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

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**FORM 8- K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): April 5, 2007**

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**SECURITY CAPITAL ASSURANCE LTD**

(Exact name of registrant as specified in its charter)

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**Bermuda**  
(State or other jurisdiction  
of incorporation)

**001- 32950**  
(Commission File Number)

**Not applicable**  
(I.R.S. Employer Identification No.)

**One Bermudiana Road, Hamilton, Bermuda HM 11**  
(Address of principal executive offices)

**Registrant's telephone number, including area code: (441) 292 8515**

**Not Applicable**  
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a- 12 under the Exchange Act (17 CFR 240.14a- 12)
  - Pre- commencement communications pursuant to Rule 14d- 2(b) under the Exchange Act (17 CFR 240.14d- 2(b))
  - Pre- commencement communications pursuant to Rule 13e- 4(c) under the Exchange Act (17 CFR 240.13e- 4(c))
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### **Item 1.01. Entry into a Material Definitive Agreement.**

On April 5, 2007, Security Capital Assurance Ltd (the “Company”) sold 250,000 of Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares, par value \$0.01 per share, having a liquidation preference of \$1,000 per share (the “Preference Shares”) to Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Wachovia Capital Markets, LLC and certain other initial purchasers (the “Initial Purchasers”).

The Preference Shares have not been registered under the Securities Act of 1933, as amended (the “Securities Act”). The Company offered and sold the Preference Shares to the Initial Purchasers in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers may resell the Series A Preference Shares to qualified institutional buyers pursuant to Rule 144A under the Securities Act and to non- US persons pursuant to Regulation S under the Securities Act. The net proceeds to the Company from the offering of the Preference Shares, after deducting the Initial Purchasers’ discount and the estimated offering expenses payable by the Company, were approximately \$245.5 million.

The terms of the Preference Shares were determined by resolutions of a subcommittee designated by the Finance and Risk Oversight Committee of the Board of Directors of the Company at a meeting held on March 23, 2007 (the “Subcommittee Resolutions”) and by resolution of Claude LeBlanc, Executive Vice President, Corporate Development and Strategy, of the Company, on March 29, 2007 (the “Liquidation Preference Resolution”) acting pursuant to the Subcommittee Resolutions. Copies of an extract of the Subcommittee Resolutions and the Liquidation Preference Resolution are attached hereto as Exhibits 4.1 and 4.2, respectively, and each is incorporated herein by reference.

Until September 30, 2017, dividends on the Preference Shares will be payable semiannually on a non- cumulative basis, when, as and if declared by the Company’s board of directors, on March 31 and September 30 of each year at a fixed rate equal to 6.88% per annum on the liquidation preference. From and after September 30, 2017, dividends on the Preference Shares will be payable quarterly on a non- cumulative basis, when, as and if declared by the Company’s board of directors, on March 31, June 30, September 30 and December 31 of each year at a floating rate equal to three- month LIBOR plus 2.715% on the liquidation preference. Dividends on the Preference Shares, if declared, will be payable commencing on September 30, 2007. The Preference Shares will be perpetual securities with no fixed maturity date and will not be convertible into any of the Company’s other securities. The Form of Regulation S Global Preference Share Certificate and Form of 144A Global Preference Share Certificate are attached hereto as Exhibits 4.3 and 4.4, respectively, and the terms of each is incorporated herein by reference.

### **Replacement Capital Covenant**

On April 5, 2007, in connection with the sale of the Preference Shares, Security Capital Assurance Ltd (the “Company”) entered into a Replacement Capital Covenant (the “Replacement Capital Covenant”), whereby the Company agreed for the benefit of holders of one or more designated series of our long- term debt securities that we may issue in the future that (i) the Company will not redeem, exchange or purchase the Preference Shares and (ii) none of the Company’s subsidiaries will purchase or exchange the Preference Shares, except, subject to certain limitations, to the extent that the applicable redemption, exchange or purchase price does not exceed a specified amount of cash proceeds from the sale of certain specified qualifying replacement capital securities raised during the period commencing on the 180th calendar day prior to the date of notice of the redemption or the date of purchase. The Company has made no decision as to whether, or when, the Company would issue debt securities that would have the benefit of that covenant. While such provisions are in effect, there could be circumstances where the Company would wish to redeem, exchange or purchase some or all of the Preference Shares but be restricted from doing so.

