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Chapter 11 Trustee*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re  SHOOT THE MOON, LLC,  Debtor.	Case No. 15-60979-11
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**MOTION OF CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. §§ 363(b)  
AND BANKRUPTCY RULE 6004 AND 9014  
FOR AN ORDER APPROVING SALE OF PROPERTY  
LIFE INSURANCE POLICY #48 646 088**

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COMES NOW Trustee, Jeremiah Foster, by and through counsel, and respectfully moves the Court to enter an order relating to the proposed sale of personal property of the Debtor, Shoot the Moon, LLC. This Motion is made pursuant to 11 U.S.C. 363(b) and (f) and Rules 6004 and 9014 of the Federal Rules

of Bankruptcy Procedure. In support of this Motion, Trustee states and represents as follows:

### **Introduction**

1. The Debtor filed a petition herein on October 21, 2015, under Chapter 11 of Title 11, United States Code.

2. The Court conditionally approved the appointment of Jeremiah Foster as Trustee on October 28, 2015, and thereafter appointed Jeremiah Foster as Trustee without condition on November 5, 2015.

3. After Trustee's appointment and based upon Trustee's investigation, Trustee determined that Debtor owned was the beneficiary of a convertible term life insurance policy ensuring Kenneth Hatzenbeller.

4. The policy was an "Increasing Premium Term Insurance" through New York Life Insurance Company, policy # 48 646 008, with a death benefit of \$2,000,000 for an annual policy premium of \$24,616.62.

5. The Trustee was initially contacted by a broker who advised that because the subject policy is convertible to universal life, it has limited value to speculators willing to exercise the conversion option and make future premium payments in anticipation of profiting from the payment of the death benefit.

6. In early October, Trustee received an offer to purchase the Policy for \$10,000 plus reimbursement for the 1<sup>st</sup> quarterly premium upon conversion to

universal life, as memorialized in the Letter of Intent (hereinafter the “Agreement”) attached hereto as Exhibit A.

7. In an effort to identify the highest and best offer, Trustee investigated further and authorized the broker to shop the policy to other entities that purchase such policies.

8. In the meantime, Trustee had to exercise the conversion option in order to meet the October 24, 2016 deadline and preserve the value of the policy for the estate.

9. After marketing the policy over a two-month period, the offer of the proposed purchaser in this motion remained the only offer received. The broker indicated that the value of the policy is impaired by the relatively young age of the insured and the resulting high number of premiums to be paid and long length of time until payment of the death benefit.

10. The current policy, a copy of which is attached hereto as Exhibit B, is through New York Life Insurance Company, policy # 61 291 457, and provides death benefit of \$2,000,000 for a quarterly policy premium of \$13,390.

11. Because the policy was only recently converted from term to universal life insurance, it currently has no cash value or surrender value from the insurance company.

12. Trustee wishes to move forward with the sale of the Policy consistent with the Agreement.

### **Jurisdiction**

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory basis for the requested relief is 11 U.S.C. § 363(b).

### **Basis for Relief Sought**

#### **A. The Court Should Approve the Proposed Sale of the Policy.**

14. The proposed sale of the Policy for net proceeds of \$10,000 is in the best interest of the estate and should be authorized by the Court. Section 363(b)(1) of the Bankruptcy Code provides that a trustee, after notice and a hearing, may sell, other than in the ordinary course of business, property of the estate, when a sound business purpose justifies such action. 11 U.S.C. § 363(b)(1); Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070–71 (2d Cir. 1983). A trustee’s business decision to sell its assets other than in the ordinary course of business “should be approved by the court unless it is shown to be so manifestly unreasonable that it could not be based on sound business judgment, but only bad faith, or whim or caprice.” In re Cadkey Corp., 317 B.R. 19, 22–23 (D. Mass. 2004). Generally, where it appears from a review of all the facts and circumstances that a sale is in the best interest of the estate, a court will not disturb

the trustee's business judgment regarding the terms of the proposed sale absent some compelling reason to do so. *See generally*, 2 Collier on Bankruptcy at ¶ 363.03 (15th ed. rev. 2008); In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

15. Here, the Trustee's decision to sell the Policy is supported by sound business judgment. The proposed sales price of \$11,771 reflected in Exhibit "A" is the highest offer that the Trustee has received for such the Policy during the course of Trustee's efforts to sell the Policy.

16. Courts have also required that the sale price be reasonable and that the sale result from arm's length, good faith negotiations with the buyer. *See, e.g., In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147-50 (3d Cir. 1986). A purchaser's good faith "is shown by the integrity of his conduct during the course of the sale proceedings." In re Gucci, 126 F.3d 380, 390 (2d Cir.1997) (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir.1978)).

17. In this case, the Agreement to sell the Policy for \$10,000 plus reimbursement of the quarterly premium has been negotiated in good faith, in a fair manner and at arms' length.

18. The proposed Buyer, Eldo Investments, LLC, is a third party unrelated to the Trustee.

19. After researching the value and contacting various professionals in the area, Trustee does not believe that any higher offers are likely to emerge for this Policy.

**B. The sale should occur free and clear of all interests in the Policy and any such interests should attach to the proceeds of the sale**

20. The Code authorizes a trustee to sell property free and clear of any interest in such property of an entity other than the estate only if such entity consents. 11 U.S.C. 363(f)(2). An entity's failure to object constitutes to the proposed sale constitutes "consent" within the meaning of 363(f)(2). *In re Colarusso* 295 B.R. 166, 175 (B.A.P. 1<sup>st</sup> Cir. 2003), citing *In re Windmill Farms Mgmt. Co.*, 116 B.R. 755, 762 (Bankr. S.D. Cal. 1990).

21. In order to effectuate a sale of the Policy, Trustee seeks to sell the Policy to Eldo Investments, LLC,, the proposed purchaser, in accordance with 11 U.S.C. 363(f)(2), free and clear of any and all interests in the Policy.

22. The Trustee believes the Policy is currently unencumbered.

23. Trustee asserts that allowing this sale to go forward in this manner in the best interests of the estate.

**WHEREFORE**, Trustee respectfully requests that this Court enter an order authorizing Trustee to sell the Policy free and clear of all liens consistent with the terms and provisions of the Agreement attached hereto as Exhibit "A", and for such other and further relief as this Court deems just and proper.

DATED this 8<sup>th</sup> day of December, 2016.

Datsopoulos MacDonald & Lind, P.C.

By: /s/ Trent N. Baker  
Trent N. Baker

*Attorneys for Jeremiah Foster  
Chapter 11 Trustee*

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**NOTICE OF OPPORTUNITY TO RESPOND  
AND REQUEST A HEARING**

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**If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:**

**NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.**

DATED this 8<sup>th</sup> day of December, 2016.

Datsopoulos MacDonald & Lind, P.C.

By: /s/ Trent N. Baker  
Trent N. Baker

*Attorneys for Jeremiah Foster  
Chapter 11 Trustee*



## CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 8<sup>th</sup> day of December, 2016 a copy of the foregoing Motion of Chapter 11 Trustee Pursuant to 11 U.S.C. §§ 363(B), Bankruptcy Rule 6004 and 9014 for an Order Approving Sale of Property Life Insurance Policy #48 646 088 was served electronically by the Court's ECF notice to parties requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy via First Class Mail, postage prepaid, at Missoula, Montana and via electronic mail, to the following persons or entities who are not ECF registered users:

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By: /s/ Trent N. Baker  
Trent N. Baker



**ELDO INVESTMENTS LLC**  
INVESTMENTS IN ALL ASSET CLASSES

**LETTER OF INTENT FOR PURCHASE/TRANSFER OF OWNERSHIP-BENEFICIARY**

Shoot the Moon LLC (the "Seller"), of, does hereby sell, assign and transfer to ELDO Investments, LLC, A(N) Texas Limited Liability Company (the "Buyer"), of 500 N Capital of Texas Hwy Bldg. 4-100, Austin, Texas 78746, the following property.

PROPERTY: \$2,000,000.00 New York Life Insurance Company on the life of Kenneth Hatzenbeller, In-Force on 10-24-2006 with Standard Class, Non-Tobacco.

POLICY NUMBER: 48646008

Term conversion must happen prior to policy term conversion deadline. Agent of record must be Sydney Neil Leer.

AMOUNT: \$10,000 plus 1<sup>st</sup> quarterly premium after conversion (Approx \$11,771.00)

This transfer is effective immediately after court approval or once New York Life Insurance Company approves change of ownership and Beneficiary. Certified Check or Wire transfer to be made payable to Shoot the Moon LLC.

The Seller warrants that the property is being transferred to the Buyer free and clear of any liens and encumbrances.

The Seller warrants that the above property is in good standing, but makes no further warranties, express or implied (except as specifically state in this document). The Seller shall not be liable for any damages including without limitation, direct, special, or consequential damages.

The property (the "Policy Documents"), TBD and all such property is in the possession of Resolute located at 7201 East Camelback Road Ste 250 Scottsdale AZ 85251

X \_\_\_\_\_

Kenneth Hatzenbeller "Insured"

X \_\_\_\_\_

Dated:

X \_\_\_\_\_

Shoot the Moon LLC "Owner"

X \_\_\_\_\_

Dated:

X \_\_\_\_\_

"Witness" Print Name \_\_\_\_\_

X \_\_\_\_\_

Dated:

x *Tatanisha Leer*

Elido Investments LLC Tatanisha Leer, President

x *10/11/16*

Dated:



NAME: KENNETH HATZENBELLER  
POLICY NUMBER: 61 291 457  
POLICY DATE: OCTOBER 13, 2008

# New York Life Insurance and Annuity Corporation

This Corporation will pay the benefits of this policy in accordance with its provisions. The pages that follow are subject to the policy.

**To Examine Policy:** Please examine your policy. Within 10 days after delivery, you can return the policy to the issuing agent or the Underwriter through which it was delivered, with a written request for a refund of unearned premium. If you do not, the policy will be held to the issue, and a full premium refund will be made.

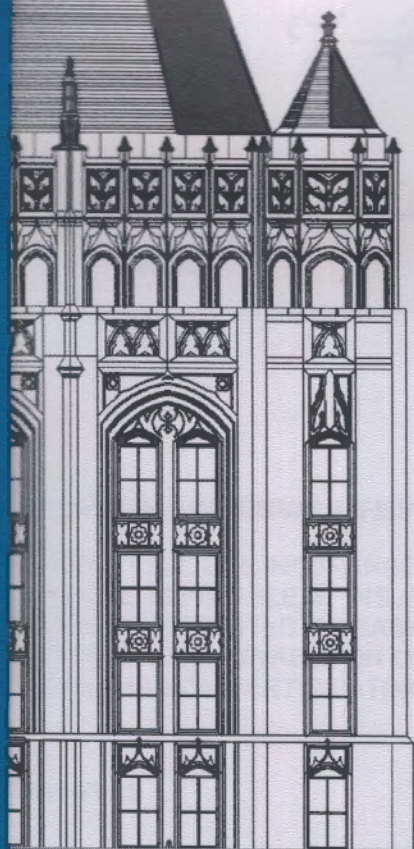
**Non-Forfeiture:** While the policy is in force, premiums can be used at any time before the policy matures to purchase a paid-up policy, a reduced paid-up policy, or a term policy. If you do not exercise any of these options, the policy will be held to the issue, and a full premium refund will be made.

## LIFE INSURANCE POLICY

**KENNETH HATZENBELLER**

**61 291 457**

ALSO CONTACT YOUR AGENT OR THE CORPORATION, PLEASE  
CONTACT YOUR AGENT FOR DETAILS.





