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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-Q**

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2008

OR

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

Commission file number 005-84030



**AMERICAN CAPITAL AGENCY CORP.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**26-1701984**  
(I.R.S. Employer  
Identification No.)

**2 Bethesda Metro Center  
14th Floor  
Bethesda, Maryland 20814**  
(Address of principal executive offices)  
**(301) 968-9300**  
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of the issuer's common stock, \$0.01 par value, outstanding as of July 30, 2008, was 15,004,600.

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AMERICAN CAPITAL AGENCY CORP.

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ITEM 1. *Consolidated Financial Statements*

AMERICAN CAPITAL AGENCY CORP.  
CONSOLIDATED BALANCE SHEET  
JUNE 30, 2008  
(in thousands, except per share data)  
(unaudited)

<b>Assets:</b>	
Agency securities, at fair value (\$2,311,563 pledged under repurchase and swap agreements)	\$ 2,401,917
Cash and cash equivalents	7,842
Restricted cash	15,859
Derivative instruments, at fair value	1,259
Interest receivable	12,059
Other assets	831
Total assets	<u>\$ 2,439,767</u>
<b>Liabilities:</b>	
Repurchase agreements	\$2,166,616
Accrued interest payable	2,612
Dividend payable	4,651
Due to Manager	925
Derivative instruments, at fair value	1,584
Accounts payable and other accrued liabilities	1,497
Total liabilities	<u>2,177,885</u>
<b>Stockholders' equity:</b>	
Preferred stock, \$0.01 par value; 10,000 shares authorized, 0 shares issued and outstanding, respectively	—
Common stock, \$0.01 par value; 150,000 shares authorized, 15,005 shares issued and outstanding, respectively	150
Additional paid-in capital	285,903
Retained earnings	848
Accumulated other comprehensive loss	(25,019)
Total stockholders' equity	<u>261,882</u>
Total liabilities and stockholders' equity	<u>\$ 2,439,767</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENT OF OPERATIONS**  
**FOR THE PERIOD MAY 20, 2008 (date operations commenced) THROUGH JUNE 30, 2008**  
**(in thousands, except per share data)**  
**(unaudited)**

<b>Interest income:</b>	
Interest income	\$ 9,924
Interest expense	<u>3,597</u>
Net interest income	<u>6,327</u>
<b>Other income:</b>	
Gain from sale of agency security	231
Gain on derivative instruments	<u>217</u>
Total other income	<u>448</u>
<b>Expenses:</b>	
Management fees	402
General and administrative expenses	<u>874</u>
Total expenses	<u>1,276</u>
<b>Net income</b>	<b><u>\$ 5,499</u></b>
<b>Net income per common share-basic and diluted</b>	<b><u>\$ 0.37</u></b>
<b>Weighted average number of common shares outstanding-basic and diluted</b>	<b>15,000</b>
<b>Dividends declared per common share:</b>	<b>\$ 0.31</b>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**FOR THE PERIOD MAY 20, 2008 (date operations commenced) THROUGH JUNE 30, 2008**  
**(in thousands, except per share data)**  
**(unaudited)**

	Common Stock Shares	Common Stock Par Value	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total
<b>Balance, May 20, 2008 (date operations commenced)</b>	—	\$ —	\$ —	\$ —	\$ —	\$ —
Net income	—	—	—	5,499	—	5,499
Other comprehensive loss:						
Unrealized loss on available-for-sale securities	—	—	—	—	(24,586)	(24,586)
Unrealized loss on derivative instruments	—	—	—	—	(433)	(433)
Comprehensive income (loss)	—	—	—	5,499	(25,019)	(19,520)
Issuance of common stock	15,000	150	285,900	—	—	286,050
Issuance of restricted stock	5	—	—	—	—	—
Stock-based compensation	—	—	3	—	—	3
Common dividends declared, \$0.31 per share	—	—	—	(4,651)	—	(4,651)
<b>Balance, June 30, 2008</b>	<u>15,005</u>	<u>\$ 150</u>	<u>\$285,903</u>	<u>\$ 848</u>	<u>\$ (25,019)</u>	<u>\$ 261,882</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
**FOR THE PERIOD MAY 20, 2008 (date operations commenced) THROUGH JUNE 30, 2008**  
**(in thousands)**  
**(unaudited)**

<b>Operating activities:</b>	
Net income	\$ 5,499
Adjustments to reconcile net income to net cash provided by operating activities:	
Amortization of agency securities premiums and discounts, net	819
Stock-based compensation	3
Gain on sale of agency security	(231)
Gain on derivative instruments	(217)
Increase in interest receivable	(9,498)
Increase in other assets	(831)
Increase in accrued interest payable	2,612
Increase in due to Manager	925
Increase in accounts payable and other accrued liabilities	1,497
Net cash provided by operating activities	<u>578</u>
<b>Investing activities:</b>	
Purchases of agency securities	(2,495,329)
Proceeds from sale of agency security	61,082
Proceeds from derivative instruments	109
Principal collections on agency securities	4,595
Net cash used in investing activities	<u>(2,429,543)</u>
<b>Financing activities:</b>	
Increase in restricted cash	(15,859)
Proceeds from repurchase arrangements	2,722,557
Repayments on repurchase arrangements	(555,941)
Net proceeds from common stock offerings	286,050
Net cash provided by financing activities	<u>2,436,807</u>
Net change in cash and cash equivalents	7,842
Cash and cash equivalents at beginning of period	—
Cash and cash equivalents at end of period	<u>\$ 7,842</u>

See accompanying notes to consolidated financial statements.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**Note 1. Unaudited Interim Consolidated Financial Statements**

The interim consolidated financial statements of American Capital Agency Corp. (which is referred throughout this report as the “Company”, “we”, “us” and “our”) are prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information and pursuant to the requirements for reporting on Form 10-Q and Article 10 of Regulation S-X. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

Our unaudited consolidated financial statements include the accounts of our wholly-owned subsidiary, American Capital Agency TRS, LLC. Significant intercompany accounts and transactions have been eliminated. In the opinion of management, all adjustments, consisting solely of normal recurring accruals, necessary for the fair presentation of financial statements for the interim periods have been included. The current period’s results of operations are not necessarily indicative of results that ultimately may be achieved for the year.

**Note 2. Organization**

We were organized in Delaware on January 7, 2008 and commenced operations on May 20, 2008 when we completed our initial public offering, or IPO, of 10 million common shares. Concurrent with our IPO, American Capital, Ltd., or American Capital, purchased 5 million shares of our common shares in a private offering. We will elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended (the “Code”), commencing with our tax year ending December 31, 2008. As such, we are required to distribute annually 90% of our taxable net income. As long as we qualify as a REIT, we will generally not be subject to U.S. federal or state corporate taxes on our taxable net income to the extent that we distribute all of our annual taxable net income to our shareholders. We are managed by American Capital Agency Management, LLC, or our Manager, a subsidiary of a wholly-owned portfolio company of American Capital.

We earn income from primarily investing in single-family residential mortgage pass-through securities and collateralized mortgage obligations on a leveraged basis. These investments consist of securities for which the principal and interest payments are guaranteed by government-sponsored entities such as the Federal National Mortgage Association, or Fannie Mae, and the Federal Home Loan Mortgage Corporation, or Freddie Mac, or by a U.S. Government agency such as the Government National Mortgage Association, or Ginnie Mae. We refer to these types of securities as agency securities and the specific agency securities in which we invest as our investment portfolio.

**Note 3. Significant Accounting Policies**

***Cash and Cash Equivalents***

Cash and cash equivalents consist of unrestricted demand deposits and highly liquid investments with original maturities of three months or less. Cash and cash equivalents are carried at cost which approximates fair value.

***Restricted Cash***

Restricted cash includes cash pledged as collateral for clearing and executing trades, repurchase agreements and interest rate swaps.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

***Investments***

Statement of Financial Accounting Standards (“SFAS”) No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, or SFAS No. 115, requires that at the time of purchase, we designate a security as held-to-maturity, available-for-sale or trading depending on our ability and intent to hold such security to maturity. Securities classified as trading and available-for-sale are reported at fair value, while securities classified as held-to-maturity are reported at amortized cost. Although we generally intend to hold most of our agency securities until maturity, we may, from time to time, sell any of our agency securities as part of our overall management of our investment portfolio. Accordingly, we are required to classify all of our agency securities as available-for-sale. All securities classified as available-for-sale are reported at fair value, based on market prices from third-party sources, with unrealized gains and losses excluded from earnings and reported in other comprehensive income (loss), a component of stockholders’ equity.

We evaluate securities for other-than-temporary impairment at least on a quarterly basis, and more frequently when economic or market conditions warrant such evaluation. The determination of whether a security is other-than-temporarily impaired involves judgments and assumptions based on subjective and objective factors. Consideration is given to (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of recovery in the fair value of the agency security, and (3) our intent and ability to retain our investment in the agency security for a period of time sufficient to allow for any anticipated recovery in fair value. Investments with unrealized losses are not considered other-than-temporarily impaired if we have the ability and intent to hold the investments for a period of time, to maturity if necessary, sufficient for a forecasted market price recovery up to or beyond the cost of the investments. Unrealized losses on securities that are considered other-than-temporary, as measured by the amount of the decline in fair value attributable to other-than-temporary factors, are recognized as an impairment charge in earnings as an unrealized loss and the cost basis of the securities is adjusted.

***Interest Income***

Interest income is accrued based on the outstanding principal amount of the agency securities and their contractual terms. Premiums and discounts associated with the purchase of the agency securities is amortized or accreted into interest income over the projected lives of the securities, including contractual payments and estimated prepayments using the interest method in accordance with SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*.

We estimate long-term prepayment speeds using third party services, market data and internal models. The third party services estimate prepayment speeds using models that incorporate the current yield curve, current mortgage rates, current mortgage rates of the outstanding loans, loan age, volatility and other factors. Management reviews the prepayment speeds estimated by the third-party services and compares the results to market consensus prepayment speeds, if available, and internal prepayments models. Management also considers historical prepayment speeds and current market conditions to validate reasonableness. Actual and anticipated prepayment experience is reviewed quarterly and effective yields are recalculated when differences arise between the previously estimated future prepayment and the amounts actually received plus current anticipated future prepayments. If the actual and anticipated future prepayment experience differs from our prior estimate of prepayments, we are required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.



**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

***Repurchase Agreements***

We finance the acquisition of agency securities for our investment portfolio through repurchase transactions under master repurchase agreements. Repurchase transactions are treated as collateralized financing transactions and are carried at their contractual amounts, including accrued interest, as specified in the respective transactions. We have entered into master repurchase agreements with 14 financial institutions.

In instances where we acquire agency securities through repurchase agreements with the same counterparty from whom the agency securities were purchased, we account for the purchase commitment and repurchase agreement on a net basis and record a forward commitment to purchase agency securities as a derivative instrument if the transaction does not comply with the criteria in Financial Accounting Standards Board (“FASB”) Staff Position FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions*, or FSP FAS 140-3, for gross presentation. If the transaction does not comply with the criteria for gross presentation in FSP FAS 140-3, such forward commitments are recorded at fair value with subsequent changes in fair value recognized in income. If the transaction complies with the criteria for gross presentation in FSP FAS 140-3, we record both the assets and the related financing on a gross basis in our consolidated balance sheet and the corresponding interest income and interest expense in our consolidated statements of operations. During the period ended June 30, 2008, we did not have any seller-financed acquisitions of agency securities that did not qualify for gross presentation.

***Manager Compensation***

The management agreement provides for the payment to our Manager of a management fee and reimbursement of certain operating expenses, which are accrued and expensed during the period for which they are earned or incurred. Refer to Note 9 for disclosure on the terms of the management agreement and administrative services agreement.

***Derivatives and Hedging Activities***

We account for derivative financial instruments in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, or SFAS No. 133. SFAS No. 133 requires an entity to recognize all derivatives as either assets or liabilities in the balance sheet and to measure those instruments at fair value.

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives that are intended to hedge exposure to variability in expected future cash flows are considered cash flow hedges. For derivatives designated in qualifying cash flow hedging relationships, the effective portion of the fair value adjustments are initially recorded in other comprehensive income (a component of stockholders’ equity) and reclassified to income at the time that the hedged transactions affect earnings. The ineffective portion of the fair value adjustments is recognized in gain (loss) on derivative instruments in net income immediately. For derivatives not designated in hedging relationships under SFAS No. 133, the fair value adjustments are recorded in gain (loss) on derivative instruments in net income.

We estimate the fair value based on the estimated net present value of the future cash flows using a forward interest rate yield curve in effect as of the measurement period, adjusted for non-performance risk based on our credit risk and our counterparty’s credit risk.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

In the normal course of business, we may use a variety of derivative financial instruments to manage, or hedge, interest rate risk on our borrowings. We do not enter into derivatives for trading or speculative purposes. To qualify for hedge accounting, the derivative financial instrument must meet the requirements of SFAS No. 133, including that the derivative must be proven to be effective in offsetting the cash flows on the hedged transactions. When the underlying hedged transaction ceases to exist, all changes in the fair value of the instrument are marked-to-market with changes in value included in gain (loss) on derivative instruments in net income for each period until the derivative instrument matures or is settled as well as any amounts that have been previously deferred in accumulated other comprehensive income may need to be reclassified to net income. Any derivative instrument used for risk management that does not meet the effective hedge criteria required for designation is marked-to-market with the fair value adjustments included in gain (loss) on derivative instruments in net income.

***Income Taxes***

We will elect to be taxed as a REIT under the provisions of the Code and the corresponding provisions of state law, commencing with the tax year ending December 31, 2008. A REIT is not subject to tax on its earnings to the extent that it distributes its annual taxable income to its stockholders and as long as certain asset, income and stock ownership tests are met. We operate in a manner that will allow us to be taxed as a REIT and, as a result, we do not expect to pay substantial corporate-level income taxes. If we failed to qualify as a REIT and did not qualify for certain statutory relief provisions, we would be subject to federal, state and local income taxes and may be precluded from qualifying as a REIT for the subsequent four fiscal years following the year in which the REIT qualification was lost. Our domestic taxable REIT subsidiary, American Capital Agency TRS, LLC, will be subject to federal, state and, if applicable, local income tax. For the period ended June 30, 2008, we had no activity in American Capital Agency TRS, LLC.

***Recent Accounting Pronouncements***

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities* (“SFAS No. 161”). The objective of SFAS No. 161 is to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity’s financial position, financial performance, and cash flows. SFAS No. 161 improves transparency about the location and amounts of derivative instruments in an entity’s financial statements; how derivative instruments and related hedged items are accounted for under SFAS No. 133; and how derivative instruments and related hedged items affect its financial position, financial performance, and cash flows. SFAS No. 161 achieves these improvements by requiring disclosure of the fair values of derivative instruments and their gains and losses in a tabular format. It also provides more information about an entity’s liquidity by requiring disclosure of derivative features that are credit risk-related. Finally, it requires cross-referencing within footnotes to enable financial statement users to locate important information about derivative instruments. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. We did not early adopt SFAS No. 161. Management is currently evaluating the enhanced disclosure requirements and the impact on our consolidated financial statements of adopting SFAS No. 161.

In June 2008, the FASB issued FASB Staff Position (FSP) No. EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities* (“FSP EITF 03-6-1”). The objective of this FSP is to address questions that arose regarding whether unvested share-based payment awards with rights to receive dividends or dividend equivalents should be considered participating securities for

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

the purposes of applying the two-class method of calculating earnings per share (EPS), pursuant to FASB Statement No. 128, *Earnings per Share*. In FSP EITF 03-6-1, the FASB staff concluded that unvested share-based payment awards that contain rights to receive non-forfeitable dividends or dividend equivalents (whether paid or unpaid) are participating securities, and thus, should be included in the two-class method of computing EPS. It is effective for fiscal years beginning after December 15, 2008, and interim periods within those years with early application prohibited. This FSP requires that all prior-period EPS data be adjusted retrospectively. Management is currently evaluating the impact on our consolidated financial statements of adopting FSP EITF 03-6-1.

**Note 4. Agency Securities**

The following table summarizes our available-for-sale agency securities as of June 30, 2008 (dollars in thousands):

	<u>Freddie Mac</u>	<u>Fannie Mae</u>	<u>Ginnie Mae</u>	<u>Total</u>
Agency securities, par	\$ 259,983	\$ 1,284,336	\$ 829,787	\$ 2,374,106
Unamortized discount	—	(48)	—	(48)
Unamortized premium	5,018	20,609	26,818	52,445
Amortized cost	265,001	1,304,897	856,605	2,426,503
Gross unrealized gains	—	78	—	78
Gross unrealized losses	(3,044)	(11,542)	(10,078)	(24,664)
Estimated fair value	<u>\$261,957</u>	<u>\$ 1,293,433</u>	<u>\$ 846,527</u>	<u>\$2,401,917</u>
Weighted average coupon	6.12%	6.06%	6.15%	6.10%
Weighted average yield(1)	5.56%	5.58%	5.36%	5.50%

(1) Weighted average yield during the period from May 20, 2008 to June 30, 2008 and incorporates future prepayment assumptions.

Actual maturities of agency securities are generally shorter than the stated contractual maturities. Actual maturities of the agency securities are affected by the contractual lives of the underlying mortgages, periodic principal payments and principal prepayments. The following table summarizes our agency securities as of June 30, 2008, according to their estimated weighted average life classifications (dollars in thousands):

	<u>Weighted Average Life</u>	<u>Fair Value</u>	<u>Amortized Cost</u>	<u>Weighted Average Coupon</u>
Less than one year		\$ —	\$ —	— %
Greater than one year and less than five years		213,931	215,569	6.35
Greater than or equal to five years		<u>2,187,986</u>	<u>2,210,934</u>	<u>6.07</u>
Total		<u>\$ 2,401,917</u>	<u>\$2,426,503</u>	<u>6.10%</u>

The weighted average lives of the agency securities as of June 30, 2008 in the table above incorporate anticipated future prepayment assumptions. We estimate long-term prepayment assumptions using third party services, market data and internal models. The third party services estimate prepayment speeds using models that consider current yield, steepness of the yield curve, current mortgage rates, mortgage rates of the outstanding loans, loan age, margin and volatility.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

During the period ended June 30, 2008, we sold one agency security with a carrying value of \$60.9 million for proceeds of \$61.1 million realizing a gain of \$0.2 million.

The following table summarizes our agency securities pledged as collateral under repurchase agreements and swaps by type as of June 30, 2008 (dollars in thousands):

Type	Agency Securities Pledged Under Repurchase Agreements			Agency Securities Pledged for Swaps			Total Fair Value of Agency Securities Pledged and Accrued Interest
	Fair Value/Carrying Value	Amortized Cost	Accrued Interest on Pledged Agency Securities	Fair Value/Carrying Value	Amortized Cost	Accrued Interest on Pledged Swaps	
Fannie Mae	\$ 1,236,817	\$ 1,247,833	\$ 6,197	\$ 2,531	\$ 2,573	\$ 13	\$ 1,245,558
Freddie Mac	225,688	228,326	1,144	—	—	—	226,832
Ginnie Mae	846,527	856,605	4,250	—	—	—	850,777
Total	<u>\$ 2,309,032</u>	<u>\$ 2,332,764</u>	<u>\$ 11,591</u>	<u>\$ 2,531</u>	<u>\$ 2,573</u>	<u>\$ 13</u>	<u>\$ 2,323,167</u>

The following table summarizes our agency securities pledged as collateral under repurchase agreements by maturity as of June 30, 2008 (dollars in thousands):

Maturity	Fair Value/Carrying Value	Amortized Cost	Accrued Interest on Pledged Agency Securities
30 days or less	\$ 1,833,739	\$ 1,851,107	\$ 9,206
31 - 59 days	427,316	432,982	2,148
60 - 89 days	47,977	48,675	237
Greater than 90 days	—	—	—
Total / Weighted average	<u>\$ 2,309,032</u>	<u>\$ 2,332,764</u>	<u>\$ 11,591</u>

**Note 5. Repurchase Agreements**

We pledge certain of our agency securities as collateral under uncommitted repurchase arrangements with financial institutions, the terms and conditions of which are negotiated on a transaction-by-transaction basis. Interest rates on these borrowings are generally based on LIBOR plus or minus a margin and amounts available to be borrowed are dependent upon the fair value of the agency securities pledged as collateral, which fluctuates with changes in interest rates, credit quality and liquidity conditions within the banking, mortgage finance and real estate industries. In response to declines in fair value of pledged agency securities, lenders may require us to post additional collateral or pay down borrowings to re-establish agreed upon collateral requirements, referred to as margin calls. As of June 30, 2008, we have met all margin requirements. As of June 30, 2008, our agency securities pledged under repurchase agreements totaled \$2.3 billion.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

The following table summarizes our borrowings under repurchase arrangements and weighted average interest rates classified by scheduled maturities as of June 30, 2008 (dollars in thousands):

<u>Maturity</u>	<u>Borrowings Outstanding</u>	<u>Average Interest Rate</u>	<u>Weighted Average Days to Maturity</u>
30 days or less	\$ 1,719,207	2.42%	16 days
31 - 59 days	403,890	2.29	55 days
60 - 89 days	43,519	2.32	65 days
Greater than 90 days	—	—	—
Total / Weighted average	<u>\$2,166,616</u>	<u>2.39%</u>	<u>24 days</u>

As of June 30, 2008, we had \$31 million at risk under a repurchase agreement with Deutsche Bank Securities Inc. which was greater than 10% of our stockholders' equity. The amount at risk is determined as the excess of the fair value of agency securities pledged as collateral plus accrued interest in excess of the repurchase obligation plus accrued interest. The weighted average maturity of the repurchase agreement with Deutsche Bank was 45 days as of June 30, 2008. We did not have any other amounts at risk with other counterparties greater than 10% of our stockholders' equity as of June 30, 2008.

**Note 6. Hedging Instruments**

In connection with our interest rate risk management strategy, we hedge a portion of our interest rate risk by entering into derivative financial instrument contracts. We may enter into interest rate caps, collars, floors, forward contracts, put and call options on securities or securities underlying futures contracts, futures, options or swap agreements to attempt to mitigate the risk of the cost of our short-term variable rate liabilities increasing at a faster rate than the earnings of our long-term assets during a period of rising interest rates. As of June 30, 2008, our derivatives were primarily comprised of six-month forward starting interest rate swaps, which will have the effect of modifying the repricing characteristics of our repurchase agreements and cash flows on such liabilities. Our interest rate swaps are used to lock-in a fixed rate related to a portion of our current and anticipated short-term repurchase agreements. Under our interest rate swaps, we pay a fixed rate and receive a floating rate based on LIBOR.

The use of hedging instruments creates exposure to credit risk relating to potential losses that could be recognized in the event that the counterparties to these instruments fail to perform their obligations under the contracts. We minimize this risk by limiting our counterparties to major financial institutions with acceptable credit ratings and monitoring positions with individual counterparties. In addition, we are required to pledge assets as collateral for some of our swaps, whose amounts vary over time based on the market value, notional amount and remaining term of the swap. We had agency securities with a fair value of \$2.5 million and cash of \$0.7 million pledged as collateral against our swaps as of June 30, 2008. In the event of a default by a counterparty we may not receive payments provided for under the terms of our hedging instruments, and may have difficulty obtaining our assets pledged as collateral for swaps. We do not anticipate any defaults by our counterparties.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

The table below summarizes information about our outstanding swaps as of June 30, 2008 (dollars in thousands):

<u>Swap Term</u>	<u>Notional Amount</u>	<u>Weighted Average Fixed Pay Rate</u>	<u>Net Estimated Fair Value</u>
1 - 2 Years	\$ 550,000	3.42%	\$ 322
3 - 4 Years	50,000	4.37	(530)
4 - 5 Years	100,000	4.22	(225)
Greater than 5 Years	—	—	—
Total / Weighted average	<u>\$ 700,000</u>	<u>3.60%</u>	<u>\$ (433)</u>

Our hedging program utilizing interest rate swap agreements had no effect on interest expense during the period ended June 30, 2008 as all swaps were forward starting with effective dates in late November and early December 2008.

#### **Note 7. Fair Value Measurements**

SFAS No. 157, *Fair Value Measurements*, or SFAS No. 157, defines fair value, establishes a framework for measuring fair value and establishes a three-level valuation hierarchy for disclosure of fair value measurement. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. A financial instrument's categorization within the hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels of hierarchy established by SFAS No. 157 are defined as follows:

- Level 1 Inputs – Quoted prices (unadjusted) for identical unrestricted assets and liabilities in active markets that are accessible at the measurement date.
- Level 2 Inputs – Quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3 Inputs – Instruments with primarily unobservable market data that cannot be corroborated.

#### ***Agency Securities***

Agency securities are valued using third-party pricing services. If third-party pricing services are not available, the values are based on dealer quotes. The third-party pricing services use pricing models that incorporate such factors as coupons, prepayment speeds, spread to the Treasury and swap curves, convexity, duration, periodic and life caps and credit enhancement. Management reviews the fair values determined by the third-party pricing models and compares the results, if available, to dealer quotes, values from the repurchase agreement counterparties and internal pricing models on each investment to validate reasonableness. The dealer quotes incorporate common market pricing methods, including a spread measurement to the Treasury curve or interest rate swap curve as well as underlying characteristics of the particular security including coupon, periodic and life caps, rate reset period, issuer, additional credit support and expected life of the security.

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

**Derivative Instruments**

Derivatives are valued using a third-party pricing model. The third-party pricing model incorporates such factors as the Treasury curve, LIBOR rates and the pay rate on the interest rate swaps. Credit valuation adjustments for nonperformance risk, if any, include a quantitative and/or qualitative evaluation of both our and our counterparty's credit risk.

Our financial assets and liabilities carried at fair value on a recurring basis are valued as follows (in thousands):

	Level 1	Level 2	Level 3	Total
Agency securities:				
Fannie Mae	\$ —	\$ 1,293,433	\$ —	\$ 1,293,433
Ginnie Mae	—	846,527	—	846,527
Freddie Mac	—	261,957	—	261,957
Total agency securities	\$ —	\$ 2,401,917	\$ —	\$ 2,401,917
Derivative instruments:				
Assets	\$ —	108	\$ 1,151	\$ 1,259
Liabilities	—	—	(1,584)	(1,584)
Total derivative instruments, net	—	108	(433)	(325)
Total	\$ —	\$ 2,402,025	\$ (433)	\$ 2,401,592

During the period ended June 30, 2008, we recognized a gain of \$0.1 million in our consolidated statement of operations and unrealized losses of \$0.4 million recorded in other comprehensive income (a component of stockholders' equity) related to our level 3 assets and liabilities.

**Note 8. Long-term Incentive Plan**

We sponsor an equity incentive plan to provide for the issuance of equity-based awards, including stock options, restricted stock, restricted stock units and unrestricted stock awards to our independent directors. An aggregate of 100,000 shares of our common stock has been reserved for issuance under this plan. Simultaneous with the completion of our IPO, 4,500 shares of restricted common stock were granted to our independent directors pursuant to this plan (grant date fair value of \$19.35 per share) that vest annually over three years. As of June 30, 2008, the plan had 95,500 common shares remaining available for future issuance. As of June 30, 2008, we had unrecognized compensation expense of \$83,735 related to unvested shares of restricted stock. For the period ended June 30, 2008, we recorded \$3,340 of compensation expense related to restricted stock awards.

**Note 9. Management Agreement and Related Party Transactions**

We entered into a management agreement with our Manager, which provides for an initial term through May 20, 2011 with automatic one-year extension options and subject to certain termination rights. We pay our Manager a monthly management fee equal to 1.25% per annum of our Stockholders' Equity (as defined in the management agreement). As of June 30, 2008, management fees of \$0.4 million were accrued and payable to our Manager.

We are obligated to reimburse our Manager for its expenses incurred directly related to our operations, excluding employment-related expenses of our Manager's officers and any American Capital employees who provide services to us pursuant to the management agreement. Our Manager has entered into an administrative services agreement with American Capital, pursuant to which American Capital will provide personnel, services and resources necessary for our Manager to perform its obligations under the management agreement. As of

**AMERICAN CAPITAL AGENCY CORP.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**  
**(unaudited)**

June 30, 2008, expense reimbursements of \$0.2 million were accrued and payable to our Manager. In addition, we are required to reimburse our Manager or American Capital for all one-time costs that our Manager or American Capital paid on behalf of us that were incurred in connection with our formation, organization and IPO. For the period ended June 30, 2008, these costs amounted to \$0.3 million.

We will be required to pay our Manager a termination fee for non-renewal of the management agreement without cause. The termination fee will be equal to three times the average annual management fee earned by the Manager during the prior 24-month period immediately preceding the most recently completed month prior to the effective date of the termination.

**Note 10. Commitments and Contingencies**

From time to time, we may become involved in various claims and legal actions arising in the ordinary course of business. We are not aware of any reported or unreported contingencies at June 30, 2008.

**Note 11. Dividends**

On June 23, 2008, our Board of Directors declared a dividend of \$0.31 per share for the second quarter of 2008. The dividend was paid on July 29, 2008 to common shareholders of record as of July 2, 2008.



## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is designed to provide a reader of American Capital Agency Corp. financial statements with a narrative from the perspective of management. Our MD&A is presented in five sections:

- Executive Overview
- Financial Condition
- Results of Operations
- Liquidity and Capital Resources
- Forward-Looking Statements

### **EXECUTIVE OVERVIEW**

American Capital Agency Corp. (together with its consolidated subsidiary, is referred throughout this report as the "Company", "we", "us" and "our") is a newly-organized real estate investment trust, or REIT, that invests exclusively in single-family residential mortgage pass-through securities and collateralized mortgage obligations on a leveraged basis. These investments consist of securities for which principal and interest are guaranteed by government-sponsored entities such as the Federal National Mortgage Association, or Fannie Mae, and the Federal Home Loan Mortgage Corporation, or Freddie Mac, or by a U.S. Government agency such as the Government National Mortgage Association, or Ginnie Mae. We refer to these types of securities as agency securities and the specific agency securities in which we invest as our investment portfolio.