In order to give effect to the intent of the Company set forth in Recital C of the Replacement Capital Covenant, the Company is entering into and disclosing the content of the Replacement Capital Covenant with the intent that the covenants provided for in the Replacement Capital Covenant be enforceable by each future Covered Debtholder (as defined in the Replacement Capital Covenant), and that the Company be estopped from disregarding its covenants in the Replacement Capital Covenant.

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The Replacement Capital Covenant may be terminated if (i) holders of at least a majority by principal amount of the then- effective series of covered debt consent or agree in writing to terminate the Replacement Capital Covenant, (ii) the Company no longer has outstanding any indebtedness that qualifies as covered debt or (iii) the Company no longer has any outstanding Preference Shares. In addition, if not earlier terminated, the Replacement Capital Covenant will terminate on September 30, 2047; provided, however, that the September 30, 2047 termination date may be extended at the Company's option.

The foregoing description of the Replacement Capital Covenant does not purport to be complete and is qualified in its entirety by reference to the full text of the Replacement Capital Covenant, which is filed as Exhibit 4.5 hereto and is incorporated by reference herein.

### **Registration Rights Agreement**

In connection with the sale of the Preference Shares, the Company entered into a registration rights agreement with the Initial Purchasers (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, the Company has agreed to file a registration statement with the Securities Exchange Commission relating to an offer to exchange the Preference Shares for publicly traded preference shares having substantially identical terms. If that registration statement is not filed within 180 days of the closing date of this offering or has not become effective within 240 days of the closing date of this offering, subject to certain exceptions, we will be required to pay additional non- cumulative dividends to holders of the Preference Shares. A copy of the Registration Rights Agreement, the terms of which are incorporated herein by reference, is attached as Exhibit 4.6 hereto.

### **Item 3.02. Unregistered Sales of Equity Securities.**

The information set forth in Item 1.01 of this Current Report is incorporated herein by reference.

### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits. The following exhibits are filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
4.1	Extract of the Minutes of a Meeting of a Subcommittee of the Finance and Risk Oversight Committee held on March 29, 2007.
4.2	Certificate of Claude LeBlanc pursuant to authority vested by the Subcommittee of the Finance and Risk Oversight Committee.
4.3	Form of Regulation S Global Preference Share Certificate.
4.4	Form of 144A Global Preference Share Certificate.
4.5	Replacement Capital Covenant, dated April 5, 2007.
4.6	Registration Rights Agreement, dated April 5, 2007.

## SIGNATURES

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

Date: April 10, 2007

SECURITY CAPITAL ASSURANCE LTD  
(Registrant)

By: /s/ Kirstin Romann Gould

Name: Kirstin Romann Gould

Title: Secretary

Security Capital Assurance Ltd  
Extract of the Minutes of a Meeting of  
a Subcommittee of the Finance and Risk Oversight Committee held on March 29, 2007; which  
Subcommittee has been established pursuant to meetings of the Board of Directors held on  
February 27, 2007 and the meetings of  
the Finance and Risk Oversight Committee held on March 23, 2007.

**1. Background**

WHEREAS, at a meeting held on February 27, 2007, the Board of Directors (the "Board of Directors") of Security Capital Assurance Ltd (the "Company") resolved that the Company may issue and sell (the "Issuance"), at any time or from time to time, up to US\$350 million of long-term debt and/or preference securities and delegated to the Finance and Risk Oversight Committee of the Board of Directors (the "FROC") and/or any subcommittee thereof appointed thereby, either of which committees or subcommittees being given full power to sub-delegate to a subcommittee appointed thereby, the right and power to determine all of the terms and conditions of each and any such Issuance (including, without limitation, the terms and conditions of any such securities, the manner of issuance and sale thereof, all pricing and pricing-related terms, and whether or not any replacement capital covenant ought to be provided for rating agency and/or similar purposes, and to execute under hand or seal any other documents, agreements, contracts, instruments and certificates to which the Company is a party or is affected, and considered to be necessary, desirable or advisable to in connection with any such Issuance).