INSURED                   KENNETH HATZENBELLER  
POLICY NUMBER       61 291 457  
POLICY DATE           OCTOBER 13, 2016

## New York Life Insurance and Annuity Corporation

51 Madison Avenue, New York, NY 10010 (A Delaware Corporation)

The Corporation will pay the benefits of this policy in accordance with its provisions. The pages that follow are also a part of this policy.

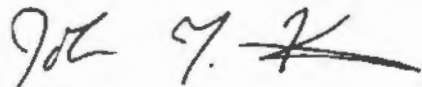
**Right To Examine Policy.** Please examine your policy. Within 10 days after delivery, you can return the policy to the Corporation or to the Representative through whom it was purchased, with a written request for a refund of premium. Upon such a request, the policy will be void from the start, and a full premium refund will be made.

**Payment Of Premiums.** While this policy is in effect, premiums can be paid at any time before the Policy Anniversary on which the Insured is age 121, and while the Insured is living. They can be paid at any interval or by any method we make available, subject to any limitations set forth in the Premiums section. The amount and interval of Planned Premiums, as stated in the application for this policy, are shown on the Premium Information Policy Data Page 2b.

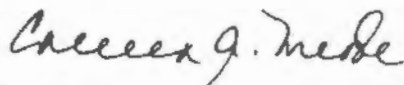
**Effective Date.** The Effective Date is the date the policy is delivered and the first premium is paid. Coverage does not begin until the Effective Date unless temporary coverage is obtained under a separate temporary coverage agreement.

**Illustrative Report To Owner.** On request, we will furnish you with an illustrative report which, based on the then current non-guaranteed factors, shows the results for at least the next 20 years, but not beyond the Policy Anniversary nearest the Insured's age 121. Each report will show the Cash Value of the policy when the report is prepared, the interest rates, the maximum Cost of Insurance Rates, and any other fees and charges in effect at that time. This report will also give you other facts required by state law or regulation. We will not charge a fee for the first report provided during the year. However, a reasonable fee, not to exceed \$30, may be charged for any additional reports provided on request.

**THIS POLICY IS A LEGAL CONTRACT BETWEEN THE POLICYOWNER AND THE CORPORATION. PLEASE READ THIS POLICY CAREFULLY FOR FULL DETAILS.**



President



Secretary

### INDIVIDUAL UNIVERSAL LIFE INSURANCE POLICY

ADJUSTABLE LIFE INSURANCE BENEFITS - FLEXIBLE PREMIUM PAYMENTS.  
PROCEEDS PAYABLE AT INSURED'S DEATH.  
INTEREST CREDITED ON CASH VALUE AT RATE SET BY CORPORATION.  
NO PREMIUMS PAYABLE ON OR AFTER THE INSURED'S AGE 121.  
POLICY IS NON-PARTICIPATING.

**POLICY INFORMATION**

INSURED  
**KENNETH HATZENBELLER**

AGE  
**65**

CLASS OF RISK  
**NON-SMOKER**

POLICY NUMBER - **61 291 457**

POLICY DATE - **OCTOBER 13, 2016**  
ISSUE DATE - **NOVEMBER 18, 2016**

PLAN - **NEW YORK LIFE NAUTILUS ADVANTAGE UNIVERSAL LIFE**

INITIAL BASE POLICY FACE AMOUNT - **\$2,000,000.00** LIFE INSURANCE BENEFIT OPTION - **3**

OWNER - **SHOOT THE MOON OF MONTANA, LLC**

BENEFICIARY (subject to change)  
**FIRST - SHOOT THE MOON, LLC - CORPORATION (GENERAL) - 100%**

**ADDITIONAL BENEFITS**

NO LAPSE GUARANTEE RIDER PERIOD - 15 YEARS  
NO LAPSE GUARANTEE RIDER EXPIRY DATE - 10-13-2031

POLICY NUMBER - 61 291 457

INSURED - KENNETH HATZENBELLER

### PREMIUM INFORMATION

#### PREMIUM PAYMENTS

PREMIUM PAYMENTS CANNOT BE MADE ON OR AFTER THE POLICY ANNIVERSARY ON WHICH THE INSURED IS AGE 121, WHICH IS **OCTOBER 13, 2072**.

**PLANNED QUARTERLY PREMIUM: \$13,390.00** BEGINNING AS OF 10/13/2016

THE FIRST PLANNED QUARTERLY PREMIUM IS DUE ON THE POLICY DATE. REFER TO SECTION 4 OF THE POLICY FOR MORE INFORMATION ABOUT PLANNED PREMIUMS. YOUR COVERAGE WILL EXPIRE WHEN THE CASH VALUE, LESS SURRENDER CHARGES AND LESS ANY UNPAID LOAN AND ACCRUED LOAN INTEREST, IS INSUFFICIENT TO COVER A MONTHLY DEDUCTION, UNLESS A NO LAPSE GUARANTEE IS IN EFFECT. PAYMENT OF THE PLANNED PREMIUM AMOUNT SHOWN ABOVE ALONE WILL NOT GUARANTEE THAT THE POLICY WILL REMAIN IN EFFECT TO THE POLICY ANNIVERSARY ON WHICH THE INSURED IS AGE 121.

**INITIAL PREMIUM PAID (INCLUDING THE FIRST PLANNED PREMIUM, IF APPLICABLE) - \$13,390.00**

THE INITIAL PREMIUM IS THE FIRST PREMIUM PAYMENT, WHICH INCLUDES THE FIRST PLANNED QUARTERLY PREMIUM AND ANY ADDITIONAL LUMP SUM AMOUNT.

**TARGET 1 PREMIUM \$53,560.00 TARGET 2 PREMIUM \$176,534.62**

TARGET 1 PREMIUM AND TARGET 2 PREMIUM ARE USED TO DETERMINE THE AMOUNT OF PREMIUM EXPENSE CHARGE DEDUCTED FROM YOUR POLICY PREMIUM PAYMENTS DURING EACH POLICY YEAR. THESE TARGET PREMIUMS MAY CHANGE IF THE INITIAL BASE POLICY FACE AMOUNT OF THIS POLICY IS INCREASED OR DECREASED.

**REQUIRED NO LAPSE GUARANTEE RIDER (NLGR) MONTHLY PREMIUM: \$2,803.56**

THIS IS THE MONTHLY PREMIUM REQUIRED TO KEEP THE NO LAPSE GUARANTEE RIDER ACTIVE UNTIL THE NO LAPSE GUARANTEE RIDER EXPIRY DATE SHOWN ON THE POLICY INFORMATION POLICY DATA PAGE 2a. ON EACH MONTHLY DEDUCTION DAY THIS PREMIUM IS USED IN CONJUNCTION WITH THE NO LAPSE GUARANTEE ACCUMULATION RATE TO DETERMINE IF THE CUMULATIVE REQUIRED NLGR MONTHLY PREMIUM TEST HAS BEEN SATISFIED. IF THIS TEST HAS BEEN SATISFIED THEN THE NO LAPSE GUARANTEE RIDER IS ACTIVE. PLEASE SEE THE NO LAPSE GUARANTEE RIDER FOR FURTHER DETAILS.

**NLGR ANNUAL ACCUMULATION RATE - 3.00%**

THIS RATE IS USED IN THE CUMULATIVE REQUIRED NLGR MONTHLY PREMIUM TEST, WHICH DETERMINES IF THE NO LAPSE GUARANTEE IS ACTIVE.



**POLICY CHARGES****MONTHLY DEDUCTION CHARGE**

AS STATED IN SECTION 6.1, THE MONTHLY DEDUCTION CHARGE THAT IS DEDUCTED FROM THE CASH VALUE ON EACH MONTHLY DEDUCTION DAY CONSISTS OF:

- A MONTHLY COST OF INSURANCE FOR THE BASE POLICY
- A MONTHLY PER THOUSAND OF BASE POLICY FACE AMOUNT CHARGE, BASED ON ISSUE AGE, AND CLASS OF RISK, NOT TO EXCEED THE CHARGES INDICATED IN THE TABLE BELOW. THE POLICY YEARS FOR THIS CHARGE ARE MEASURED FROM THE POLICY DATE FOR THE INITIAL BASE POLICY FACE AMOUNT AND FROM THE EFFECTIVE DATE OF THE INCREASE FOR A BASE POLICY FACE AMOUNT INCREASE.

<u>POLICY YEAR</u>	<u>PER \$1000 CHARGE</u>
1-20	<b>\$0.18746</b>

- THE MONTHLY COST FOR ANY RIDER(S) AS SHOWN ON THE DATA PAGES FOR SUCH RIDER(S)
- AN ADMINISTRATIVE FEE NOT TO EXCEED \$10.00 PER MONTH

MONTHLY DEDUCTION DAY - THIRTEENTH DAY OF EACH CALENDAR MONTH

**PREMIUM EXPENSE CHARGE**

A PREMIUM EXPENSE CHARGE IS DEDUCTED FROM EACH PLANNED AND UNPLANNED PREMIUM WHEN THAT PAYMENT IS RECEIVED. THE AMOUNT OF THE CHARGE IS DETERMINED BY APPLYING A PERCENTAGE TO THE PREMIUM AMOUNT PAID. THAT PERCENTAGE WILL NOT EXCEED THE AMOUNTS SET FORTH IN THE TABLE BELOW. THE ACTUAL PERCENTAGE APPLIED WILL VARY BY POLICY YEAR.

**GUARANTEED MAXIMUM PERCENTAGE**

POLICY YEAR	PREMIUM PAID LESS THAN OR EQUAL TO TARGET 1 PREMIUM	PREMIUM PAID GREATER THAN TARGET 1 PREMIUM BUT LESS THAN OR EQUAL TO TARGET 2 PREMIUM	PREMIUM PAID GREATER THAN TARGET 2 PREMIUM
1+	10%	10%	8%



**POLICY CHARGES**

**MONTHLY DEDUCTION CHARGE**

AS STATED IN SECTION 6.1, THE MONTHLY DEDUCTION CHARGE THAT IS DEDUCTED FROM THE CASH VALUE ON EACH MONTHLY DEDUCTION DAY CONSISTS OF:

- A MONTHLY COST OF INSURANCE FOR THE BASE POLICY
- A MONTHLY PER THOUSAND OF BASE POLICY FACE AMOUNT CHARGE, BASED ON ISSUE AGE, AND CLASS OF RISK, NOT TO EXCEED THE CHARGES INDICATED IN THE TABLE BELOW. THE POLICY YEARS FOR THIS CHARGE ARE MEASURED FROM THE POLICY DATE FOR THE INITIAL BASE POLICY FACE AMOUNT AND FROM THE EFFECTIVE DATE OF THE INCREASE FOR A BASE POLICY FACE AMOUNT INCREASE.

<u>POLICY YEAR</u>	<u>PER \$1000 CHARGE</u>
1-20	<b>\$0.18746</b>

- THE MONTHLY COST FOR ANY RIDER(S) AS SHOWN ON THE DATA PAGES FOR SUCH RIDER(S)
- AN ADMINISTRATIVE FEE NOT TO EXCEED \$10.00 PER MONTH

MONTHLY DEDUCTION DAY - THIRTEENTH DAY OF EACH CALENDAR MONTH

**PREMIUM EXPENSE CHARGE**

A PREMIUM EXPENSE CHARGE IS DEDUCTED FROM EACH PLANNED AND UNPLANNED PREMIUM WHEN THAT PAYMENT IS RECEIVED. THE AMOUNT OF THE CHARGE IS DETERMINED BY APPLYING A PERCENTAGE TO THE PREMIUM AMOUNT PAID. THAT PERCENTAGE WILL NOT EXCEED THE AMOUNTS SET FORTH IN THE TABLE BELOW. THE ACTUAL PERCENTAGE APPLIED WILL VARY BY POLICY YEAR.