We were organized on January 7, 2008, and commenced operations on May 20, 2008 following the completion of our initial public offering, or IPO. In connection with the IPO, we sold 10 million shares of our common stock at \$20.00 per share for net proceeds of \$186 million, net of the underwriters' commission and estimated expenses. Concurrent with our IPO, in a private offering we sold five million shares of our common stock at \$20.00 per share for aggregate proceeds of \$100 million to American Capital, Ltd., or American Capital. Our common stock is traded on the NASDAQ Global Market under the symbol "AGNC".

We are externally managed by American Capital Agency Management, LLC, or our Manager. Our Manager is a wholly-owned subsidiary of American Capital, LLC, which is a wholly-owned portfolio company of American Capital. We do not have any employees.

Our principal goal is to generate net income for distribution to our stockholders through regular quarterly dividends from our net interest income, which is the spread between the interest income earned on our investment portfolio and the interest costs of our borrowings and hedging activities. We fund our investments through short-term borrowings structured as repurchase agreements.

We intend to qualify as a REIT for federal income tax purposes and will elect to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, commencing with our taxable year ending December 31, 2008. We generally will not be subject to federal income taxes on our taxable income to the extent that we annually distribute all of our taxable income to stockholders and maintain our intended qualification as a REIT.

As of June 30, 2008, we had total assets of \$2.4 billion. Our investment portfolio consisted entirely of fixed-rate agency securities. Our repurchase agreements outstanding were \$2.2 billion and our stockholders' equity was \$0.3 billion, or \$17.45 per share, for a leverage ratio of 8.27. For the period ended June 30, 2008, we reported net income of \$5.5 million, or \$0.37 per basic and diluted share. On June 23, 2008, we declared a cash dividend of \$0.31 per share for the period ended June 30, 2008 to shareholders of record as of July 2, 2008, which was paid on July 29, 2008.

### ***Recent Developments***

Our business is affected by general U.S. residential real estate fundamentals and the overall U.S. economic environment. In particular, our strategy and performance is influenced by the specific characteristics of these markets, including prepayment rates, interest rates and the interest rate yield curve. Our results of operations primarily depend on, among other things, the level of our interest income and the amount and cost of borrowings we may obtain by pledging our investment portfolio as collateral for the borrowings. Our interest income, which includes the amortization of purchase premiums and accretion of discounts, varies primarily as a result of changes in prepayment speeds of the mortgages. Our borrowing cost varies based on changes in interest rates and changes in the amount we can borrow which is generally based on the fair value of the portfolio and the advance rate the lenders are willing to lend against the portfolio.

Since the middle of 2007, commercial banks, investment banks and insurance companies have announced extensive losses from exposure to the U.S. mortgage market. These losses have reduced financial industry capital leading to reduced liquidity for mortgage assets, more volatile valuations of mortgage assets and in some cases forced selling of mortgage assets. As a result, less financing on attractive terms is available for mortgage assets.

The payment of principal and interest on the agency securities that we invest in is guaranteed by Ginnie Mae, Freddie Mac or Fannie Mae. The payment of principal and interest on agency securities issued by Ginnie Mae is guaranteed by the full faith and credit of the U.S. government, while payment of principal and interest on agency securities issued by Freddie Mac or Fannie Mae is not guaranteed by the U.S. government. Any failure to honor its guarantee of agency securities by Freddie Mac or Fannie Mae or any downgrade of securities issued by Freddie Mac or Fannie Mae by the rating agencies could cause a significant decline in the value of and cash flow from, any agency securities we own that are guaranteed by such entity. The recent economic challenges in the residential mortgage market have significantly affected the financial results of Freddie Mac and Fannie Mae. Both Freddie Mac and Fannie Mae reported substantial losses in 2007 and continued to report losses in the first half of 2008. Subsequent to the end of the quarter, there have been increased market concerns about Freddie Mac and Fannie Mae's ability to withstand future credit losses associated with securities held in their investment portfolios, and on which they provide guarantees, without the direct support of the federal government. We believe Freddie Mac and Fannie Mae's ability to fulfill their guarantees were significantly improved by the "The Housing and Economic Recovery Act of 2008". This law (i) authorizes the Department of the Treasury to purchase obligations (including equity) of housing Government Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, and expands an existing line of credit to the GSEs; (ii) reforms the regulatory supervision of the GSEs; and (iii) provides reform of the Federal Housing Administration. We will continue to monitor the developments of the GSEs and we may change our portfolio composition in response to changes in our views.

### ***Our Manager***

We are externally managed and advised by our Manager pursuant to the terms of a management agreement. Our Manager is responsible for administering our business activities and day-to-day operations, subject to the supervision and oversight of our Board of Directors. Members of American Capital's senior management and its residential mortgage-backed securities, or RMBS, investment team serve as our Manager's officers. Because neither we nor our Manager have any employees, our Manager has entered into an administrative services agreement with American Capital, pursuant to which our Manager has access to American Capital's employees, infrastructure, business relationships, management expertise and capital raising capabilities. This access to American Capital's infrastructure allows our Manager to dedicate its time to managing our investment portfolio on our behalf so that we may fully take advantage of opportunities in the agency securities market. American Capital had approximately \$20 billion of capital resources under management and 619 employees as of June 30, 2008.

### ***Our Investment Strategy***

Our investment strategy is to build an investment portfolio consisting exclusively of agency securities that seeks to generate risk-adjusted returns. Agency securities carry an actual or implied AAA rating. Our Manager has established an investment committee comprised of its officers. The investment committee has established investment guidelines that have been approved by our Board of Directors. The investment committee can change our investment guidelines at any time with the approval of our Board of Directors. The following are our investment guidelines:

The investment committee has proposed, and our Board of Directors has approved, the following investment guidelines:

- no investment shall be made in any non-agency securities;
- our leverage may not exceed 10 times our stockholders' equity (as computed in accordance with GAAP), which we refer to as our leverage threshold. In the event that our leverage inadvertently exceeds the leverage threshold, we may not utilize additional leverage without prior approval from our Board of Directors or until we are once again in compliance with the leverage threshold;
- no investment shall be made that would cause us to fail to qualify as a REIT for federal income tax purposes;
- no investment shall be made that would cause us to be regulated as an investment company under the Investment Company Act; and
- prior to entering into any proposed investment transaction with American Capital or any of its affiliates, a majority of our independent directors must approve the terms of the transaction.

Agency securities consist of single-family residential pass-through certificates and CMOs for which the principal and interest are guaranteed by a U.S. Government agency or a U.S. Government sponsored entity.

- ***Single-Family Residential Pass-Through Certificates.*** Single-family residential pass-through certificates are securities representing interests in "pools" of mortgage loans secured by residential real property where payments of both interest and principal, plus pre-paid principal, on the securities are made monthly to holders of the security, in effect "passing through" monthly payments made by the individual borrowers on the mortgage loans that underlie the securities, net of fees paid to the issuer/guarantor and servicers of the securities.
- ***Collateralized Mortgage Obligations (CMOs).*** CMOs are structured instruments comprised of agency securities. Interest and principal, if applicable, plus pre-paid principal, on a CMO are paid on a monthly basis. CMOs consist of multiple classes of securities, with each class bearing different stated maturity dates. Monthly payments of principal, including prepayments, are first returned to investors holding the shortest maturity class; investors holding the longer maturity classes receive principal only after the first class has been retired.

These securities are collateralized by either fixed-rate mortgage loans, or FRMs, adjustable-rate mortgage loans, or ARMs, or hybrid ARMs. Hybrid ARMs are mortgage loans that have interest rates that are fixed for an initial period (typically three, five, seven or 10 years) and thereafter reset at regular intervals subject to interest rate caps. Our allocation between securities collateralized by FRMs, ARMs or hybrid ARMs will depend on various factors including, but not limited to, relative value, expected future prepayment trends, supply and demand, costs of financing, costs of hedging, expected future interest rate volatility and the overall shape of the U.S. Treasury and interest rate swap yield curves. We take these factors into account when we make these types of investments.

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As of June 30, 2008, our investment portfolio totaled \$2.4 billion financed at a leverage ratio of approximately 8.27, which is below the leverage approved by our Board of Directors and permitted under our master repurchase agreements of 10 times our stockholders' equity. Financing spreads (the difference between yields on our investments and rates on related borrowings) averaged 315 basis points during the period ended June 30, 2008.

The size and composition of our investment portfolio depends on investment strategies being implemented by management, the availability of investment capital and overall market conditions, including the availability of attractively priced investments and suitable financing to appropriately leverage our investment capital. Market conditions are influenced by, among other things, current levels of, and expectations for future levels of, short-term interest rates, mortgage prepayments and market liquidity.

### ***Our Financing Strategy***

As part of our investment strategy, we borrow against our investment portfolio pursuant to master repurchase agreements with financial institutions. We expect that our borrowings pursuant to repurchase transactions under such master repurchase agreements generally will have maturities that range from 30 to 90 days, but may have maturities of up to 364 days. We currently expect our leverage will range between 6 to 8 times the amount of our stockholders' equity. Per our investment guidelines approved by our Board of Directors, we would need Board of Director approval for our leverage to exceed 10 times the amount of our stockholders' equity.

### ***Our Hedging Strategy***

As part of our risk management strategy, we may hedge our exposure to interest rate and prepayment risk as our Manager determines is in our best interest given our investment strategy, the cost of the hedging transactions and our intention to qualify as a REIT. As a result, we may elect to bear a level of interest rate or prepayment risk that could otherwise be hedged when management believes, based on all relevant facts, that bearing the risk enhances our risk/return profile. We may enter into interest rate caps, collars, floors, forward contracts, put and call options on securities or securities underlying futures contracts, futures, options or swap agreements to attempt to mitigate the risk of the cost of our variable rate liabilities increasing at a faster rate than the earnings on our assets during a period of rising interest rates. We do not anticipate entering into hedging instruments for speculative or trading purposes.

### **Summary of Critical Accounting Policies**

Our critical accounting policies relate to investment accounting, revenue recognition, securities valuation, derivative accounting and income taxes. Each of these items involves estimates that will require management to make judgments that are subjective in nature. We will rely on our Manager's experience and analysis of historical and current market data in order to arrive at what we believe to be reasonable estimates. Under different conditions, we could report materially different amounts using these critical accounting policies.

### ***Investments***

Statement of Financial Accounting Standards ("SFAS") No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, or SFAS No. 115, requires that at the time of purchase, we designate a security as held-to-maturity, available-for-sale, or trading depending on our ability and intent to hold such security to maturity. Securities classified as available-for-sale are reported at fair value, while securities classified as held-to-maturity are reported at amortized cost. Although we generally intend to hold most of our agency securities until maturity, we may, from time to time, sell any of our agency securities as part of our overall management of our investment portfolio. Accordingly, we are required to classify all of our securities as available-for-sale. All securities classified as available-for-sale are reported at fair value, based on market prices from third-party sources, with unrealized gains and losses excluded from earnings and reported in other comprehensive income (loss), a component of stockholders' equity. Upon the sale of an investment security, any unrealized gain or loss is reclassified out of accumulated other comprehensive income to earnings as a realized gain or loss using the specific identification method.

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We evaluate securities for other-than-temporary impairment at least on a quarterly basis, and more frequently when economic or market conditions warrant such evaluation. The determination of whether a security is other-than-temporarily impaired involves judgments and assumptions based on subjective and objective factors. Consideration is given to (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of recovery in fair value of the agency security, and (3) our intent and ability to retain our investment in the agency security for a period of time sufficient to allow for any anticipated recovery in fair value. Investments with unrealized losses are not considered other-than temporarily impaired if we have the ability and intent to hold the investments for a period of time, to maturity if necessary, sufficient for a forecasted market price recovery up to or beyond the cost of the investments. Unrealized losses on securities that are considered other-than-temporary, as measured by the amount of the difference between the securities' cost basis and its fair value are recognized as an impairment charge in earnings as an unrealized loss and the cost basis of the securities is adjusted.

### ***Interest Income***

Interest income is accrued based on the outstanding principal amount of the agency securities and their contractual terms. Premiums and discounts associated with the purchase of the agency securities is amortized or accreted into interest income over the projected lives of the securities, including contractual payments and estimated prepayments using the interest method in accordance with SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases* .

We estimate long-term prepayment speeds using third party services, market data and internal models. The third party services estimate prepayment speeds using models that incorporate the current yield curve, current mortgage rates, current mortgage rates of the outstanding loans, loan age, volatility and other factors. Management reviews the prepayment speeds estimated by the third-party services and compares the results to market consensus prepayment speeds, if available, and internal prepayments models. Management also considers historical prepayment speeds and current market conditions to validate reasonableness. Actual and anticipated prepayment experience is reviewed quarterly and effective yields are recalculated when differences arise between the previously estimated future prepayment and the amounts actually received plus current anticipated future prepayments. If the actual and anticipated future prepayment experience differs from our prior estimate of prepayments, we are required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.

### ***Repurchase Agreements***

We finance the acquisition of agency securities for our investment portfolio through repurchase transactions under master repurchase agreements. Repurchase transactions are treated as collateralized financing transactions and are carried at their contractual amounts, including accrued interest, as specified in the respective transactions. We have entered into master repurchase agreements with 14 financial institutions.

In instances where we acquire agency securities through repurchase agreements with the same counterparty from whom the agency securities were purchased, we account for the purchase commitment and repurchase agreement on a net basis and record a forward commitment to purchase agency securities as a derivative instrument if the transaction does not comply with the criteria in Financial Accounting Standards Board ("FASB") Staff Position FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions* , or FSP FAS 140-3, for gross presentation. If the transaction does not comply with the criteria for gross presentation in FSP FAS 140-3, such forward commitments are recorded at fair value with subsequent changes in fair value recognized in income. Additionally, we record the cash portion of our investment in agency securities as a mortgage related receivable from the counterparty on our balance sheet. If the transaction complies with the criteria for gross presentation in FSP FAS 140-3, we record both the assets and the related financing on a

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gross basis in our consolidated balance sheet and the corresponding interest income and interest expense in our consolidated statements of operations. During the period ended June 30, 2008, we did not have any seller-financed acquisitions of agency securities that did not qualify for gross presentation.

***Derivatives and Hedging Activities***

We account for derivative financial instruments in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, or SFAS No. 133. SFAS No. 133 requires an entity to recognize all derivatives as either assets or liabilities in the balance sheet and to measure those instruments at fair value.

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives that are intended to hedge exposure to variability in expected future cash flows are considered cash flow hedges. For derivatives designated in qualifying cash flow hedging relationships, the effective portion of the fair value adjustments are initially recorded in other comprehensive income (a component of stockholders' equity) and reclassified to income at the time that the hedged transactions affect earnings. The ineffective portion of the fair value adjustments is recognized in gain (loss) on derivative instruments in net income immediately. For derivatives not designated in hedging relationships under SFAS No. 133, the fair value adjustments are recorded in gain (loss) on derivative instruments in net income.

We estimate the fair value based on the estimated net present value of the future cash flows using a forward interest rate yield curve in effect as of the measurement period, adjusted for non-performance risk based on our credit risk and our counterparty's credit risk.

In the normal course of business, we may use a variety of derivative financial instruments to manage, or hedge, interest rate risk on our borrowings. The Company does not enter into derivatives for trading or speculative purposes. To qualify for hedge accounting, the derivative financial instrument must meet the requirements of SFAS No. 133, including the derivative must be proven to be effective in offsetting the cash flows on the hedged transactions. When the underlying hedged transaction ceases to exist, all changes in the fair value of the instrument are marked-to-market with changes in value included in gain (loss) on derivative instruments in net income for each period until the derivative instrument matures or is settled as well as any amounts that have been previously deferred in accumulated other comprehensive income may need to be reclassified to net income. Any derivative instrument used for risk management that does not meet the effective hedge criteria required for designation is marked-to-market with the fair value adjustments included in gain (loss) on derivative instruments in net income.

***Income Taxes***

We will elect to be taxed as a REIT in our tax return for the year ending December 31, 2008, under the provisions of the Code and the corresponding provisions of state law. A REIT is not subject to tax on its earnings to the extent that it distributes its annual taxable income to its stockholders and as long as certain asset, income and stock ownership tests are met. We operate in a manner that we believe allows us to be taxed as a REIT and, as a result, we do not expect to pay substantial corporate-level income taxes. If the Company failed to qualify as a REIT and did not qualify for certain statutory relief provisions, we would be subject to federal, state and local income taxes and may be precluded from qualifying as a REIT for the subsequent four fiscal years following the year in which the REIT qualification was lost. Our domestic taxable REIT subsidiary, American Capital Agency TRS, LLC, will be subject to federal, state and, if applicable, local income tax.

[Table of Contents](#)**FINANCIAL CONDITION**

As of June 30, 2008, our investment portfolio consisted of \$2.4 billion of agency securities. On average, the portfolio was deployed for approximately 27 days during the stub period since our IPO. As of June 30, 2008, the amortized cost basis of our investment portfolio was 102.2%. The following tables summarize certain characteristics of our investment portfolio as of June 30, 2008 (dollars in thousands):

	<u>Par Value</u>	<u>Amortized Cost</u>	<u>Purchase Price</u>	<u>Fair Value</u>	<u>Weighted Average</u>	
					<u>Coupon</u>	<u>Yield</u>
Fannie Mae	\$1,284,336	\$1,304,897	101.6%	\$1,293,433	6.06%	5.58%
Freddie Mac	259,983	265,001	101.9	261,957	6.12	5.56
Ginnie Mae	829,787	856,605	103.2	846,527	6.15	5.36
Total / Weighted average	<u>\$2,374,106</u>	<u>\$2,426,503</u>	<u>102.2%</u>	<u>\$2,401,917</u>	<u>6.10%</u>	<u>5.50%</u>

Actual maturities of agency securities are generally shorter than stated contractual maturities primarily as a result of prepayments of principal of the underlying mortgages. The stated contractual final maturity of the mortgage loans underlying our portfolio of agency securities ranges up to 40 years, but the expected maturity is subject to change based on the actual and expected future prepayments of the underlying loans. As of June 30, 2008, the average final contractual maturity of the agency securities in our investment portfolio is 31 years. The estimated weighted average months to maturity of the agency securities in the tables below are based upon our prepayment expectations, which are estimated using third party services, market data and internal models. Our prepayment projections consider current and expected trends in interest rates, interest rate volatility, steepness of the yield curve, the mortgage rate of the outstanding loan, time to reset and the spread margin of the reset.

The following table summarizes our agency securities, at fair value, according to their estimated weighted average life classifications as of June 30, 2008 (dollars in thousands):

Less than one year	\$ —
Greater than one year and less than five years	213,931
Greater than or equal to five years	<u>2,187,986</u>
Total	<u>\$ 2,401,917</u>

The constant prepayment rate, or CPR, reflects the percentage of principal that is prepaid over a period of time on an annualized basis. As interest rates rise, the rate of refinancings typically declines, which we expect may result in lower rates of prepayment and, as a result, a lower portfolio CPR. Conversely, as interest rates fall, the rate of refinancings typically increases, which we expect may result in higher rates of prepayment and, as a result, a higher portfolio CPR. As of June 30, 2008, our portfolio was purchased at a net premium because in part, we believe that we are in an environment that will result in relatively slow CPRs. The CPR was approximately 4% for the period from our IPO through June 30, 2008. We expect that prepayments will continue to be slow in the near term due to higher mortgage rates, tighter underwriting standards and negative home price appreciation. In determining the yield on our agency securities, we have assumed that the CPR over the remaining projected life of the agency securities will be 16% as of June 30, 2008.

[Table of Contents](#)**RESULTS OF OPERATIONS**

The table below presents our condensed statement of operations and key portfolio statistics for the period from May 20, 2008 through June 30, 2008 (in thousands, except per share amounts):

**Statement of Operations Data:**

Interest income	\$ 9,924
Interest expense	3,597
Net interest income	6,327
Other income	448
Expenses	(1,276)
Net income	\$ 5,499
Net income per common share-basic and diluted	\$ 0.37
Weighted average number of common shares outstanding-basic and diluted	15,000

**Key Portfolio Statistics\*:**

Average agency securities(1)	\$ 1,579,421
Average repurchase agreements(1)	\$ 1,331,825
Average total assets(1)	\$ 1,643,480
Average equity(2)	\$ 273,966
Average asset yield(3)	5.50%
Average cost of funds(4)	2.35%
Net interest rate spread(5)	3.15%
Net return on average equity(6)	17.44%
Leverage ( <i>average during the period</i> )(7)	4.86:1
Leverage ( <i>at period end</i> )(8)	8.27:1
Expenses % of average assets(9)	0.67%
Expenses % of average equity(10)	4.05%
Book value per common share as of June 30, 2008(11)	\$ 17.45

\* Average numbers for each period are weighted based on days on the Company's books and records. All percentages are annualized.

(1) Weighted average balance from May 20, 2008 to June 30, 2008.

(2) Average of our beginning and ending equity during the period from May 20, 2008 to June 30, 2008.

(3) Weighted average asset yield for the period was calculated by dividing our average interest income on agency securities less average amortization of premiums by our average agency securities.

(4) Weighted average cost of funds for the period was calculated by dividing our total interest expense by our weighted average repurchase agreements.

(5) Net interest rate spread for the period was calculated by subtracting our weighted average cost of funds from our weighted average asset yield.

(6) Net return on average equity for the period was calculated by dividing our net income by our average equity.

(7) Leverage during the period was calculated by dividing our average repurchase agreements by our average equity.

(8) Leverage at period end was calculated by dividing the amount outstanding under our repurchase agreements by our total shareholders' equity at period end.

(9) Expenses as a % of average assets was calculated by dividing our total expenses by our average total assets.

(10) Expenses as a % of average equity was calculated by dividing our total expenses by our average equity.

(11) Book value per common share was calculated by dividing our total shareholders' equity by our number of common shares outstanding.



### ***Interest Income and Asset Yield***

Interest income was \$9.9 million for the period ended June 30, 2008. The average yield on our investment portfolio was 5.50% for the period ended June 30, 2008. Net amortization of premiums and discounts on our investment portfolio of \$0.8 million was included in interest income for the period ended June 30, 2008. The unamortized net premium as of June 30, 2008 was \$52.4 million. The asset yield on our investment portfolio as of June 30, 2008 was 5.54%.

### ***Leverage***

Our weighted average leverage during the period ended June 30, 2008 was 4.86 times our average stockholders' equity. As of June 30, 2008, our leverage was 8.27. We currently expect to maintain a leverage ratio of 6 to 8 times our stockholders' equity, although the ratio may vary from time to time based on various factors, including our management's opinion of the level of risk of our assets and liabilities, our liquidity position, our level of unused borrow capacity, over-collateralization levels required by lenders when we pledge agency securities to secure our borrowings and the current market value of our investment portfolio. Per our investment guidelines approved by our Board of Directors, we would need Board of Director approval for our leverage to exceed 10 times the amount of our stockholders' equity. Certain of our master repurchase agreements contain a restriction that prohibits our leverage from exceeding 10 times the amount of our stockholders' equity.

### ***Interest Expense and Cost of Funds***

Interest expense was \$3.6 million for the period ended June 30, 2008. Our average cost of funds was 2.35% for the period ended June 30, 2008 compared to the average one-month LIBOR of 2.37% during the same period. Our average cost of funds was 2.39% as of June 30, 2008.

As of June 30, 2008, we had entered into six-month forward starting interest rate swap agreements for a total notional amount of \$0.7 billion, or 32% of the outstanding balance under our repurchase agreements. There was no effect on interest expense during the period ended June 30, 2008 as all swaps were forward starting as of June 30, 2008.

### ***Net Interest Income and Net Interest Rate Spread***

Net interest income, which equals interest income less interest expense, was \$6.3 million for the period ended June 30, 2008. The net interest rate spread, which equals the yield on our average assets for the period less the average cost of funds for the period, was 3.15% for the period ended June 30, 2008. The net interest rate spread as of June 30, 2008 was also 3.15%.

### ***Gain from Sale of Agency Security***

For the period ended June 30, 2008, we sold one asset with a carrying value of \$60.9 million for an aggregate gain of \$0.2 million.

### ***Management Fee and General and Administrative Expenses***

We accrued a management fee of \$0.4 million for the period ended June 30, 2008. We pay our Manager a monthly management fee equal to 1.25% per annum of our stockholders' equity (as defined in the management agreement).

General and administrative expenses were \$0.9 million for the period ended June 30, 2008. The general and administrative expenses for the period ended June 30, 2008 included non-recurring expenses of \$0.3 million related to our initial organization and formation costs.

### *Net Income and Net Return on Equity*

Net income was \$5.5 million for the period ended June 30, 2008 or \$0.37 per basic and diluted share. The net return on average equity for the period ended June 30, 2008 was 17.44%.

### **LIQUIDITY AND CAPITAL RESOURCES**

Our primary sources of funds are borrowings under master repurchase agreements and monthly principal and interest payments on our investment portfolio. Other sources of funds may include proceeds from debt and equity offerings and asset sales. We generally use our liquidity to pay down borrowings under repurchase arrangements to reduce borrowing costs and otherwise efficiently manage our long-term investment capital. Because the level of these borrowings can be adjusted on a daily basis, the level of cash and cash equivalents carried on the balance sheet is significantly less important than the potential liquidity available under our borrowing arrangements. We currently believe that we have sufficient liquidity and capital resources available for the acquisition of additional investments, repayments on borrowings and the payment of cash dividends as required for our continued qualification as a REIT.

As part of our investment strategy, we borrow against our investment portfolio pursuant to master repurchase agreements. We expect that our borrowings pursuant to repurchase transactions under such master repurchase agreements generally will have maturities that range from 30 to 90 days, but may have maturities of up to 364 days. We currently expect our leverage will range between 6 to 8 times the amount of our stockholders' equity. Per our investment guidelines approved by our Board of Directors, we would need Board of Director approval for our leverage to exceed 10 times the amount of our stockholders' equity. As of June 30, 2008, our leverage was 8.27 times the amount of our stockholders' equity. Our cost of borrowings under master repurchase agreements generally corresponds to LIBOR plus or minus a margin. Currently, we have master repurchase agreements with 14 financial institutions, subject to certain conditions, and have borrowings outstanding with 12 of these financial institutions as of June 30, 2008. Borrowings under repurchase arrangements secured by residential mortgage investments totaled \$2.3 billion as of June 30, 2008. As of June 30, 2008, we had an amount at risk under a repurchase agreement with Deutsche Bank of \$31 million which was greater than 10% of our stockholders' equity. The weighted average maturity of the repurchase agreement with Deutsche Bank was 45 days as of June 30, 2008. We did not have any other amounts at risk with other financial institutions greater than 10% of our stockholders' equity as of June 30, 2008.

Amounts available to be borrowed under these arrangements are dependent upon lender collateral requirements and the lender's determination of the fair value of the securities pledged as collateral, which fluctuates with changes in interest rates, credit quality and liquidity conditions within the investment banking, mortgage finance and real estate industries. Under the repurchase agreements, we may be required to pledge additional assets to the repurchase agreement counterparties (i.e., lenders) in the event the estimated fair value of the existing pledged collateral under such agreements declines and such lenders demand additional collateral (a margin call), which may take the form of additional securities or cash. Similarly, if the estimated fair value of investment securities increases due to changes in the market interest rates, lenders may release collateral back to us. Specifically, margin calls would result from a decline in the value of the agency securities securing our repurchase agreements and prepayments on the mortgages securing such agency securities. As of June 30, 2008, we have met all margin requirements. As of June 30, 2008, we had unrestricted cash of \$8 million and unpledged securities of \$90 million available to meet margin calls on our repurchase agreements.

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The following table summarizes our borrowings under repurchase arrangements and weighted average interest rates classified by scheduled maturities as of June 30, 2008 (dollars in thousands):

<u>Maturities</u>	<u>Borrowings Outstanding</u>	<u>Average Interest Rate</u>	<u>Weighted Average Days to Maturity</u>
30 days or less	\$ 1,719,207	2.42%	16 days
31 - 59 days	403,890	2.29	55 days
60 - 90 days	43,519	2.32	65 days
Greater than 90 days	—	—	—
Total / Weighted average	<u>\$2,166,616</u>	<u>2.39%</u>	<u>24 days</u>

Although we believe that we will have adequate sources of liquidity available to us through repurchase agreement financing to execute our business strategy, there can be no assurances that repurchase financing will be available to us upon the maturity of our current repurchase agreements to allow us to renew or replace our repurchase agreement financing on favorable terms or at all. The recent disruptions in the financial markets have resulted in greater price volatility of collateral, including agency securities, and reduced liquidity of repurchase agreement lenders. Many financial institutions, including repurchase agreement lenders, have experienced a reduction in their capacity to provide financing and have tightened their lending standards. In addition, if our repurchase agreement lenders default on their obligations to resell the underlying agency security back to us at the end of the term, we could incur a loss equal to the difference between the value of the agency security and the cash we originally received. In response to the continued deterioration of the markets subsequent to June 30, 2008, we feel it would be prudent to reduce our leverage in the short-term to the middle to lower end of our intended leverage range of 6 to 8 times the amount of our shareholders' equity. Accordingly, we have opportunistically sold investments at attractive prices in the beginning of the third quarter of 2008 and thereby reduced our leverage ratio. We believe that this strategy will allow us, rather than the market, to control our leverage in a volatile market and would increase the likelihood that repurchase financing would continue to be available to us at times when the investment opportunities are at their highest levels.