WHEREAS, at a meeting of the FROC held on March 23, 2007 the FROC approved certain transactions and documents generally and delegated to a subcommittee (the "Subcommittee") consisting of Paul S Giordano, Michael P. Esposito and Robert M. Lichten the full right and power to determine all of the terms and conditions of each and any such issuance.

WHEREAS, the purpose of this meeting (the "Meeting") is for the Subcommittee, on behalf of the Board of Directors, to consider approving (i) the issuance of the Fixed/Floating Series A Perpetual Non-Cumulative Preference Shares, liquidation preference of either, as shall be decided at the discretion of either Paul Giordano or Claude LeBlanc, US\$25 or US\$1,000 per share (the "Series A Preference Shares"), which may be issued pursuant to the Purchase Agreement (the "Purchase Agreement") between the Company and Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wachovia Capital Markets, LLC, as the representatives of the several initial purchasers named therein (the "Initial Purchasers"), (ii) the execution and delivery of the Replacement Capital Covenant, (iii) the execution and delivery of the Purchase Agreement, (iv) the execution and delivery of the Registration Rights Agreement and (v) such other matters as they deem necessary, desirable or advisable to complete the transactions in connection with the Issuance. The Series A Preference Shares will be issued pursuant to an offering memorandum (the "Offering Memorandum") which will be submitted confidentially to a limited number of U.S. institutional investors and Non-U.S. investors.

WHEREAS, there were circulated and described as to their provisions at the Meeting the following documents:

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- (i) the Purchase Agreement;
- (ii) the Registration Rights Agreement;
- (iii) the Replacement Capital Covenant; and
- (iv) the preliminary offering memorandum (the “Preliminary Offering Memorandum”).

The above documents are hereinafter collectively referred to as the “Documents.” The transactions described in and contemplated by the Documents are hereinafter collectively referred to as the “Transactions.”

## **2. Resolutions**

NOW THEREFORE, after full and careful consideration of the terms of the Documents and the Transactions as contemplated thereby, the nature and scale of the liabilities and obligations to be undertaken thereunder and of the commercial and financial consequences, direct and indirect, of the execution of the Documents and the consummation of the Transactions as contemplated thereby, in so far as they affect the Company, upon motion duly made and seconded, the following resolutions are unanimously adopted by the Subcommittee. On behalf of the Board of Directors, it is:

### **3.1 Transaction and Documents**

RESOLVED that the Transactions and the Documents substantially in the forms presented to the Subcommittee be approved and that the Company execute and deliver, to the extent the Company is a party thereto, or approve all such deeds, contracts, agreements, documents, instruments and certificates (including, without limitation, the Documents) as any officer of the Company in his or her discretion shall determine or deem necessary, desirable or advisable in connection with the Transactions, the execution and delivery by any such officer of any such contract, agreement, document or certificate being conclusive evidence of such determination; and

### **3.2 Designation and Offering of Fixed/Floating Rate Preference Shares**

RESOLVED that (i) a series of 250,000 preference shares in the capital of the Company be designated as “Fixed/Floating Series A Perpetual Non-Cumulative Preference Shares,” and (ii) such Series A Preference Shares be issued on the terms of and in accordance with the Memorandum of Association of the Company (the “Memorandum of Association”), Bye-laws and the Purchase Agreement;

FURTHER RESOLVED that the Series A Preference Shares shall be offered only to qualified institutional buyers (“QIBs”) in reliance on Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”), and non-U.S. Persons under Regulation S, in accordance with the descriptions of the registration rights and transfer restrictions set forth in the Preliminary Offering Memorandum and the Offering Memorandum and in the Registration Rights Agreement,

and that the responsible officers shall have the authority to adopt such procedures as they determine are necessary in order to comply with the provisions thereto; and