**GUARANTEED MAXIMUM PERCENTAGE**

POLICY YEAR	PREMIUM PAID LESS THAN OR EQUAL TO TARGET 1 PREMIUM	PREMIUM PAID GREATER THAN TARGET 1 PREMIUM BUT LESS THAN OR EQUAL TO TARGET 2 PREMIUM	PREMIUM PAID GREATER THAN TARGET 2 PREMIUM
1+	10%	10%	8%

**INTEREST AND LOANS**

GUARANTEED INTEREST CREDITING RATE 2%

**CASH VALUE AND LOANS**

PRIOR TO THE POLICY ANNIVERSARY WHEN THE INSURED IS AGE 121, THE PORTION OF THE CASH VALUE THAT SECURES THE AMOUNT OF ANY UNPAID LOAN WILL RECEIVE INTEREST AT A RATE THAT IS NEVER LESS THAN 2% LOWER THAN THE EFFECTIVE ANNUAL LOAN INTEREST RATE. HOWEVER, BEGINNING ON THE POLICY ANNIVERSARY WHEN THE INSURED IS AGE 121, THE PORTION OF THE CASH VALUE THAT SECURES THE AMOUNT OF ANY UNPAID LOAN WILL RECEIVE INTEREST AT A RATE THAT IS EQUAL TO THE EFFECTIVE ANNUAL LOAN INTEREST RATE. THIS INTEREST RATE CAN BE CHANGED PERIODICALLY BUT IN NO EVENT WILL IT BE LESS THAN THE GUARANTEED INTEREST CREDITING RATE SHOWN ABOVE.

**ADDITIONAL POLICY INFORMATION**

THE MINIMUM BASE POLICY FACE AMOUNT FOR THIS POLICY, AS REFERRED TO IN THE PROVISIONS OF SECTION THREE AND SECTION FIVE, IS \$1,000,000.

THE MINIMUM PARTIAL SURRENDER AMOUNT, AS REFERRED TO IN THE PROVISIONS OF SECTION FIVE, IS \$500. THE SERVICE CHARGE TAKEN FOR ANY PAYMENT OF PARTIAL CASH SURRENDER VALUE BENEFITS, AS REFERRED TO IN THE PROVISIONS OF SECTION FIVE, IS \$25.

THE LIFE INSURANCE BENEFIT DISCOUNT FACTOR FOR THIS POLICY, AS REFERRED TO IN SECTION 6.2 IS 1.00205984.

THE MORTALITY TABLE REFERRED TO IN SECTION 8.14 IS THE COMMISSIONERS' 2001 STANDARD ORDINARY UNISEX (80% MALE) NON-SMOKER TABLE OF MORTALITY, ANB.

## TABLE OF MAXIMUM SURRENDER CHARGES

<u>Policy Year</u>	<u>Percentage Applied</u>	<u>Maximum Surrender Charges</u>
1	100.00%	\$90,000.00
2	93.33%	\$83,997.00
3	86.66%	\$77,994.00
4	79.99%	\$71,991.00
5	73.32%	\$65,988.00
6	66.65%	\$59,985.00
7	59.98%	\$53,982.00
8	53.31%	\$47,979.00
9	46.64%	\$41,976.00
10	39.97%	\$35,973.00
11	33.30%	\$29,970.00
12	26.63%	\$23,967.00
13	19.96%	\$17,964.00
14	13.29%	\$11,961.00
15	6.62%	\$5,958.00
16+	0.00%	\$0.00

THIS TABLE APPLIES TO THE INITIAL BASE POLICY FACE AMOUNT FOR THE NUMBER OF YEARS SHOWN ABOVE. ADDITIONAL CHARGES WILL APPLY TO EACH BASE POLICY FACE AMOUNT INCREASE AFTER THE EFFECTIVE DATE OF THE INCREASE. A NEW TABLE WILL BE PROVIDED FOR EACH BASE POLICY FACE AMOUNT INCREASE.

**SURRENDER CHARGE PREMIUM: \$90,000.00**

THE SURRENDER CHARGE PREMIUM IS AN AMOUNT BASED ON EACH \$1000 OF INITIAL BASE POLICY FACE AMOUNT. IT IS USED TO CALCULATE THE MAXIMUM SURRENDER CHARGES. THE SURRENDER CHARGE PREMIUM WILL CHANGE IF THE BASE POLICY FACE AMOUNT IS INCREASED OR DECREASED.

THE SURRENDER CHARGE IS CALCULATED AS THE LESSER OF:

- (A) 50% OF THE SUM OF THE TARGET 1 PREMIUMS FOR THE NUMBER OF YEARS THE POLICY HAS BEEN IN EFFECT; OR
- (B) THE APPLICABLE SURRENDER CHARGE PERCENTAGE (AS SHOWN IN THE ABOVE TABLE) OF THE SURRENDER CHARGE PREMIUM.



TABLE OF PERCENTAGES FOR LIFE INSURANCE BENEFIT  
FOR COMPLIANCE WITH IRC SECTION 7702  
CASH VALUE ACCUMULATION TEST (CVAT)

POLICY YEAR	PERCENT OF CASH VALUE	POLICY YEAR	PERCENT OF CASH VALUE
001	194%	041	100%
002	189%	042	100%
003	184%	043	100%
004	180%	044	100%
005	175%	045	100%
006	171%	046	100%
007	167%	047	100%
008	163%	048	100%
009	159%	049	100%
010	156%	050	100%
011	152%	051	100%
012	149%	052	100%
013	146%	053	100%
014	143%	054	100%
015	140%	055	100%
016	138%	056	100%
017	135%		
018	133%		
019	131%		
020	129%		
021	127%		
022	125%		
023	124%		
024	122%		
025	121%		
026	120%		
027	118%		
028	117%		
029	116%		
030	114%		
031	113%		
032	111%		
033	110%		
034	107%		
035	104%		
036	100%		
037	100%		
038	100%		
039	100%		
040	100%		

TABLE OF GUARANTEED MAXIMUM MONTHLY COST OF INSURANCE RATES  
FOR BASE POLICY  
(PER \$1,000 OF NET AMOUNT AT RISK)

CLASS OF RISK: NON-SMOKER

POLICY YEAR		POLICY YEAR	
001	1.2238470	041	47.2089488
002	1.3433229	042	51.7613030
003	1.4663817	043	56.8275340
004	1.5998467	044	62.3878163
005	1.7386573	045	68.6835589
006	1.9050483	046	75.7532212
007	2.0923474	047	83.3333333
008	2.3341994	048	83.3333333
009	2.5897387	049	83.3333333
010	2.8608289	050	83.3333333
011	3.1580488	051	83.3333333
012	3.4834411	052	83.3333333
013	3.8583821	053	83.3333333
014	4.2950429	054	83.3333333
015	4.7962379	055	83.3333333
016	5.3444548	056	83.3333333
017	5.9883916		
018	6.6704330		
019	7.3988789		
020	8.2083438		
021	9.1181870		
022	10.0948255		
023	11.2331070		
024	12.4548242		
025	13.7517260		
026	15.0675251		
027	16.1355465		
028	17.3818780		
029	18.8573958		
030	20.5737777		
031	22.5988261		
032	24.5539244		
033	26.7018332		
034	27.8868259		
035	29.5971645		
036	31.8472166		
037	34.0417817		
038	36.6025548		
039	39.6009699		
040	43.1205703		

THESE MAXIMUMS WILL BE INCREASED BY ANY FLAT EXTRA CHARGES THAT APPLY.

**WE & YOU**

In this policy, the words "we", "our" or "us" refer to New York Life Insurance and Annuity Corporation, and the words "you" or "your" refer to the Owner of this policy.

When you write to us, please include the policy number, the Insured's full name, and your current address.

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APPLICATION – Attached to the Policy

RIDERS OR ENDORSEMENTS  
(IF ANY) – Attached to the Policy

## SECTION ONE – LIFE INSURANCE BENEFITS

- 1.1 Life Insurance Proceeds** The amount of life insurance proceeds payable under this policy consists of:
- The Life Insurance Benefit of this policy, plus
  - The death benefit payable of any riders in effect on the Insured on the date of the Insured's death, less
  - Any unpaid loan and accrued loan interest.

The Life Insurance Benefit of this policy is based on the Life Insurance Benefit Option in effect on the date of death and the policy's Initial Base Policy Face Amount shown on the Policy Information Policy Data Page 2a. It will also reflect any changes to the Base Policy Face Amount in accordance with the provisions of this policy.

We will pay the life insurance proceeds to the beneficiary promptly when we have due proof that the Insured died on or after the Effective Date of this policy, subject to all of this policy's provisions. A claim for the life insurance proceeds must be made in writing to our Service Office or any other location that we indicate to you in writing.

- 1.2 Life Insurance Benefit Options** The Life Insurance Benefit payable under this policy will be determined in accordance with one of the following options. See Policy Data Page 2.2 for a table of the percentages referenced below.

**Option 1** – This option provides a Life Insurance Benefit equal to the greater of the Base Policy Face Amount of the policy or a percentage of the Cash Value equal to the minimum necessary for this policy to qualify as life insurance under Section 7702 of the Internal Revenue Code, as amended.

**Option 2** – This option provides a Life Insurance Benefit equal to the greater of the Base Policy Face Amount of the policy plus the Cash Value or a percentage of the Cash Value equal to the minimum necessary for this policy to qualify as life insurance under Section 7702 of the Internal Revenue Code, as amended.

**Option 3** – This option provides a Life Insurance Benefit equal to the greater of the Base Policy Face Amount of the policy plus the Adjusted Total Premium, or a percentage of the Cash Value equal to the minimum necessary for this policy to qualify as life insurance under Section 7702 of the Internal Revenue Code, as amended. See Section 4.6 for an explanation of the Adjusted Total Premium.

## SECTION TWO – OWNER AND BENEFICIARY

- 2.1 Owner** The owner of this policy is shown on the Policy Information Policy Data Page 2a. In this policy, the words "you" and "your" refer to the owner.
- 2.2 Change Of Ownership** You can change the owner of this policy in a form we provide. The form and any other requirements must be completed and signed by you. This change will take effect as of the date you signed the form, subject to any payment we made or action we took before recording the change. When this change takes effect, all rights of ownership will pass to the new owner. Changing the owner or successor owner cancels any prior choice of owner or successor owner, but does not change the beneficiary.
- 2.3 Successor Owner** A successor owner can be named in the application, or in a form we provide. The form and any other requirements must be completed and signed by you. If you die before the successor owner, the successor owner will become the new owner. If no successor owner survives you and you die before the Insured, your estate becomes the new owner.



## SECTION TWO – OWNER AND BENEFICIARY (Continued)

- 2.4 Beneficiary** The beneficiary for any life insurance proceeds is the person or entity named in the application, or in a notice you sign that gives us the information we need. If more than one beneficiary is named, they can be classed as first, second, and so on. If 2 or more are named in a class, their share in the proceeds is equal, unless you state otherwise. The stated shares will be paid to any first beneficiaries who survive the Insured. If no first beneficiaries survive, payment will be made to any beneficiary surviving in the second class, and so on.

If no beneficiary for either all or part of the proceeds survives the Insured, the right to those proceeds will pass to you. If you are deceased, this right will pass to your estate.