We use interest rate swap agreements to effectively lock in fixed rates on a portion of our short-term borrowings because longer-term committed borrowings are not available at attractive terms. We have entered into interest rate swap agreements to attempt to mitigate the risk of the cost of our short-term variable rate liabilities thereby compressing the net spreads that we earn on our long-term fixed rate assets during a period of rising interest rates. As of June 30, 2008, our swap agreements had notional amounts totaling \$0.7 billion and were designated as cash flow hedges for accounting purposes of a like amount of our short-term borrowings. We may be limited on the types of hedging strategies we can deploy as a REIT under the Code; therefore, we may implement part of our hedging strategy through American Capital Agency TRS, LLC, our domestic taxable REIT subsidiary, which will be subject to federal, state and, if applicable, local income tax. As of June 30, 2008, our derivatives were primarily comprised of six-month forward starting interest rate swaps, which had the effect of modifying the repricing characteristics of our repurchase agreements and cash flows on such liabilities.

The table below summarizes information about our outstanding swaps as of June 30, 2008 (dollars in thousands):

<u>Swap Term</u>	<u>Notional Amount</u>	<u>Weighted Average Fixed Pay Rate</u>	<u>Net Estimated Fair Value</u>
1 - 2 Years	\$ 550,000	3.42%	\$ 322
3 - 4 Years	50,000	4.37	(530)
4 - 5 Years	100,000	4.22	(225)
Greater than 5 Years	—	—	—
Total / Weighted average	<u>\$ 700,000</u>	<u>3.60%</u>	<u>\$ (433)</u>

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To qualify as a REIT, we must distribute annually at least 90% of our taxable income. To the extent that we annually distribute all of our taxable income in a timely manner, we will generally not be subject to federal and state income taxes. We currently expect to distribute all of our taxable income. This distribution requirement limits our ability to retain earnings and thereby replenish or increase capital for operations.

***Off-Balance Sheet Arrangements***

As of June 30, 2008, we did not maintain any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance, or special purpose or variable interest entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, as of June 30, 2008, we had not guaranteed any obligations of unconsolidated entities or entered into any commitment or intent to provide funding to any such entities.

**FORWARD LOOKING STATEMENTS**

This document contains “forward-looking statements” (within the meaning of the Private Securities Litigation Reform Act of 1995) that inherently involve risks and uncertainties. Our actual results and liquidity can differ materially from those anticipated in these forward-looking statements because of changes in the level and composition of our investments and other factors. These factors may include, but are not limited to, changes in general economic conditions, the availability of suitable investments from both an investment return and regulatory perspective, the availability of new investment capital, fluctuations in interest rates and levels of mortgage prepayments, deterioration in credit quality and ratings, the effectiveness of risk management strategies, the impact of leverage, liquidity of secondary markets and credit markets, increases in costs and other general competitive factors.

**Item 3. *Quantitative And Qualitative Disclosures About Market Risk***

**MARKET RISK**

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. The primary market risks that we will be exposed to are interest rate risk, prepayment risk, liquidity risk, extension risk and inflation risk

***Interest Rate Risk***

Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control.

Changes in the general level of interest rates can affect our net interest income, which is the difference between the interest income earned on interest-earning assets and the interest expense incurred in connection with our interest-bearing liabilities, by affecting the spread between our interest-earning assets and interest bearing liabilities. Changes in the level of interest rates also can affect the value of the agency securities that constitute our investment portfolio and our ability to realize gains from the sale of these assets.

We utilize a variety of financial instruments, including interest rate caps, collars, floors, forward contracts, futures, options or swap agreements, in order to limit the effects of changes in interest rates on our operations. When we use these types of derivatives to hedge the risk of interest-earning assets or interest-bearing liabilities, we may be subject to certain risks, including the risk that losses on a hedge position will reduce the funds available for payments to holders of our common stock and that the losses may exceed the amount we invested in the instruments.

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Our profitability and the value of our investment portfolio (including derivatives used for hedging purposes) may be adversely affected during any period as a result of changing interest rates including resulting changes in forward yield curves. The following table quantifies the estimated changes in net interest income and investment portfolio value should interest rates go up or down by 100 basis points, assuming the yield curves of the rate shocks will be parallel to each other and the current yield curve. These estimates were compiled using third party services, market data and internal models. All changes in income and value are measured as percentage changes from the projected net interest income and investment portfolio value at the base interest rate scenario. The base interest rate scenario assumes interest rates at June 30, 2008 and various estimates regarding prepayment and all activities are made at each level of rate shock.

Actual results could differ materially from estimates, especially in the current market environment. The accuracy of the projected agency securities prices relies on assumptions that define specific agency securities spreads at projected interest rate levels. To the extent that these estimates do not hold true, which is likely in a period of high price volatility, actual results will likely differ materially from projections.

<u>Change in Interest Rate</u>	<u>Percentage Change in Projected Net Interest Income<sup>(1)</sup></u>	<u>Percentage Change in Projected Portfolio Value, with Effect of Interest Rate Swaps</u>
+100 Basis Points	(22)%	(3.94)%
-100 Basis Points	13%	2.42%

(1) Does not include the effect of our forward starting swaps.

### ***Prepayment Risk***

Premiums and discounts associated with the purchase of agency securities are amortized or accreted into interest income over the projected lives of the securities, including contractual payments and estimated prepayments using the interest method. Our policy for estimating prepayment speeds for calculating the effective yield is to evaluate published prepayment data for similar agency securities, market consensus and current market conditions. If the actual prepayment experienced differs from our estimate of prepayments, we will be required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.

### ***Liquidity Risk***

The primary liquidity risk for us arises from financing long-term assets with shorter-term borrowings in the form of repurchase agreements. Our assets which are pledged to secure repurchase agreements are high-quality agency securities and cash. As of June 30, 2008, we had cash and cash equivalents of \$8 million and unpledged agency securities of \$90 million available to meet margin calls on our repurchase agreements and for other corporate purposes. However, should the value of our investment securities pledged as collateral suddenly decrease, margin calls relating to our repurchase agreements could increase, causing an adverse change in our liquidity position. As such, we cannot assure that we will always be able to roll over our repurchase agreements.

### ***Extension Risk***

The projected weighted-average life of our investments is based on our assumptions regarding the rate at which the borrowers will prepay the underlying mortgage loans. In general, when we acquire a FRM or hybrid ARM security, we may, but are not required to, enter into an interest rate swap agreement or other hedging instrument that effectively fixes our borrowing costs for a period close to the anticipated average life of the fixed-rate portion of the related assets. This strategy is designed to protect us from rising interest rates because the borrowing costs are fixed for the duration of the fixed-rate portion of the related agency security.

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However, if prepayment rates decrease in a rising interest rate environment, the life of the fixed-rate portion of the related assets could extend beyond the term of the swap agreement or other hedging instrument. This could have a negative impact on our results from operations, as borrowing costs would no longer be fixed after the end of the hedging instrument while the income earned on the FRM or hybrid ARM security would remain fixed. This situation may also cause the market value of our FRM or hybrid ARM security to decline, with little or no offsetting gain from the related hedging transactions. In extreme situations, we may be forced to sell assets to maintain adequate liquidity, which could cause us to incur losses.

**Inflation Risk**

Virtually all of our assets and liabilities are interest rate sensitive in nature. As a result, interest rates and other factors influence our performance more so than does inflation. Changes in interest rates do not necessarily correlate with inflation rates or changes in inflation rates. Further, our financial statements are prepared in accordance with GAAP and our distributions are determined by our Board of Directors based primarily by our net income as calculated for tax purposes. In each case, our activities and balance sheet are measured with reference to historical cost and/or fair market value without considering inflation.

**Item 4. Controls And Procedures**

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based on the definition of "disclosure controls and procedures" as promulgated under the SEC Act of 1934, as amended. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

We, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of June 30, 2008. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

**PART II.— OTHER INFORMATION**

**Item 1. Legal Proceedings**

From time to time, we may be involved in various claims and legal actions arising in the ordinary course of business. As of June 30, 2008, we have no legal proceedings.

**Item 1A. Risk Factors**

There have been no material changes to the risk factors previously disclosed in the prospectus filed pursuant to Rule 424b(4) on May 16, 2008 with the Securities and Exchange Commission in connection with our initial public offering, except as described below.

You should carefully consider the risks described below and all other information contained in this interim report on Form 10-Q, including our interim consolidated financial statements and the related notes thereto before making a decision to purchase our securities. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us, or not presently deemed material by us, may also impair our operations and performance.

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If any of the following risks actually occur, our business, financial condition or results of operations could be materially adversely affected. If that happens, the trading price of our securities could decline, and you may lose all or part of your investment.

**Risks Related to Our Investing and Financing Strategy**

***Continued adverse developments in the broader residential mortgage market may adversely affect the value of the agency securities in which we invest.***

In 2008, the residential mortgage market in the United States has experienced a variety of difficulties and changed economic conditions, including defaults, credit losses and liquidity concerns. Recently, some commercial banks, investment banks and insurance companies have announced extensive losses from exposure to the residential mortgage market. These losses have reduced financial industry capital, leading to reduced liquidity for some institutions. These factors have impacted investor perception of the risk associated with real estate related assets, including agency securities and other high-quality RMBS assets. As a result, values for RMBS assets, including some agency securities and other AAA-rated RMBS assets, have experienced significant volatility. Further increased volatility and deterioration in the broader residential mortgage and RMBS markets may adversely affect the performance and market value of our agency securities.

We invest exclusively in agency securities and rely on our agency securities as collateral for our financings. Any decline in their value, or perceived market uncertainty about their value, would likely make it difficult for us to obtain financing on favorable terms or at all, or maintain our compliance with terms of any financing arrangements already in place. The agency securities we invest in are classified for accounting purposes as available-for-sale. All assets classified as available-for-sale are reported at fair value, based on market prices from third-party sources, with unrealized gains and losses excluded from earnings and reported as a separate component of stockholders' equity. As a result, a decline in fair values may reduce the book value of our assets. Moreover, if the decline in fair value of an available-for-sale security is other-than-temporarily impaired, such decline will reduce earnings. If market conditions result in a decline in the value of our agency securities, our financial position and results of operations could be adversely affected.

***To the extent that we invest in agency securities that are guaranteed by Fannie Mae and Freddie Mac, we are subject to the risk that these U.S. Government-sponsored entities may not be able to fully satisfy their guarantee obligations, which may adversely affect the value of our investment portfolio and our ability to sell or finance these securities.***

The interest and principal payments we receive on the agency securities in which we invest are guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. Unlike the Ginnie Mae certificates in which we may invest, the principal and interest on securities issued by Fannie Mae and Freddie Mac are not guaranteed by the U.S. government. All the agency securities in which we invest depend on a steady stream of payments on the mortgages underlying the securities.

The recent economic challenges in the residential mortgage market have affected the financial results and stock values of Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac have stated that losses on guarantees of agency securities are expected to continue and that significant increases in credit-related expenses and credit losses would continue through 2008. If Fannie Mae and Freddie Mac continue to suffer significant losses and their stock values continue to decline, investors may perceive these firms are financially unstable, which may further exacerbate declines in their stock values and threaten their financial stability. This could affect the ability of Fannie Mae and Freddie Mac to honor their respective agency securities guarantees. Further, any actual or perceived financial challenges at either Fannie Mae or Freddie Mac could cause the rating agencies to downgrade the corporate credit ratings of Fannie Mae or Freddie Mac. Moody's Investor Service's, or Moody's, Bank Financial Strength Rating, or BFSR, measures the likelihood that a financial institution will require financial assistance.

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Any failure to honor guarantees on agency securities by Fannie Mae or Freddie Mac or any downgrade of securities issued by Fannie Mae or Freddie Mac by the rating agencies could cause a significant decline in the cash flow from, and the value of, any agency securities we may own and the market for these securities may be adversely affected for a significant period of time. We may be unable to sell or finance agency securities on favorable terms or at all and our financial position and results of operations could be adversely affected.

***Continued adverse developments in the residential mortgage market, including recent defaults, credit losses and liquidity concerns, could make it difficult for us to borrow money to acquire agency securities on a leveraged basis, on favorable terms or at all, which could adversely affect our profitability.***

We rely on the availability of financing to acquire agency securities on a leveraged basis. Recently, some commercial banks, investment banks and insurance companies have announced extensive losses from exposure to the residential mortgage market. These losses have reduced financial industry capital, leading to reduced liquidity for some institutions. Institutions from which we seek to obtain financing may have owned or financed RMBS which have declined in value and caused them to suffer losses as a result of the recent downturn in the residential mortgage market. If these conditions persist, these institutions may be forced to exit the repurchase market, become insolvent or further tighten their lending standards or increase the amount of equity capital or haircut required to obtain financing, and in such event, could make it more difficult for us to obtain financing on favorable terms or at all. Our profitability will be adversely affected if we were unable to obtain cost-effective financing for our investments.

***Failure to procure adequate repurchase agreement financing, or to renew (roll) or replace existing repurchase agreement financing as it matures, would adversely affect our results of operations and may, in turn, negatively affect the market value of our common stock and our ability to make distributions to our stockholders.***

We use repurchase agreement financing as a strategy to increase our return on investments. However, we may not be able to achieve our desired leverage ratio for a number of reasons, including if the following events occur:

- our lenders do not make repurchase agreement financing available to us at acceptable rates;
- certain of our lenders exit the repurchase market;
- our lenders require that we pledge additional collateral to cover our borrowings, which we may be unable to do; or
- we determine that the leverage would expose us to excessive risk.

We cannot assure you that any, or sufficient, repurchase agreement financing will be available to us in the future on terms that are acceptable to us. Over the last few months, investors and financial institutions that lend in the securities repurchase market, have tightened lending standards in response to the difficulties and changed economic conditions that have materially adversely affected the RMBS market. While the market disruptions have been most pronounced in the non-agency RMBS market, recently, the impact has extended to agency RMBS and the value of these assets have declined and become relatively illiquid compared to prior periods. Any decline in their value, or perceived market uncertainty about their value, would make it more difficult for us to obtain financing on favorable terms or at all, or maintain our compliance with terms of any financing arrangements already in place. Additionally, the lenders from which we have obtained repurchase financing may have owned or financed RMBS that have declined in value and caused the lender to suffer losses as a result of the recent downturn in the residential mortgage market. If these conditions persist, these institutions may be forced to exit the repurchase market, become insolvent or further tighten lending standards or increase the amount of equity capital or haircut required to obtain financing, and in such event, could make it more difficult for us to



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obtain financing on favorable terms or at all. In the event that we cannot obtain sufficient funding on acceptable terms, there may be a negative impact on the value of our common stock and our ability to make distributions, and you may lose part or all of your investment.

Furthermore, because we rely primarily on short-term borrowings, our ability to achieve our investment objective depends not only on our ability to borrow money in sufficient amounts and on favorable terms, but also on our ability to renew or replace on a continuous basis our maturing short-term borrowings. If we are not able to renew or replace maturing borrowings, we may have to sell some or all of our assets, possibly under adverse market conditions.

***Pursuant to the terms of borrowings under our master repurchase agreements, we are subject to margin calls that could result in defaults or force us to sell assets under adverse market conditions or through foreclosure.***

We have entered into master repurchase agreements with 14 financial institutions. We have borrowed under certain of these master repurchase agreements to finance the acquisition of agency securities for our investment portfolio. Pursuant to the terms of borrowings under our master repurchase agreements, a decline in the value of the subject agency securities may result in our lenders initiating margin calls. A margin call means that the lender requires us to pledge additional collateral to re-establish the ratio of the value of the collateral to the amount of the borrowing. The specific collateral value to borrowing ratio that would trigger a margin call is not set in the master repurchase agreements and will not be determined until we engage in a repurchase transaction under these agreements. Our fixed-rate agency securities generally are more susceptible to margin calls as increases in interest rates tend to more negatively affect the market value of fixed-rate securities. If we are unable to satisfy margin calls, our lenders may foreclose on our collateral. The threat of or occurrence of a margin call could force us to sell either directly or through a foreclosure our agency securities under adverse market conditions. Because of the significant leverage we have, we may incur substantial losses upon the threat or occurrence of a margin call.

Our borrowings, which are generally made under our master repurchase agreements, may qualify for special treatment under the Bankruptcy Code. This special treatment would allow the lenders under these agreements to avoid the automatic stay provisions of the Bankruptcy Code and to liquidate the collateral under these agreements without delay.

***If our lenders pursuant to our repurchase transactions default on their obligations to resell the underlying agency security back to us at the end of the transaction term, or if the value of the underlying agency security has declined by the end of the term or if we default on our obligations under the transaction, we will lose money on these transactions.***

When we engage in a repurchase transaction, we initially sell securities to the financial institution under one of our master repurchase agreements in exchange for cash and our counterparty is obligated to resell the securities to us at the end of the term of the transaction, which is typically from 30 to 90 days, but which may have terms up to 364 days. The cash we receive when we initially sell the securities is less than the value of those securities, which is referred to as the haircut. Many financial institutions from which we may obtain repurchase agreement financing have recently increased their haircut on pass-through securities, from approximately 3% on average to approximately 5% on average, which means that we will only be able to borrow against approximately 95% of the value of the agency securities we will initially sell in these transactions. These increased haircuts will require us to post additional cash collateral for our agency securities. The haircut rates under the 14 master repurchase agreements we have entered into will not be set until we engage in a specific repurchase transaction under these agreements. If our counterparty defaults on its obligation to resell the securities to us we would incur a loss on the transaction equal to the amount of the haircut (assuming there was no change in the value of the securities). We would also lose money on a repurchase transaction if the value of the underlying securities has declined as of the end of the transaction term, as we would have to repurchase the securities for their initial value but would receive securities worth less than that amount. Any losses we incur on our repurchase transactions could adversely affect our earnings, and thus our cash available for distribution to our stockholders.

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If we default on one of our obligations under a repurchase transaction, the counterparty can terminate the transaction and cease entering into any other repurchase transactions with us. In that case, we would likely need to establish a replacement repurchase facility with another financial institution in order to continue to leverage our portfolio and carry out our investment strategy. There is no assurance we would be able to establish a suitable replacement facility on acceptable terms or at all.

**Item 2. *Unregistered Sales of Equity Securities and Use of Proceeds***

On May 14, 2008, the Securities and Exchange Commission declared effective our Registration Statement on Form S-11 (File No. 333-149167) relating to our initial public offering. The offering date was May 14, 2008. The initial public offering was underwritten by Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated acting as the representatives of Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Morgan Stanley & Co. Incorporated, Banc of America Securities LLC, HSBC Securities (USA) Inc., JMP Securities LLC and RBC Capital Markets Corporation. We registered 10,000,000 shares of our common stock, par value \$0.01 per share. On May 20, 2008, we sold 10,000,000 of common stock in our initial public offering at a price to the public of \$20.00 per share for an aggregate offering price of approximately \$200.0 million. In connection with the offering, we paid approximately \$12.5 million in underwriting discounts and commissions and incurred approximately \$1.5 million of other offering expenses. None of the underwriting discounts and commissions or offering expenses were incurred or paid, directly or indirectly, to directors or officers of ours or their associates or to persons owning 10% or more of our common stock or to any affiliates of ours. After deducting the underwriting discounts and commissions and these other offering expenses, we estimate that the net proceeds from the offering equaled approximately \$186 million.

In a concurrent private offering, we sold American Capital 5,000,000 shares of our common stock at a price of \$20 per share, for aggregate proceeds of approximately \$100.0 million. We did not pay any underwriting fees, commissions or discounts with respect to the shares we sold to American Capital. We relied on the exemption from registration provided by Section 4(2) of the Securities Act for the sale of the shares to American Capital.

We invested the net proceeds of these offerings in accordance with our investment objectives and strategies as described in the prospectus comprising a part of the Registration Statement referenced above. There has been no material change in our planned use of proceeds from our initial public offering as described in our final prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b).

**Item 3. *Defaults Upon Senior Securities***

None.

**Item 4. *Submission of Matters to a Vote of Security Holders***

None.

**Item 5. *Other Information***

None.

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**Item 6. Exhibits**

- (a) Exhibits:
- 3.1 American Capital Agency Corp. Amended and Restated Certificate of Incorporation.
  - 3.2 American Capital Agency Corp. Amended and Restated Bylaws.
  - 4.1 Instruments defining the rights of holders of securities: See Article IV of our Amended and Restated Certificate of Incorporation.
  - 4.2 Instruments defining the rights of holders of securities: See Article VI of our Amended and Restated Bylaws.
  - 10.1 Registration Rights Agreement between American Capital Agency Corp. and American Capital Strategies, Ltd., dated May 20, 2008.
  - 10.2 Management Agreement between American Capital Agency Corp. and American Capital Agency Management, LLC, dated May 20, 2008.
  - \*10.3 American Capital Agency Corp. Equity Incentive Plan for Independent Directors, incorporated herein by reference to Exhibit 10.1 of the Registration Statement on Form S-8 (File No. 333-151027), filed on May 20, 2008.
  - 10.4 Restricted Stock Agreement between American Capital Agency Corp. and Morris A. Davis, dated May 20, 2008.
  - 10.5 Restricted Stock Agreement between American Capital Agency Corp. and Randy E. Dobbs, dated May 20, 2008.
  - 10.6 Restricted Stock Agreement between American Capital Agency Corp. and Larry K. Harvey, dated May 20, 2008.
  - 10.7 Stock Purchase Agreement by and between American Capital Agency Corp. and American Capital Strategies, Ltd., dated May 14, 2008.
  - 31.1 Certification pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
  - 31.2 Certification pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
  - 32 Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- \* Previously filed in whole or in part.



**INDEX TO EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>
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3.2	American Capital Agency Corp. Amended and Restated Bylaws.
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32	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AMERICAN CAPITAL AGENCY CORP.

The undersigned, being the President and the Secretary of American Capital Agency Corp. (the "Corporation"), a corporation existing under and pursuant to the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), do hereby certify:

(i) That the original Certificate of Incorporation of the Corporation was filed with the Delaware Secretary of State on January 7, 2008.

(ii) That this Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

(iii) That the text of the original Certificate of Incorporation of the Corporation is hereby amended and restated to read in full as follows:

ARTICLE I

NAME

The name of the Corporation is American Capital Agency Corp.

ARTICLE II

ADDRESS OF REGISTERED OFFICE; NAME OF REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is The Corporation Trust Company.

ARTICLE III

PURPOSE AND POWER

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law.

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ARTICLE IV  
CAPITAL STOCK

Section 4.1. Total Number of Shares of Capital Stock. The total number of shares of capital stock of all classes which the Corporation shall have authority to issue is 160,000,000 shares. The authorized stock is divided into 10,000,000 shares of preferred stock, with the par value of \$0.01 each (the "Preferred Stock"), and 150,000,000 shares of common stock, with the par value of \$0.01 each (the "Common Stock"). The Board of Directors of the Corporation (the "Board of Directors") may classify any unissued shares of stock and reclassify any previously classified but unissued shares of stock from time to time, in one or more classes or series of stock.

Section 4.2 Preferred Stock. Authority is hereby expressly granted to the Board of Directors of the Corporation (the "Board of Directors"), subject to the provisions of this Article IV and to the limitations prescribed by the General Corporation Law, to authorize the issue of one or more classes of Preferred Stock and, with respect to each such class, to fix by resolution or resolutions providing for the issue of such class the voting powers, full or limited, if any, of the shares of such class, the designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each class thereof shall include, but not be limited to, the determination or fixing of the following:

- (a) the designation of such class;
- (b) the number of shares to compose such class, which number the Board of Directors may thereafter (except where otherwise provided in a resolution designating a particular class) increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares thereof then outstanding);
- (c) the dividend rate of such class, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of capital stock of the Corporation and whether such dividends shall be cumulative or noncumulative;
- (d) whether the shares of such class shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;
- (e) the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such class;
- (f) whether the shares of such class shall be convertible into or exchangeable for shares of any other class or classes of any capital stock or any other securities of the Corporation, and, if provision is made for conversion or exchange, the times, prices, rates, adjustments and other terms and conditions of such conversion or exchange;

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- (g) the extent, if any, to which the holders of shares of such class shall be entitled to vote with respect to the election of directors or otherwise;
  - (h) the restrictions, if any, on the issue or reissue of any additional Preferred Stock;
  - (i) the rights of the holders of the shares of such class upon the dissolution of, voluntary or involuntary liquidation, winding up or upon the distribution of assets of the Corporation; and
  - (j) the manner in which any facts ascertainable outside the resolution or resolutions providing for the issue of such class shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class.

Section 4.3 Common Stock. (a) Subject to all of the rights of the holders of Preferred Stock provided for by resolution or resolutions of the Board of Directors pursuant to this Article IV or by the General Corporation Law, each holder of Common Stock shall have one vote per share of Common Stock held by such holder on all matters on which holders of Common Stock are entitled to vote and shall have the right to receive notice of and to vote at all meetings of the stockholders of the Corporation.

(b) The holders of Common Stock shall have the right to receive dividends as and when declared by the Board of Directors in its sole discretion, subject to any limitations on the declaring of dividends imposed by the General Corporation Law or the rights of holders of Preferred Stock provided for by resolution or resolutions of the Board of Directors pursuant to this Article IV.

(c) Stockholders shall not have preemptive rights to acquire additional shares of stock of any class which the Corporation may elect to issue or sell.

Section 4.4 Issuance of Rights to Purchase Securities and Other Property. Subject to all of the rights of the holders of Preferred Stock provided for by resolution or resolutions of the Board of Directors pursuant to this Article IV or by the General Corporation Law, the Board of Directors is hereby authorized to create and to authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Corporation of rights, options and warrants for the purchase of shares of capital stock of the Corporation, other securities of the Corporation or shares or other securities of any successor in interest of the Corporation (a "Successor"), at such times, in such amounts, to such persons, for such consideration, with such form and content (including without limitation the consideration for which any shares of capital stock of the Corporation, other securities of the Corporation or shares or other securities of any Successor are to be issued) and upon such terms and conditions as it may from time to time determine, subject only to the restrictions, limitations, conditions and requirements imposed by the General Corporation Law, other applicable laws and this Certificate of Incorporation.

Section 4.5 Certificate of Incorporation and By-laws. All persons who shall acquire stock in the Corporation shall acquire the same subject to the provisions of the Certificate of Incorporation and the By-laws of the Corporation (the "By-laws").



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ARTICLE V  
BOARD OF DIRECTORS

Section 5.1 Power of the Board of Directors. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In furtherance, and not in limitation, of the powers conferred by the General Corporation Law, the Board of Directors is expressly authorized to:

(a) adopt, amend, alter, change or repeal the By-laws; provided, however, that no By-laws hereafter adopted shall invalidate any prior act of the directors that was valid at the time such action was taken;

(b) determine the rights, powers, duties, rules and procedures that affect the power of the Board of Directors to manage and direct the business and affairs of the Corporation, including the power to designate and empower committees of the Board of Directors to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for, Board meetings, as well as quorum and voting requirements for, and the manner of taking, Board action; and

(c) exercise all such powers and do all such acts as may be exercised or done by the Corporation, subject to the provisions of the General Corporation Law, this Certificate of Incorporation and the By-laws.

Section 5.2 Number of Directors. The number of directors constituting the Board of Directors shall be as specified in the By-laws of the Corporation.

Section 5.3 Classes, Election and Term. The directors shall be elected by the stockholders at each annual meeting of the stockholders for a one-year term. The term of all current directors will end at the 2009 annual meeting of stockholders. Commencing with the 2009 annual meeting of stockholders, each director shall hold office for a one-year term and until such director's successor shall have been duly elected and qualified.

Section 5.4 Vacancies. Any vacancies in the Board of Directors for any reason and any newly created directorships resulting by reason of any increase in the number of directors may be filled only by the Board of Directors, acting by a majority of the remaining directors then in office, although less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next annual election of directors and until their successors are duly elected and qualified.

Section 5.5 Removal of Directors. Except as may be provided in a resolution or resolutions providing for any class of Preferred Stock pursuant to Article IV hereof, with respect to any directors elected by the holders of such class, any director, or the entire Board of Directors, may be removed from office at any time for cause by the affirmative vote of the holders of at least sixty-six percent (66%) of the voting power of all of the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

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Section 5.6 REIT Qualification. If the Corporation elects to qualify for federal income tax treatment as a REIT (as defined in Article VIII hereof), the Board of Directors shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the qualification of the Corporation as a REIT; however, if the Board of Directors determines that it is no longer in the best interests of the Corporation to continue to be qualified as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation's REIT election pursuant to Section 856(g) of the Code (as defined in Article VIII hereof). The Board of Directors also may determine that compliance with any restriction or limitation on stock ownership and transfers set forth in Article VIII hereof is no longer required for REIT qualification.

ARTICLE VI  
STOCKHOLDER ACTION

Except as may be provided in a resolution or resolutions providing for any class of Preferred Stock pursuant to Article IV hereof, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. Elections of directors need not be by written ballot, unless otherwise provided in the By-laws of the Corporation.

ARTICLE VII  
INDEMNIFICATION

Section 7.1 Right to Indemnification. Each person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact:

(a) that he or she is or was a director or officer of the Corporation, or

(b) that he or she, being at the time a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, trustee, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise (collectively, "another enterprise" or "other enterprise"),

whether either in case (a) or in case (b) the basis of such proceeding is alleged action or inaction (x) in an official capacity as a director or officer of the Corporation, or as a director, trustee, officer, employee or agent of such other enterprise, or (y) in any other capacity related to the Corporation or such other enterprise while so serving as a director, trustee, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent not prohibited by Section 145 of the General Corporation Law, (or any successor provision or provisions, respectively) as the same exists or may hereafter be amended, respectively (but, in the case of any amendment to Section 145 of the General Corporation Law, with respect to actions taken prior to such amendment, only to the extent that such amendment permits the

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Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith if such person satisfied the applicable level of care to permit such indemnification under the General Corporation Law; provided however, that nothing in this Article VII shall indemnify any person to the extent that such person has committed willful misfeasance, bad faith, gross negligence or reckless disregard involved in the conduct of such person's duties to or for the Corporation. The persons indemnified by this Article VII are hereinafter referred to as "indemnitees." Such indemnification as to such alleged action or inaction shall continue as to an indemnitee who has after such alleged action or inaction ceased to be a director or officer of the Corporation, or director, officer, employee or agent of another enterprise; and shall inure to the benefit of the indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Article VII: (i) shall be a contract right; (ii) shall not be affected adversely as to any indemnitee by any amendment of this Certificate with respect to any action or inaction occurring prior to such amendment; and (iii) shall, subject to any requirements imposed by law and the By-laws, include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition.