FURTHER RESOLVED that the Issuance shall be subject to the Company's agreement to file with the United States Securities and Exchange Commission either an exchange offer registration statement or a shelf registration statement on the appropriate form under the Securities Act with respect to the exchange preference shares (the "Exchange Preference Shares") on the terms of and in accordance with the Registration Rights Agreement, which, pursuant to the terms of the Purchase Agreement, contemplates an exchange, registered under the Securities Act, of Exchange Preference Shares with terms similar to the Preference Shares (the "Exchange Offer"), and that the responsible officers shall have the authority to adopt such procedures and execute such ancillary documentation as they determine are necessary in order to comply with the provisions thereto and issue the Exchange Preference Shares.

### **3.3 Series A Preference Shares**

RESOLVED that the Series A Preference Shares (i) will have, on the date the Transactions are consummated (the "Closing Date"), an aggregate liquidation preference of either, as shall be decided at the discretion of either Paul Giordano or Claude LeBlanc, US\$25 or US\$1,000 (the "Series A Aggregate Available Liquidation Preference"), and (ii) be non-cumulative preference shares with a nominal par value of US\$0.01 per share; and

FURTHER RESOLVED that the Series A Preference Shares have, subject to the Memorandum of Association, the Bye-laws of the Company, the provisions of, and restrictions contained in, the Companies Act 1981 of Bermuda, as amended, and every statutory modification or re-enactment thereof for the time being in force (the "Law"), the following preferences and rights and be subject to the following restrictions.

#### **(a) Liquidation Preference**

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company legally available for distribution among shareholders shall be applied first in repaying to the holders of the Series A Preference Shares (the "Series A Holders") an amount equal to either, as shall be decided at the discretion of either Paul Giordano or Claude LeBlanc, US\$25 or US\$1,000 per Series A Preference Share (inclusive of the nominal amount thereof) plus any declared and unpaid dividends with respect to the then-current Series A Dividend Period to the date fixed for distribution in preference to the repayment of the nominal amount of and any share premium or other amounts paid on common shares of the Company (the "Common Shares") or any other shares ranking junior in right of payment to the Series A Preference Shares as to dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (together with the Common Shares, the "Series A Junior Shares") to the holders of such Series A Junior Shares, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period (as defined below) to the extent not declared and payable in respect of such Series A Dividend Period. In the event that upon any voluntary or involuntary liquidation, dissolution

or winding up of the Company, the assets of the Company available are insufficient to pay the amount of the liquidating distributions on all outstanding Series A Preference Shares as referred to above and the corresponding amounts payable on all other shares, if any, ranking *pari passu* on a pro rata basis with the Series A Preference Shares with respect to the payment of dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (including, without limitation, any other series of preference shares, if issued) (the “Series A Parity Shares”), then the Series A Holders, and all such Series A Parity Shares shall share on a pro rata basis in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. The Series A Preference Shares will not be convertible into, exchangeable for or carry rights or options to purchase, any Common Shares or any other class or series of securities of the Company or any other entity. For purposes of this Section 3.3(a), a consolidation, amalgamation, merger, arrangement or reconstruction involving the Company or the sale or transfer of all or substantially all of the shares or property or business of the Company will not be deemed to constitute a liquidation, dissolution or winding up.

**(b) Dividend Rights**

- (i) During the Series A Fixed Rate Period (as defined below), Series A Holders will be entitled to receive, when, as and if declared by the Board of Directors, cash dividends at a fixed annual rate equal to 6.88% of the either US\$25 or US\$1,000 liquidation preference per share on March 31 and September 30. During the Series A Floating Rate Period (as defined below), Series A Holders will be entitled to receive, when, as and if declared by the Board of Directors, cash dividends at a floating annual rate equal to Three- Month LIBOR for the applicable Series A Dividend Period, plus 2.715% on the liquidation preference of either US\$25 or US\$1,000 per share.