- 2.5 Change Of A Beneficiary** While the Insured is living, you can change a beneficiary by notifying us in writing. The notice must clearly state the beneficiary designation, be signed by you, and include the policy number and the name of the Insured. This change will take effect as of the date you signed the notice, subject to any payment we made or action we took before recording the change. For example, if we make any payment before we record the change, we will not have to make the payment again.
- 2.6 Simultaneous Death Of Insured And Beneficiary** Unless stated otherwise in the policy or in your signed notice that is in effect at the Insured's death, if any beneficiary dies at the same time as the Insured or within 15 days after the Insured but before we receive proof of the Insured's death, we will pay the proceeds as though that beneficiary died first.

## SECTION THREE – POLICY CHANGES

- 3.1 Policy Changes** After the first Policy Year, you can apply in writing to increase or decrease the Base Policy Face Amount (without changing the Life Insurance Benefit Option) as described in Sections 3.2 and 3.3, or to change the Life Insurance Benefit Option within the limits stated in Section 3.4. Changes can be made only while the Insured is living, and only if this policy would continue to qualify as Life Insurance as defined under Section 7702 of the Internal Revenue Code, as amended.

- 3.2 Base Policy Face Amount Increases** You can increase the Base Policy Face Amount once every 12 months. This increased amount of insurance is a Base Policy Face Amount Increase. Every Base Policy Face Amount Increase is subject to a \$5,000 minimum and a maximum not to exceed our policy retention limits. To effect a Base Policy Face Amount Increase, you must send us your written application, also signed by the Insured, together with any proof of insurability that we require. A Base Policy Face Amount Increase will take effect on the Monthly Deduction Day on or next following the date we approve the application for the increase. Any Base Policy Face Amount Increase that occurs automatically and without your request is not subject to evidence of insurability.

The Cost of Insurance and Monthly Per Thousand of Base Policy Face Amount Charge for a Base Policy Face Amount Increase will be based on the Insured's age and class of risk at the time the Base Policy Face Amount Increase takes effect. A new set of Surrender Charges will apply to the Base Policy Face Amount Increase. They will be shown on new Policy Data Pages we will send you when the Base Policy Face Amount Increase takes effect. New Contestable and Suicide Exclusion periods will apply for the Base Policy Face Amount Increase, beginning on the effective date of the Base Policy Face Amount Increase.

- 3.3 Base Policy Face Amount Decreases** You can decrease the Base Policy Face Amount only once every 12 months, provided the new Base Policy Face Amount meets the minimum Base Policy Face Amount requirement shown in the Additional Policy Information section on Policy Data Page 2d. This decreased amount of insurance is a Base Policy Face Amount Decrease. Any Base Policy Face Amount Decrease will take effect on the Monthly Deduction Day on or next following the date we receive your signed request. You should consult your Tax Advisor regarding the tax consequences of decreasing the Base Policy Face Amount.



## SECTION THREE – POLICY CHANGES (Continued)

The Base Policy Face Amount Decrease will first be applied to reduce the most recent Base Policy Face Amount Increase. It will then be applied to reduce other Base Policy Face Amount Increases in the reverse order in which they took place, and then to decrease the Initial Base Policy Face Amount.

When the Base Policy Face Amount is decreased, we will deduct any applicable Surrender Charge from the Cash Value. The Surrender Charge deduction will be equal to the difference between the Surrender Charge immediately before the decrease and the Surrender Charge immediately after the decrease. In assessing this Surrender Charge, we first take into account the Surrender Charge associated with any Base Policy Face Amount Increase in the reverse order made, and then the Initial Base Policy Face Amount.

- 3.4 Life Insurance Benefit Option Changes** Life Insurance Benefit Option changes will take effect on the Monthly Deduction Day on or next following the date we receive your signed request.

If you change from Option 1 to Option 2, the Base Policy Face Amount will be decreased by the Cash Value and any applicable Surrender Charge will be deducted.

If you change from Option 2 to Option 1, the Base Policy Face Amount will be increased by the Cash Value.

Changes to Option 3 will not be allowed at any time. However, you can change from Option 3 to Options 1 or 2. If you change from Option 3 to Option 1 the Base Policy Face Amount will be increased by the Adjusted Total Premium. If you change from Option 3 to Option 2 the Base Policy Face Amount will be increased by the Adjusted Total Premium and decreased by the Cash Value and any applicable Surrender Charge will be deducted. The Adjusted Total Premium is described in more detail in Section 4.6.

You can change the Life Insurance Benefit Option of this policy only once per policy year. Changes in the Life Insurance Benefit Option that would cause the Base Policy Face Amount to fall below the minimum Base Policy Face Amount requirement shown in the Additional Policy Information section on Policy Data Page 2d will not be permitted.

## SECTION FOUR – PREMIUMS

- 4.1 Premium Payments** You can make premium payments at any interval or by any method we make available at any time before the Policy Anniversary on which the Insured is age 121, and while the Insured is living. You can pay Planned Premiums and/or Unplanned Premiums. See Sections 4.2 and 4.3. Premiums are payable at our Service Office or at any other location that we indicate to you in writing. The Cash Value and Life Insurance Benefit under this policy are based on the amount and interval of the premiums that have been received by us. Please refer to Section Five – Cash Value and Loans for full details.
- 4.2 Planned Premium** Planned Premium refers to the amount and frequency of premium payments you selected for your premium payment schedule. The amount and interval of any Planned Premiums, as stated in the application, are shown on the Premium Information Policy Data Page 2b. The first Planned Premium is payable as of the Policy Date. A Planned Premium does not have to be paid to keep this policy in effect provided the Cash Surrender Value is sufficient to cover the charges made on the Monthly Deduction Day. Payment of the Planned Premium alone may not guarantee that coverage will remain in effect. The amount and frequency of any Planned Premium can be increased or decreased subject to the limits we set. However, in no event can the Planned Premium be an amount that would jeopardize the policy continuing to qualify as Life Insurance, as defined under Section 7702 of the Internal Revenue Code, as amended (See Section 4.4). Planned Premiums cannot be paid on or after the Policy Anniversary on which the Insured is age 121.



## SECTION FOUR – PREMIUMS (Continued)

- 4.3 Unplanned Premiums** Unplanned Premiums are premium payments you can make in addition to or in place of a Planned Premium. You can make an Unplanned Premium payment up to 12 times per policy year provided the Unplanned Premium payment is at least \$50. It cannot be an amount that would jeopardize the policy continuing to qualify as Life Insurance as defined under Section 7702 of the Internal Revenue Code, as amended. This limitation is further described in Section 4.4 below. The Insured must be living and payment must be made prior to the Policy Anniversary on which the Insured is age 121. If an Unplanned Premium payment would result in an increase in the Life Insurance Benefit greater than the increase in the Cash Value, we will require proof of insurability before accepting that payment and applying it to the policy. A written application will be required and a copy of the application will be placed in the policy and made a part of it. Any unplanned payment not specifically designated as an Unplanned Premium payment or a loan repayment will be credited to the policy as an Unplanned Premium.
- 4.4 Premium Payment Limitations** In addition to the limits described in Sections 4.1, 4.2 and 4.3, premium payments are also limited by the premium test choice you made when you applied for this policy. These premium tests are used to determine whether an insurance policy meets the definition of life insurance under Section 7702 of the Internal Revenue Code, as amended.
- (1) The Guideline Premium Test (or GPT) allows you to maintain a higher level of Cash Value in relation to the death benefit. If you chose this test and the premium you pay during any policy year exceeds the maximum permitted under this Internal Revenue Code test, we will return any such excess within 60 days after the end of the policy year, with interest at a rate of not less than the guaranteed rate shown on the Interest And Loans Policy Data Page 2d.
  - (2) The Cash Value Accumulation Test (or CVAT) allows you to maintain a higher level of death benefit in relation to Cash Value.

The test you chose is shown on Policy Data Page 2.2 and cannot be changed.

- 4.5 Premium Expense Charge** A Premium Expense Charge is a premium charge that is deducted from each Planned and Unplanned Premium when that payment is received. The amount after the Premium Expense Charge is deducted will be allocated to the policy's cash value. This charge is defined as a percentage of premium and the percentage(s) used for this purpose will not exceed the percentage(s) shown in the Premium Expense Charge section on Policy Data Page 2c.
- 4.6 Adjusted Total Premium** The Adjusted Total Premium is equal to the total Planned and Unplanned Premium payments made, less the total partial surrenders taken under the policy. Reductions in premium payments due to partial surrenders will never cause this amount to be less than zero. The Adjusted Total Premium is used to calculate the Life Insurance Benefit under Life Insurance Benefit Option 3.
- 4.7 Late Period** If, on a Monthly Deduction Day, the Cash Surrender Value is less than the Monthly Deduction Charge for the next policy month, the policy will continue for a Late Period of 62 days after that Monthly Deduction Day. If we do not receive payment before the end of the Late Period, the policy will end and there will be no more benefits under the policy or any attached riders. To inform you of this event, we will mail a notice to you at your last known address at least 31 days before the end of the Late Period. We will also mail a copy of the notice to the last known address of any assignee on our records.

If the Insured dies during the Late Period, we will pay the life insurance proceeds to the beneficiary. These proceeds will be reduced by the amount of any unpaid loan and accrued loan interest. They will also be reduced by the Monthly Deduction Charges for the full policy month or months that run from the beginning of the Late Period through the policy month in which the Insured died.



## SECTION FOUR – PREMIUMS (Continued)

- 4.8 Reinstatement** Within 5 years after this policy has ended, you can apply, in writing, to reinstate the policy (and any other benefits provided by riders) if you did not surrender it. If the required payment is made within 31 days after the end of the Late Period, no proof of insurability is required. If not, when you apply for reinstatement, you must provide proof of insurability that is acceptable to us. A written application will be required and a copy of the application will be placed in the policy and made a part of it.

To reinstate this policy, a payment that is sufficient to keep this policy in effect for at least 2 months must be made. This payment will be in lieu of the payment of all premiums in arrears. If this policy is reinstated, we will reinstate the Cash Value and the Surrender Charge corresponding to the date of reinstatement, less any unpaid loan if not repaid. The Table of Maximum Surrender Charges and the Surrender Charge that are applicable at the time of reinstatement will be the same as they would have been had the Base Policy not lapsed. Any unpaid loan can also be repaid, together with loan interest at the current loan interest rate compounded once each year from the end of the Late Period to the date of reinstatement.

The date of reinstatement is the Monthly Deduction Day on or next following the date we approve your signed request for reinstatement.

## SECTION FIVE – CASH VALUE AND LOANS

- 5.1 Cash Value** On the Policy Date, the Cash Value is determined by subtracting the Monthly Deduction Charge and the Premium Expense Charge for the initial premium, if the initial premium was paid by the Policy Date.

On each Monthly Deduction Day after the Policy Date, the Cash Value is determined as follows:

- (1) From the Cash Value as of the prior Monthly Deduction Day, subtract any partial Cash Surrender Value benefits paid, less any service or other charges made since that day.
- (2) Add all premium payments received since the prior Monthly Deduction Day less any Premium Expense Charge.
- (3) Add to this sum any interest credited for the prior month.
- (4) Subtract the Monthly Deduction Charge.

On any other day, the Cash Value is determined as follows:

- (1) From the Cash Value, as of the prior Monthly Deduction Day, subtract any partial Cash Surrender Value benefits paid, less any service or other charges made since that day.
- (2) Add all premium payments received since the prior Monthly Deduction Day, less any Premium Expense Charge.
- (3) Add to this sum any interest credited to the Cash Value for the number of days since the prior Monthly Deduction Day.

- 5.2 Interest Crediting** Interest is credited to the Cash Value. This interest is based on a rate(s) of interest that we declare periodically. Such rate(s) will be declared at least once annually and will never be less than the guaranteed rate shown on the Interest And Loans Policy Data Page 2d.