Section 7.2. Relationship to Other Rights and Provisions Concerning Indemnification. The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Certificate, By-laws, agreement, vote of stockholders or disinterested directors or otherwise. The By-laws may contain such other provisions concerning indemnification, including provisions specifying reasonable procedures relating to and conditions to the receipt by indemnitees of indemnification, provided that such provisions are not inconsistent with the provisions of this Article VII.

Section 7.3 Agents and Employees. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses, to any agent of the Corporation (or any person serving at the Corporation's request as a director, trustee, officer, employee or agent of another enterprise) or to persons who are or were a director, officer, employee or agent of any of the Corporation's affiliates, predecessor or subsidiary corporations or of a constituent corporation absorbed by the Corporation in a consolidation or merger or who is or was serving at the request of such affiliate, predecessor or subsidiary corporation or of such constituent corporation as a director, officer, employee or agent of another enterprise, in each case as determined by the Board of Directors to the fullest extent of the provisions of this Article VII in cases of the indemnification and advancement of expenses of directors and officers of the Corporation, or to any lesser extent (or greater extent, if permitted by law) determined by the Board of Directors.

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ARTICLE VIII  
RESTRICTION ON TRANSFER AND OWNERSHIP OF SHARES

Section 8.1 Definitions. For the purpose of this Article VIII, the following terms shall have the following meanings:

Aggregate Stock Ownership Limit. The term “Aggregate Stock Ownership Limit” shall mean not more than 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Capital Stock, subject to the Board of Directors’ power under Section 8.2.8 hereof to increase or decrease such percentage. The value and number of the outstanding shares of Capital Stock shall be determined by the Board of Directors of the Corporation in good faith, which determination shall be conclusive for all purposes hereof. For the purposes of determining the percentage ownership of Capital Stock by any Person, shares of Capital Stock that may be acquired upon conversion, exchange or exercise of any securities of the Corporation directly or constructively held by such Person, but not Capital Stock issuable with respect to the conversion exchange or exercise of securities for the Corporation held by other Persons shall be deemed to be outstanding prior to conversion, exchange or exercise.

Beneficial Ownership. The term “Beneficial Ownership” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Sections 856(h)(1)(B) and 856(h)(3) of the Code. The terms “Beneficial Owner,” “Beneficially Owns” and “Beneficially Owned” shall have the correlative meanings.

Business Day. The term “Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

Capital Stock. The term “Capital Stock” shall mean all classes or series of stock of the Corporation, including, without limitation, Common Stock and Preferred Stock.

Charitable Beneficiary. The term “Charitable Beneficiary” shall mean one or more beneficiaries of the Trust as determined pursuant to Section 8.3.6, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

Certificate of Incorporation. The term “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Corporation.

Code. The term “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

Common Stock Ownership Limit. The term “Common Stock Ownership Limit” shall mean not more than 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Common Stock, subject to the Board of Directors’ power under Section 8.2.8 hereof to increase or decrease such percentage. The number and value of the outstanding shares of Common Stock of the Corporation shall be determined by the Board of Directors of the Corporation in good faith, which determination shall be conclusive for all purposes hereof. For purposes of determining the percentage ownership of Common Stock

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by any Person, shares of Common Stock that may be acquired upon conversion, exchange or exercise of any securities of the Corporation directly or constructively held by such Person, but not Common Stock issuable with respect to the conversion, exchange or exercise of securities for the Corporation held by other Persons, shall be deemed to be outstanding prior to conversion, exchange or exercise.

Constructive Ownership. The term “Constructive Ownership” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned actually or constructively through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms “Constructive Owner,” “Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

Excepted Holder. The term “Excepted Holder” shall mean a Person for whom an Excepted Holder Limit is created by the Certificate of Incorporation or by the Board of Directors pursuant to Section 8.2.7.

Excepted Holder Limit. The term “Excepted Holder Limit” shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Certificate of Incorporation or by the Board of Directors pursuant to Section 7.2.7 and subject to adjustment pursuant to Section 8.2.8, the percentage limit established for an Excepted Holder by the Board of Directors pursuant to Section 8.2.7.

Initial Date. The term “Initial Date” shall mean the date upon which the Amended and Restated Certificate of Incorporation containing this Article VIII are filed with the Delaware Secretary of State.

Market Price. The term “Market Price” on any date shall mean, with respect to any class or series of outstanding shares of Capital Stock, the Closing Price for such Capital Stock on such date. The “Closing Price” on any date shall mean the last reported sale price for such Capital Stock, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Capital Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on Nasdaq or, if such Capital Stock is not listed or admitted to trading on Nasdaq, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Capital Stock is listed or admitted to trading or, if such Capital Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such Capital Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Capital Stock selected by the Board of Directors of the Corporation or, in the event that no trading price is available for such Capital Stock, the fair market value of the Capital Stock, as determined in good faith by the Board of Directors of the Corporation.

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General Corporation Law. The term “General Corporation Law” shall mean the Delaware General Corporation Law, as amended from time to time.

Nasdaq. The term “Nasdaq” shall mean The NASDAQ Stock Market, Inc.

Person. The term “Person” shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

Prohibited Owner. The term “Prohibited Owner” shall mean, with respect to any purported Transfer (or other event), any Person who, but for the provisions of Section 8.2.1, would Beneficially Own or Constructively Own shares of Capital Stock in violation of the provisions of 8.2.1(a) and, if appropriate in the context, shall also mean any Person who would have been the record owner of the shares of Capital Stock that the Prohibited Owner would have so owned.

REIT. The term “REIT” shall mean a real estate investment trust within the meaning of Section 856 of the Code.

Restriction Termination Date. The term “Restriction Termination Date” shall mean the first day after the Initial Date on which the Corporation determines pursuant to Section 5.6 of the Certificate of Incorporation that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of shares of Capital Stock set forth herein is no longer required in order for the Corporation to qualify as a REIT.

Transfer. The term “Transfer” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Capital Stock or the right to vote or receive dividends on Capital Stock, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Capital Stock or any interest in Capital Stock or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Capital Stock; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

Trust. The term “Trust” shall mean any trust provided for in Section 8.3.1.

Trustee. The term “Trustee” shall mean the Person unaffiliated with the Corporation and a Prohibited Owner, that is appointed by the Corporation to serve as trustee of the Trust.

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Section 8.2 Capital Stock.

Section 8.2.1 Ownership Limitations. During the period commencing on the Initial Date and prior to the Restriction Termination Date:

(a) Basic Restrictions.

(i) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own either shares of Capital Stock in excess of the Aggregate Stock Ownership Limit or shares of Common Stock in excess of the Common Stock Ownership Limit and (2) no Excepted Holder shall Beneficially Own or Constructively Own shares of Capital Stock in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No Person shall Beneficially or Constructively Own shares of Capital Stock to the extent that such Beneficial or Constructive Ownership of Capital Stock would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership to the extent that such Beneficial or Constructive Ownership would result in the Corporation owning (actually or Constructively) a 9.9% interest in a tenant that is described in Section 856(d)(2)(B) of the Code (for this purpose, a tenant from whom the Corporation (or an entity owned or controlled by the Corporation) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board of Directors of the Corporation, rent from such tenant would not adversely affect the Corporation’s ability to qualify as a REIT, shall not be treated as a tenant of the Corporation)).

(iii) Notwithstanding any other provisions contained herein, no Person shall Transfer of shares of Capital Stock (whether or not such Transfer is the result of a transaction entered into through the facilities of Nasdaq or any other national securities exchange or automated inter-dealer quotation system) that, if effective, would result in the Capital Stock being Beneficially Owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code).

(b) Transfer in Trust. If any Transfer of shares of Capital Stock (whether or not such Transfer is the result of a transaction entered into through the facilities of Nasdaq or any other national securities exchange or automated inter-dealer quotation system) occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning shares of Capital Stock in violation of Section 8.2.1(a),

(i) then that number of shares of Capital Stock the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 8.2.1(a) (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Section 8.3, effective as of the close of business on the Business Day prior to the date of such Transfer (or other event), and such Person shall acquire no rights in such shares of Capital Stock; or

(ii) if the transfer to the Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 8.2.1(a), then

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the Transfer of that number of shares of Capital Stock that otherwise would cause any Person to violate Section 8.2.1(a) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(iii) In determining which shares of Capital Stock are to be transferred to a Trust in accordance with this Section 8.2.1(b) and Section 8.3 hereof, shares shall be so transferred to a Trust in such manner that minimizes the aggregate value of the shares that are transferred to the Trust (except to the extent that the Board of Directors determines that the shares transferred to the Trust shall be those directly or indirectly held or Beneficially Owned or Constructively Owned by a Person or Persons that caused or contributed to the application of this Section 8.2.1(b)), and to the extent not inconsistent therewith, on a pro rata basis.

(iv) To the extent that, upon a transfer of shares of Capital Stock pursuant to this Section 8.2.1(b), a violation of Section 8.2.1(a) would nonetheless be continuing, (for example where the ownership of shares of Capital Stock by a single Trust would result in the Capital Stock being beneficially owned (determined under the principles of Section 856(a)(5) of the Code) by less than 100 persons), the shares of Capital Stock shall be transferred to that number of Trusts, each having a distinct Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Trust, such that there is no violation of Section 8.2.1(a).

Section 8.2.2 Remedies for Breach. If the Board of Directors of the Corporation or any duly authorized committee thereof (or other designees if permitted by the General Corporation Law) shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 8.2.1(a) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Capital Stock in violation of Section 8.2.1(a) (whether or not such violation is intended), the Board of Directors or a committee thereof (or other designees if permitted by the General Corporation Law) shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Corporation to redeem shares of Capital Stock, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 8.2.1(a) shall automatically result in the transfer to the Trust described above and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Directors or a committee thereof.

Section 8.2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of shares of Capital Stock that will or may violate Section 8.2.1(a) or any Person who would have owned shares of Capital Stock that resulted in a transfer to the Trust pursuant to the provisions of Section 8.2.1(b) shall immediately give written notice to the Corporation of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer on the Corporation's qualification as a REIT.

Section 8.2.4 Owners Required to Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) in number or value of the outstanding shares of Capital Stock, within 30 days after the end of each taxable year, shall give written notice to the Corporation stating the name and address of such owner, the number of shares of Capital Stock and other shares of the Capital Stock Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's qualification as a REIT and to ensure compliance with the Aggregate Stock Ownership Limit and the Common Stock Ownership Limit; and



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(b) each Person who is a Beneficial or Constructive Owner of Capital Stock and each Person (including the stockholder of record) who is holding Capital Stock for a Beneficial or Constructive Owner shall provide to the Corporation such information as the Corporation may request, in good faith, in order to determine the Corporation's qualification as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the Aggregate Stock Ownership Limit and the Common Stock Ownership Limit.

Section 8.2.5 Remedies Not Limited. Subject to Section 5.6 of the Certificate of Incorporation, nothing contained in this Section 8.2 shall limit the authority of the Board of Directors of the Corporation to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders in preserving the Corporation's qualification as a REIT.

Section 8.2.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 8.2, Section 8.3 or any definition contained in Section 8.1, the Board of Directors of the Corporation shall have the power to determine the application of the provisions of this Section 8.2 or Section 8.3 or any such definition with respect to any situation based on the facts known to it. In the event Section 8.2 or Section 8.3 requires an action by the Board of Directors and the Certificate of Incorporation fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Sections 8.1, 8.2 or 8.3. Absent a decision to the contrary by the Board of Directors (which the Board of Directors may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 8.2.1) acquired Beneficial Ownership or Constructive Ownership of Capital Stock in violation of Section 8.2.1, such remedies (as applicable) shall apply first to the shares of Capital Stock that, but for such remedies, would have been actually owned by such Person, and second to shares of Capital Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Capital Stock based upon the relative number of the shares of Capital Stock held by each such Person.

Section 8.2.7 Exceptions.

(a) Subject to Section 8.2.1, the Board of Directors of the Corporation, in its sole discretion, may exempt (prospectively or retroactively) a Person from the Aggregate Stock Ownership Limit, the Common Stock Ownership Limit, or both such limits and may establish or increase an Excepted Holder Limit for such Person if:

(i) the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial or Constructive Ownership of such shares of Capital Stock will violate Section 8.2.1(a)(ii);

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(ii) such Person does not and represents that it will not own, actually or Constructively, an interest in a tenant of the Corporation (or a tenant of any entity owned or controlled by the Corporation) that would cause the Corporation to own, actually or Constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact; and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Sections 8.2.1 through 8.2.6) will result in such shares of Capital Stock being automatically transferred to a Trust in accordance with Sections 8.2.1(b) and 8.3.

(b) Prior to granting any exception pursuant to Section 8.2.7(a), the Board of Directors of the Corporation may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's qualification as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Directors may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 8.2.1(a)(ii), an underwriter or placement agent that participates in a public offering or a private placement of Capital Stock (or securities convertible into or exchangeable for Capital Stock) may Beneficially Own or Constructively Own shares of Capital Stock (or securities convertible into or exchangeable for Capital Stock) in excess of the Aggregate Stock Ownership Limit, the Common Stock Ownership Limit, or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board of Directors may only reduce the Excepted Holder Limit for an Excepted Holder: (i) with the written consent of such Excepted Holder at any time, or (ii) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Aggregate Stock Ownership Limit or the Common Stock Ownership Limit, as the case may be.

Section 8.2.8 Change in Aggregate Stock Ownership Limit and Common Stock Ownership Limit. The Board of Directors may from time to time increase or decrease the Aggregate Stock Ownership Limit and Common Stock Ownership Limit; provided, however, that a decreased Aggregate Stock Ownership Limit or Common Stock Ownership Limit will not be effective for any Person whose percentage ownership of Capital Stock or Common Stock, as

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the case may be, is in excess of such decreased Aggregate Stock Ownership Limit or Common Stock Ownership Limit until such time as such Person's percentage of Capital Stock or Common Stock, as the case may be, equals or falls below the decreased Aggregate Stock Ownership Limit or Common Stock Ownership, but until such time as such Person's percentage of Capital Stock or Common Stock, as the case may be, falls below such decreased Aggregate Stock Ownership Limit or Common Stock Ownership Limit, any further acquisition of Capital Stock or Common Stock will be in violation of the Aggregate Stock Ownership Limit or Common Stock Ownership Limit and, provided further, that the new Aggregate Stock Ownership Limit or Common Stock Ownership Limit would not allow five or fewer individuals (as defined in Section 542(a)(2) of the Code and taking into account all Excepted Holders) to Beneficially Own more than 49.9% in value of the outstanding Capital Stock. If the Board of Directors changes the Common Stock Ownership Limit and/or Aggregate Stock Ownership Limit, it will (i) notify each stockholder of record of any such change, and (ii) publicly announce any such change, in each case at least 30 days prior to the effective date of such change.

Section 8.2.9 Legend. Each certificate for shares of Capital Stock shall bear substantially the following legend:

"The shares of any class or series of the Corporation's stock (the "Capital Stock") represented by this certificate are subject to restrictions on Beneficial Ownership, Constructive Ownership and Transfer (as each such capitalized term is defined in the Corporation's Certificate of Incorporation, as the same may be amended from time to time (the "Certificate of Incorporation")) for the purpose of the Corporation's maintenance of its status as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in the Certificate of Incorporation, (i) no Person (as defined in the Certificate of Incorporation) may Beneficially Own or Constructively Own shares of the Corporation's common stock, par value \$0.01 per share (the "Common Stock") in excess of 9.8% (in value or number of shares, whichever is more restrictive) of the total outstanding shares of Common Stock unless such Person is an Excepted Holder (as defined in the Certificate of Incorporation), in which case the Excepted Holder Limit (as defined in the Certificate of Incorporation) shall be applicable; (ii) no Person may Beneficially Own or Constructively Own shares of Capital Stock in excess of 9.8% (in value or number of shares, whichever is more restrictive) of the total outstanding shares of Capital Stock, unless such Person is an Excepted Holder, in which case the Excepted Holder Limit shall be applicable; (iii) no Person may Beneficially Own or Constructively Own shares of Capital Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code or otherwise cause the Corporation to fail to qualify as a REIT; and (iv) no Person may Transfer shares of Capital Stock if such Transfer would result in the Capital Stock of the Corporation being owned by fewer than 100 Persons. Any Person who Beneficially Owns or Constructively Owns, or attempts to Beneficially Own or Constructively Own shares of Capital Stock which causes or will cause a Person to Beneficially Own or Constructively Own shares of Capital Stock in excess or in violation of the above limitations must immediately notify the Corporation. If any of the above restrictions on Beneficial Ownership, Constructive Ownership or Transfer are violated, the shares of Capital Stock represented hereby will be automatically transferred to a Trust (as defined in the Certificate of Incorporation) for the benefit of one or more Charitable Beneficiaries (as defined in the Certificate of Incorporation). In addition, the Board of Directors shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer

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or other event, including, without limitation, causing the Corporation to redeem shares of Capital Stock; provided, however, that any Transfer or attempted Transfer or other event in violation of the above restrictions on Beneficial Ownership, Constructive Ownership and Transfer shall automatically result in the above transfer to the Trust and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Directors. The Board of Directors may, pursuant to Section 8.2.8 of the Certificate of Incorporation, increase or decrease the percentage of Common Stock or Capital Stock that a person may Beneficially Own or Constructively Own.

A copy of the Certificate of Incorporation, including the above restrictions on Beneficial Ownership, Constructive Ownership and Transfer, will be furnished to each holder of Capital Stock on request and without charge. Requests for such a copy may be directed to the Secretary of the Corporation at its principal office.”

Instead of the foregoing legend, the certificate may state that the Corporation will furnish a full statement about certain restrictions on transferability to a stockholder on request and without charge.

### Section 8.3 Transfer of Capital Stock in Trust.

Section 8.3.1 Ownership in Trust. Upon any purported Transfer or other event described in Section 8.2.1(a) that would result in a transfer of shares of Capital Stock to a Trust, such shares of Capital Stock shall be deemed to have been transferred to the Trustee as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Trust pursuant to Section 8.2.1(b). The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 8.3.6.

Section 8.3.2 Status of Shares Held by the Trustee. Shares of Capital Stock held by the Trustee shall continue to be issued and outstanding shares of Capital Stock of the Corporation. The Prohibited Owner shall have no rights in the shares of Capital Stock held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Trust.

Section 8.3.3 Dividend and Voting Rights. The Trustee shall have all voting rights and rights to dividends or other distributions with respect to shares of Capital Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid to a Prohibited Owner prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee shall be paid with respect to such shares of Capital Stock by the Prohibited Owner to the Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Trustee. Any dividend or distribution so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares held in the Trust and, subject to the General Corporation Law, effective as of the date that the

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shares of Capital Stock have been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article VIII, until the Corporation has received notification that shares of Capital Stock have been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

Section 8.3.4 Sale of Shares by Trustee. Within 20 days of receiving notice from the Corporation that shares of Capital Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares held in the Trust to a person, designated by the Trustee, whose ownership of the shares will not violate the ownership limitations set forth in Section 8.2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 8.3.4. The Prohibited Owner shall receive the lesser of (i) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Trust and (ii) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions paid to the Prohibited Owner and owned by the Prohibited Owner to the Trustee pursuant to Section 8.3.3 of this Article VIII. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Corporation that shares of Capital Stock have been transferred to the Trustee, such shares are sold by a Prohibited Owner, then (a) such shares shall be deemed to have been sold on behalf of the Trust and (b) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 8.3.4, such excess shall be paid to the Trustee upon demand.

Section 8.3.5 Purchase Right in Stock Transferred to the Trustee. Shares of Capital Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions paid to the Prohibited Owner and owed by the Prohibited Owner to the Trustee pursuant to Section 8.3.3 of this Article VIII. The Corporation may pay the amount of such reduction to the Trustee for the benefit of the Charitable Beneficiary. The Corporation shall have the right to accept such offer until the Trustee has sold the shares held in the Trust pursuant to Section 8.3.4. Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and any dividends or other distributions held by the Trustee shall be paid to the Charitable Beneficiary.

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Section 8.3.6 Designation of Charitable Beneficiaries. By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that (i) the shares of Capital Stock held in the Trust would not violate the restrictions set forth in Section 8.2.1(a) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

Section 8.4 Nasdaq Transactions. Nothing in this Article VIII shall preclude the settlement of any transaction entered into through the facilities of Nasdaq or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article VIII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article VIII.

Section 8.5 Enforcement. The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article VIII.

Section 8.6 Non-Waiver. No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board of Directors, as the case may be, except to the extent specifically waived in writing.

Section 8.7 Severability. If any provision of this Article VIII or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

#### ARTICLE IX LIMITATION ON LIABILITY OF DIRECTORS

A director of the Corporation shall, to the maximum extent now or hereafter permitted by Section 102(b)(7) of the General Corporation Law (or any successor provision or provisions), have no personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such director has committed willful misfeasance, bad faith, gross negligence or reckless disregard of such director's duties involved in the conduct of the office of director.

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ARTICLE X  
COMPROMISE

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of the General Corporation Law, trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of the General Corporation Law, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE XI  
AMENDMENT OF BY-LAWS

The Board of Directors shall have power to adopt, amend, alter, change and repeal any By-laws by a vote of the majority of the Board of Directors then in office. In addition to any requirements of the General Corporation Law (and notwithstanding the fact that a lesser percentage may be specified by the General Corporation Law), any adoption, amendment, alteration, change or repeal of any By-laws by the stockholders of the Corporation shall require the affirmative vote of the holders of at least sixty-six percent (66%) of the combined voting power of all of the shares of all classes of capital stock of the Corporation then entitled to vote generally in the election of directors.

ARTICLE XII  
AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation hereby reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation. Except as may be provided in a resolution or resolutions providing for any class of Preferred Stock pursuant to Article IV hereof and which relate to such class of Preferred Stock and except as provided in Article IV hereof, any such amendment, alteration, change or repeal shall require the affirmative vote of both (a) a majority of the members of the Board of Directors then in office and (b) a majority of the combined voting power of all of the shares of all classes of capital stock of the Corporation then entitled to vote generally in the election of directors.

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By a vote of the majority of the Board of Directors then in office, the Board of Directors may adopt a resolution providing that at any time prior to the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders, the Board of Directors may abandon such proposed amendment without further action by the stockholders.

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least sixty-six percent (66%) of the combined voting power of all of the shares of all classes of capital stock of the Corporation then entitled to vote shall be required to amend, repeal or adopt any provision inconsistent with Article V herein.

ARTICLE XIII  
MISCELLANEOUS

Section 13.1 Books and Records. The books of the Corporation may be kept (subject to any provision contained in the General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

Section 13.2 Section 203. The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law.

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THE UNDERSIGNED hereby executes this Amended and Restated Certificate of Incorporation this May 20, 2008.

By: /s/ Malon Wilkus

Name: Malon Wilkus

Title: Chief Executive Officer and President

By: /s/ Samuel A. Flax

Name: Samuel A. Flax

Title: Executive Vice President and Secretary

AMENDED AND RESTATED BY-LAWS  
OF  
AMERICAN CAPITAL AGENCY CORP.  
(hereinafter called the "Corporation")

**ARTICLE I**

**OFFICES**

Section 1.1 Registered Office. The address of the registered office of the Corporation in the State of Delaware shall be 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent at that address is Corporation Trust Company.

Section 1.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

Section 2.1 Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors or, in the absence of a designation by the Board of Directors, by the Chairman of the Board or the Chief Executive Officer, and stated in the written notice of the meeting. Notwithstanding the foregoing, the Board of Directors may, in its sole discretion, determine that meetings of the stockholders will not be held at any place, but may instead be held by means of remote communications. The Board of Directors or the Chairman of the Board may postpone any previously scheduled Annual or Special Meeting of Stockholders.

Section 2.2 Annual Meetings. The Annual Meetings of Stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. At the Annual Meeting of Stockholders, the stockholders will elect directors of the Corporation and transact any other business as brought before the meeting in accordance with these By-laws.

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Section 2.3 Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation, as amended and restated from time to time (the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called only by (i) the President, pursuant to a resolution adopted by a majority of the Board of Directors or by a committee of the Board of Directors that has been duly designated by the Board of Directors and whose powers and authority include the power to call such meetings or (ii) by the Chairman of the Board of Directors. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 2.4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law and subject to Section 2 of ARTICLE VII hereof, the written notice of any meeting shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

Section 2.5 List of Stockholders. A complete list of the stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary and shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held, for at least ten days before the meeting and at the place of the meeting during the whole time of the meeting.

Section 2.6 Quorum. Unless otherwise required by law or the Certificate of Incorporation, or as provided by the Delaware General Corporation Law (the "DGCL"), the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person, by means of remote communication, if applicable, or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. In the event of a lack of a quorum, the chairman of the meeting or a majority in interest of the stockholders present in person, by means of remote communication, if applicable, or represented by proxy may adjourn the meeting from time to time without notice other than an announcement at the meeting, until a quorum shall be obtained. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called.

Section 2.7 Organization. The Chairman of the Board, or, in the absence of the Chairman of the Board, the President, or, in the absence of the Chairman of the Board and the President, any Executive Vice President, shall preside at meetings of stockholders. The Secretary of the Corporation shall act as secretary, but in the absence of the Secretary, the presiding officer may appoint a secretary.

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## Section 2.8 Stockholder Nominations and Proposals.

(a) No proposal for a stockholder vote shall be submitted by a stockholder (a “Stockholder Proposal”) to the Corporation’s stockholders unless the stockholder submitting such proposal (the “Proponent”) shall have filed a written notice setting forth with particularity (i) the names and business addresses of the Proponent and all Persons (as such term is defined in Section 3(a)(9) of the Securities Exchange Act of 1934, as amended through the date of adoption of these Bylaws) acting in concert with the Proponent; (ii) the names and addresses of the Proponent and the Persons identified in clause (i), as they appear on the Corporation’s books (if they so appear); (iii) the class and number of shares of the Corporation beneficially owned by the Proponent and the Persons identified in clause (i); (iv) a description of the Stockholder Proposal containing all material information relating thereto; and (v) such other information as the Board of Directors reasonably determines is necessary or appropriate to enable the Board of Directors and stockholders of the Corporation to consider the Stockholder Proposal. Upon receipt of the Stockholder Proposal and prior to the stockholder meeting at which such Stockholder Proposal will be considered, if the Board of Directors or a designated committee or the officer who will preside at the stockholders meeting determines that the information provided in a Stockholder Proposal does not satisfy the informational requirements of these Bylaws or is otherwise not in accordance with law, the Secretary of the Corporation shall promptly notify such Proponent of the deficiency in the notice. Such Proponent shall have an opportunity to cure the deficiency by providing additional information to the Secretary within the period of time, not to exceed five days from the date such deficiency notice is given to the Proponent, determined by the Board of Directors, such committee or such officer. If the deficiency is not cured within such period, or if the Board of Directors, such committee or such officer determines that the additional information provided by the Proponent, together with the information previously provided, does not satisfy the requirements of this Section 2.8, then such proposal shall not be presented for action at the meeting in question.

(b) Only persons who are selected and recommended by the Board of Directors or the Nominating Committee thereof, or who are nominated by stockholders in accordance with the procedures set forth in this Section 2.8, shall be eligible for election, or qualified to serve, as directors. Nominations of individuals for election to the Board of Directors of the Corporation at any annual meeting or any special meeting of stockholders at which directors are to be elected may be made by any stockholder of the Corporation entitled to vote for the election of directors at that meeting by compliance with the procedures set forth in this Section 2.8. Nominations by stockholders shall be made by written notice (a “Nomination Notice”), which shall set forth (i) as to each individual nominated, (A) the name, date of birth, business address and residence address of such individual; (B) the business experience during the past five years of such nominee, including his or her principal occupations and employment during such period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on and such other information as to the nature of his or her responsibilities and level of professional competence as may be sufficient to permit assessment of his or her prior business experience; (C) whether the nominee is or has ever been at any time a director, officer or owner of 5% or more of any class of capital stock, partnership interests or other equity interest of any corporation, partnership or other entity; (D) any directorships held by such nominee in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, as amended; and (E) whether, in the last five years,

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such nominee has been convicted in a criminal proceeding or has been subject to a judgment, order, finding or decree of any federal, state or other governmental entity, concerning any violation of federal, state or other law, or any proceeding in bankruptcy, which conviction, judgment, order, finding, decree or proceeding may be material to an evaluation of the ability or integrity of the nominee; and (ii) as to the Person submitting the Nomination Notice and any Person acting in concert with such Person, (x) the name and business address of such Persons, (y) the name and address of such Persons and as they appear on the Corporation's books (if they so appear) and (z) the class and number of shares of the Corporation which are beneficially owned by such Persons. A written consent to being named in a proxy statement as a nominee, and to serve as a director if elected, signed by the nominee, shall be filed with any Nomination Notice. If the presiding officer at any stockholders meeting determines that a nomination was not made in accordance with the procedures prescribed by these Bylaws, he shall so declare to the meeting and the defective nomination shall be disregarded.

(c) Nomination Notices and Stockholder Proposals shall be delivered to the Secretary at the principal executive office of the Corporation not less than sixty and not more than ninety days prior to the date of the meeting of stockholders if such Nomination Notice or Stockholder Proposal is to be submitted at an annual stockholders meeting (provided, however, that if such annual meeting is called to be held before the date specified in Section 2.2 hereof, such Nomination Notice or Stockholder Proposal shall be so delivered no later than the close of business on the tenth day following the day on which notice of the date of the annual stockholders meeting was given). Nomination Notices and Stockholder Proposals shall be delivered to the Secretary at the principal executive office of the Corporation no later than the close of business on the tenth day following the day on which notice of the date of a special meeting of stockholders was given if the Nomination Notice or Stockholder Proposal is to be submitted at a special stockholders meeting.