“Three- Month LIBOR” with respect to any Series A Dividend Period shall be the rate (expressed as a percentage per annum) for deposits in United States dollars for a three- month period beginning on the first day of such Series A Dividend Period that appears on Reuters LIBOR01 Page (as defined below) as of 11:00 a.m., London time, on the Determination Date (as defined below). If the Reuters LIBOR01 Page as of 11:00 a.m., London time, does not include the applicable rate or is unavailable on the Determination Date, the calculation agent will request the principal London office of each of four major banks in the London interbank market, as selected by the calculation agent, to provide that bank’s offered quotation (expressed as a percentage per annum) as of approximately 11:00 a.m., London time, on the Determination Date to prime banks in the London interbank market for deposits in a Representative Amount (as defined below) for a three- month period beginning on the first day of such Series A Dividend Period. If at least two offered quotations are so provided, LIBOR for such Series A Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of those quotations. If fewer than two quotations are so provided, the calculation agent will request each of three major banks in



New York City, as selected by the calculation agent, to provide that bank's rate (expressed as a percentage per annum), as of approximately 11:00 a.m., New York City time, on the Determination Date for loans in a Representative Amount to leading European banks for a three- month period beginning on the first day of such Series A Dividend Period. If at least three rates are so provided, LIBOR for such Series A Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of those rates. If fewer than three rates are so provided, then LIBOR for the Series A Dividend Period will be LIBOR in effect with respect to the immediately preceding Series A Dividend Period.

"Business Day" means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in Bermuda, London and New York City.

"Determination Date" with respect to any Series A Dividend Period will be the second London Banking Day preceding the first day of that Series A Dividend Period. London Banking Day is any day in which dealings in United States dollars are transacted or, with respect to any future date, are expected to be transacted in the London interbank market.

"Representative Amount" means a principal amount of not less than US\$1,000,000 for a single transaction in the relevant market at the relevant time.

"Reuters LIBOR01 Page" means the display designated on page LIBOR01 on the Reuters Page (or such other page as may replace the LIBOR01 page on the Reuters Page or such other service as may be nominated by the British Bankers Association for the purpose of displaying London interbank offered rates for U.S. Dollar deposits).

"Reuters Page" means the display on Reuters Money 3000 Service, or any successor service.

The dividend rates applicable during the Series A Fixed Rate Period and the Series A Floating Rate Period are referred to collectively as the "Series A Dividend Rate." The rights of the Series A Holders to receive dividends are non- cumulative. Accordingly, to the extent dividends are neither declared nor paid in respect of any Series A Dividend Period in respect of the Series A Preference Shares, Series A Holders will have no right to receive dividends in respect of that Series A Dividend Period in respect of the Series A Preference Shares and the Company will have no obligation to pay dividends in respect of that Series A Dividend Period in respect of the Series A Preference Shares, whether or not dividends are payable in respect of any future Series A Dividend Period in respect of the Series A Preference Shares. In addition, the liquidation preference of the Preference Shares will not be adjusted for any dividends that are not declared.

Subject to the next sentence, dividends will be payable semi-annually, during the Series A Fixed Rate Period, and quarterly, during the Series A Floating Rate Period, in each case when, as and if declared by the Company's Board of Directors, in arrears, on March 31 and September 30 (or if such date is not a Business Day, on the Business Day immediately after such date and no further sums will be payable in respect of such delay), during the Series A Fixed Rate Period, and on March 31, June 30, September 30 and December 31 (or if such date is not a Business Day, on the Business Day immediately after such date unless such day would fall in the next calendar month, in which case the dividend will be paid on the immediately preceding Business Day), during the Series A Floating Rate Period, of each year (each such date during the Series A Fixed Rate Period or the Series A Floating Rate Period a "Series A Dividend Payment Date"). The first dividend will represent the period of time from and including the date of original issuance to but excluding September 30, 2007, calculated as described below.