We begin crediting interest on any premium payment, after deducting the applicable Premium Expense Charge, on the date that the premium payment is received by our Service Office.

- 5.3 Full Surrender** When this policy has Cash Value, and while the Insured is living, you can surrender it for the Cash Surrender Value. The Cash Surrender Value is equal to the Cash Value less any Surrender Charges that may apply, less any unpaid loan and accrued loan interest. A Table of Maximum Surrender Charges is shown on Policy Data Page 2.1. The Cash Value, Surrender Charges and Cash Surrender Value will be calculated as of the date on which we receive your signed request. All insurance will end on the date we receive your surrender request.

## SECTION FIVE – CASH VALUE AND LOANS (Continued)

It may happen that a premium payment is paid after a Monthly Deduction Day and we then receive your signed request for surrender proceeds before the next Monthly Deduction Day. In this case, that premium payment will be included as part of the surrender proceeds.

- 5.4 Partial Surrender** You can request a partial surrender by sending us your signed request at our Service Office. This request must be received while the Insured is living. The lesser of \$500 of Cash Surrender Value or an amount equal to 2 Monthly Deduction Charges must remain after we pay this amount. The minimum partial surrender amount is shown in the Additional Policy Information section of Policy Data Page 2d.

When you take a partial surrender, the Cash Value and Cash Surrender Value will be reduced by the amount of the surrender.

### Life Insurance Benefit Option 1

The Base Policy Face Amount will be reduced by the difference between:

- (a) the amount of the surrender; and
- (b) the greater of:
  - (i) the Cash Value of the policy immediately prior to the surrender, minus the Base Policy Face Amount divided by the applicable percentage, as shown on Policy Data Page 2.2, for the Insured's age at the time of surrender, or
  - (ii) zero.

If the above results in zero or a negative amount, there will be no adjustment in the Base Policy Face Amount.

### Life Insurance Benefit Option 2

A partial surrender will not affect the Base Policy Face Amount.

### Life Insurance Benefit Option 3

- The Adjusted Total Premium will be reduced by the amount of the surrender proceeds. A reduction of the Adjusted Total Premium will never cause the Adjusted Total Premium to be less than zero.
- Where the Adjusted Total Premium amount is less than the amount of the surrender, the Base Policy Face Amount will be reduced by the difference between:
  - (a) the amount of the surrender less the Adjusted Total Premium amount immediately prior to the surrender; and
  - (b) the greater of:
    - (i) the Cash Value of the policy immediately prior to the surrender, less the Adjusted Total Premium, minus the Base Policy Face Amount divided by the applicable percentage shown on Policy Data Page 2.2, for the Insured's age at the time of surrender, or
    - (ii) zero.

If the above results in zero or a negative amount, there will be no adjustment in the Base Policy Face Amount.

### Decrease In Base Policy Face Amount

Any decrease in Base Policy Face Amount caused by payment of a partial surrender will first be applied against the most recent Base Policy Face Amount Increase. It will then be applied to other Base Policy Face Amount Increases in the reverse order in which they took place, and then to the Initial Base Policy Face Amount.

Proceeds from a partial surrender will be determined as of the date we receive your signed request at our Service Office in any method acceptable to us. Each time you make a partial surrender of the Cash Surrender Value, we will deduct a service charge from the Cash Value that remains under this policy. If a partial surrender would cause the Base Policy Face Amount to drop below our minimum Base Policy Face Amount requirement, we reserve the right to require a full surrender. The amount of the service charge and the minimum Base Policy Face Amount are shown in the Additional Policy Information section on Policy Data Page 2d.



## SECTION FIVE – CASH VALUE AND LOANS (Continued)

- 5.5 Surrender Charge** For the number of years shown on Policy Data Page 2.1, a Surrender Charge will be deducted from the Cash Value when there is a full surrender and any time the Base Policy Face Amount is decreased, whether due to a partial surrender of the Cash Surrender Value, a change in the Life Insurance Benefit Option or requested decreases in the Base Policy Face Amount. The Surrender Charge applied will be based on the lesser of a percent of the cumulative Target 1 Premiums or the Surrender Charge Premium but will never be more than the maximum charges shown on the Table of Maximum Surrender Charges on Policy Data Page 2.1. A separate Surrender Charge is calculated for the Initial Base Policy Face Amount and for each Base Policy Face Amount Increase.
- 5.6 Loan Value** You can borrow any amount up to the loan value of this policy using this policy as sole security. The loan value on any given date is equal to the Cash Surrender Value, less one Monthly Deduction Charge, and less loan interest on the new loan and any outstanding loans to the next Monthly Deduction Day. You may wish to consult your Tax Advisor prior to taking a loan under this policy.
- 5.7 Loan Interest** Loan interest accrues each day and is payable on the anniversary, the date of death, the date of surrender, the date the policy ends, or on the date of a loan increase or loan repayment and any other date we specify. Loan interest not paid when due will become part of the loan and will also bear interest.
- 5.8 Loan Interest Rate** Unless we set a lower rate for any period, the effective annual loan interest rate is 6%, which is payable in arrears. Loan interest for the policy year in which a loan is taken will be due on the next policy anniversary. We will determine this rate at least once every 12 months, but not more frequently than once in any 3 month period.

If we have set a rate lower than 6% per year, any subsequent increase in the interest rate will be subject to the following conditions:

- (1) The effective date of any increase in the interest rate shall not be earlier than one year after the effective date of the establishment of the previous rate.
- (2) The amount by which the interest rate can be increased will not exceed one percent per year, but the rate of interest shall in no event ever exceed 6%.
- (3) We will give notice of the interest rate in effect when a loan is made and when sending notice of loan interest due.
- (4) If a loan is outstanding 40 days or more before the effective date of an increase in the interest rate, we will notify you of that increase at least 30 days prior to the effective date of the increase.
- (5) We will give notice of any increase in the interest rate when a loan is made during the 40 days before the effective date of the increase.

This policy will not lapse in a given policy year solely as a result of a change in the loan interest rate during that policy year.

- 5.9 Loan Repayments** All or part of an unpaid loan and accrued loan interest can be repaid before the Insured's death or before we pay the full Cash Surrender Value benefit. We will deduct any unpaid loan and accrued loan interest when life insurance or full Cash Surrender Value proceeds are paid. A payment not designated as a loan repayment will not be credited to the policy as a loan repayment.

If a loan is outstanding when full Cash Surrender Value proceeds are paid, the Cash Surrender Value reflects a deduction of any outstanding policy loan and accrued loan interest. It may happen in a given policy year that, based on the loan interest rate in effect when that year began (ignoring any subsequent increase in the rate during that year), any unpaid loan plus accrued loan interest exceeds the Cash Value of this Base Policy less Surrender Charges. In that event, we will mail a notice to you at your last known address, and a copy to the last known assignee on our records. If the unpaid loan plus accrued loan interest in excess of the Cash Value less Surrender Charges is not paid within that 31 days, all insurance will end 31 days after the date on which we mail that notice to you.

However, if a higher interest rate or rates take effect during the policy year, this policy will not end any sooner than it would have if the rate had not changed.



## SECTION FIVE – CASH VALUE AND LOANS (Continued)

- 5.10 Loan And Surrender Payment Deferral** We can defer paying you any partial or full Cash Surrender Value benefits, or defer any loan proceeds unless such payment will be made to pay premiums on policies in effect with the company for up to 6 months from the date we receive your request. Interest will be paid on any amount deferred beyond that date. We will set the interest rate to a rate that will not be less than required by law.

## SECTION SIX – CALCULATION OF MONTHLY DEDUCTION CHARGE

- 6.1 Monthly Deduction Charge** On each Monthly Deduction Day, the following deductions are made:

- (a) the monthly Cost of Insurance for this Base Policy;
- (b) a monthly per thousand Base Policy Face Amount charge;
- (c) the monthly cost for any riders attached to this Base Policy;
- (d) any applicable Base Policy administrative fee.

Additional details regarding the specific Monthly Deduction Charges that apply to this Base Policy and any rider(s) attached to this Base Policy are shown on the Policy Charges Policy Data Page or the applicable Rider Data pages, respectively.

In some cases, an extra deduction may be required due to an Insured's circumstances, including but not limited to their medical condition, occupation, motor vehicle or aviation record. These deductions are referred to as flat extras. The amount and duration of these flat extras, if any, are shown in a footnote on the Policy Data pages.

The Monthly Deduction Day for this policy is shown on the Policy Charges Policy Data Page 2c. The first Monthly Deduction Day is the Issue Date of the policy. If the Issue Date and the Policy Date of the policy are different, deductions made on the Issue Date will include the monthly deductions that would have been made on each Monthly Deduction Day for the period from the Policy Date to the Issue Date, as if the policy were issued on the Policy Date.

- 6.2 Cost Of Insurance Calculation** The Cost of Insurance for the Initial Base Policy Face Amount is equal to (1) multiplied by the result of (2) minus (3), where:

- (1) is the monthly Cost of Insurance rate per \$1,000 of net amount at risk;
- (2) is the number of thousands of Life Insurance Benefit (as defined in the applicable Option 1, Option 2 or Option 3 in Section One) divided by the Life Insurance Benefit Discount Factor shown on the Additional Policy Information section of Policy Data Page 2d; and
- (3) is the number of thousands of Cash Value as of the Monthly Deduction Day (before this Cost of Insurance and the monthly cost of any Monthly Deduction Waiver rider, and after any applicable administrative fee and the monthly cost of any other riders, are subtracted).

The Net Amount at Risk is (2) minus (3).

The calculation for Cost of Insurance charges is performed for each Base Policy Face Amount Increase, in the order in which the increases were made, by using the formula stated above.

However, the value for (3) that is used in the calculation of the Cost of Insurance charges for the first Base Policy Face Amount Increase will be zero, unless the value calculated for (3) according to the formula above is greater than the value that was used to determine the value for (2) when the Cost of Insurance for the Initial Base Policy Face Amount was calculated.

When the value calculated for (3) is greater than the value that was used for (2) in the calculation of Cost of Insurance charges for the Initial Base Policy Face Amount, the difference between these two values will be used as the value for (3) when performing the calculation for the Cost of Insurance charges for the first Base Policy Face Amount Increase.



## SECTION SIX – CALCULATION OF MONTHLY DEDUCTION CHARGE (Continued)

Additionally, for the calculation of Cost of Insurance charges for each subsequent Base Policy Face Amount Increase, the value to be used for (3) for the formula above will be equal to zero unless the value calculated for (3) is greater than the value that was used for (2) when the Cost of Insurance calculation was performed on the Base Policy Face Amount Increase immediately preceding it.

When the value calculated for (3) is greater than the value that was used for (2) in the Cost of Insurance charge calculation for the Base Policy Face Amount Increase immediately preceding it, the difference between these two values will be used as the value for (3) when performing this calculation.

- 6.3 Cost Of Insurance Rate** The rates used to calculate the Cost of Insurance for the Initial Base Policy Face Amount and for each Base Policy Face Amount Increase are based on the Insured's age and class of risk at the time the Initial Base Policy Face Amount or Base Policy Face Amount Increase took effect. They will be based on future expectations for investment income, mortality, persistency, taxes and expenses and will be in accordance with the procedures and standards on file with the insurance department in the state or district in which this policy is delivered.

The monthly rates that apply to the Cost of Insurance for the Initial Base Policy Face Amount at all ages will not be greater than the maximum rates shown in the Table of Guaranteed Maximum Monthly Cost of Insurance Rates shown on Policy Data Page 2A attached to this policy. The actual rate will be set by us, in advance, at least once a year. Any change in the Cost of Insurance rate will be on a uniform basis for Insureds of the same classification, such as attained age and class of risk. Any change in these rates will be based on future expectations for investment earning, mortality, persistency, taxes and expenses.