Section 2.9 Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-laws, any question brought before any meeting of stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the capital stock represented and entitled to vote thereat, voting as a single class. Abstentions shall not be considered to be votes cast.

Section 2.10 Inspectors. Votes by written ballot at any meeting of stockholders may be conducted by one or more inspectors, appointed for that purpose, either by the Board of Directors or by the chairman of the meeting. The inspector or inspectors may decide upon the qualifications of voters and the validity of proxies, and may count the votes and declare the results.

Section 2.11 Remote Communications. If authorized by the Board of Directors and subject to the guidelines and procedures as the Board of Directors may from time to time adopt, stockholders and proxyholders not physically present at a meeting of stockholders may participate in such meeting by means of remote communication, so long as the stockholder or proxyholder participating in the meeting can read or hear the proceedings of the meeting substantially concurrently with such proceedings.

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## ARTICLE III

### DIRECTORS

Section 3.1 Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by a majority vote of the members of the Board of Directors then in office, provided that no amendment to the Bylaws decreasing the number of directors shall have the effect of shortening the term of any incumbent director and provided that the number of directors shall not be increased by fifty percent (50%) or more in any twelve-month period without the approval of at least sixty-six percent (66%) of the members of the Board of Directors then in office. Except as provided in Section 3.3 hereof, directors shall be elected by a plurality of the votes cast at the Annual Meetings of Stockholders and each director so elected shall hold office until the next Annual Meeting of Stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.2 Resignation. Any director may resign at any time upon written notice to the Chairman of the Board, to the President or the Secretary. Unless otherwise stated in such notice of resignation, the acceptance thereof shall not be necessary to make it effective; and such resignation shall take effect at the time specified therein or, in the absence of such specification, it shall take effect upon the receipt thereof.

Section 3.3 Vacancies and New Directorships. Unless otherwise required by law or the Certificate of Incorporation, vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal.

Section 3.4 Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 3.5 Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, the Chairman of the Executive Committee, the Vice Chairman of the Board, the President or at the request in writing of a majority of the members of the Board of Directors then in office. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than 48 hours before the date of the meeting, by telephone or telegram on 24 hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

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Section 3.6 Quorum. Except as otherwise required by law or the Certificate of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 3.7 Actions by Written Consent. Unless otherwise provided in the Certificate of Incorporation, or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or by electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.8 Meetings by Means of Remote Communications. Unless otherwise provided in the Certificate of Incorporation, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.8 shall constitute presence in person at such meeting.

Section 3.9 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors when a vote on any matter is taken is deemed to have assented to the action taken unless he votes against or abstains from the action taken, or unless at the beginning of the meeting or promptly upon arrival, the director objects to the holding of the meeting or the transacting of specified business at the meeting. Any such dissenting votes, abstentions or objections shall be entered in the minutes of the meeting

Section 3.10 Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, all actions taken by the Board of Directors shall be taken by a majority vote of the members then in office.

Section 3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director, payable in cash or securities as may be established by the Board of Directors. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 3.12 Loss of Deposits. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom moneys or stock have been deposited.

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Section 3.13 Surety Bonds. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 3.14 Reliance. Each director, officer, employee and agent of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be fully justified and protected with regard to any act or failure to act in reliance in good faith upon the books of account or other records of the Corporation, upon an opinion of counsel or upon reports made to the Corporation by any of its officers or employees or by the adviser, accountants, appraisers or other experts or consultants selected by the Board of Directors or officers of the Corporation, regardless of whether such counsel or expert may also be a director.

Section 3.15 Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because the director or officer's vote is counted for such purpose if (i) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 3.16 Certain Rights of Directors, Officers, Employees and Agents. The directors shall have no responsibility to devote their full time to the affairs of the Corporation. Any director or officer, employee or agent of the Corporation, in his or her personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to or in addition to or in competition with those of or relating to the Corporation.

#### **ARTICLE IV COMMITTEES**

Section 4.1 Nominating Committee. The Board shall, by resolution passed by a majority of the members of the Board of Directors then in office, designate a Nominating Committee to consist of two or more members of the Board. A majority of the Board of Directors then in office shall have the power to change the membership of the Nominating



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Committee, fill vacancies therein or remove any members thereof, either with or without cause, at any time. Unless otherwise provided by the Board of Directors or the Nominating Committee, quorum, voting, and other procedures of the Nominating Committee shall be the same as those applicable to actions taken by the Board of Director. The Nominating Committee may fix its rules of procedure, determine its manner of acting and fix the time and place, whether within or without the State of Delaware, of its meetings and specify what notice thereof, if any, shall be given, unless the majority of the Board of Directors shall otherwise by resolution provide.

Section 4.2 Other Committees. The Board of Directors may, by resolutions passed by a majority of the members of the Board of Directors then in office, designate members of the Board of Directors to constitute other committees which shall in each case consist of such number of directors, and shall have and may execute such powers as may be determined and specified in the respective resolutions appointing them. Any such committee may fix its rules of procedure, determine its manner of acting and fix the time and place, whether within or without the State of Delaware, of its meetings and specify what notice thereof, if any, shall be given, unless the Board of Directors shall otherwise by resolution provide. Unless otherwise provided by the Board of Directors or such committee, quorum, voting and other procedures shall be the same as those applicable to actions taken by the Board of Director. A majority of the members of the Board of Directors then in office shall have the power to change the membership of any such committee at any time, to fill vacancies therein and to discharge any such committee or to remove any member thereof, either with or without cause, at any time.

## **ARTICLE V**

### **OFFICERS**

Section 5.1 General. The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chief Executive Officer, President, Chief Financial Officer and Secretary. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors (who must be a director), one or more Vice Presidents and select and appoint such other officers it deems necessary. Any number of offices may be held by the same person, unless otherwise prohibited by law or the Certificate of Incorporation. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 5.2 Election. The Board of Directors, at its first meeting held after each Annual Meeting of Stockholders (or action by written consent of stockholders in lieu of the Annual Meeting of Stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

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Section 5.3 Vacancies. A vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors or, in the case of offices held by officers who may be appointed by other officers, by any officer authorized to appoint such officer.

Section 5.4 Chief Executive Officers. The Chairman of the Board shall initially be the Chief Executive Officer of the Corporation and thereafter, at such time as the Board of Directors shall determine, the Chief Executive Officer shall be such officer as the Board of Directors shall designate from time to time. The Chief Executive Officer shall be responsible for carrying out the policies adopted by the Board of Directors.

Section 5.5 Chairman of the Board. The Chairman of the Board shall have such powers and perform such duties as may be provided for herein and as may be incident to the office and as may be assigned by the Board of Directors.

Section 5.6 President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and the Board of Directors. If the Board of Directors shall not otherwise designate a Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 5.7 Chief Financial Officers. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation.

Section 5.8 Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President, or the Vice Presidents if there is more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer

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of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 5.9 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall have custody of the seal of the Corporation and the Secretary shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 5.10 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Section 5.11 Execution of Instruments. Checks, notes, drafts, other commercial instruments, assignments, guarantees of signatures and contracts (except as otherwise provided herein or by law) shall be executed by the Chairman of the Board, any Vice Chairman of the Board, the President, any Vice President or such officers or employees or agents as the Board of Directors or any of such designated officers may direct.

Section 5.12 Mechanical Endorsement. The Chairman of the Board, any Vice Chairman of the Board, the President, any Vice President or the Secretary may authorize any endorsement on behalf of the Corporation to be made by such mechanical means or stamps as any such officers may deem appropriate.

## ARTICLE VI

### STOCK

Section 6.1 Shares of Stock. Except as otherwise provided in a resolution approved by the Board of Directors, all shares of capital stock of the Corporation issued after May 19, 2008 shall be uncertificated shares. Notwithstanding the foregoing, shares of capital stock of the Corporation represented by a certificate issued on or prior to May 19, 2008, shall be certificated shares until such certificate is surrendered to the Corporation. Within a reasonable time after the issuance or transfer of uncertificated shares of stock, the Corporation shall send the registered owner a written notice confirming the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL or a statement that the Corporation will furnish, without charge, to each stockholder who so requests, the powers,

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designations, preferences and relative participating, optional or other special rights of each class of stock or shares thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 6.2 Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 6.3 Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 6.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law, the Certificate of Incorporation and in these By-Laws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 6.5 Record Date. The Board of Directors may fix in advance a future date, not exceeding sixty days (nor, in the case of a stockholders' meeting, less than ten days) preceding the date of any meeting of stockholders, payment of dividend or other distribution, allotment of rights, or change, conversion or exchange of capital stock or for the purpose of any other lawful action, as the record date for determination of the stockholders entitled to notice of and to vote at any such meeting and any adjournment thereof, or to receive any such dividend or

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other distribution or allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to participate in any such other lawful action, and, in such case, such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of and to vote at such meeting and any adjournment thereof, or to receive such dividend or other distribution or allotment of rights, or to exercise such rights or to participate in any such other lawful action, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

Section 6.6 Stock Ledger. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate share ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6.7 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 6.8 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

## ARTICLE VII

### NOTICES

Section 7.1 Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may be given personally or by telegram, telex, cable or other electronic transmission.

Section 7.2 Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

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## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 3.7 of ARTICLE III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 8.2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 8.3 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 8.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 8.5 Executive Office. The principal executive office of the Corporation shall be located in Bethesda, Maryland or such other location as may be specified by the Board of Directors. The books of account and records shall be kept in such office. The Corporation also may have offices at such other places, both within and without Delaware, as the Board of Directors from time to time shall determine or the business and affairs of the Corporation may require.

## ARTICLE IX

### INVESTMENT POLICY

Subject to the provisions of the Certificate of Incorporation, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

## ARTICLE X

### INDEMNIFICATION

Section 10.1 Indemnification Provisions in Certificate of Incorporation. The provisions of this ARTICLE X are intended to supplement Article VII of the Certificate of

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Incorporation pursuant to Section 7.2 therein. To the extent that this ARTICLE X contains any provisions inconsistent with such Article VII, the provisions of the Certificate of Incorporation shall govern. Terms used in this ARTICLE X but not otherwise defined shall have the respective meanings given such terms in such Article VII of the Certificate of Incorporation.

Section 10.2 Undertakings for Advances of Expenses. If and to the extent the DGCL requires, an advancement by the Corporation of expenses incurred by an indemnitee pursuant to clause (iii) of the last sentence of Section 7.1 of the Certificate of Incorporation (hereinafter an “advancement of expenses”) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under Article VII of the Certificate of Incorporation or otherwise.

Section 10.3 Claims for Indemnification. If a claim for indemnification under Section 7.1 of the Certificate of Incorporation is not paid in full by the Corporation within sixty (60) days after it has been received in writing by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses only upon a final adjudication that, the indemnitee has not met the applicable standard of conduct set forth in Section 145 of the DGCL (or any successor provision or provisions). Neither the failure of the Corporation (including the Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in Section 145 of the DGCL (or any successor provision or provisions), nor an actual determination by the Corporation (including the Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to have or retain such advancement of expenses, under Article VII of the Certificate of Incorporation or this ARTICLE X or otherwise, shall be on the Corporation.

Section 10.4 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer,

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employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or any other provision of law.

Section 10.5 Severability. In the event that any of the provisions of this ARTICLE X (including any provision within a single section, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the full extent permitted by law.

## **ARTICLE XI AMENDMENTS**

Section 11.1 Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of stockholders or Board of Directors as the case may be. All such amendments must be approved by either the holders of sixty-six percent (66%) of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 11.2 Entire Board of Directors. As used in this ARTICLE XI and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

Adopted as of: May 20, 2008



**REGISTRATION RIGHTS AGREEMENT**

This REGISTRATION RIGHTS AGREEMENT, dated as of May 20, 2008, is entered into by and between American Capital Agency Corp., a Delaware corporation (the “*Company*”) and American Capital Strategies, Ltd., a Delaware corporation (“*American Capital*”).

WHEREAS, the Company will issue and sell American Capital 5,000,000 shares of the Company’s common stock, par value \$0.01 per share (the “*Common Stock*”) in a transaction not registered under the Securities Act of 1933, as amended (the “*Securities Act*”) on the date hereof (the “*Private Placement*”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

**Section 1. Certain Definitions.**

In addition to the terms defined elsewhere in this Agreement, the following terms, as used herein, shall have the following meanings:

“*Affiliate*” of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) as used with respect to any Person means the possession, directly or indirectly through one or more intermediaries, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“*Agreement*” means this Registration Rights Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to this Registration Rights Agreement as the same may be in effect at the time such reference becomes operative.

“*Business Day*” means any day other than Saturday, Sunday or a day on which commercial banks in New York, New York are directed or permitted to be closed.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Holder*” means (i) American Capital as holders of record of Registrable Common Stock (as defined below) and (ii) any Affiliate of American Capital that is a partnership, limited liability company, corporation or similar entity and a direct or indirect transferee of such Registrable Common Stock from American Capital. For purposes of this Agreement, the Company may deem and treat the registered holder of Registrable Common Stock as the Holder and absolute owner thereof, and the Company shall not be affected by any notice to the contrary.

“*IPO*” means the initial public offering of the Company’s Common Stock.

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“*IPO Date*” means the closing date of the IPO.

“*Person*” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof) or any other entity.

“*Prospectus*” means the prospectus or prospectuses included in any Registration Statement (including without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act and any term sheet filed pursuant to Rule 434 under the Securities Act), as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Common Stock covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference or deemed to be incorporated by reference in such prospectus or prospectuses.

“*Registrable Common Stock*” means each of the 5,000,000 shares of Common Stock issued and sold to American Capital in connection with the Private Placement upon original issuance thereof and at all times subsequent thereto, including upon the transfer thereof by the original Holder or any subsequent Holder and any securities issued in respect of such securities by reason of or in connection with any exchange for or replacement of such securities or any stock dividend, stock distribution, stock split, purchase in any rights offering or in connection with any combination of shares, recapitalization, merger or consolidation, or any other equity securities issued pursuant to any other pro rata distribution with respect to the Common Stock, until, in the case of any such securities, the earliest to occur of (i) the date on which it has been registered effectively pursuant to the Securities Act and disposed of in accordance with the Registration Statement relating to it or (ii) the date on which either it is distributed to the public or is saleable, in each case pursuant to Rule 144 promulgated by the SEC pursuant to the Securities Act.

“*Registration Statement*” means any registration statement of the Company filed with the SEC under the Securities Act which covers any of the Registrable Common Stock pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference or deemed to be incorporated by reference in such Registration Statement.

“*Rule 415*” means Rule 415 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar Rule or regulation hereafter adopted by the SEC as a replacement thereto having substantially the same effect as such rule.

“*SEC*” means the Securities and Exchange Commission.

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“*underwritten registration or underwritten offering*” means a registration in which securities of the Company are sold to underwriters for reoffering to the public.

“*Underwriting Agreement*” means the Underwriting Agreement dated May 14, 2008 by and among the Company, American Capital Agency Management, LLC, a Delaware limited liability company and the Manager of the Company, Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives for the underwriters named on Schedule A of such Underwriting Agreement.

## **Section 2. Demand Registrations.**

(a) Right to Request Registration. From and after the date hereof, any Holder or Holders (“*Initiating Holders*”) may request registration under the Securities Act of all or part of the Registrable Common Stock (“*Demand Registration*”) at any time and from time to time; *provided, however*, that such Initiating Holders shall not be entitled to request any Demand Registration with respect to 2,500,000 shares of the Registrable Common Stock issued to American Capital in connection with the Private Placement prior to the third anniversary of the IPO Date.

Within ten (10) Business Days after receipt of any such request for Demand Registration, the Company shall give written notice of such request to all other Holders of Registrable Common Stock, if any, and shall, subject to the provisions of Section 2(c) hereof, include in such registration all such Registrable Common Stock with respect to which the Company has received written requests for inclusion therein within twenty (20) Business Days after the receipt of the Company’s notice.

(b) Priority on Demand Registrations. If the managing underwriters of a requested Demand Registration advise the Company in writing that in their opinion the shares of Registrable Common Stock proposed to be included in any such registration exceeds the number of securities that can be sold in such offering and/or that the number of shares of Registrable Common Stock proposed to be included in any such registration would materially adversely affect the price per share of the Company’s equity securities to be sold in such offering, the Company shall include in such registration only the number of shares of Registrable Common Stock that, in the opinion of such managing underwriters, can be sold. If the number of shares that can be sold is less than the number of shares of Registrable Common Stock proposed to be registered, the Company shall allocate the amount of Registrable Common Stock to be sold among the Holders pro rata on the basis of Registrable Common Stock offered for such registration by each Holder electing to participate in such registration. If the number of shares that can be sold, as determined by the managing underwriters, exceeds the number of shares of Registrable Common Stock proposed to be sold, such excess shall be allocated pro rata among the other holders of Common Stock, if any, desiring to participate in such registration based on the amount of such Common Stock initially requested to be registered by such holders or as such holders may otherwise agree.

(c) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration within six (6) months after the effective date of a previous Demand Registration or a previous registration under which the Initiating Holders had piggyback

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rights pursuant to Section 3 hereof wherein the Initiating Holders were permitted to register, and sold, at least 50% of the shares of Registrable Common Stock requested to be included therein. The Company may (i) postpone for up to ninety (90) days the filing or the effectiveness of a Registration Statement for a Demand Registration if, based on the good faith judgment of the Company's board of directors, such postponement or withdrawal is necessary in order to avoid premature disclosure of a matter the board has determined would not be in the best interest of the Company to be disclosed at such time or (ii) postpone the filing of a Demand Registration in the event the Company shall be required to prepare audited financial statements as of a date other than its fiscal year and (unless the Holders requesting such registration agree to pay the expenses of such an audit); provided, however, that in no event shall the Company withdraw a Registration Statement under clause (i) after such Registration Statement has been declared effective; and provided, further, however, that in any of the events described in clause (i) or (ii) above, the Initiating Holders requesting such Demand Registration shall be entitled to withdraw such request. The Company shall provide written notice to the Initiating Holders requesting such Demand Registration of (x) any postponement or withdrawal of the filing or effectiveness of a Registration Statement pursuant to this Section 2(c), (y) the Company's decision to file or seek effectiveness of such Registration Statement following such withdrawal or postponement and (z) the effectiveness of such Registration Statement.

(d) Selection of Underwriters. If any of the Registrable Common Stock covered by a Demand Registration hereof is to be sold in an underwritten offering, the Initiating Holders shall have the right to select the managing underwriter(s) to administer the offering subject to the approval of the Company, which approval shall not be unreasonably withheld.

(e) Effective Period of Demand Registrations. After any Demand Registration filed pursuant to this Agreement has become effective, the Company shall use its best efforts to keep such Demand Registration effective for a period equal to 180 days from the date on which the SEC declares such Demand Registration effective (or if such Demand Registration is not effective during any period within such 180 days, such 180-day period shall be extended by the number of days during such period when such Demand Registration is not effective), or such shorter period that shall terminate when all of the Registrable Common Stock covered by such Demand Registration has been sold pursuant to such Demand Registration. If the Company shall withdraw or reduce the number of shares of Registrable Common Stock that is subject to any Demand Registration pursuant to subsection (b) of this Section 2 (a " *Withdrawn Demand Registration*"), the Initiating Holders of the Registrable Common Stock remaining unsold and originally covered by such Withdrawn Demand Registration shall be entitled to a replacement Demand Registration that (subject to the provisions of this Section 2) the Company shall use its best efforts to keep effective for a period commencing on the effective date of such Demand Registration and ending on the earlier to occur of the date (i) that is 180 days from the effective date of such Demand Registration and (ii) on which all of the Registrable Common Stock covered by such Demand Registration has been sold. Such additional Demand Registration otherwise shall be subject to all of the provisions of this Agreement.

(f) Underwritten Offerings. Notwithstanding the foregoing, in no event shall the Company be obligated to effect more than one (1) underwritten offering hereunder in any single six (6) month period, with the first such period measured from the date of the first Demand Registration and ending on the same date during the six (6) months following such Demand Registration, whether or not a Business Day.

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### Section 3. Piggyback Registrations.

(a) Right to Piggyback. From and after the date hereof and until the termination of the Management Agreement, whenever the Company proposes to register any of its common equity securities under the Securities Act (other than a registration statement on Form S-8 or on Form S-4 or any similar successor forms thereto), whether for its own account or for the account of one or more stockholders of the Company, and the registration form to be used may be used for any registration of Registrable Common Stock (a “*Piggyback Registration*”), the Company shall give prompt written notice (in any event within ten (10) business days after its receipt of notice of any exercise of other demand registration rights) to all Holders of its intention to effect such a registration and, subject to Sections 3(b) and 3(c), shall include in such registration all Registrable Common Stock with respect to which the Company has received written requests for inclusion therein within twenty (20) days after the receipt of the Company’s notice; *provided, however*, that such Initiating Holders shall not be entitled to request any Piggyback Registration with respect to 2,500,000 shares of the Registrable Common Stock issued to American Capital in connection with the Private Placement prior to the third anniversary of the IPO Date. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration at any time in its sole discretion.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number that can be sold in such offering and/or that the number of shares of Registrable Common Stock proposed to be included in any such registration would adversely affect the price per share of the Company’s equity securities to be sold in such offering, the underwriting shall be allocated among the Company and all Holders pro rata on the basis of the Common Stock and Registrable Common Stock offered for such registration by the Company and each Holder, respectively, electing to participate in such registration.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of a holder of the Company’s securities other than Registrable Common Stock (“*Non-Holder Securities*”), and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number that can be sold in such offering and/or that the number of shares of Registrable Common Stock proposed to be included in any such registration would adversely affect the price per share of the Company’s equity securities to be sold in such offering, the underwriting shall be allocated among the holders of Non-Holder Securities and all Holders pro-rata on the basis of the Non-Holder Securities and Registrable Common Stock offered for such registration by the holder of Non-Holder Securities and each Holder, respectively, electing to participate in such registration.

(d) Selection of Underwriters. If any Piggyback Registration is an underwritten primary offering, the Company shall have the right to select the managing underwriter or underwriters to administer any such offering.

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(e) Other Registrations. If the Company has previously filed a Registration Statement with respect to Registrable Common Stock pursuant to Section 2 hereof or pursuant to this Section 3, and if such previous registration has not been withdrawn or abandoned, the Company shall not be obligated to cause to become effective any other registration of any of its securities under the Securities Act, whether on its own behalf or at the request of any holder or holders of such securities, until a period of at least three (3) months has elapsed from the effective date of such previous registration.

#### **Section 4. Holdback Agreement.**

In connection with an underwritten primary or secondary offering to the public, each Holder agrees, subject to any exceptions that may be agreed upon at the time of such offering, not to sell or otherwise transfer or dispose of any shares of Registrable Common Stock (or other securities) of the Company held by them (other than Registrable Common Stock included in such offering in accordance with the terms hereof) for a period equal to the lesser of one hundred eighty (180) days following the effective date of a Registration Statement of the Company filed under the Securities Act or such shorter period as the managing underwriter shall agree to; provided that all other stockholders who own more than ten percent (10%) of the outstanding Common Stock of the Company and all officers and directors of the Company enter into similar agreements. Such agreement shall be in writing in form reasonably satisfactory to the Company and the managing underwriter. The Company may impose stop-transfer instructions with respect to the shares of Registrable Common Stock (or other securities) subject to the foregoing restriction until the end of said period.

#### **Section 5. Registration Procedures.**

Whenever the Holders request that any Registrable Common Stock be registered pursuant to this Agreement, the Company shall use its commercially reasonable efforts to effect and maintain the registration and the sale of such Registrable Common Stock in accordance with the intended methods of disposition thereof, and pursuant thereto the Company shall as expeditiously as possible:

(a) prepare and file with the SEC a Registration Statement with respect to such Registrable Common Stock and use its best efforts to cause such Registration Statement to become effective as soon as practicable thereafter; and before filing a Registration Statement or Prospectus or any amendments or supplements thereto, furnish to the Holders of Registrable Common Stock covered by such Registration Statement and the underwriter or underwriters, if any, copies of all such documents proposed to be filed, including, if requested by such Holders, documents incorporated by reference in the Prospectus and, if requested by such Holders, the exhibits incorporated or deemed incorporated by reference, and such Holders shall have the opportunity to object to any information pertaining to such Holders that is contained therein and the Company will make the corrections reasonably requested by such Holders with respect to such information prior to filing any Registration Statement or amendment thereto or any Prospectus or any supplement thereto;

(b) prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to

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keep such Registration Statement effective, in the case of Demand Registration, for a period not less than 180 days, or such shorter period as is necessary to complete the distribution of the securities covered by such Registration Statement and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) furnish to each seller of Registrable Common Stock (without charge) such number of copies of such Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Common Stock owned by such seller, and the Company consents to the use of such Prospectus, including each preliminary Prospectus, by Holders of Registrable Common Stock, in connection with the offering and sale of Registrable Common Stock covered by any such Prospectus;

(d) use its commercially reasonable efforts to register or qualify such Registrable Common Stock under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Common Stock owned by such seller (provided, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph (d), (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) notify each seller of such Registrable Common Stock, at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of any event as a result of which the Registration Statement, including the Prospectus contained therein, contains an untrue statement of a material fact or omits any fact required to be stated therein or necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall prepare a supplement or amendment to such Registration Statement so that, as thereafter delivered to the purchasers of such Registrable Common Stock, such Prospectus shall not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(f) in the case of an underwritten offering, enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Holders of a majority of number of shares of the Registrable Common Stock being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Common Stock, (including making executive officers of the Company available to participate in, and cause them to cooperate with the underwriters in connection with, "road-show" and other customary marketing activities (including one-on-one meetings with prospective purchasers of the Registrable Common Stock), and cause to be delivered to the underwriters and the sellers, if any, opinions of counsel to the Company in customary form, covering such matters as are customarily covered by opinions for an underwritten public offering as the underwriters may request and addressed to the underwriters and the sellers;

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(g) subject to receipt of reasonably acceptable confidentiality agreements, make available, for inspection by representative of a seller of Registrable Common Stock, any underwriter participating in any disposition pursuant to such Registration Statement, and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement;

(h) to use its commercially reasonable efforts to cause all such Registrable Common Stock to be listed on each securities exchange on which securities of the same class issued by the Company are then listed or, if no such similar securities are then listed, on a national securities exchange selected by the Company;

(i) provide a transfer agent and registrar for all such Registrable Common Stock not later than the effective date of such Registration Statement;

(j) if requested, cause to be delivered, immediately prior to the effectiveness of the Registration Statement (and, in the case of an underwritten offering, at the time of delivery of any Registrable Common Stock sold pursuant thereto), letters from the Company's independent certified public accountants addressed to each selling Holder (unless such selling Holder does not provide to such accountants the appropriate representation letter required by rules governing the accounting profession) and each underwriter, if any, stating that such accountants are independent public accountants within the meaning of the Securities Act and the applicable rules and regulations adopted by the SEC thereunder, and otherwise in customary form and covering such financial and accounting matters as are customarily covered by letters of the independent certified public accountants delivered in connection with primary or secondary underwritten public offerings, as the case may be;

(k) make generally available to its stockholders a consolidated earnings statement (which need not be audited) for the 12 months (or, if applicable, such shorter period that the Company has been in existence) beginning after the effective date of a Registration Statement as soon as reasonably practicable after the end of such period, which earnings statement shall satisfy the requirements of an earning statement under Section 11(a) of the Securities Act and Rule 158 thereunder;

(l) cooperate with each selling Holder of Registrable Common Stock and each underwriter participating in the disposition of such Registrable Common Stock and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc. and make reasonably available its employees and personnel and otherwise provide reasonable assistance to the underwriters (taking into account the needs of the Company's businesses and the requirements of the marketing process) in the marketing of Registrable Common Stock in any underwritten offering.

(m) use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Common Stock for sale in any jurisdiction and, if such an order or suspension is



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issued, to use reasonable efforts to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify each seller of Registrable Common Stock being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(n) promptly notify each seller of Registrable Common Stock and the underwriter or underwriters, if any:

(i) when the Registration Statement, pre-effective amendment, the Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement has been filed and, with respect to the Registration Statement or any post-effective amendment, when the same has become effective;

(ii) of any written request by the SEC for amendments or supplements to the Registration Statement or Prospectus;

(iii) of the notification to the Company by the SEC of its initiation of any proceeding with respect to the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement; and

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Common Stock for sale under the applicable securities or blue sky laws of any jurisdiction.

(o) At all times after the Company has filed a registration statement with the SEC pursuant to the requirements of either the Securities Act or the Exchange Act, the Company shall file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder, and take such further action as any Holders may reasonably request, all to the extent required to enable such Holders to be eligible to sell Registrable Common Stock pursuant to Rule 144 under the Securities Act (or any similar rule then in effect).

(p) As a condition to being included in any Registration Statement, the Company may require each seller of Registrable Common Stock as to which any registration is being effected to furnish to the Company any other information regarding such seller and the distribution of such securities as the Company may from time to time reasonably request in writing.

(q) Each seller of Registrable Common Stock agrees by having its stock treated as Registrable Common Stock hereunder that, upon notice of the happening of any event as a result of which the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any material fact necessary to make the statements therein not misleading (a “*Suspension Notice*”), such seller will forthwith discontinue disposition of Registrable Common Stock until such seller is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus as contemplated by Section 5(e) hereof, and, if so directed by the Company, such seller, at its option, either will destroy or deliver to the Company (at the Company’s expense) all copies, other than permanent file copies then in such seller’s possession, of the Prospectus covering such Registrable Common Stock current at the time of receipt of such notice; provided, however, that

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such postponement of sales of Registrable Common Stock by the Holders shall not exceed thirty (30) days in the aggregate in any three-month period or ninety (90) days in the aggregate in any one year except as a result of a refusal by the SEC to declare any post-effective amendment to the Registration Statement effective after the Company has used all commercially reasonable efforts to cause such post-effective amendment to be declared effective, in which case the Company shall terminate the suspension of the use of the Registration Statement immediately following the effective date of the post-effective amendment. If the Company shall give any notice to suspend the disposition of Registrable Common Stock pursuant to a Prospectus, the Company shall extend the period of time during which the Company is required to maintain the Registration Statement effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such notice to and including the date such seller either is advised by the Company that the use of the Prospectus may be resumed or receives the copies of the supplemented or amended Prospectus contemplated by Section 6(e). In any event, the Company shall not be entitled to deliver more than three (3) Suspension Notices in any one year.