During the Series A Fixed Rate Period, the amount of the dividend that is to be payable to the Series A Holder of each Series A Preference Share with respect to each Dividend Period in respect of Series A Preference Shares will be calculated as follows: the product, rounded to the nearest cent (half a cent being rounded upwards), of (i) 6.88%, (ii) either US\$25 or US\$1,000 and (iii) a fraction, (A) the numerator of which will be 180 (or, in the case of a Series A Dividend Period that is not a full Series A Dividend Period in respect of Series A Preference Shares, the actual number of days elapsed in such Series A Dividend Period), and (B) the denominator of which will be 360.

Each Series A Dividend Period during the Series A Fixed Rate Period will be the period from and including a respective Series A Dividend Payment Date for the Series A Fixed Rate Period up to but excluding the immediately succeeding Series A Dividend Payment Date for the Series A Fixed Rate Period (provided that the last Series A Dividend Period for the Series A Fixed Rate Period shall end on September 29, 2017).

During the Series A Floating Rate Period, the amount of the dividend that is to be payable to the Series A Holder of each Series A Preference Share with respect to each Series A Dividend Period in respect of Series A Preference Shares will be calculated as follows: the product, rounded to the nearest cent (half a cent being rounded upwards), of (i) three-Month LIBOR for such Dividend Period in respect of Series A Preference Shares plus 2.715%, (ii) either US\$25 or US\$1,000 and (iii) a fraction, (A) the numerator of which will be the actual number of days in the Series A Dividend Period, and (B) the denominator of which will be 360.

Each Series A Dividend Period during the Series A Floating Rate Period will be the period from and including a respective Series A Dividend Payment Date for the Series A Floating Rate Period up to but excluding the immediately succeeding Series A Dividend Payment Date for the Series A Floating Rate Period (provided

that the first Series A Dividend Period for the Series A Floating Rate Period shall begin on September 30, 2017).

If declared, dividends will be payable to Series A Holders of record as they appear in the Company's register of members at the close of business on the applicable record date, which will be one day prior to the Series A Dividend Payment Date as long as all of the Series A Preference Shares remain in book- entry form. If all of the Series A Preference Shares are not in book- entry form, the record date with respect to the Series A Preference Shares will be 15 days prior to the Series A Dividend Payment Date (whether or not such date is a Business Day). Holders will not be entitled to any dividends other than as described above. Dividends on the Series A Preference Shares will be non- cumulative, but will be payable only if there are funds legally available for the payment of such dividends and such dividends are declared. No interest or sum of money in lieu of interest will be payable on any dividend payment.

"Series A Dividend Period" shall mean the period from and including a Series A Dividend Payment Date (or the date of the original issuance if there has not been a Series A Dividend Payment Date) to but excluding the immediately succeeding Series A Dividend Payment Date.

"Series A Fixed Rate Period" means the period from and including the Closing Date to but excluding September 30, 2017.

"Series A Floating Rate Period" means the period from and after September 30, 2017.

- (ii) As long as any Series A Preference Shares are outstanding, no dividends or other distributions may be declared or paid or set apart for payment on any class or series of Series A Parity Shares for any period unless either (1) full dividends have been, or contemporaneously are, declared and paid or declared and a sum sufficient for the payment thereof set apart for such payments on the Series A Preference Shares for the then- current Series A Dividend Period or (2) all dividends declared upon the Series A Preference Shares and any Series A Parity Shares are declared pro rata so that the amount of dividends declared per share on the Series A Preference Shares and any Series A Parity Shares will in all cases bear to each other the same ratio that accrued but unpaid dividends per share on the Series A Preference Shares (with respect to the then- current Series A Dividend Period) and such Series A Parity Shares bear to each other.
- (iii) As long as any Series A Preference Shares are outstanding (1) no dividends (other than those paid in Common Shares or other shares ranking junior in right of payment to the Series A Preference Shares as to dividends and the distribution of assets upon any liquidation, dissolution or winding up of the Company (together with the Common Shares, "Series A Fully Junior Shares")), may be declared or paid or set apart for payment upon any Series A Junior Shares, (2) no other distri-