For each Base Policy Face Amount Increase that is based on the same class of risk as the Initial Base Policy Face Amount, the monthly rates that apply to the Cost of Insurance for the Base Policy Face Amount Increase will not be greater than the table of maximum rates attached to this policy. However, if the class of risk for a Base Policy Face Amount Increase is different than the class of risk for the Initial Base Policy Face Amount, we will furnish you with the applicable Table of Guaranteed Maximum Monthly Cost of Insurance Rates for that increase.

- 6.4 Monthly Per Thousand Of Base Policy Face Amount Charge Calculation** The Monthly Per Thousand of Base Policy Face Amount Charge is calculated each month on each Monthly Deduction Day. We do this even if a premium payment is not made in that month.

The Monthly Per Thousand of Base Policy Face Amount Charge is calculated for the Initial Base Policy Face Amount of insurance by multiplying the Per \$1000 Charge for the appropriate year by the number of thousands of the Initial Base Policy Face Amount. The applicable Per \$1000 Charge for any Policy Year will not be greater than the maximum rate shown on the Policy Charges Policy Data Page 2c.

The Monthly Per Thousand of Base Policy Face Amount Charge is calculated separately for each Base Policy Face Amount Increase by multiplying the Per \$1000 Charge for the appropriate year by the number of thousands for each respective Base Policy Face Amount Increase. The applicable Per \$1000 Charge for any policy year will not be greater than the maximum rate shown on the Policy Charges Policy Data Page 2c.

- 6.5 Monthly Per Thousand Of Base Policy Face Amount Charge** The Monthly Per Thousand of Base Policy Face Amount Charge for the Initial Base Policy Face Amount is based on the Insured's age and class of risk at the time of issue. The Monthly Per Thousand of Base Policy Face Amount Charge for each Base Policy Face Amount Increase is based on the Insured's age and class of risk at the time that Increase took effect.

- 6.6 Monthly Rider Costs** The monthly cost of any rider attached to this policy is described on the Rider Data Pages for such rider(s).



## SECTION SEVEN – PAYMENT OF POLICY PROCEEDS

- 7.1 Payment Of Policy Proceeds** The proceeds of this policy will be paid in one sum. Such life insurance proceeds will bear interest computed daily from the date of the Insured's death to the date of payment. Any claims made under this policy will be settled within 60 days of receipt of due proof of death. If settlement is made after the first 30 days of receipt of due proof of death, it will bear interest at a rate prescribed by Montana law from the 30<sup>th</sup> day until a settlement is made.

## SECTION EIGHT – GENERAL PROVISIONS

- 8.1 Entire Contract** The entire contract consists of this Base Policy, any attached riders or endorsements, and the attached copy of the application. Also, any application used to modify this Base Policy, (including but not limited to a request for a Base Policy Face Amount Increase or a Base Policy Face Amount Decrease, to add a rider to the Base Policy, or required under the terms of Section 4.3 or Section 4.8 of this Base Policy) will be attached to and made a part of this policy. Only our Chairman, President, Secretary, or one of our Vice Presidents is authorized to change the contract, and then, only in writing. No change will be made to this contract without your consent. No agent is authorized to change this contract.
- 8.2 Information Provided In The Application** In issuing this Base Policy, we have relied on the statements made in the application. All such statements are deemed to be representations and not warranties. We assume these statements are true and complete to the best of the knowledge and belief of those who made them. No statement made in connection with the application will be used by us to void this Base Policy unless that statement is a material misrepresentation and is part of the application.
- 8.3 Contestable Period** We will not contest this Base Policy, based on the Initial Base Policy Face Amount, after this Base Policy has been in effect during the lifetime of the Insured for 2 years from the Issue Date.

A Base Policy Face Amount Increase as described in Section Three – Policy Changes or an Unplanned Premium payment as described in Section Four – Premiums may occur. In these cases, the 2 year contestable period for each Base Policy Face Amount Increase or increase in life insurance benefit resulting from an Unplanned Premium payment will begin on the effective date of such increase or payment. We can contest only on the basis of those statements made in the application for such Base Policy Face Amount Increase or Unplanned Premium payment. No new contestable period will apply if the Base Policy Face Amount Increase was due solely to a change in the Life Insurance Benefit Option.

We will not contest the payment of the life insurance proceeds, based on a Base Policy Face Amount Increase, after such increase has been in effect for 2 years from the effective date of a Base Policy Face Amount Increase during the lifetime of the Insured. We will not contest the payment of any life insurance proceeds attributable to the difference in rates due to a reclassification after such reclassification has been in effect for 2 years from the effective date of a reclassification during the lifetime of the Insured. We will require evidence of insurability in cases of reclassification.

If this policy ends, and is reinstated, we will not contest this policy after it has been in effect during the lifetime of the Insured for 2 years from the date of reinstatement.

- 8.4 Suicide Exclusion** Suicide of the Insured, while sane or insane, within 2 years of the Issue Date, is not covered by this Base Policy. In that event, this Base Policy will end and the only amount payable will be the premiums paid to us, less any unpaid loan and accrued loan interest and any partial surrender benefits paid.

A Base Policy Face Amount Increase as described in Section Three – Policy Changes may occur. In this case, the 2 year suicide exclusion period for each Base Policy Face Amount Increase will begin on the effective date of such increase. If the suicide exclusion period applies to such an increase, the only amount payable with respect to that Base Policy Face Amount Increase will be the total Cost of Insurance we deducted for the Base Policy Face Amount Increase. No new suicide exclusion period will apply if the Base Policy Face Amount Increase was due solely to a change in the Life Insurance Benefit Option.



## SECTION EIGHT – GENERAL PROVISIONS (Continued)

**8.5 Policy Date** The Policy Date is the date from which premiums and charges are calculated and become due. Except for the first Monthly Deduction Day, which is described in Section 6.1, the Monthly Deduction Day for this Base Policy will be the same calendar day each month, as determined by the Policy Date.

The Policy Date is also the date from which policy years, months and anniversaries are measured, unless otherwise stated.

Unless another date is chosen, as described below, the Policy Date is determined as follows:

- (1) If you paid the initial premium with your application and obtained a temporary coverage agreement, the Policy Date will be the date of the temporary coverage agreement.
- (2) If you did not pay the initial premium and therefore no temporary coverage agreement was obtained, the Policy Date will be the date the policy is issued by the Company for delivery, known as the Issue Date.

Both the Policy Date and the Issue Date are shown on the Policy Information Policy Data Page 2a.

If the Base Policy was issued prior to the date you paid your first premium, the Policy Date will be earlier than the Effective Date. The Policy Date can be chosen to correspond to the definition of the Effective Date, as described on the cover page of this Base Policy. You can request another date if it is preferable to pay premiums on that date or have policy values accrue as of that date, by providing us with your signed request.

- 8.6 Calculation Of Age** When we refer to a person's age in this Base Policy on a Policy Anniversary, we mean his or her age on the birthday that is nearest that date. At any other time, age means the age on the birthday nearest to the previous Policy Anniversary.
- 8.7 Misstatement Of Age** If you misstate the age of the insured, we will adjust any Cash Value proceeds, Cash Surrender Value proceeds and life insurance proceeds, up or down, to reflect the correct age. The amount of the Life Insurance Benefit will be the amount that would be purchased by the most recent mortality charge at the correct age.
- 8.8 Assignment** While the Insured is living, you can assign this Base Policy, or any interest in it. If you do this, your interest, and anyone else's is subject to that of the assignee. As owner, you still have the rights of ownership that have not been assigned.
- An assignee cannot change the owner or beneficiary of this Base Policy, and cannot elect or change an optional method of payment of proceeds. Any amount payable to the assignee will be paid in one sum.
- You must provide us with a copy of the assignment. We are not responsible for the validity of any assignment. Any assignment will be subject to any payment we make or other action we take before we record the assignment.
- 8.9 Protection Against Creditors** Payments we make under this Base Policy are, to the extent the law permits, exempt from the claims, attachments, or levies of any creditors.
- 8.10 Payments To Company** Any payment made to us by check or money order must be payable to New York Life Insurance and Annuity Corporation. When asked, we will provide a countersigned receipt, signed by our President or Secretary, for any premium paid to us.
- 8.11 Conformity With Law** The provisions of this policy are subject to all Montana Laws, which apply and control over conflicting statutes of any state in which the Insured resides on or after the effective date of this policy.
- 8.12 Dividends** This is a non-participating policy on which no dividends are payable.



## SECTION EIGHT – GENERAL PROVISIONS (Continued)

**8.13 Policy Report** Each policy year after the first, while this Base Policy is in effect and the Insured is living, we will send a written report to you within 30 days after the Policy Anniversary. It will show, as of that Anniversary, the Cash Value, the Cash Surrender Value and the amount of any unpaid loan and accrued loan interest. This report will also give you any other facts required by state law or regulation.

**8.14 Basis For Computation Of Policy Values** All minimum Cash Surrender Values and maximum Cost of Insurance rates referred to in this Base Policy are based on the mortality table referred to in the Additional Policy Information section on Policy Data Page 2d. This mortality table applies if the Insured is in a standard or better class of risk. Separate scales of maximum Cost of Insurance rates apply to substandard class of risk. Semi-continuous functions are used, with interest at the Guaranteed Interest Crediting Rate shown on the Interest And Loans Policy Data Page 2d.

We have filed a statement with the insurance official in the state or district in which this policy is delivered that describes, in detail, how we compute policy benefits and Cash Surrender Values. These policy benefits and Cash Surrender Values are at least those required by the law of the state or district where the policy was delivered.

**8.15 Other Exchange Privileges** From time to time, at our option based on rules applicable to all policyowners in a class, we may offer you the right to exchange your policy for a new policy that was not available on the date your policy was issued.

**8.16 Age 121 Policy Anniversary** Beginning on the Policy Anniversary on which the Insured is age 121:

- If the Cash Value is less than the Life Insurance Benefit, it will be increased to equal the Life Insurance Benefit. The Life Insurance Benefit will not be changed.
- No further Planned or Unplanned Premiums will be allowed and no further monthly deductions will be made from the Cash Value.
- The Cash Value will continue to accumulate interest.
- Loan interest will continue to accrue at the current loan interest rate but no new policy loans can be requested.
- Partial surrenders and loan repayments will continue to be allowed.
- Changes to the Life Insurance Benefit Option will not be allowed.
- The policy can be surrendered for its Cash Surrender Value proceeds by submitting to us a signed written request that gives us the information we need.
- Any insurance on an Other Covered Insured, provided by a rider attached to the policy, that is still in effect, will end. However, if an Other Covered Insured is younger than age 70 when the rider ends, the owner can convert the term insurance at that time as described in the rider.
- Any other riders attached to the policy will also end.

This policy may not qualify as life insurance after the Insured's attained age 121 under federal tax law and the policy may be subject to adverse tax consequences. You should consult your Tax Advisor before choosing to continue the policy after age 121.

**8.17 Duty To Cooperate** We will pay or deny a claim within 30 days after receipt of due proof of death unless we make a reasonable request for additional information or documents to evaluate the claim. If we make such a request, we will pay or deny the claim within 60 days of receiving the due proof of death unless we notify the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless we have a reasonable belief that insurance fraud has been committed and we have reported the possible insurance fraud to the commissioner. You, the applicant, the insured and the beneficiary under this policy all have a duty to cooperate with us in the underwriting of this policy and in the investigation of any claim for benefits under the policy, including any attached riders. The duty to cooperate includes but is not limited to providing signed authorizations in the form we request and without time limitations, for the release of information concerning all representations made in connection with the application, including medical condition, and history and financial and employment information. Signed authorizations provided in connection with the underwriting of this policy or the investigation of any claim for benefits under this policy will comply with Montana laws which apply and will be in effect for the length of time stated in the authorization form.