**Section 6. Registration Expenses.**

(a) All fees and expenses incident to the Company's performance of or compliance with this Agreement, including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, listing application fees, printing, word processing, telephone, messenger and delivery expenses, transfer agent's and registrar's fees, cost of distributing Prospectuses in preliminary and final form as well as any supplements thereto, and fees and disbursements of counsel for the Company, one counsel retained by the Holders of Registrable Common Stock and all independent certified public accountants and other Persons retained by the Company (all such expenses being herein called "*Registration Expenses*") (but not including any underwriting discounts or commissions attributable to the sale of Registrable Common Stock or fees and expenses of more than one counsel representing the Holders of Registrable Common Stock, which shall be borne by the Holders), shall be borne by the Company (whether or not any Registration Statement is declared effective or any of the transactions described herein is consummated). In addition, the Company shall pay its internal expenses, the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which they are to be listed.

(b) In connection with each registration initiated hereunder (whether a Demand Registration or a Piggyback Registration), the Company shall reimburse the Holders covered by such registration or sale for the reasonable fees and disbursements of one law firm chosen by the Holders of a majority of the number of shares of Registrable Common Stock included in such registration sale.

(c) The obligation of the Company to bear the expenses described in Section 6(a) and to reimburse the Holders for the expenses described in Section 6(b) shall apply irrespective of whether a registration, once properly demanded, if applicable, becomes effective, is withdrawn or suspended, is converted to another form of registration and irrespective of when any of the foregoing shall occur; provided, however, that Registration Expenses for any Registration Statement withdrawn solely at the request of a Holder of Registrable Common Stock (unless

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withdrawn following postponement of filing by the Company in accordance with Section 2(c) (i) or (ii)) or any supplements or amendments to a Registration Statement or Prospectus resulting from a misstatement furnished to the Company by a Holder shall be borne by such Holder.

**Section 7. Indemnification.**

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its officers, directors and Affiliates, employees and agents of such Holder and each Person, if any, who controls such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) from and against all losses, claims, damages, liabilities, judgments and expenses (including without limitation, the reasonable fees and other expenses incurred in connection with any suit, action, investigation or proceeding or any claim asserted) caused by, arising out of, in connection with or based upon, any untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus (including any preliminary Prospectus) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in the light of the circumstances under which they were made, not misleading or any violation or alleged violation by the Company of the Securities Act, the Exchange Act or applicable “blue sky” laws, except insofar as the same are made in reliance and in conformity with information relating to such Holder furnished in writing to the Company by such Holder expressly for use therein or caused by such Holder’s failure to deliver to such Holder’s immediate purchaser a copy of the Prospectus or any amendments or supplements thereto (if the same was required by applicable law to be so delivered) after the Company has furnished such Holder with a sufficient number of copies of the same.

(b) In connection with any Registration Statement in which a Holder of Registrable Common Stock is participating, each such Holder shall furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus and, shall indemnify, to the fullest extent permitted by law, the Company, its officers, directors, Affiliates, and each Person who “controls” the Company within the meaning of the Securities Act (excluding American Capital to the extent that American Capital is the Holder of the Registrable Common Stock), against all losses, claims, damages, liabilities and expenses arising out of or based upon any untrue or alleged untrue statement of material fact contained in the Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in the light of the circumstances under which they were made, not misleading, but only to the extent that the same are made in reliance and in conformity with information relating to such Holder furnished in writing to the Company by such Holder expressly for use therein or caused by such Holder’s failure to deliver to such Holder’s immediate purchaser a copy of the Prospectus or any amendments or supplements thereto (if the same was required by applicable law to be so delivered) after the Company has furnished such Holder with a sufficient number of copies of the same; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders and the liability of each such Holder shall be in proportion to and limited to the net amount received by such Holder from the sale of Registrable Common Stock pursuant to such Registration Statement.

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(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, such indemnifying party shall assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for each party indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party there may be one or more legal or equitable defenses available to such indemnified party which are in addition to or may conflict with those available to another indemnified party with respect to such claim. Failure to give prompt written notice shall not release the indemnifying party from its obligations hereunder. No indemnifying party shall, without the prior written consent of the indemnified party, consent to entry of any judgment or enter into any settlement or other compromise (i) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation or (ii) which includes any statement of admission of fault, culpability or failure to act by or on behalf of such indemnified party.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the transfer of securities or the termination of this agreement.

(e) If the indemnification provided for in or pursuant to this Section 8 is unavailable, unenforceable or insufficient to hold harmless any indemnified Person in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified Person as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions which result in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of the indemnifying party on the one hand and of the indemnified Person on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party, and by such party's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. In no event shall the liability of any selling Holder be greater in amount than the amount of net proceeds received by such Holder upon such sale or the amount for which such indemnifying party would have been obligated to pay by way of indemnification if the indemnification provided for under Section 8(a) or 8(b) hereof had been available under the circumstances. The indemnity and contribution agreements contained in this Section 7 are in addition to any liability which the indemnifying Persons may otherwise have to the indemnified Persons hereunder, under applicable law or at equity.

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**Section 8. Participation in Underwritten Registrations.**

No Person may participate in any registration hereunder that is underwritten unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, opinions and other documents required under the terms of such underwriting arrangements.

**Section 9. Rule 144.**

The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in accordance with the requirements of the Securities Act and the Exchange Act, and it will take such further action as any Holder may reasonably request to make available adequate current public information with respect to the Company meeting the current public information requirements of Rule 144(c) under the Securities Act (to the extent such information is available), to the extent required to enable such Holder to sell Registrable Common Stock without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder, the Company will deliver to such Holder a written statement as to whether it has complied with such information and requirements.

**Section 10. Miscellaneous.**

(a) Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given,

If to the Company:

American Capital Agency Corp.  
2 Bethesda Metro Center, 14<sup>th</sup> Floor  
Bethesda, Maryland 20814  
Attention: Chief Executive Officer  
Facsimile No.: (301)654-6714

If to American Capital:

American Capital Strategies, Ltd.  
2 Bethesda Metro Center, 14<sup>th</sup> Floor  
Bethesda, Maryland 20814  
Attention: Chief Executive Officer  
Facsimile No.: (301)654-6714

If to a transferee Holder, to the address of such Holder set forth in the transfer documentation provided to the Company;

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or such other address or facsimile number as such party (or transferee) may hereafter specify for the purpose by notice to the other parties. Each such notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section 10(a) and the appropriate facsimile confirmation is received or (b) if given by any other means, when delivered at the address specified in this Section.

(b) No Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(c) Expenses. Except as otherwise provided for herein or otherwise agreed to in writing by the parties, all costs and expenses incurred in connection with the preparation of this Agreement shall be paid by the Company.

(d) Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, it being understood that subsequent Holders of the Registrable Common Stock are intended third party beneficiaries hereof.

(e) Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, without regard to principles of conflicts of law. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court for any district within such state for the purpose of any action or judgment relating to or arising out of this Agreement or any of the transactions contemplated hereby and to the laying of venue in such court.

(f) Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may be brought in any federal or state court located in the County and State of New York, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 10(a) shall be deemed effective service of process on such party.

(g) Waiver of Jury Trial.

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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(h) Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(i) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the transactions contemplated herein. No provision of this Agreement or any other agreement contemplated hereby is intended to confer on any Person other than the parties hereto any rights or remedies.

(j) Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(l) Amendments. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given without the prior written consent of the Holders of a majority of the Registrable Common Stock; provided, further, that the consent or agreement of the Company shall be required with regard to any termination, amendment, modification or supplement of, or waivers or consents to departures from, the terms hereof, which affect the Company's obligations hereunder.

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IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above

AMERICAN CAPITAL AGENCY CORP.

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Executive Vice President and Secretary

AMERICAN CAPITAL STRATEGIES, LTD.

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: General Counsel, Executive Vice President and Secretary



**MANAGEMENT AGREEMENT**

**by and between**

**American Capital Agency Corp.**

**and**

**American Capital Agency Management, LLC**

**Dated as of May 20, 2008**

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MANAGEMENT AGREEMENT, dated as of May 20, 2008, by and between American Capital Agency Corp., a Delaware corporation (the “Company”) and American Capital Agency Management, LLC, a Delaware limited liability company (the “Manager”), a subsidiary of a wholly-owned portfolio company of American Capital Strategies, Ltd., a Delaware corporation (“American Capital”).

W I T N E S S E T H:

WHEREAS, the Company is a newly formed corporation which intends to invest exclusively in single-family residential mortgage pass-through securities and collateralized mortgage obligations for which the principal and interest payments, if applicable, are guaranteed by (i) a U.S. Government agency such as the Government National Mortgage Association, or (ii) a U.S. Government-sponsored entity such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, “Agency Securities”) and intends to qualify as a real estate investment trust for federal income tax purposes and will elect to receive the tax benefits accorded by Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Company desires to retain the Manager to administer the business activities and day-to-day operations of the Company and to perform services for the Company in the manner and on the terms set forth herein and the Manager wishes to be retained to provide such services.

NOW THEREFORE, in consideration of the premises and agreements hereinafter set forth, the parties hereto hereby agree as follows:

**Section 1. Definitions.**

(a) The following terms shall have the meanings set forth in this Section 1(a):

“*Administrative Services Agreement*” means an agreement between the Manager and American Capital whereby American Capital agrees to provide the Manager with the personnel, services and resources necessary for the Manager to perform its obligations and responsibilities under this Agreement in exchange for certain fees payable by the Manager.

“*Affiliate*” means (i) any Person directly or indirectly controlling, controlled by, or under common control with such other Person, (ii) any executive officer, general partner or employee of such other Person, (iii) any member of the board of directors or board of managers (or bodies performing similar functions) of such Person, and (iv) any legal entity for which such Person acts as an executive officer or general partner.

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“*Agency Securities*” has the meaning set forth in the Recitals.

“*Agreement*” means this Management Agreement, as amended, supplemented or otherwise modified from time to time.

“*American Capital*” has the meaning set forth in the Recitals.

“*Automatic Renewal Term*” has the meaning set forth in Section 10(b) hereof.

“*Board of Directors*” means the board of directors of the Company.

“*Business Day*” means any day except a Saturday, a Sunday or a day on which banking institutions in New York, New York are not required to be open.

“*Claim*” has the meaning set forth in Section 8(c) hereof.

“*Closing Date*” means the date of closing of the Initial Public Offering.

“*Code*” has the meaning set forth in the Recitals.

“*Common Stock*” means the common stock, par value \$0.01, of the Company.

“*Company*” has the meaning set forth in the Recitals.

“*Company Indemnified Party*” has meaning set forth in Section 8(b) hereof.

“*Company Permitted Disclosure Parties*” has the meaning set forth in Section 5(b) hereof.

“*Conduct Policies*” has the meaning set forth in Section 2(k) hereof.

“*Confidential Information*” has the meaning set forth in Section 5 hereof.

“*Effective Termination Date*” has the meaning set forth in Section 10(c) hereof.

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“*Equity*” means the Company’s month-end stockholders’ equity, adjusted to exclude the effect of any unrealized gains or losses included in either retained earnings or other comprehensive income (loss), each computed in accordance with GAAP.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*GAAP*” means generally accepted accounting principles in effect in the United States on the date such principles are applied.

“*Governing Instruments*” means, with regard to any entity, the articles of incorporation or certificate of incorporation and bylaws in the case of a corporation, the partnership agreement in the case of a general or limited partnership or the certificate of formation and operating agreement in the case of a limited liability company, the trust instrument in the case of a trust, or similar governing documents in each case as amended.

“*Indemnified Party*” has the meaning set forth in Section 8(b) hereof.

“*Independent Director*” means a member of the Board of Directors who is “independent” in accordance with the Company’s Governing Instruments and the rules of Nasdaq or such other securities exchange on which the shares of Common Stock are listed.

“*Initial Public Offering*” means the Company’s sale of Common Stock to the public through underwriting pursuant to the Company’s Registration Statement on Form S-11 (No. 333-149167).

“*Investment Committee*” means the investment committee formed by the Manager, the members of which shall consist of officers of American Capital, the Manager and/or American Capital’s other Affiliates.

“*Initial Term*” has the meaning set forth in Section 10(a) hereof.

“*Investment Company Act*” means the Investment Company Act of 1940, as amended.

“*Investment Guidelines*” means the investment guidelines proposed by the Investment Committee and approved by the Board of Directors, a copy of which is attached hereto as Exhibit A, as the same may amended, restated, modified, supplemented or waived by the Investment Committee, subject to the consent of a majority of the entire Board of Directors (which must include a majority of the then incumbent Independent Directors).

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“*Losses*” has the meaning set forth in Section 8(a) hereof.

“*Management Fee*” means the management fee, calculated and payable monthly in arrears, in an amount equal to one-twelfth of 1.25% of Equity.

“*Manager*” has the meaning set forth in the Recitals.

“*Manager Indemnified Party*” has the meaning set forth in Section 8(a) hereof.

“*Manager Permitted Disclosure Parties*” has the meaning set forth in Section 5(a) hereof.

“*Nasdaq*” means The NASDAQ Stock Market, Inc.

“*Notice of Proposal to Negotiate*” has the meaning set forth in Section 10(d) hereof.

“*Person*” means any natural person, corporation, partnership, association, limited liability company, estate, trust, joint venture, any federal, state, county or municipal government or any bureau, department or agency thereof or any other legal entity and any fiduciary acting in such capacity on behalf of the foregoing.

“*REIT*” means a “real estate investment trust” as defined under the Code.

“*SEC*” means the United States Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Subsidiary*” means any subsidiary of the Company and any partnership, the general partner of which is the Company or any subsidiary of the Company, and any limited liability company, the managing member of which is the Company or any subsidiary of the Company.

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“*Termination Fee*” means a termination fee equal to three (3) times the average annual Management Fee earned by the Manager during the 24-month period immediately preceding the most recently completed calendar quarter prior to the Effective Termination Date.

“*Termination Notice*” has the meaning set forth in Section 10(c) hereof.

“*Termination Without Cause*” has the meaning set forth in Section 10(c) hereof.

(b) As used herein, accounting terms relating to the Company and its Subsidiaries, if any, not defined in Section 1(a) and accounting terms partly defined in Section 1(a), to the extent not defined, shall have the respective meanings given to them under United States generally accepted accounting principles. As used herein, “calendar quarters” shall mean the period from January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31 of the applicable year.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The words include, includes and including shall be deemed to be followed by the phrase “without limitation.”

## **Section 2. Appointment and Duties of the Manager .**

(a) The Company hereby appoints the Manager to manage the investments and day-to-day operations of the Company and its Subsidiaries, subject at all times to the further terms and conditions set forth in this Agreement and to the supervision of, and such further limitations or parameters as may be imposed from time to time by, the Board of Directors. The Manager hereby agrees to use its commercially reasonable efforts to perform each of the duties set forth herein, provided that funds are made available by the Company for such purposes as set forth in Section 7 hereof. The appointment of the Manager shall be exclusive to the Manager, except to the extent that the Manager elects, in its sole and absolute discretion, in accordance with the terms of this Agreement, to cause the duties of the Manager as set forth herein to be provided by third parties.

(b) The Manager, in its capacity as manager of the investments and the operations of the Company, at all times will be subject to the supervision and direction of the Board of Directors and will have only such functions and authority as the Board of Directors

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may delegate to it, including, without limitation, the functions and authority identified herein and delegated to the Manager hereby. The Manager will be responsible for the day-to-day operations of the Company and will perform (or cause to be performed) such services and activities relating to the investments and operations of the Company as may be appropriate, which may include, without limitation:

(i) forming and maintaining the Investment Committee, which will have the following responsibilities: (A) proposing the Investment Guidelines to the Board of Directors, (B) reviewing the Company's investment portfolio for compliance with the Investment Guidelines on a monthly basis, (C) reviewing the Investment Guidelines adopted by the Board of Directors on a periodic basis, (D) reviewing the diversification of the Company's investment portfolio and the Company's hedging and financing strategies on a monthly basis, and (E) generally be responsible for conducting or overseeing the provision of the services set forth in this Section 2.

(ii) serving as the Company's consultant with respect to the periodic review of the investments, borrowings and operations of the Company and other policies and recommendations with respect thereto, including, without limitation, the Investment Guidelines, in each case subject to the approval of the Board of Directors;

(iii) serving as the Company's consultant with respect to the selection, purchase, monitoring and disposition of the Company's investments;

(iv) serving as the Company's consultant with respect to decisions regarding any financings, hedging activities or borrowings undertaken by the Company or its Subsidiaries, including (1) assisting the Company in developing criteria for debt and equity financing that is specifically tailored to the Company's investment objectives, and (2) advising the Company with respect to obtaining appropriate financing for its investments;

(v) advising the Company with respect to incentive plans that the Company may establish for the Independent Directors;

(vi) purchasing and financing investments on behalf of the Company;

(vii) providing the Company with portfolio management;

(viii) engaging and supervising, on behalf of the Company and at the Company's expense, independent contractors that provide real estate, investment banking, securities brokerage, insurance, legal, accounting, transfer agent, registrar and such other services as may be required relating to the Company's operations or investments (or potential investments);

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- (ix) providing executive and administrative personnel, office space and office services required in rendering services to the Company;
- (x) performing and supervising the performance of administrative functions necessary in the management of the Company as may be agreed upon by the Manager and the Board of Directors, including, without limitation, the services in respect of any equity incentive plan the Company may establish for the Independent Directors, the collection of revenues and the payment of the Company's debts and obligations and maintenance of appropriate information technology services to perform such administrative functions;
- (xi) communicating on behalf of the Company with the holders of any equity or debt securities of the Company as required to satisfy the reporting and other requirements of any governmental bodies or agencies or trading exchanges or markets and to maintain effective relations with such holders, including website maintenance, logo design, analyst presentations, investor conferences and annual meeting arrangements;
- (xii) counseling the Company in connection with policy decisions to be made by the Board of Directors;
- (xiii) evaluating and recommending to the Company hedging strategies and engaging in hedging activities on behalf of the Company, consistent with such strategies, as so modified from time to time, with the Company's qualification as a REIT and with the Investment Guidelines;
- (xiv) counseling the Company regarding the maintenance of its qualification as a REIT and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and U.S. Treasury regulations promulgated thereunder;
- (xv) counseling the Company regarding the maintenance of its exemption from status as an investment company under the Investment Company Act and monitoring compliance with the requirements for maintaining such exemption;
- (xvi) furnishing reports and statistical and economic research to the Company regarding the activities and services performed for the Company or its Subsidiaries, if any, by the Manager;



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(xvii) monitoring the operating performance of the Company's investments and providing periodic reports with respect thereto to the Board of Directors, including comparative information with respect to such operating performance and budgeted or projected operating results;

(xviii) investing and re-investing any monies and securities of the Company (including in short-term investments, payment of fees, costs and expenses, or payments of dividends or distributions to stockholders and partners of the Company) and advising the Company as to its capital structure and capital-raising activities;

(xix) causing the Company to retain qualified accountants and legal counsel, as applicable, to (i) assist in developing appropriate accounting procedures, compliance procedures and testing systems with respect to financial reporting obligations and compliance with the provisions of the Code applicable to REITs and, if applicable, taxable REIT subsidiaries and (ii) conduct quarterly compliance reviews with respect thereto;

(xx) causing the Company to qualify to do business in all jurisdictions in which such qualification is required and to obtain and maintain all appropriate licenses;

(xxi) assisting the Company in complying with all regulatory requirements applicable to the Company in respect of its business activities, including preparing or causing to be prepared all financial statements required under applicable regulations and contractual undertakings and all reports and documents, if any, required under the Exchange Act or the Securities Act;

(xxii) taking all necessary actions to enable the Company and any Subsidiaries to make required tax filings and reports, including soliciting stockholders for required information to the extent necessary under the Code and U.S. Treasury regulations applicable to REITs;

(xxiii) handling and resolving all claims, disputes or controversies (including all litigation, arbitration, settlement or other proceedings or negotiations) in which the Company may be involved or to which the Company may be subject arising out of the Company's day-to-day operations;

(xxiv) arranging marketing materials, advertising, industry group activities (such as conference participations and industry organization memberships) and other promotional efforts designed to promote the business of the Company;

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(xxv) using commercially reasonable efforts to cause expenses incurred by or on behalf of the Company to be commercially reasonable or commercially customary and within any budgeted parameters or expense guidelines set by the Board of Directors from time to time;

(xxvi) performing such other services as may be required from time to time for the management and other activities relating to the assets of the Company as the Board of Directors shall reasonably request or the Manager shall deem appropriate under the particular circumstances; and

(xxvii) using commercially reasonable efforts to cause the Company to comply with all applicable laws.

(c) The Manager may retain, for and on behalf, and at the sole cost and expense, of the Company, such services of the persons and firms referred to in Section 7(b) hereof as the Manager deems necessary or advisable in connection with the management and operations of the Company. In performing its duties under this Section 2, the Manager shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by the Manager at the Company's sole cost and expense.

(d) The Manager shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Investment Guidelines, (ii) would adversely affect the qualification of the Company as a REIT under the Code or the Company's status as an entity excluded from investment company status under the Investment Company Act, or (iii) would violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Company or of any exchange on which the securities of the Company may be listed or that would otherwise not be permitted by the Company's Governing Instruments. If the Manager is ordered to take any action by the Board of Directors, the Manager shall promptly notify the Board of Directors if it is the Manager's judgment that such action would adversely affect such status or violate any such law, rule or regulation or the Governing Instruments. Notwithstanding the foregoing, neither the Manager nor any of its Affiliates (including American Capital) shall be liable to the Company, the Board of Directors, or the Company's stockholders for any act or omission by the Manager or any of its Affiliates, except as provided in Section 8 of this Agreement.

(e) The Company (including the Board of Directors) agrees to take all actions reasonably required to permit and enable the Manager to carry out its duties and obligations under this Agreement, including, without limitation, all steps reasonably necessary to allow the Manager to file any registration statement or other filing required to be made under the Securities Act, Exchange Act, Nasdaq, Code or other applicable law, rule or regulation on behalf of the Company in a timely manner. The Company further agrees to use commercially reasonable efforts to make available to the Manager all resources, information and materials

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reasonably requested by the Manager to enable the Manager to satisfy its obligations hereunder, including its obligations to deliver financial statements and any other information or reports with respect to the Company. If the Manager is not able to provide a service, or in the reasonable judgment of the Manager it is not prudent to provide a service, without the approval of the Board of Directors, as applicable, then the Manager shall be excused from providing such service (and shall not be in breach of this Agreement) until the applicable approval has been obtained.

(f) *Reporting Requirements.* (i) As frequently as the Manager may deem reasonably necessary or advisable, or at the direction of the Board of Directors, the Manager shall prepare, or, at the sole cost and expense of the Company, cause to be prepared, with respect to any investment, reports and other information with respect to such investment as may be reasonably requested by the Company.

(ii) The Manager shall prepare, or, at the sole cost and expense of the Company, cause to be prepared, all reports, financial or otherwise, with respect to the Company reasonably required by the Board of Directors in order for the Company to comply with its Governing Instruments, or any other materials required to be filed with any governmental body or agency, and shall prepare, or, at the sole cost and expense of the Company, cause to be prepared, all materials and data necessary to complete such reports and other materials including, without limitation, an annual audit of the Company's books of account by a nationally recognized independent accounting firm.

(iii) The Manager shall prepare, or, at the sole cost and expense to the Company, cause to be prepared, regular reports for the Board of Directors to enable the Board of Directors to review the Company's acquisitions, portfolio composition and characteristics, credit quality, performance and compliance with the Investment Guidelines and policies approved by the Board of Directors.

(g) Directors, officers, employees and agents of the Manager, American Capital or their respective Affiliates may serve as directors, officers, agents, nominees or signatories for the Company or any of its Subsidiaries, to the extent permitted by their Governing Instruments and pursuant to the Administrative Services Agreement, as from time to time amended, by any resolutions duly adopted by the Board of Directors. When executing documents or otherwise acting in such capacities for the Company or any of its Subsidiaries, such Persons shall indicate in what capacity they are executing on behalf of the Company or any of its Subsidiaries. Without limiting the foregoing, but subject to Section 12 below, the Manager will provide the Company with a management team, including a Chief Executive Officer, Chief Financial Officer and Chief Investment Officer or similar positions, along with appropriate support personnel to provide the management services to be provided by the Manager to the Company hereunder, who shall devote such of their time to the management of the Company as necessary and appropriate, commensurate with the level of activity of the Company from time to time.

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(h) The Manager shall provide personnel for service on the Investment Committee.

(i) The Manager shall maintain reasonable and customary “errors and omissions” insurance coverage and other customary insurance coverage.

(j) The Manager shall provide such internal audit, compliance and control services as may be required for the Company to comply with applicable law (including the Securities Act and Exchange Act), regulation (including SEC regulations) and the rules and requirements of Nasdaq and as otherwise reasonably requested by the Company or its Board of Directors from time to time.

(k) The Manager acknowledges receipt of the Company’s Code of Business Conduct and Ethics and Policy on Insider Trading and Communications Policy (collectively, the “*Conduct Policies*”) and agrees to require the persons who provide services to the Company to comply with such Conduct Policies in the performance of such services hereunder or such comparable policies as shall in substance hold such persons to at least the standards of conduct set forth in the Conduct Policies.

**Section 3. Additional Activities of the Manager; Non-Solicitation; Restrictions .**

(a) Except as provided, the last sentence of this Section 3(a) and/or the Investment Guidelines, nothing in this Agreement shall (i) prevent the Manager or any of its Affiliates, officers, directors or employees, from engaging in other businesses or from rendering services of any kind to any other Person or entity, whether or not the investment objectives or policies of any such other Person or entity are similar to those of the Company or (ii) in any way bind or restrict the Manager or any of its Affiliates, officers, directors or employees from buying, selling or trading any securities or commodities for their own accounts or for the account of others for whom the Manager or any of its Affiliates, officers, directors or employees may be acting. While information and recommendations supplied to the Company shall, in the Manager’s reasonable and good faith judgment, be appropriate under the circumstances and in light of the investment objectives and policies of the Company, they may be different from the information and recommendations supplied by the Manager or any Affiliate of the Manager to others. The Company shall be entitled to equitable treatment under the circumstances in receiving information, recommendations and any other services, but the Company recognizes that it is not entitled to receive preferential treatment as compared with the treatment given by the Manager or any Affiliate of the Manager to others. The Company shall have the benefit of the Manager’s best judgment and effort in rendering services hereunder and, in furtherance of the foregoing, the Manager shall not undertake activities that, in its good faith judgment, will adversely affect the performance of its obligations under this Agreement.

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(b) In the event of a Termination Without Cause of this Agreement by the Company pursuant to Section 10(c) hereof, the Company shall not, without the consent of the Manager, employ or otherwise retain any employee of the Manager or any of its Affiliates (including American Capital) or any person who has been in the employ of the Manager or any of its Affiliates at any time within the two (2) year period immediately preceding the date on which such person commences employment with or is otherwise retained by the Company for two (2) years after such termination of this Agreement. The Company acknowledges and agrees that, in addition to any damages the Manager shall be entitled to equitable relief for any violation of this agreement by the Company, including, without limitation, injunctive relief.

**Section 4. Bank Accounts.** At the direction of the Board of Directors, the Manager may establish and maintain one or more bank accounts in the name of the Company or any Subsidiary, and may collect and deposit into any such account or accounts, and disburse funds from any such account or accounts, under such terms and conditions as the Board of Directors may approve; and the Manager shall from time to time render appropriate accountings of such collections and payments to the Board of Directors and, upon request, to the auditors of the Company or any Subsidiary.

**Section 5. Records; Confidentiality.**

(a) The Manager shall maintain appropriate books of accounts and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Company or any Subsidiary at any time during normal business hours. The Manager shall keep confidential any and all non-public information, written or oral, obtained by it in connection with the services rendered hereunder ( "*Confidential Information*" ) and shall not use Confidential Information except in furtherance of its duties under this Agreement or disclose Confidential Information, in whole or in part, to any Person other than (i) to its Affiliates, officers, directors, employees, agents, representatives or advisors who need to know such Confidential Information for the purpose of rendering services hereunder, (ii) to appraisers, financing sources and others in the ordinary course of the Company's business ((i) and (ii) collectively, "*Manager Permitted Disclosure Parties*" ), (iii) in connection with any governmental or regulatory filings of the Company or disclosure or presentations to Company investors, (iv) to governmental officials having jurisdiction over the Company, (v) as requested by law or legal process to which the Manager or any Person to whom disclosure is permitted hereunder is a party, or (vi) with the consent of the Company. The Manager agrees to inform each of its Manager Permitted Disclosure Parties of the non-public nature of the Confidential Information and to direct such Persons to treat such Confidential Information in accordance with the terms hereof. Nothing herein shall prevent the Manager from disclosing Confidential Information (i) upon the order of any court or administrative agency, (ii) upon the request or demand of, or pursuant to any law or regulation, any regulatory agency or authority, (iii) to the extent reasonably required in connection with the exercise of any remedy hereunder, or (iv) to its legal counsel or independent auditors; *provided, however* that with respect to clauses (i) and (ii), it is agreed that, so long as not legally prohibited, the Manager will provide the Company with prompt written notice of such order, request or demand so that the Company may seek, at its sole expense, an appropriate protective order and/or waive the Manager's compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver

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hereunder, the Manager is required to disclose Confidential Information, the Manager may disclose only that portion of such information that is legally required without liability hereunder; provided, that the Manager agrees to exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded such information. Notwithstanding anything herein to the contrary, each of the following shall be deemed to be excluded from provisions hereof: any Confidential Information that (A) is available to the public from a source other than the Manager, (B) is released in writing by the Company to the public or to persons who are not under similar obligation of confidentiality to the Company, or (C) is obtained by the Manager from a third-party which, to the best of the Manager's knowledge, does not constitute a breach by such third-party of an obligation of confidence with respect to the Confidential Information disclosed. The provisions of this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one year.