bution (other than those paid in Series A Fully Junior Shares) may be declared or paid or set apart for payment upon any Series A Junior Shares and (3) no Series A Junior Shares may be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Common Shares made for purposes of any employee incentive, stock, benefit or any similar plan of the Company or any of its subsidiaries) for any consideration (or any moneys be paid to or made available for a sinking fund or the redemption of any Series A Junior Shares) by the Company (except by conversion into or exchange for Series A Fully Junior Shares), unless, in any such case, full dividends on the Series A Preference Shares and any Series A Parity Shares have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment, for the then- current Series A Dividend Period.

**(c) Voting Rights**

**(i)** Subject to paragraphs (ii) and (iii) below, and unless required by law or court order, the Series A Holders shall not be entitled to receive notice of nor to attend nor to vote at any general meeting of the Company.

**(ii)** The Series A Holders shall be entitled to one vote for each Series A Preference Share held at any separate general meeting of that class or series (i.e., Preference Shares or Series A Preference Shares, respectively), subject to the provisions of Article 43 of the By-laws. At every separate meeting of Series A Holders, the necessary quorum shall be any one or more persons present in person or by proxy holding more than 50% of the issued shares of that class. Notwithstanding the foregoing and subject to the applicable provisions of the Memorandum of Association, the By-laws and the Law, Series A Holders are not entitled to vote on any sale of all or substantially all of the assets of the Company, or the issuance of any shares that rank *pari passu* with, or senior or junior to, the Series A Preference Shares as to the payment of dividends and the distribution of assets upon the liquidation, dissolution or winding up of the Company.

**(iii)** If at any time dividends payable on the Series A Preference Shares shall not have been paid (whether or not such dividends shall have been declared) in an aggregate amount equivalent to dividends for six or more full quarterly periods, which, during the Series A Fixed Rate Period, shall mean three or more Series A Dividend Periods and, during the Series A Floating Rate Period, shall mean six or more Series A Dividend Periods (in each case, whether or not consecutive), then during such period until all such dividends shall have been paid in full, and only during such period (the "Series A Voting Period"), the Series A Holders voting together with any other series or classes of Preference Shares also in not having been paid and having such right shall be entitled by ordinary resolution at a separate meeting of such holders to elect two persons and nominate such elected persons for appointment by the Board of Directors as additional Directors of the Company. In no event shall there be more than two Directors elected by the holders of the Series A Preference Shares (whether voting alone as a series or class or

with another series or class so in arrears and having such right). The right of the holders of the Series A Preference Shares will cease (subject always to the same provision for the vesting of such rights if dividends on the Series A Preference Shares are not paid in future periods) upon the earlier to occur of (i) the first date as of which full dividends on the Series A Preference Shares have been paid for at least four consecutive quarterly periods, which, during the Series A Fixed Rate Period, shall mean two or more Series A Dividend Periods and, during the Series A Floating Rate Period, shall mean four or more Series A Dividend Periods, and (ii) the redemption of all Series A Preference Shares.

(iv) Any Director who shall have been elected pursuant to Section 3.4 below may be removed at any time during a Series A Voting Period, either for or without cause, by, and only by, ordinary resolution of the holders of the outstanding Preference Shares of the relevant class or series at a special separate general meeting of such holders called for that purpose. Any vacancy thereby created may be filled during such Series A Voting Period by ordinary resolution of the holders of Preference Shares of all relevant series at such a meeting. Any Director elected by holders of Preference Shares pursuant to this provision, or by any Director so elected as herein contemplated, who dies, resigns or otherwise ceases to be a Director during a Series A Voting Period shall, except as otherwise provided in the preceding sentence, be replaced by the remaining Director theretofore elected by the holders of Preference Shares nominating a replacement for appointment by the Board of Directors; *provided* that, if no remaining additional Director is then in office, additional Directors will be elected in accordance with the procedures described above. At the end of the Series A Voting Period, the holders of Preference Shares of all the relevant series shall be automatically divested of all voting powers vested in them by the provision, but subject always to subsequent vesting of such voting power in the holders of Preference Shares in the event of any similar cumulated arrearage in payment of quarterly dividends occurring thereafter. The term of all Directors elected and appointed pursuant to this provision shall in all events expire at the end of the applicable Series A Voting Period and if the size of the Board of Directors was increased for the purpose of the additional Directors, the number of Directors constituting the Board of Directors shall be reduced accordingly. The provisions of the Bye-laws relating to general meetings and voting shall apply, *mutatis mutandis*, to every such separate meeting, except that the necessary quorum shall be any one or more persons present in person or by proxy holding more than fifty percent (50%) of the issued Preference Shares of the relevant series.