# ENDORSEMENT

## INCONTEST- ABILITY AND SUICIDE EXCLUSION PROVISIONS

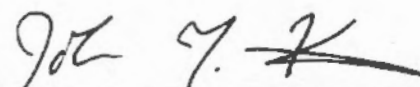
This policy is issued as the result of a term conversion.

Thus, but only for the face amount being converted, the period of time stated in this policy's Incontestability and Suicide Exclusion provisions starts on the date of issue of the term coverage.

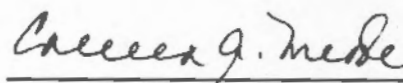
However, on some cases, the new policy may be issued with the rider or with an additional amount of insurance which you requested and which required our agreement. If this happens, the time periods for that rider or amount will start instead on the date of issue of the new policy.

### NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION

By



President



Secretary

# ENDORSEMENT

1000A

## EXCESSIVE RISK PREMIUM PURCHASE OPTION (RPO)

This endorsement provides the insured with the right to purchase additional coverage under the plan provided the annual premium for the additional coverage does not exceed a certain percentage of the annual premium for the existing coverage. The insured may exercise this option at any time during the term of the plan.

By purchasing this endorsement, you agree to the following terms:

1. The maximum amount of additional coverage that may be purchased under this endorsement is limited to the amount of the annual premium for the existing coverage.

2. The maximum amount of additional coverage that may be purchased under this endorsement is limited to the amount of the annual premium for the existing coverage.

3. The annual premium for the additional coverage shall be determined by the insurer based on the risk associated with the additional coverage. The annual premium for the additional coverage shall be payable in advance.

4. The insured shall be responsible for the payment of the annual premium for the additional coverage. The insured shall be responsible for the payment of the annual premium for the additional coverage. The insured shall be responsible for the payment of the annual premium for the additional coverage.

5. The insured shall be responsible for the payment of the annual premium for the additional coverage. The insured shall be responsible for the payment of the annual premium for the additional coverage.

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## RIDER

### SPOUSE'S PAID-UP INSURANCE PURCHASE OPTION (SPPO)

1. **Benefit** When this rider is in effect, and the Insured covered under the Base Policy dies, the eligible applicant shown in Section 2 below can purchase a new single premium paid-up whole life insurance policy (the "New Policy") on the Insured's Spouse. Evidence of insurability on the New Policy is not needed, subject to the terms and conditions of this rider. The Company must receive the application for the New Policy within 90 days after the Insured's death while the Insured's Spouse must be alive.
2. **Eligibility** One of the following eligible applicants can purchase the New Policy:
  - a.) The Insured's Spouse, who is a Beneficiary for all or part of the Base Policy Life Insurance Proceeds (the "Life Proceeds"), as defined in Section 3 below.
  - b.) The Owner, who is a Beneficiary for all or part of the Life Proceeds and is not the Insured's Spouse (the "Third Party").
  - c.) The Owner, who is a Trust and a Beneficiary for all or part of the Life Proceeds. The Trust must be authorized by its terms to purchase insurance on the life of the Insured's Spouse. The Company has the right to obtain a copy of the Trust document.
3. **Amount Of New Insurance** The maximum face amount of the New Policy that can be purchased under this rider is the lesser of: (a) \$5 million or (b) the Life Proceeds payable in one sum to which the eligible applicant is entitled as the Beneficiary, subject to the Company's minimum amount requirements. If the eligible applicant as Beneficiary receives only part of the Life Proceeds, then that amount is the maximum that can be purchased.

The Life Proceeds is the amount, defined below, payable under the terms of the Base Policy. The Life Proceeds equals the sum of:

  - a.) The proceeds from the Base Policy, prior to deducting any unpaid loan; and
  - b.) Any riders on the same Insured, as defined in the Base Policy, attached to this policy excluding accidental death benefits; and
  - c.) Any dividends, if applicable.
4. **Premium For New Policy** The single premium amount for the New Policy is based on the Insured Spouse's age on the Effective Date of the New Policy, as defined in Section 8. As payment for the New Policy, we will reduce the Life Proceeds payable to the eligible applicant shown in Section 2 above by the single premium. If these proceeds are not sufficient to pay the entire single premium, the balance of that premium must be paid to us before the New Policy will take effect. A Table of Single Premium amounts for the New Policy is shown on this rider's data page. (These amounts are shown on a per \$1,000 basis.)
5. **Availability Of Riders** Riders are not available on the New Policy.
6. **Values** The New Policy has cash value and loan value. It is eligible for dividends, but it is not expected that any dividends will be payable.
7. **Application For New Policy** The application to purchase the New Policy can be submitted before we have paid the Life Proceeds to the eligible applicant.

The Company must receive the application signed by the Insured's Spouse and all other required signatures while the Insured's Spouse is living and within 90 days after the Insured's death.

(over)

**SPOUSE'S PAID-UP INSURANCE PURCHASE OPTION (SPPO)**  
(Continued)

- 8. Issuance Of New Policy** The New Policy will be a single premium paid-up whole life insurance policy issued by New York Life Insurance Company. The New Policy is made available only under the terms of this rider.

The Insured's Spouse must be alive on the Effective Date of the New Policy. The Effective Date of the New Policy will be the later of:

- a.) The date we receive the application which is signed by the Insured's Spouse and eligible applicant if different, while that Insured's Spouse is alive and within 90 days after the Insured's death;
- b.) The date we determine the Life Proceeds payable to the Insured's Spouse or Owner-Beneficiary; or
- c.) The date we receive the entire single premium for the New Policy.

Unless otherwise stated in the application: a.) The Insured's Spouse will be the Owner of the New Policy; and b.) The Beneficiary for the New Policy will be the estate of the Insured's Spouse. Proceeds from the New Policy will be payable in accordance with the terms and conditions of the New Policy.

- 9. Simultaneous Death** If the Insured's Spouse, who has the right to purchase a New Policy, dies at the same time as the Insured or within 30 days after the Insured's death, the Insured's Spouse is still eligible for the benefit provided by this rider. If this occurs and we are notified, in writing at our Service Center or any other location that we indicate to you in writing, of the Spouse's death within 90 days after the death of the Insured, the Company will pay the Spouse's estate the lesser of: (a) \$2.5 million or (b) the maximum amount of single premium paid-up whole life insurance that the Insured's Spouse could have purchased under this rider less the applicable single premium for that insurance.

The simultaneous death provision does not apply to a policy in which a Third Party or Trust is the Owner and Beneficiary for any or all of the Life Proceeds. If either the Insured or the Insured's Spouse under the Base Policy commits suicide, while sane or insane, this provision does not apply.

- 10. Contract** This rider is made a part of the Base Policy. If added to a Base Policy that is already in-force, this rider is made a part of that Base Policy, based on the application for the rider.
- 11. Suicide Exclusion** Suicide of the Insured's Spouse, while sane or insane, within two years after the date of the Insured's death, is not covered by this rider.
- 12. Contestability Of Rider** We will not contest this rider if it is issued with the Base Policy.

If this rider is added to a policy that is already in force, we will not contest the rider after it has been in effect during the lifetime of the Insured for 2 years from the date of issue of the rider.

- 13. Dates** This rider and the Base Policy have the same date of issue and Effective Date, unless the rider is added to a policy that is already in force. In this case, the date of issue and Effective Date of this rider is shown in an add-on rider that we put in the Base Policy.
- 14. Effect of Base Policy's Conditional Temporary Coverage Agreement** This rider is not applicable if the claim for the Life Proceeds is made under the Base Policy's Conditional Temporary Coverage Agreement.



**SPOUSE'S PAID-UP INSURANCE PURCHASE OPTION (SPPO)**  
(Continued)

- 15. When Rider Ends** You can cancel this rider with a signed request at any time. This rider ends if the Base Policy ends, is surrendered, or is exchanged for a new policy.
- 16. Definitions** Unless stated otherwise, terms in this rider have the same meaning as in the Base Policy to which it is attached. References to the Base Policy refer to the policy to which this rider is attached.

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**

*Careen G. Meade*

Secretary

*John G. K...*

President

**SINGLE PREMIUM FOR SPOUSE'S INDIVIDUAL LIFE INSURANCE POLICY**  
 (per \$1,000 based on the above age of the surviving spouse)

Issue Age	Class	Rate	Class
14	135.00	135	135.00
15	144.00	144	144.00
16	153.00	153	153.00
17	162.00	162	162.00
18	171.00	171	171.00
19	180.00	180	180.00
20	189.00	189	189.00
21	198.00	198	198.00
22	207.00	207	207.00
23	216.00	216	216.00
24	225.00	225	225.00
25	234.00	234	234.00
26	243.00	243	243.00
27	252.00	252	252.00
28	261.00	261	261.00
29	270.00	270	270.00
30	279.00	279	279.00
31	288.00	288	288.00
32	297.00	297	297.00
33	306.00	306	306.00
34	315.00	315	315.00
35	324.00	324	324.00
36	333.00	333	333.00
37	342.00	342	342.00
38	351.00	351	351.00
39	360.00	360	360.00
40	369.00	369	369.00
41	378.00	378	378.00
42	387.00	387	387.00
43	396.00	396	396.00
44	405.00	405	405.00
45	414.00	414	414.00
46	423.00	423	423.00
47	432.00	432	432.00
48	441.00	441	441.00
49	450.00	450	450.00
50	459.00	459	459.00
51	468.00	468	468.00
52	477.00	477	477.00
53	486.00	486	486.00
54	495.00	495	495.00
55	504.00	504	504.00
56	513.00	513	513.00
57	522.00	522	522.00



**SINGLE PREMIUM FOR SPOUSE'S PAID-UP LIFE INSURANCE POLICY**  
 (per \$1,000 based on the attained age of the surviving spouse)

<b>Issue Age</b>	<b>Unisex</b>	<b>Issue Age</b>	<b>Unisex</b>
14	139.86	58	550.30
15	144.42	59	565.33
16	149.03	60	580.60
17	153.70	61	596.12
18	158.44	62	611.84
19	163.30	63	627.70
20	168.30	64	643.66
21	173.48	65	659.65
22	178.84	66	675.65
23	184.44	67	691.69
24	190.28	68	707.78
25	196.38	69	723.95
26	202.75	70	740.22
27	209.40	71	756.55
28	216.33	72	772.85
29	223.53	73	789.03
30	231.02	74	804.97
31	238.79	75	820.57
32	246.83	76	835.81
33	255.17	77	850.69
34	263.78	78	865.27
35	272.69	79	879.61
36	281.88	80	893.75
37	291.35	81	907.67
38	301.09	82	921.29
39	311.10	83	934.52
40	321.37	84	947.23
41	331.88	85	959.38
42	342.64	86	970.97
43	353.65	87	982.06
44	364.92	88	992.73
45	376.46	89	1000.00
46	388.26	90	1000.00
47	400.34	91	1000.00
48	412.70	92	1000.00
49	425.34	93	1000.00
50	438.26	94	1000.00
51	451.45	95	1000.00
52	464.91	96	1000.00
53	478.61	97	1000.00
54	492.53	98	1000.00
55	506.66	99	1000.00
56	520.99	100	1000.00
57	535.53		

## RIDER INSURANCE EXCHANGE (IE)

1. **Benefit** On or after the first policy anniversary and while this rider is in effect, you can exchange the Base Policy for a new policy insuring the life of another person (the "Successor Insured") in whom you have an insurable interest. The Successor Insured must be acceptable under our underwriting rules that are in effect at the time of application for the new policy.