(b) The Company shall keep confidential any and all Confidential Information and shall not use Confidential Information except in furtherance of the terms of this Agreement or disclose Confidential Information, in whole or in part, to any Person other than (i) to its Affiliates, officers or directors who need to know such Confidential Information for the purpose of fulfilling the Company's obligations hereunder (collectively, "*Company Permitted Disclosure Parties*"), (ii) as requested by law or legal process to which the Company or any Person to whom disclosure is permitted hereunder is a party, or (iii) with the consent of the Manager. The Company agrees to (i) inform each of its Company Permitted Disclosure Parties of the non-public nature of the Confidential Information and to direct such Persons to treat such Confidential Information in accordance with the terms hereof and (ii) not disclose any Confidential Information to its Company Permitted Disclosure Parties upon the expiration or nonrenewal of this Agreement in accordance with Section 10. Nothing herein shall prevent the Company from disclosing Confidential Information (i) upon the order of any court or administrative agency, (ii) upon the request or demand of, or pursuant to any law or regulation, any regulatory agency or authority, (iii) to the extent reasonably required in connection with the exercise of any remedy hereunder, or (iv) to its legal counsel or independent auditors; *provided, however* that with respect to clauses (i) and (ii), it is agreed that, so long as not legally prohibited, the Company will provide the Manager with prompt written notice of such order, request or demand so that the Manager may seek, at its sole expense, an appropriate protective order and/or waive the Company's compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Company is required to disclose Confidential Information, the Company may disclose only that portion of such information that is legally required without liability hereunder; provided, that the Company agrees to exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded such information. Notwithstanding anything herein to the contrary, each of the following shall be deemed to be excluded from provisions hereof: any Confidential Information that (A) is available to the public from a source other than the Company, (B) is released in writing by the Manager to the public or to persons who are not under similar obligation of confidentiality to the Manager, or (C) is obtained by the Company from a third-party which, to the best of the Company's knowledge, does not constitute breach by such third-party of an obligation of confidence with respect to the Confidential Information disclosed. For the avoidance of doubt, information about the systems, employees, policies, procedures and investment portfolio (other than investments in which the Company and Manager have co-invested) shall be deemed to be included within the meaning of "Confidential Information" for purposes of the Company's obligations pursuant to this Section 5(b).

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## **Section 6. Compensation.**

(a) For the services rendered under this Agreement, the Company shall pay the Management Fee to the Manager. The Manager will not receive any compensation for the period prior to the Closing Date other than expenses incurred and reimbursed pursuant to Section 7 hereof.

(b) The parties acknowledge that the Management Fee is intended to compensate the Manager for the costs and expenses it will incur pursuant to the Administrative Services Agreement, as well as certain expenses not otherwise reimbursable under Section 7 below, in order for the Manager to provide the Company the investment advisory services and certain general management services rendered under this Agreement.

(c) The Management Fee shall be payable in arrears in cash, in monthly installments commencing with the month in which this Agreement is executed. If applicable, the initial and final installments of the Management Fee shall be pro-rated based on the number of days during the initial and final month, respectively, that this Agreement is in effect. The Manager shall calculate each monthly installment of the Management Fee, and deliver such calculation to the Company, within fifteen (15) days following the last day of each calendar month. The Company shall pay the Manager each installment of the Management Fee within five (5) Business Days after the date of delivery to the Company of such computations.

## **Section 7. Expenses of the Company .**

(a) The Manager shall be responsible for the expenses related to any and all personnel of the Manager and its Affiliates who provide services to the Company pursuant to this Agreement or to the Manager pursuant to the Administrative Services Agreement (including each of the officers of the Company and any directors of the Company who are also directors, officers, employees or agents of the Manager, American Capital or any of their Affiliates), including, without limitation, salaries, bonus and other wages, payroll taxes and the cost of employee benefit plans of such personnel, and costs of insurance with respect to such personnel.

(b) The Company shall pay all of its costs and expenses and shall reimburse the Manager or its Affiliates for expenses of the Manager and its Affiliates incurred on behalf of the Company, excepting only those expenses that are specifically the responsibility of the Manager pursuant to Section 7(a) of this Agreement. Without limiting the generality of the foregoing, it is specifically agreed that the following costs and expenses of the Company or any Subsidiary shall be paid by the Company and shall not be paid by the Manager or Affiliates of the Manager:

(i) all costs and expenses associated with the formation and capital raising activities of the Company and its Subsidiaries, if any, including, without limitation, the costs and expenses of (A) the preparation of the Company's registration statements, (B) the initial public offering of the Company, (C) the original incorporation and initial organization of the Company, and (D) any subsequent offerings and any filing fees and costs of being a public company, including, without limitation, filings with the SEC, the Financial Industry Regulatory Authority, Inc. and Nasdaq (and any other exchange or over-the-counter market), among other such entities;

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(ii) all costs and expenses in connection with the acquisition, disposition, financing, hedging and ownership of the Company's or any Subsidiary's investments, including, without limitation, costs and expenses incurred in contracting with third parties to provide such services, such as legal fees, accounting fees, consulting fees, trustee fees, appraisal fees, insurance premiums, commitment fees, brokerage fees and guaranty fees;

(iii) all legal, audit, accounting, consulting, brokerage, listing, filing, custodian, transfer agent, rating agency, registration and other fees and charges, printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, registration and stock exchange listing of the Company's or any Subsidiary's equity securities or debt securities;

(iv) all expenses relating to communications to holders of equity securities or debt securities issued by the Company or any Subsidiary and other third party services utilized in maintaining relations with holders of such securities and in complying with the continuous reporting and other requirements of governmental bodies or agencies (including, without limitation, the SEC), including any costs of computer services in connection with this function, the cost of printing and mailing certificates for such securities and proxy solicitation materials and reports to holders of the Company's or any Subsidiary's securities and the cost of any reports to third parties required under any indenture to which the Company or any Subsidiary is a party;

(v) all costs and expenses of money borrowed by the Company or its Subsidiaries, if any, including, without limitation, principal, interest and the costs associated with the establishment and maintenance of any credit facilities, warehouse loans, repurchase facilities and other indebtedness of the Company and its Subsidiaries, if any (including commitment fees, legal fees, closing and other costs);

(vi) all taxes and license fees applicable to the Company or any Subsidiary, including interest and penalties thereon;



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(vii) all fees paid to and expenses of third-party advisors and independent contractors, consultants, managers and other agents engaged by the Company or any Subsidiary or by the Manager for the account of the Company or any Subsidiary;

(viii) all insurance costs incurred by the Company or any Subsidiary, including, without limitation, the cost of obtaining and maintaining (A) liability or other insurance to indemnify (1) the Manager, (2) the directors and officers of the Company, and (3) underwriters of any securities of the Company, (B) "errors and omissions" insurance coverage, and (C) any other insurance deemed necessary or advisable by the Board of Directors for the benefit of the Company and its directors and officers;

(ix) all compensation and fees paid to directors of the Company or any Subsidiary (excluding those directors who are also directors, officers, employees or agents of American Capital or any of its Affiliates), and all expenses of all directors of the Company or any Subsidiary incurred in their capacity as such;

(x) all third-party legal, accounting and auditing fees and expenses and other similar services relating to the Company's or any Subsidiary's operations (including, without limitation, all quarterly and annual audit or tax fees and expenses);

(xi) all third-party legal, expert and other fees and expenses relating to any actions, proceedings, lawsuits, demands, causes of action and claims, whether actual or threatened, made by or against the Company, or which the Company is authorized or obligated to pay under applicable law or its Governing Instruments or by the Board of Directors;

(xii) subject to Section 8 below, any judgment or settlement of pending or threatened proceedings (whether civil, criminal or otherwise) against the Company or any Subsidiary, or against any trustee, director or officer of the Company or any Subsidiary in his capacity as such for which the Company or any Subsidiary is required to indemnify such trustee, director or officer by any court or governmental agency, or settlement of pending or threatened proceedings;

(xiii) all travel and related expenses of directors, officers and employees of the Company and the Manager, incurred in connection with attending meetings of the Board of Directors or holders of securities of the Company or any Subsidiary or performing other business activities that relate to the Company or any Subsidiary, including, without limitations, travel and related expenses incurred in connection with the purchase, consideration for purchase, financing, refinancing, sale or other disposition of any investment or potential investment of the Company; *provided, however*, that the Company shall only be responsible for a proportionate share of such expenses, as determined by the Manager in good faith, where such expenses were not incurred solely for the benefit of the Company;

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(xiv) all expenses of organizing, modifying or dissolving the Company or any Subsidiary and costs preparatory to entering into a business or activity, or of winding up or disposing of a business activity of the Company or its Subsidiaries, if any;

(xv) all expenses relating to payments of dividends or interest or distributions in cash or any other form made or caused to be made by the Board of Directors to or on account of holders of the securities of the Company or any Subsidiary, including, without limitation, in connection with any dividend reinvestment plan;

(xvi) all costs and expenses related to (A) the design and maintenance of the Company's web site or sites and (B) the Company's pro rata share of any computer software, hardware or information technology services that is used by the Company;

(xvii) all costs and expenses incurred with respect to market information systems and publications, research publications and materials, and settlement, clearing and custodial fees and expenses; *provided, however*, that the Company shall only be responsible for a proportionate share of such expenses, as determined by the Manager in good faith, where such expenses were not incurred solely for the benefit of the Company;

(xviii) all costs and expenses incurred with respect to administering the Company's incentive plans;

(xix) rent (including disaster recovery facilities costs and expenses), telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Manager and its Affiliates required for the Company's operations; *provided, however*, that the Company shall only be responsible for a proportionate share of such expenses, as determined by the Manager in good faith, where such expenses were not incurred solely for the benefit of the Company; and

(xx) all other expenses actually incurred by the Manager or its Affiliates or their respective officers, employees, representatives or agents, or any Affiliates thereof, which are reasonably necessary for the performance by the Manager of its duties and functions under this Agreement (including, without limitation, any fees or expenses relating to the Company's compliance with all governmental and regulatory matters).

(c) Costs and expenses incurred by the Manager on behalf of the Company shall be reimbursed monthly to the Manager. The Manager shall prepare a written statement in reasonable detail documenting the costs and expenses of the Company and those

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incurred by the Manager on behalf of the Company during each month, and shall deliver such written statement to the Company within thirty (30) days after the end of each month. The Company shall pay all amounts payable to the Manager pursuant to this Section 7(c) within five (5) Business Days after the receipt of the written statement without demand, deduction, offset or delay. Cost and expense reimbursement to the Manager shall be subject to adjustment at the end of each calendar year in connection with the annual audit of the Company. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement to the extent such expenses has previously been incurred or are incurred in connection with such expiration or termination.

#### **Section 8. Limits of the Manager's Responsibility .**

(a) The Manager assumes no responsibility under this Agreement other than to render the services called for hereunder in good faith and shall not be responsible for any action of the Board of Directors in following or declining to follow any advice or recommendations of the Manager, including as set forth in the Investment Guidelines. The Manager and its Affiliates, and the directors, officers, employees and stockholders of the Manager and its Affiliates, will not be liable to the Company, any Subsidiary of the Company, the Board of Directors, or the Company's stockholders for any acts or omissions by the Manager, its officers, employees or its Affiliates, performed in accordance with and pursuant to this Agreement, except by reason of acts constituting bad faith, willful misconduct, gross negligence or reckless disregard of their respective duties under this Agreement. The Company shall, to the full extent lawful, reimburse, indemnify and hold harmless the Manager, its Affiliates, and the directors, officers, employees and stockholders of the Manager and its Affiliates (each, a "*Manager Indemnified Party*"), of and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever, (including reasonable attorneys' fees) (collectively "*Losses*") in respect of or arising from any acts or omissions of such Manager Indemnified Party performed in good faith under this Agreement and, in respect of any such Manager Indemnified Party, not constituting bad faith, willful misconduct, gross negligence or reckless disregard of duties of such Manager Indemnified Party under this Agreement.

(b) The Manager shall, to the full extent lawful, reimburse, indemnify and hold harmless the Company, and the directors, officers and stockholders of the Company and each Person, if any, controlling the Company (each, a "*Company Indemnified Party*"; a Manager Indemnified Party and a Company Indemnified Party are each sometimes hereinafter referred to as an "*Indemnified Party*") of and from any and all Losses in respect of or arising from (i) any acts or omissions of the Manager constituting bad faith, willful misconduct, gross negligence or reckless disregard of duties of the Manager under this Agreement or (ii) any claims by the Manager's employees relating to the terms and conditions of their employment by the Manager.

(c) In case any such claim, suit, action or proceeding (a "*Claim*") is brought against any Indemnified Party in respect of which indemnification may be sought by such Indemnified Party pursuant hereto, the Indemnified Party shall give prompt written notice thereof to the indemnifying party, which notice shall include all documents and information in

the possession of or under the control of such Indemnified Party reasonably necessary for the evaluation and/or defense of such Claim and shall specifically state that indemnification for such Claim is being sought under this Section; *provided, however*, that the failure of the Indemnified Party to so notify the indemnifying party shall not limit or affect such Indemnified Party's rights to be indemnified pursuant to this Section. Upon receipt of such notice of Claim (together with such documents and information from such Indemnified Party), the indemnifying party shall, at its sole cost and expense, in good faith defend any such Claim with counsel reasonably satisfactory to such Indemnified Party, which counsel may, without limiting the rights of such Indemnified Party pursuant to the next succeeding sentence of this Section, also represent the indemnifying party in such investigation, action or proceeding. In the alternative, such Indemnified Party may elect to conduct the defense of the Claim, if (i) such Indemnified Party reasonably determines that the conduct of its defense by the indemnifying party could be materially prejudicial to its interests, (ii) the indemnifying party refuses to defend (or fails to give written notice to the Indemnified Party within ten (10) days of receipt of a notice of Claim that the indemnifying party assumes such defense), or (iii) the indemnifying party shall have failed, in such Indemnified Party's reasonable judgment, to defend the Claim in good faith. The indemnifying party may settle any Claim against such Indemnified Party without such Indemnified Party's consent, provided (i) such settlement is without any Losses whatsoever to such Indemnified Party, (ii) the settlement does not include or require any admission of liability or culpability by such Indemnified Party and (iii) the indemnifying party obtains an effective written release of liability for such Indemnified Party from the party to the Claim with whom such settlement is being made, which release must be reasonably acceptable to such Indemnified Party, and a dismissal with prejudice with respect to all claims made by the party against such Indemnified Party in connection with such Claim. The applicable Indemnified Party shall reasonably cooperate with the indemnifying party, at the indemnifying party's sole cost and expense, in connection with the defense or settlement of any Claim in accordance with the terms hereof. If such Indemnified Party is entitled pursuant to this Section to elect to defend such Claim by counsel of its own choosing and so elects, then the indemnifying party shall be responsible for any good faith settlement of such Claim entered into by such Indemnified Party. Except as provided in the immediately preceding sentence, no Indemnified Party may pay or settle any Claim and seek reimbursement therefor under this Section.

(d) The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

**Section 9. No Joint Venture.** The Company and the Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them.

**Section 10. Term; Renewal.**

(a) *Initial Term.* This Agreement shall become effective on the Closing Date and shall continue in operation, unless terminated in accordance with the terms hereof, until •, 2011 (the "*Initial Term*").

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(b) *Automatic Renewal Terms.* After the Initial Term, this Agreement shall be deemed renewed automatically each year for an additional one-year period (an “*Automatic Renewal Term*”) unless the Company or the Manager elects not to renew this Agreement in accordance with Section 10(c) of this Agreement.

(c) *Nonrenewal of this Agreement Without Cause.* Notwithstanding any other provision of this Agreement to the contrary, upon the expiration of the Initial Term and upon 180 days’ prior written notice to the Manager or the Company (the “*Termination Notice*”), either the Company (but only with the approval of a majority of the Independent Directors) or the Manager may, without cause, in connection with the expiration of the Initial Term or any Automatic Renewal Term, decline to renew this Agreement (any such nonrenewal, a “*Termination Without Cause*”). If the Company issues the Termination Notice, the Company shall be obligated to (i) specify the reason for nonrenewal in the Termination Notice and (ii) pay the Manager the Termination Fee before or on the last day of the Initial Term or Automatic Renewal Term (the “*Effective Termination Date*”). In the event of a Termination Without Cause, nonrenewal of this Agreement shall be without any further liability or obligation of either party to the other, except as provided in Section 3(b), Section 8 and Section 14 of this Agreement. The Manager shall cooperate with the Company in executing an orderly transition of the management of the Company’s assets to a new manager. The Company may terminate this Agreement for cause pursuant to Section 12 hereof even after a Termination Without Cause and, in such case, no Termination Fee shall be payable.

(d) *Unfair Manager Compensation.* Notwithstanding the provisions of subsection (c) above, if the reason for nonrenewal specified in the Company’s Termination Notice is that a majority of the Independent Directors have determined that the Management Fee payable to the Manager is unfair, the Company shall not have the foregoing nonrenewal right in the event the Manager agrees that it will continue to perform its duties hereunder during the Automatic Renewal Term that would commence upon the expiration of the Initial Term or then current Automatic Renewal Term at a fee that the majority of the Independent Directors determine to be fair; *provided, however*, the Manager shall have the right to renegotiate the Management Fee by delivering to the Company, not less than 120 days prior to the pending Effective Termination Date, written notice (a “*Notice of Proposal to Negotiate*”) of its intention to renegotiate the Management Fee. Thereupon, the Company and the Manager shall endeavor to negotiate the Management Fee in good faith. Provided that the Company and the Manager agree to a revised Management Fee or other compensation structure within sixty (60) days following the Company’s receipt of the Notice of Proposal to Negotiate, the Termination Notice from the Company shall be deemed of no force and effect, and this Agreement shall continue in full force and effect on the terms stated herein, except that the Management Fee or other compensation structure shall be the revised Management Fee or other compensation structure then agreed upon by the Company and the Manager. The Company and the Manager agree to execute and deliver an amendment to this Agreement setting forth such revised Management Fee or other compensation structure promptly upon reaching an agreement regarding same. In the event that the Company and the Manager are unable to agree to a revised Management Fee or other compensation structure during such sixty (60) day period, this Agreement shall terminate on the Effective Termination Date and the Company shall be obligated to pay the Manager the Termination Fee upon the Effective Termination Date.

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### **Section 11. Assignments.**

(a) *Assignments by the Manager.* This Agreement shall terminate automatically without payment of the Termination Fee in the event of its assignment, in whole or in part, by the Manager, unless such assignment is consented to in writing by the Company with the consent of a majority of the Independent Directors. Any such permitted assignment shall bind the assignee under this Agreement in the same manner as the Manager is bound, and the Manager shall be liable to the Company for all errors or omissions of the assignee under any such assignment. In addition, the assignee shall execute and deliver to the Company a counterpart of this Agreement naming such assignee as the Manager. Notwithstanding the foregoing, the Manager may (i) assign this Agreement to an Affiliate of the Manager that is a successor to the Manager by reason of a restructuring or other internal reorganization among the Manager and any one or more of its Affiliates without the consent of the majority of the Independent Directors and (ii) delegate to one or more of its Affiliates the performance of any of its responsibilities hereunder so long as it remains liable for any such Affiliate's performance. Nothing contained in this Agreement shall preclude any pledge, hypothecation or other transfer of any amounts payable to the Manager under this Agreement.

(b) *Assignments by the Company.* This Agreement shall terminate automatically in the event of its assignment, in whole or in part, by the Company, unless such assignment is consented to in writing by the Manager. Any such permitted assignment shall bind the assignee under this Agreement in the same manner as the Company is bound. In addition, the assignee shall execute and deliver to the Manager a counterpart of this Agreement.

**Section 12. Termination of the Manager for Cause.** At the option of the Company and at any time during the term of this Agreement, this Agreement shall be and become terminated upon 60 days' written notice of termination from the Board of Directors to the Manager, without payment of the Termination Fee, if any of the following events shall occur, which shall be determined by a majority of the Independent Directors:

(a) the Manager shall commit any act of fraud, misappropriation of funds, or embezzlement against the Company or shall be grossly negligent in the performance of its duties under this Agreement (including such action or inaction by the Manager which materially impairs the Company's ability to conduct its business);

(b) the Manager shall fail to provide adequate or appropriate personnel necessary for the Manager to originate investment opportunities for the Company and to manage and develop the Company's portfolio; *provided*, that such default has continued uncured for a period of sixty (60) days after written notice thereof, which notice shall contain a request that the same be remedied;

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(c) the Manager shall commit a material breach of any provision of this Agreement (including the failure of the Manager to use reasonable efforts to comply with the Investment Guidelines); *provided*, that such default has continued uncured for a period of sixty (60) days after written notice thereof, which notice shall contain a request that the same be remedied;

(d) (A) the Manager shall commence any case, proceeding or other action (1) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (2) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Manager shall make a general assignment for the benefit of its creditors; or (B) there shall be commenced against the Manager any case, proceeding or other action of a nature referred to in clause (A) above which (1) results in the entry of an order for relief or any such adjudication or appointment or (2) remains undismitted, undischarged or unbonded for a period of 90 days; or (C) the Manager shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (A) or (B) above; or (D) the Manager shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(e) upon the dissolution of the Manager.

If any of the events specified above shall occur, the Manager shall give prompt written notice thereof to the Board of Directors.

**Section 13. Action Upon Termination.** From and after the effective date of termination of this Agreement pursuant to Sections 10, 11, or 12 of this Agreement, the Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accruing to the date of termination and, if terminated or not renewed pursuant to Section 10, the Termination Fee. Upon any such termination, the Manager shall forthwith:

(a) after deducting any accrued compensation and reimbursement for its expenses to which it is then entitled, pay over to the Company or a Subsidiary all money collected and held for the account of the Company or a Subsidiary pursuant to this Agreement;

(b) deliver to the Board of Directors a full accounting, including a statement showing all payments collected by it and a statement of all money held by it, covering the period following the date of the last accounting furnished to the Board of Directors with respect to the Company and any Subsidiaries; and

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(c) deliver to the Board of Directors all property and documents of the Company and any Subsidiaries then in the custody of the Manager.

**Section 14. Release of Money or Other Property Upon Written Request .**

The Manager agrees that any money or other property of the Company (which such term, for the purposes of this Section, shall be deemed to include any and all of its Subsidiaries, if any) held by the Manager shall be held by the Manager as custodian for the Company, and the Manager's records shall be appropriately and clearly marked to reflect the ownership of such money or other property by the Company. Upon the receipt by the Manager of a written request signed by a duly authorized officer of the Company requesting the Manager to release to the Company any money or other property then held by the Manager for the account of the Company under this Agreement, the Manager shall release such money or other property to the Company within a reasonable period of time, but in no event later than 60 days following such request. Upon delivery of such money or other property to the Company, the Manager shall not be liable to the Company, the Board of Directors, or the Company's stockholders or partners for any acts or omissions by the Company in connection with the money or other property released to the Company in accordance with this Section. The Company shall indemnify the Manager, its directors, officers, stockholders, employees and agents against any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever, which arise in connection with the Manager's release of such money or other property to the Company in accordance with the terms of this Section 14. Indemnification pursuant to this provision shall be in addition to any right of the Manager to indemnification under Section 8 of this Agreement.

**Section 15. Representations and Warranties.**

(a) The Company hereby represents and warrants to the Manager as follows:

(i) The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware, has the corporate power and authority and the legal right to own and operate its assets, to lease any property it may operate as lessee and to conduct the business in which it is now engaged and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except for failures to be so qualified, authorized or licensed that could not in the aggregate have a material adverse effect on the business operations, assets or financial condition of the Company.

(ii) The Company has the corporate power and authority and the legal right to make, deliver and perform this Agreement and all obligations required hereunder and has taken all necessary corporate action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all



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obligations required hereunder. No consent of any other Person, including stockholders and creditors of the Company, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Company in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement and all obligations required hereunder. This Agreement has been, and each instrument or document required hereunder will be, executed and delivered by a duly authorized officer of the Company, and this Agreement constitutes, and each instrument or document required hereunder when executed and delivered hereunder will constitute, the legally valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(iii) The execution, delivery and performance of this Agreement and the documents or instruments required hereunder will not violate any provision of any existing law or regulation binding on the Company, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Company, or the Governing Instruments of, or any securities issued by the Company or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Company is a party or by which the Company or any of its assets may be bound, the violation of which would have a material adverse effect on the business operations, assets or financial condition of the Company and its Subsidiaries, if any, taken as a whole, and will not result in, or require, the creation or imposition of any lien or any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(b) The Manager hereby represents and warrants to the Company as follows:

(i) The Manager is duly organized, validly existing and in good standing under the laws of the State of Delaware, has the limited liability company power and authority and the legal right to own and operate its assets, to lease the property it operates as lessee and to conduct the business in which it is now engaged and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except for failures to be so qualified, authorized or licensed that could not in the aggregate have a material adverse effect on the business operations, assets or financial condition of the Manager.

(ii) The Manager has the limited liability company power and authority and the legal right to make, deliver and perform this Agreement and all obligations required hereunder and has taken all necessary corporate action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder. No consent of any other Person, including members and creditors of the Manager, and no license, permit, approval or

authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Manager in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement and all obligations required hereunder. This Agreement has been, and each instrument or document required hereunder will be, executed and delivered by a duly authorized officer of the Manager, and this Agreement constitutes, and each instrument or document required hereunder when executed and delivered hereunder will constitute, the legally valid and binding obligation of the Manager enforceable against the Manager in accordance with its terms.

(iii) The execution, delivery and performance of this Agreement and the documents or instruments required hereunder will not violate any provision of any existing law or regulation binding on the Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Manager, or the Governing Instruments of, or any securities issued by the Manager or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Manager is a party or by which the Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business operations, assets or financial condition of the Manager, and will not result in, or require, the creation or imposition of any lien or any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

#### **Section 16. Miscellaneous.**

(a) *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered against receipt or upon actual receipt of (i) personal delivery, (ii) delivery by reputable overnight courier, (iii) delivery by facsimile transmission with telephonic confirmation or (iv) delivery by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below (or to such other address as may be hereafter notified by the respective parties hereto in accordance with this Section 16):

The Company:                    American Capital Agency Corp.  
2 Bethesda Metro Center, 14<sup>th</sup> Floor  
Bethesda, MD 20814  
Attention: Chief Financial Officer  
Fax: 301-968-9301

with a copy to:                Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, New York 10036  
Attention: David J. Goldschmidt, Esq.  
Fax: (212) 735-2000

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The Manager: American Capital Agency Management, LLC  
c/o American Capital Strategies, Ltd.  
2 Bethesda Metro Center, 14<sup>th</sup> Floor  
Bethesda, MD 20814  
Attention: Chief Financial Officer  
Fax: 301-951-5651

with a copy to: Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, New York 10036  
Attention: David J. Goldschmidt, Esq.  
Fax: (212) 735-2000

(b) *Binding Nature of Agreement; Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns as provided herein.

(c) *Integration*. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

(d) *Amendments*. This Agreement, nor any terms hereof, may not be amended, supplemented or modified except in an instrument in writing executed by the parties hereto.

(e) **GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE PARTIES HERETO IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR ANY DISTRICT WITHIN SUCH STATE FOR THE PURPOSE OF ANY ACTION OR JUDGMENT RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND TO THE LAYING OF VENUE IN SUCH COURT.**

(f) **WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND**

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UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(g) *Survival of Representations and Warranties.* All representations and warranties made hereunder, and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement.

(h) *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of a party hereto, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(i) *Costs and Expenses.* Each party hereto shall bear its own costs and expenses (including the fees and disbursements of counsel and accountants) incurred in connection with the negotiations and preparation of and the closing under this Agreement, and all matter incident thereto.

(j) *Section Headings.* The section and subsection headings in this Agreement are for convenience in reference only and shall not be deemed to alter or affect the interpretation of any provisions hereof.

(k) *Counterparts.* This Agreement may be executed by the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(l) *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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IN WITNESS WHEREOF, each of the parties hereto have executed this Management Agreement as of the date first written above.

**American Capital Agency Corp.**

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Executive Vice President and Secretary

**American Capital Agency Management, LLC**

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Vice President and Secretary

Investment Guidelines

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in that certain Management Agreement, dated as of May \_\_, 2008, as may be amended from time to time (the "Management Agreement"), by and between American Capital Agency Corp. (the "*Company*") and American Capital Agency Management, LLC (the "*Manager*").

1. The Company shall not make any investments other than investments in Agency Securities.
2. The Company's leverage may not exceed 10 times its stockholders' equity (as computed in accordance with GAAP) (the "Leverage Threshold.") In the event that the Company's leverage inadvertently exceeds the Leverage Threshold, the Company may not utilize additional leverage without prior approval from the Board of Directors until the Company is once again in compliance with the Leverage Threshold.
3. No investment shall be made that would cause the Company to fail to qualify as a REIT under the Code.
4. No investment shall be made that would cause the Company to be regulated as an investment company under the Investment Company Act.
5. A majority of the Independent Directors must approve any transaction between the Company and/or any of its subsidiaries on the one hand and the Manager and/or any of its Affiliates (including, but not limited to American Capital) on the other hand.

These Investment Guidelines may be amended, restated, modified, supplemented or waived by the Board of Directors (which must include a majority of the Independent Directors) without the approval of the Company's stockholders.

**AMERICAN CAPITAL AGENCY CORP.  
EQUITY INCENTIVE PLAN FOR INDEPENDENT DIRECTORS  
RESTRICTED STOCK AGREEMENT**

This Restricted Stock Agreement (this "Agreement") is executed and delivered as of May 20, 2008 (the "Grant Date") by and between American Capital Agency Corp., a Delaware corporation (the "Company") and Morris A Davis, a director of the Company (the "Grantee"). The Grantee and the Company hereby agree as follows:

1. Grant. Pursuant to the American Capital Agency Corp. Equity Incentive Plan for Independent Directors (the "Plan"), the Company hereby grants to the Grantee 1,500 shares of the Company's common stock, \$0.01 par value (the "Shares").
2. Restrictions. Subject to Section 3 hereof, the Shares may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of and shall be subject to the risk of forfeiture described in Section 4 hereof (the "Restrictions") from the Grant Date until (i) the first anniversary thereof with respect to one-third of the Shares, (ii) the second anniversary thereof with respect to an additional one-third of the Shares, and (iii) the third anniversary thereof with respect to the remaining one-third of the Shares.
3. Lapse of Restrictions.
  - (a) Unless the Restrictions shall have been terminated pursuant to clauses (b), (c) or (d) of this Section 3, the Restrictions shall lapse with respect to one-third of the Shares on the first, second and third anniversaries of the Grant Date.
  - (b) In the event of the Grantee's death or disability, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Grantee's death or the occurrence of the Grantee's disability.
  - (c) In the event that the Grantee's service as a director of the Company is terminated other than for any of the reasons set forth in Section 4 hereof, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of such termination.
  - (d) Upon a Change of Control (as defined in the Plan), the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Change of Control.
4. Forfeiture Events. If (a) the Grantee terminates his service as a director of the Company, except for a termination due to the Grantee's death or disability, or (b) the Grantee's service as a director is terminated pursuant to a Removal for Cause (as defined in the Plan), all Shares subject to the Restrictions as of the date of any such termination shall be forfeited on such date.

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5. Certain Tax Matters.

- (a) Tax Consequences. The Grantee acknowledges that it shall recognize ordinary income at the times the Restrictions lapse with respect to the Shares in an amount equal to the fair market value of the Shares on each such date and the Company shall be required to collect all applicable withholding taxes with respect to such income. The obligations of the Company under the Plan are conditioned on the Grantee making arrangements for the payment of any such taxes. Notwithstanding anything herein to the contrary, the release of the Shares from the Restrictions shall be conditioned upon the Grantee making adequate provision for federal, state or other tax withholding obligations, if any, which arise upon such release (unless the Section 83(b) election described in Section 5(b) hereof has been filed), whether by withholding, direct payment to the Company, or otherwise.
- (b) Section 83(b) Election. The Grantee acknowledges that he has been informed that he may file with the Internal Revenue Service within 30 days of the Grant Date an election, pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), to be taxed currently on the fair market value of the Shares on the Grant Date. The Grantee acknowledges that it is the Grantee's sole responsibility to file timely the election under Section 83(b) of the Code, even if the Grantee requests the Company or its representative to make this filing on the Grantee's behalf.
- (c) No Tax Advice. By signing this Agreement, the Grantee represents that he has reviewed with his own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement and that he is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands and agrees that he (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Agreement.

6. Restrictive Legend. The certificate representing the Shares subject to the Restrictions shall bear the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE COMPANY.



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The Grantee shall be entitled to have such legend removed from such certificate upon the lapse of the Restrictions on the Shares.

7. Entire Agreement; Plan Controls. This Agreement and the Plan contain the entire understanding and agreement of the parties concerning the subject matter hereof, and supersede all earlier negotiations and understandings, written or oral, between the parties with respect thereto. This Agreement is made under and subject to the provisions of the Plan, and all of the provisions of the Plan are hereby incorporated by reference into this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall govern. By signing this Agreement, the Grantee confirms that he has received a copy of the Plan and has had an opportunity to review the contents thereof.
8. Miscellaneous.
- (a) Notices. Any notice required or permitted under this Agreement shall be deemed given when delivered personally, or when deposited in a United States Post Office, postage prepaid, addressed, as appropriate, to the Grantee either at his address herein below set forth or such other address as he may designate in writing to the Company, or to the Company to the attention of the Secretary, at the Company's address or such other address as the Company may designate in writing to the Grantee.
- (b) Failure to Enforce Not a Waiver. The failure of the Company or the Grantee to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.
- (c) Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Delaware without giving effect to the choice of law principles thereof.
- (d) Amendments. This Agreement may be amended or modified at any time by an instrument in writing signed by the parties.
- (e) Agreement Not a Contract of Employment. Neither this Agreement nor any other action taken in connection herewith shall constitute or be evidence of any agreement or understanding, express or implied, that the Grantee is an employee of the Company or any subsidiary of the Company.
- (f) Captions. The captions and headings of the sections and subsections of this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.
- (g) Counterparts. This Agreement may be executed in counterparts, each of which when signed by the Company or the Grantee will be deemed an original and all of which together will be deemed the same agreement.

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(h) Assignment. The Company may assign its rights and delegate its duties under this Agreement. If any such assignment or delegation requires consent of any state securities authorities, the parties agree to cooperate in requesting such consent. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon the Grantee, his heirs, executors, administrators, successors and assigns.

(i) Severability. This Agreement will be severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any invalid or unenforceable term or provision, the parties intend that there be added as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized representative and the Grantee has hereunto set his hand as of the Grant Date.

AMERICAN CAPITAL AGENCY CORP.

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Executive Vice President and Secretary

GRANTEE

/s/ Morris A. Davis  
Name: Morris A Davis

**AMERICAN CAPITAL AGENCY CORP.  
EQUITY INCENTIVE PLAN FOR INDEPENDENT DIRECTORS  
RESTRICTED STOCK AGREEMENT**

This Restricted Stock Agreement (this "Agreement") is executed and delivered as of May 20, 2008 (the "Grant Date") by and between American Capital Agency Corp., a Delaware corporation (the "Company") and Randy E. Dobbs, a director of the Company (the "Grantee"). The Grantee and the Company hereby agree as follows:

1. Grant. Pursuant to the American Capital Agency Corp. Equity Incentive Plan for Independent Directors (the "Plan"), the Company hereby grants to the Grantee 1,500 shares of the Company's common stock, \$0.01 par value (the "Shares").
2. Restrictions. Subject to Section 3 hereof, the Shares may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of and shall be subject to the risk of forfeiture described in Section 4 hereof (the "Restrictions") from the Grant Date until (i) the first anniversary thereof with respect to one-third of the Shares, (ii) the second anniversary thereof with respect to an additional one-third of the Shares, and (iii) the third anniversary thereof with respect to the remaining one-third of the Shares.
3. Lapse of Restrictions.
  - (a) Unless the Restrictions shall have been terminated pursuant to clauses (b), (c) or (d) of this Section 3, the Restrictions shall lapse with respect to one-third of the Shares on the first, second and third anniversaries of the Grant Date.
  - (b) In the event of the Grantee's death or disability, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Grantee's death or the occurrence of the Grantee's disability.
  - (c) In the event that the Grantee's service as a director of the Company is terminated other than for any of the reasons set forth in Section 4 hereof, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of such termination.
  - (d) Upon a Change of Control (as defined in the Plan), the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Change of Control.
4. Forfeiture Events. If (a) the Grantee terminates his service as a director of the Company, except for a termination due to the Grantee's death or disability, or (b) the Grantee's service as a director is terminated pursuant to a Removal for Cause (as defined in the Plan), all Shares subject to the Restrictions as of the date of any such termination shall be forfeited on such date.

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5. Certain Tax Matters.

- (a) Tax Consequences. The Grantee acknowledges that it shall recognize ordinary income at the times the Restrictions lapse with respect to the Shares in an amount equal to the fair market value of the Shares on each such date and the Company shall be required to collect all applicable withholding taxes with respect to such income. The obligations of the Company under the Plan are conditioned on the Grantee making arrangements for the payment of any such taxes. Notwithstanding anything herein to the contrary, the release of the Shares from the Restrictions shall be conditioned upon the Grantee making adequate provision for federal, state or other tax withholding obligations, if any, which arise upon such release (unless the Section 83(b) election described in Section 5(b) hereof has been filed), whether by withholding, direct payment to the Company, or otherwise.
- (b) Section 83(b) Election. The Grantee acknowledges that he has been informed that he may file with the Internal Revenue Service within 30 days of the Grant Date an election, pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), to be taxed currently on the fair market value of the Shares on the Grant Date. The Grantee acknowledges that it is the Grantee's sole responsibility to file timely the election under Section 83(b) of the Code, even if the Grantee requests the Company or its representative to make this filing on the Grantee's behalf.
- (c) No Tax Advice. By signing this Agreement, the Grantee represents that he has reviewed with his own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement and that he is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands and agrees that he (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Agreement.

6. Restrictive Legend. The certificate representing the Shares subject to the Restrictions shall bear the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE COMPANY.

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The Grantee shall be entitled to have such legend removed from such certificate upon the lapse of the Restrictions on the Shares.

7. Entire Agreement; Plan Controls. This Agreement and the Plan contain the entire understanding and agreement of the parties concerning the subject matter hereof, and supersede all earlier negotiations and understandings, written or oral, between the parties with respect thereto. This Agreement is made under and subject to the provisions of the Plan, and all of the provisions of the Plan are hereby incorporated by reference into this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall govern. By signing this Agreement, the Grantee confirms that he has received a copy of the Plan and has had an opportunity to review the contents thereof.
8. Miscellaneous.
- (a) Notices. Any notice required or permitted under this Agreement shall be deemed given when delivered personally, or when deposited in a United States Post Office, postage prepaid, addressed, as appropriate, to the Grantee either at his address herein below set forth or such other address as he may designate in writing to the Company, or to the Company to the attention of the Secretary, at the Company's address or such other address as the Company may designate in writing to the Grantee.
- (b) Failure to Enforce Not a Waiver. The failure of the Company or the Grantee to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.
- (c) Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Delaware without giving effect to the choice of law principles thereof.
- (d) Amendments. This Agreement may be amended or modified at any time by an instrument in writing signed by the parties.
- (e) Agreement Not a Contract of Employment. Neither this Agreement nor any other action taken in connection herewith shall constitute or be evidence of any agreement or understanding, express or implied, that the Grantee is an employee of the Company or any subsidiary of the Company.
- (f) Captions. The captions and headings of the sections and subsections of this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.
- (g) Counterparts. This Agreement may be executed in counterparts, each of which when signed by the Company or the Grantee will be deemed an original and all of which together will be deemed the same agreement.

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(h) Assignment. The Company may assign its rights and delegate its duties under this Agreement. If any such assignment or delegation requires consent of any state securities authorities, the parties agree to cooperate in requesting such consent. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon the Grantee, his heirs, executors, administrators, successors and assigns.

(i) Severability. This Agreement will be severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any invalid or unenforceable term or provision, the parties intend that there be added as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized representative and the Grantee has hereunto set his hand as of the Grant Date.

AMERICAN CAPITAL AGENCY CORP.

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Executive Vice President and Secretary

GRANTEE

/s/ Randy E. Dobbs  
Name: Randy E. Dobbs

**AMERICAN CAPITAL AGENCY CORP.  
EQUITY INCENTIVE PLAN FOR INDEPENDENT DIRECTORS  
RESTRICTED STOCK AGREEMENT**

This Restricted Stock Agreement (this "Agreement") is executed and delivered as of May 20, 2008 (the "Grant Date") by and between American Capital Agency Corp., a Delaware corporation (the "Company") and Larry K. Harvey, a director of the Company (the "Grantee"). The Grantee and the Company hereby agree as follows:

1. Grant. Pursuant to the American Capital Agency Corp. Equity Incentive Plan for Independent Directors (the "Plan"), the Company hereby grants to the Grantee 1,500 shares of the Company's common stock, \$0.01 par value (the "Shares").
2. Restrictions. Subject to Section 3 hereof, the Shares may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of and shall be subject to the risk of forfeiture described in Section 4 hereof (the "Restrictions") from the Grant Date until (i) the first anniversary thereof with respect to one-third of the Shares, (ii) the second anniversary thereof with respect to an additional one-third of the Shares, and (iii) the third anniversary thereof with respect to the remaining one-third of the Shares.
3. Lapse of Restrictions.
  - (a) Unless the Restrictions shall have been terminated pursuant to clauses (b), (c) or (d) of this Section 3, the Restrictions shall lapse with respect to one-third of the Shares on the first, second and third anniversaries of the Grant Date.
  - (b) In the event of the Grantee's death or disability, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Grantee's death or the occurrence of the Grantee's disability.
  - (c) In the event that the Grantee's service as a director of the Company is terminated other than for any of the reasons set forth in Section 4 hereof, the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of such termination.
  - (d) Upon a Change of Control (as defined in the Plan), the Restrictions shall lapse with respect to all Shares subject to the Restrictions on the date of the Change of Control.
4. Forfeiture Events. If (a) the Grantee terminates his service as a director of the Company, except for a termination due to the Grantee's death or disability, or (b) the Grantee's service as a director is terminated pursuant to a Removal for Cause (as defined in the Plan), all Shares subject to the Restrictions as of the date of any such termination shall be forfeited on such date.

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5. Certain Tax Matters.

- (a) Tax Consequences. The Grantee acknowledges that it shall recognize ordinary income at the times the Restrictions lapse with respect to the Shares in an amount equal to the fair market value of the Shares on each such date and the Company shall be required to collect all applicable withholding taxes with respect to such income. The obligations of the Company under the Plan are conditioned on the Grantee making arrangements for the payment of any such taxes. Notwithstanding anything herein to the contrary, the release of the Shares from the Restrictions shall be conditioned upon the Grantee making adequate provision for federal, state or other tax withholding obligations, if any, which arise upon such release (unless the Section 83(b) election described in Section 5(b) hereof has been filed), whether by withholding, direct payment to the Company, or otherwise.
- (b) Section 83(b) Election. The Grantee acknowledges that he has been informed that he may file with the Internal Revenue Service within 30 days of the Grant Date an election, pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), to be taxed currently on the fair market value of the Shares on the Grant Date. The Grantee acknowledges that it is the Grantee's sole responsibility to file timely the election under Section 83(b) of the Code, even if the Grantee requests the Company or its representative to make this filing on the Grantee's behalf.
- (c) No Tax Advice. By signing this Agreement, the Grantee represents that he has reviewed with his own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement and that he is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands and agrees that he (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Agreement.

6. Restrictive Legend. The certificate representing the Shares subject to the Restrictions shall bear the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE COMPANY.



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The Grantee shall be entitled to have such legend removed from such certificate upon the lapse of the Restrictions on the Shares.

7. Entire Agreement; Plan Controls. This Agreement and the Plan contain the entire understanding and agreement of the parties concerning the subject matter hereof, and supersede all earlier negotiations and understandings, written or oral, between the parties with respect thereto. This Agreement is made under and subject to the provisions of the Plan, and all of the provisions of the Plan are hereby incorporated by reference into this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall govern. By signing this Agreement, the Grantee confirms that he has received a copy of the Plan and has had an opportunity to review the contents thereof.
8. Miscellaneous.
- (a) Notices. Any notice required or permitted under this Agreement shall be deemed given when delivered personally, or when deposited in a United States Post Office, postage prepaid, addressed, as appropriate, to the Grantee either at his address herein below set forth or such other address as he may designate in writing to the Company, or to the Company to the attention of the Secretary, at the Company's address or such other address as the Company may designate in writing to the Grantee.
- (b) Failure to Enforce Not a Waiver. The failure of the Company or the Grantee to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.
- (c) Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Delaware without giving effect to the choice of law principles thereof.
- (d) Amendments. This Agreement may be amended or modified at any time by an instrument in writing signed by the parties.
- (e) Agreement Not a Contract of Employment. Neither this Agreement nor any other action taken in connection herewith shall constitute or be evidence of any agreement or understanding, express or implied, that the Grantee is an employee of the Company or any subsidiary of the Company.
- (f) Captions. The captions and headings of the sections and subsections of this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.
- (g) Counterparts. This Agreement may be executed in counterparts, each of which when signed by the Company or the Grantee will be deemed an original and all of which together will be deemed the same agreement.

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(h) Assignment. The Company may assign its rights and delegate its duties under this Agreement. If any such assignment or delegation requires consent of any state securities authorities, the parties agree to cooperate in requesting such consent. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon the Grantee, his heirs, executors, administrators, successors and assigns.

(i) Severability. This Agreement will be severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any invalid or unenforceable term or provision, the parties intend that there be added as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized representative and the Grantee has hereunto set his hand as of the Grant Date.

AMERICAN CAPITAL AGENCY CORP.

By: /s/ Samuel A. Flax  
Name: Samuel A. Flax  
Title: Executive Vice President and Secretary

GRANTEE

/s/ Larry K. Harvey  
Name: Larry K. Harvey

## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "Agreement") is dated as of May 14, 2008, by and among American Capital Agency Corp., a Delaware corporation (the "Issuer") and American Capital Strategies, Ltd., a Delaware corporation (the "Purchaser").

## WITNESSETH:

WHEREAS, the Issuer is entering into an underwriting agreement on the date hereof (the "Underwriting Agreement"), a copy of which is attached hereto as Annex I, with the underwriters named therein (the "Underwriters") pursuant to which the Issuer will, subject to the satisfaction of the terms and conditions set forth in the Underwriting Agreement, issue and sell to the Underwriters of 10,000,000 shares (the "IPO Shares") of common stock, par value \$0.01 per share, of the Issuer (the "Common Stock") in connection with an offering to the public (the "IPO") of the IPO Shares for \$20.00 per share (the "IPO Price"); and

WHEREAS, subject to the consummation of the Issuer's agreement to issue and sell the IPO Shares to the Underwriters upon the satisfaction of the terms and conditions set forth in the Underwriting Agreement, the Purchaser desires to purchase 5,000,000 shares of Common Stock at the IPO Price and the Issuer desires to issue and sell such shares to the Purchaser.

NOW THEREFORE, in consideration of the premises and of the mutual agreements, covenants and provisions herein contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

## PURCHASE AND SALE

1.1 Purchase and Sale of Subject Shares. Subject to (a) the terms and conditions set forth in this Agreement and (b) the consummation of the Issuer's agreement to issue and sell the IPO Shares to the Underwriters upon the satisfaction of the terms and conditions set forth in the Underwriting Agreement (the "IPO Closing"), the Issuer agrees to issue the Purchaser 5,000,000 shares of Common Stock (the "Subject Shares"), and the Purchaser agrees to purchase the Subject Shares for \$100,000,000.00 (the "Subject Shares Purchase Price").

1.2 Closing. Subject to the terms and conditions of this Agreement and the occurrence of the IPO Closing, the closing of the purchase and sale of the Subject Shares (the

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“Closing”) shall take place on the date of the IPO Closing at the offices of counsel to the Issuer, Skadden, Arps, Slate, Meagher & Flom LLP located at Four Times Square, New York, New York 10036, or at such other place as the applicable parties to such closing shall agree in writing.

1.3 Delivery at Closing. At the Closing, (a) Purchase shall deliver to Issuer the Subject Shares Purchase Price by wire transfer of immediately available funds to an account designated by the Issuer in writing by 10:30 a.m., and (b) the Issuer shall deliver certificates representing the Subject Shares to the Purchaser.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer represents and warrants to the Purchaser as follows:

2.1 Formation and Good Standing. The Issuer is a corporation duly incorporated, validly existing and in good standing under the jurisdiction and laws of the State of Delaware.

2.2 Authorization and Validity of Agreements. The Issuer has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance by the Issuer of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of the Issuer. This Agreement constitutes a legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its respective terms.

2.3 No Conflicts; Consents. The execution, delivery and performance of this Agreement by the Issuer and the consummation by the Issuer of the transactions contemplated hereby do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time, or both), permit any party to terminate, amend or accelerate the provisions of, or result in the imposition of any claim, lien, pledge, deed of trust, option, charge, security interest, hypothecation, encumbrance, right of first offer, voting trust, proxy, right of third parties or other restriction or limitation of any nature whatsoever (each, a “Lien”), or any obligation to create any Lien, upon any of the property or assets of the Issuer under (a) any contract, agreement, indenture, letter of credit, mortgage, security agreement, pledge agreement, deed of trust, bond, note, guarantee, surety obligation, warranty, license, franchise, permit, power of attorney, lease, instrument or other agreement (each, a “Contract”) to which the Issuer is a party or by which any of its property or assets may be bound or (b) any provision of the organizational document of the Issuer.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Issuer as follows:

3.1 Formation and Good Standing. The Purchaser is a corporation duly incorporated, validly existing and in good standing under the jurisdiction and laws of the State of Delaware.

3.2 Authorization and Validity of Agreements. The Purchaser has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance by the Purchaser of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of the Purchaser. This Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its respective terms.

3.3 No Conflicts; Consents. The execution, delivery and performance of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time, or both), permit any party to terminate, amend or accelerate the provisions of, or result in the imposition of any Lien (or any obligation to create any Lien) upon any of the property or assets of the Purchaser under (a) any Contract to which the Purchaser is a party or by which any of its property or assets may be bound or (b) any provision of the organizational document of the Purchaser.

3.4 Investment Purpose; Accredited Purchaser; Access to Information.

(a) The Purchaser hereby acknowledges that the Subject Shares have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) and may not be offered or sold except pursuant to registration or to an exemption from the registration requirements of the Securities Act and that the certificates evidencing the Subject Shares will bear a legend to that effect. The Subject Shares to be acquired by the Purchaser pursuant to this Agreement are being acquired for its own account and with no intention of distributing or reselling the Subject Shares or any part thereof in any transaction that would be in violation of the securities laws of the United States, any state of the United States or any foreign jurisdiction. The Purchaser further agrees that it has not entered and prior to the Closing will not enter into any Contract with respect to the distribution, sale, transfer or delivery of the Subject Shares.

(b) The Purchaser is an “accredited investor” as such term is defined in Section 2(15) of the Securities Act and within the meaning of Rule 501 of Regulation D under the Securities Act, as presently in effect.

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(c) The Purchaser is sufficiently experienced in financial and business matters to be capable of evaluating the merits and risks involved in purchasing the Subject Shares and to make an informed decision relating thereto. The Purchaser has been furnished with the materials relating to the business, operations, financial condition, assets, liabilities of the Issuer and other matters relevant to Purchaser's investment in the Subject Shares, which have been requested by the Purchaser. The Purchaser has had adequate opportunity to ask questions of, and receive answers from, the officers, employees, agents, accountants, and representatives of the Issuer concerning the business, operations, financial condition, assets, liabilities of the Issuer and all other matters relevant to its investment in the Subject Shares.

#### ARTICLE IV

#### COVENANTS

4.1 Non-Sponsorship Covenant. Each of the parties hereto acknowledges that American Capital Agency Management, LLC (the "Manager") is a Purchaser Affiliate (as defined below) and will manage and advise the Issuer pursuant to that certain Management Agreement to be entered into by the Issuer and the Manager upon consummation of the IPO (the "Management Agreement"). Subject to the occurrence of the IPO Closing and the Closing, the Purchaser hereby agrees that it will not sponsor an investment vehicle that invests predominantly in Agency Securities (as defined below) which represent an undivided beneficial ownership interest in a group or pool of one or more mortgages, or "whole pool" Agency Securities (other than the Issuer) for so long as (1) the Manager or another Purchaser Affiliate serves as the Company's manager pursuant to the Management Agreement and (2) the Manager is a Purchaser Affiliate. For the purpose of this Article IV, (a) "Agency Securities" means single-family residential mortgage pass-through securities and collateralized mortgage obligations for which the principal and interest payments are guaranteed by (i) a U.S. Government agency such as the Government National Mortgage Association, or (ii) a U.S. Government-sponsored entity such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and (b) "Purchaser Affiliate" is any natural person or legal entity which is directly or indirectly controlling, controlled by, or under common control with the Purchaser.

4.2 Registration Rights. Subject to the occurrence of the IPO Closing and the Closing, each of the parties hereto covenants to enter into that certain Registration Rights Agreement, a copy of which is attached hereto as Annex II, with respect to the Subject Shares.

4.3 Further Assurances. Each party hereto shall execute and deliver such instruments and take such other actions prior to or after the Closing as any other party may reasonably request in order to carry out the intent of this Agreement, including without limitation obtaining any required consents or approvals from third parties.

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ARTICLE V

CONDITIONS PRECEDENT TO THE OBLIGATIONS

5.1 Mutual Conditions. The obligations of the Issuer and the Purchaser to consummate the purchase and sale of the Subject Shares contemplated hereby are subject to the following conditions: (a) the occurrence of the IPO Closing, (b) the absence of any order, decree, judgment or injunction of a court of competent jurisdiction or other governmental or regulatory authority precluding the consummation of the purchase and sale of the Subject Shares contemplated hereby, and (c) there shall not have been any action taken or any statute, rule or regulation enacted, promulgated or deemed applicable to, the purchase and sale of the Subject Shares contemplated hereby by any court, governmental agency or regulatory or administrative authority that makes consummation of such transactions illegal.

5.2 Conditions to the Obligations of the Issuer. The obligations of the Issuer under this Agreement to consummate the purchase and sale of the Subject Shares contemplated hereby are subject to the fulfillment (or waiver by the Issuer) of the conditions that (a) the representations and warranties of the Purchaser contained in or made pursuant to this Agreement shall be deemed to have been made again at and as of the Closing and shall then be true and accurate, and (b) the Purchaser shall have performed and complied in all material respects with all agreements required by this Agreement to be performed or complied with by it prior to or at the Closing.

5.3 Conditions to the Obligations of the Purchaser. The obligations of the Purchaser under this Agreement to consummate the purchase and sale of the Subject Shares contemplated hereby are subject to the fulfillment (or waiver in writing by the Purchaser) of the condition that (a) all representations and warranties of the Issuer shall be deemed to have been made again at and as of the Closing and shall then be true and accurate, and (b) the Issuer shall have performed and complied in all material respects with all agreements required by this Agreement to be performed or complied with by it prior to or at the Closing.

ARTICLE VI

MISCELLANEOUS

6.1 Termination. This Agreement shall be terminated prior to the consummation of the transactions contemplated hereby if, prior to the consummation of the IPO Closing, the Underwriting Agreement is terminated pursuant to its terms. In the event of any termination of this Agreement, this Agreement shall become void and have no effect, without any liability to any person in respect hereof on the part of any party hereto, except for any liability resulting from such party's breach of this Agreement prior to such termination.

6.2 Survival. Each of the representations and warranties contained in this Agreement shall survive indefinitely. Each of the covenants contained in this Agreement shall survive the Closing until performed in accordance with their terms.

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6.3 Amendments; Waivers. The provisions of this Agreement may not be amended or modified except by a writing signed by each of the parties. No waiver of any term or condition hereof or obligation hereunder shall be valid unless made in writing and signed by the party to which performance is due.

6.4 Severability of Provisions. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws principles thereof that would cause the application of the laws of another jurisdiction.

6.6 Waiver of Trial By Jury. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

6.7 Remedies and Waivers. No delay or omission on the part of any Party to this Agreement in exercising any right, power or remedy provided by law or under this agreement shall (i) impair such right, power or remedy; or (ii) operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of any other right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

6.8 Notices. All notices, requests, demands, waivers and other communications to be given by either party hereunder shall be in writing and shall be (i) mailed by first-class, registered or certified mail, postage prepaid, (ii) sent by hand delivery or reputable overnight delivery service or (iii) transmitted by fax (provided that a copy is also sent by reputable overnight delivery service) addressed to the Secretary of the Issuer or the Secretary of the Purchaser, as applicable, in each case at 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814, or such other address as may be specified in writing to the other party hereto. All such notices, requests, demands, waivers and other communications shall be deemed to have been given and received (i) if by personal delivery or fax, on the day of such delivery, (ii) if by first-class, registered or certified mail, on the fifth business day after the mailing thereof, or (iii) if by reputable overnight delivery service, on the day delivered.

6.9 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.



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6.10 Headings. The Article and Section headings contained herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

6.11 Entire Agreement. This Agreement, including the Exhibits hereto, contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

ISSUER:

AMERICAN CAPITAL AGENCY CORP.

By: /s/ Samuel A. Flax

Name: Samuel A. Flax

Title: Executive Vice President and Secretary

PURCHASER:

AMERICAN CAPITAL STRATEGIES, LTD.

By: /s/ Samuel A. Flax

Name: Samuel A. Flax

Title: Executive Vice President, General Counsel and Secretary

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**Annex I**

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**Annex II**

**American Capital Agency Corp.**  
**Certification Pursuant to Section 302(a)**  
**of the Sarbanes-Oxley Act of 2002**

I, Malon Wilkus, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Capital Agency Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

By: /s/ MALON WILKUS  
Malon Wilkus  
Chairman of the Board of Directors,  
President and Chief Executive Officer

**American Capital Agency Corp.**  
**Certification Pursuant to Section 302(a)**  
**of the Sarbanes-Oxley Act Of 2002**

I, John R. Erickson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Capital Agency Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

By: /s/ JOHN R. ERICKSON

John R. Erickson  
Executive Vice President and  
Chief Financial Officer

**American Capital Agency Corp.**  
**Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350,**  
**as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

We, Malon Wilkus, Chief Executive Officer, President and Chairman of the Board of Directors, and John R. Erickson, Executive Vice President and Chief Financial Officer of American Capital Agency Corp. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350 that:

1. The Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2008 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 14, 2008

By: /s/ MALON WILKUS  
Malon Wilkus  
Chairman of the Board, President and  
Chief Executive Officer

Date: August 14, 2008

By: /s/ JOHN R. ERICKSON  
John R. Erickson  
Executive Vice President and  
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.