You may want to consult with your tax advisor, prior to exercising the exchange option provided under this rider.

2. **Date Of Exchange** The date this exchange is effective (the "Date of Exchange") will be the Monthly Deduction Day of the Base Policy that is on or next following the date on which we have received all of the following at our Home Office:

- 1) The application for the new policy, signed by you and the Successor Insured;
- 2) Proof, acceptable to us, of the insurability of the Successor Insured;
- 3) Proof of your insurable interest in the Successor Insured;
- 4) Any loan repayment, as required by Section 7 of this rider;
- 5) Any extra payment we may require in connection with the exchange, as required by Section 6 of this rider.

Coverage under the new policy will take effect on the Date of Exchange. The Base Policy will become void after that date. No insurance will be provided under the Base Policy on or after that date. If an assignment is in effect under the Base Policy on the Date of Exchange, we will require that the assignee give a written consent to the exchange before the Date of Exchange.

If, on the Date of Exchange, the Insured dies at the same time as the Successor Insured, we will administer the policy as if the Successor Insured had died prior to the exchange taking effect.

3. **New Policy** The Base Policy can only be exchanged for a policy that we make available for such exchange on the Date of Exchange. The new policy will generally be the current edition of the same type of insurance as the Base Policy. However, if we are not offering the same type of insurance policy for such exchanges, another type of insurance will be made available.

The new policy will have the same provisions and limitations as policies of that edition and type which we are issuing on the Date of Exchange.

The Base Policy Face Amount of the new policy cannot exceed the lesser of (1) the Initial Base Policy Face Amount of the Base Policy as of the Issue Date, or (2) the Base Policy Face Amount of this policy on the Date of Exchange.

Riders may not be made a part of the new policy, unless we agree.

The Policy Date of the new policy will be the Date of Exchange. The Cost of Insurance charges for the new policy will be based on the Successor Insured's age and class of risk on the Date of Exchange, as well as our Cost of Insurance rate scale in effect at that time.

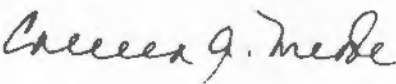
4. **Contestable And Suicide Exclusion Periods** The periods of time described in the Contestable or Suicide Exclusion provisions of the new policy will be measured from the issue date of the new policy. If the contract is rescinded pursuant to the Contestable or Suicide Exclusion provisions of the new policy, the only amounts payable will be any premiums paid for the new policy and any Cash Value of the Base Policy applied under the new policy less any policy loan.
5. **New Surrender Charge Period If Applicable** The period during which the surrender charges, if any, apply under the new policy will be measured from the Policy Date of the Base Policy.

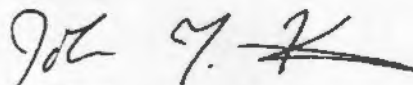


**INSURANCE EXCHANGE (IE)**  
**(continued)**

6. **Extra Payment** The Cash Value of the new policy will be the same as the Cash Value of the Base Policy on the Date of Exchange. However, the Cash Surrender Value of the new policy will be different than that of the Base Policy if different surrender charges are applicable to the Successor Insured. At the time the exchange is requested, we may require an extra payment to be paid no later than the Date of Exchange. The method we use to determine this extra payment is as follows:
- a) If the Cash Surrender Value of the new policy will exceed the Cash Surrender Value of the Base Policy, then a payment equal to 103% of the difference between these two values is required.
  - b) It may happen that the Cash Surrender Value of the new policy after the exchange would be zero or less than zero. In this event, we will require a payment in an amount sufficient to keep the new policy in effect for 2 months following the Date of Exchange.
7. **Unpaid Policy Loans** If the Base Policy has an unpaid loan and that loan, including accrued loan interest, exceeds the loan value of the new policy on the Date of Exchange, the part of the loan that exceeds that loan value must be repaid to us before the exchange can take effect. At the time of exchange the part of any unpaid loan under the Base Policy that is equal to or less than the loan value of the new policy will be charged against the new policy as a loan, as stated in the new policy's provisions for loans.
8. **Cash Or Loan Values** This rider does not have Cash Value or loan value.
9. **Rider Charge** There is no charge for this rider.
10. **Contract** This rider is made a part of the Base Policy to which it is attached.
11. **Conformity With Law** This rider is subject to all laws that apply. We reserve the right to make changes to this rider to ensure that this rider, or the new policy resulting from the exercise of this rider, qualifies as life insurance under federal tax law.
12. **When Rider Ends** This rider ends on the earliest date of the following:
- a) The date of the death of the Insured.
  - b) The date the Base Policy ends or is surrendered.
  - c) The Date of Exchange.

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**

  
Secretary

  
President



# NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION

## RIDER

### NO LAPSE GUARANTEE RIDER (NLGR)

- 1. Benefit** The No Lapse Guarantee Rider (NLGR) guarantees that while it is active, the Base Policy to which it is attached will not lapse because the Base Policy's Cash Surrender Value is not sufficient to cover the current Monthly Deduction Charges defined in the Base Policy. The No Lapse Guarantee Rider Period is shown on the Base Policy's Policy Information Policy Data Page. This rider will remain active until the No Lapse Guarantee Rider Expiry Date shown on the Base Policy's Policy Information Policy Data Page if the Base Policy is still in effect, and the Cumulative Required NLGR Monthly Premium Test, described below, has been satisfied.

If, on a Monthly Deduction Day, there is insufficient Cash Surrender Value to cover the Monthly Deduction Charges, and the rider's status is active, the Base Policy will not lapse. Each month, we will deduct as much of the Monthly Deduction Charges as possible from the Base Policy's Cash Value. Any charges not covered by the Cash Value on a Monthly Deduction Day will be waived.

If, on a Monthly Deduction Day, there is insufficient Cash Surrender Value to cover the Monthly Deduction Charges, and the rider's status is inactive, the Base Policy will enter the Late Period as described in the Base Policy.

- 2. Required NLGR Monthly Premium** The Required NLGR Monthly Premium is shown on the Base Policy's Policy Information Policy Data Page. The Required NLGR Monthly Premium is the monthly premium that, if paid monthly, will keep your NLGR active subject to the terms and conditions of the Cumulative Required NLGR Monthly Premium Test described in Section 3. However, because the premiums for this rider and Base Policy may be paid using any mode or method of premium payment we make available, premiums need not be paid monthly to keep the NLGR active. Satisfying the Cumulative Required NLGR Monthly Premium Test is the only requirement to keep this rider active.

The Required NLGR Monthly Premium can change if:

- (a) the Base Policy Face Amount changes;
- (b) the Life Insurance Benefit Option changes;
- (c) the Insured's class of risk changes;
- (d) a rider is added to or deleted from the Base Policy; or
- (e) a partial surrender is taken and causes the Base Policy Face Amount to change.

The new Required NLGR Monthly Premium will take effect on the Monthly Deduction Day on or next following the date of the change. We will notify you in writing if it changes. If, as a result of the change, the payment of the Required NLGR Monthly Premium would cause the Base Policy to no longer continue to qualify as life insurance as defined under Section 7702 of the Internal Revenue Code, as amended, we will not accept that payment and the rider will end.

## NO LAPSE GUARANTEE RIDER (NLGR) (Continued)

- 3. The Cumulative Required NLGR Monthly Premium Test** The Cumulative Required NLGR Monthly Premium Test is performed to determine if the NLGR is active. For the rider to be active, the total premiums paid to date for the Base Policy, plus interest on those premiums calculated at the NLGR Annual Accumulation Rate shown on the Base Policy's Premium Information Policy Data Page from the monthly deduction day prior to each payment, must be at least equal to the sum of A, B and C, where:
- A = Required NLGR Monthly Premiums, that are assumed to be payable monthly, accumulated at the NLGR Annual Accumulation Rate from the Policy Date plus one month to the date of the test,
  - B = Outstanding loans, including accrued loan interest, and
  - C = Total partial surrenders, including partial surrender fees and surrender charges, if any, accumulated at the NLGR Annual Accumulation Rate from the Monthly Deduction Day following the partial surrender.

This test is performed on each Monthly Deduction Day. If this test is satisfied, this rider's status is active. If the test is failed, the rider will become inactive. When this rider is inactive, the guarantee is not in effect. We will send you a notice that the rider is inactive and indicate the premium payment that is required before the next Monthly Deduction Day to re-activate the rider.

- 4. Re-activating The NLG Rider** When the rider is inactive we continue to offer you the option to change your rider's status from inactive to active by making a premium payment sufficient to pass the Cumulative Required NLGR Monthly Premium Test. Once this test is passed, the status of your rider will become active and the guarantee will again be in effect. This offer is available during the No Lapse Guarantee Rider Period shown on the Base Policy's Policy Information Policy Data Page.

If you want to re-activate this rider, and you need information about the premium payment necessary to pass the Cumulative Required NLGR Monthly Premium Test, you can call or send a signed request to our Service Office and we will advise you of the amount due to re-activate the rider. If the premium payment necessary to satisfy the Cumulative Required NLGR Monthly Premium Test would cause the policy to no longer continue to qualify as life insurance as defined under Section 7702 of the Internal Revenue Code, as amended, we will not accept that payment and the rider will end.

- 5. Reinstatement** If the policy to which this rider is attached lapses while the rider is inactive, and the policy is later reinstated, this rider is also reinstated if it is prior to the No Lapse Guarantee Rider Expiry Date. However, the NLG rider will remain inactive. To change the rider's status from inactive to active, you must make a premium payment sufficient to pass the Cumulative Required NLGR Monthly Premium Test from the date the rider became inactive. Once this payment is received, the rider's status will become active and the guarantee will become effective.

This rider cannot be reinstated after the No Lapse Guarantee Rider Period has ended.

- 6. Waiver Of Charges Due To Disability** The Cumulative Required NLGR Monthly Premium Test is affected if Monthly Deduction Charges for the Base Policy are waived due to disability and if your Base Policy contains a rider providing a waiver of monthly deductions benefit. During the period that Monthly Deduction Charges are being waived due to disability, the Cumulative Required NLGR Monthly Premium Test is performed. However, when the test is performed during this period, the Required NLGR Monthly Premium will be set to zero. When Monthly Deduction Charges resume, the Cumulative Required NLGR Monthly Premium Test will not include the Required NLGR Monthly Premium for the number of months the Monthly Deduction Charges for the Base Policy were being waived.



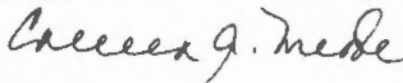
## NO LAPSE GUARANTEE RIDER (NLGR) (Continued)

7. **Cash Or Loan Value** This rider does not have cash or loan value.
8. **When Rider Ends** You can cancel this rider at any time by sending us a signed notice. This rider will end on the Monthly Deduction Day on or next following the date we receive your request.

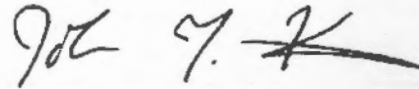
This rider will also end for any of the following reasons:

- (a) The No Lapse Guarantee Rider Period shown on the Base Policy's Policy Information Policy Data Page has expired; or
- (b) The payment of the Required NLGR Monthly Premium or the premium required to satisfy the Cumulative Required NLGR Monthly Premium Test would cause the Base Policy to no longer continue to qualify as life insurance as defined under Section 7702 of the Internal Revenue Code, as amended; or
- (c) The Base Policy ends or is surrendered.

### NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION



Secretary



President