(d) **Redemption**

The Company shall be entitled to redeem all or any of the Series A Preference Shares as follows:

- (i) **General.** Subject to Section 3.3(j) and paragraphs (ii), (iii), (iv) and (v) below, the Series A Preference Shares shall not be redeemable by the Company prior to

September 30, 2017. From or after such date, the Company shall be entitled at any time in whole or from time to time in part, upon not less than thirty (30) days' nor more than sixty (60) days' prior written notice to the Series A Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph (e) below, to redeem all or any of the Series A Preference Shares pursuant to this paragraph for cash at a redemption price of either US\$25 or US\$1,000 per share being redeemed (inclusive of the nominal value thereof) plus any declared and unpaid dividends with respect to the then- current Series A Dividend Period to the date of redemption, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period to the extent not declared and payable in respect of such Series A Dividend Period.

**(ii) Redemption upon the Submission of Certain Shareholder Proposals.** At any time prior to September 30, 2017, *provided* that at such time some or all of the Series A Preference Shares are outstanding, if the Company shall have (i) submitted to holders of Common Shares a proposal for an amalgamation, consolidation, merger, arrangement, reconstruction, reincorporation, deregistration or any other similar transaction involving the Company that requires or (ii) submitted any proposal for any other matter that, as a result of any change in Bermuda law after the date of the final Offering Memorandum relating to the issuance and sale of the Series A Preference Shares (whether by enactment or official interpretation) requires, in each case, a vote of Series A Holders voting separately as a single class (alone or with one or more class or series of preference shares), the Company shall be entitled, upon not less than thirty (30) days' nor more than sixty (60) days' prior written notice to the Series A Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph (e) below, to redeem all of the outstanding Series A Preference Shares pursuant to this paragraph for cash at a redemption price equal to the Make Whole Amount for the Series A Preference Shares described in clause (vi) below, plus any declared and unpaid dividends with respect to the then- current Series A Dividend Period to the date of redemption, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period to the extent not declared and payable in respect of such Series A Dividend Period.

**(iii) Redemption on Tax Event.** If (a) there is a "change in tax law" that would require the Company or any successor company to pay any additional amounts with respect to any then issued and outstanding Series A Preference Shares and (b) the payment of those additional amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the Company shall be entitled at any time thereafter, upon not less than thirty (30) days' nor more than sixty (60) days' prior written notice to the Series A Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph (e) below, to redeem, in whole but not in part, the Series A Preference Shares pursuant to this paragraph for cash at a redemption

price equal to the Make Whole Amount for the Series A Preference Shares described in clause (vi) below, plus any declared and unpaid dividends with respect to the then- current Series A Dividend Period to the date of redemption, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period to the extent not declared in respect of such Series A Dividend Period.

For the purpose of this provision a “change in tax law” shall be (a) a change in or amendment to laws, regulations or rulings of any jurisdiction, political subdivision or taxing authority described in the next sentence, (b) a change in the official application or interpretation of those laws, regulations or rulings, or (c) any execution of or amendment to any treaty affecting taxation to which any jurisdiction, political subdivision or taxing authority described in the next sentence is party after the date of the final Offering Memorandum. The jurisdictions, political subdivisions and taxing authorities referred to in the previous sentence are (a) Bermuda or any political subdivision or governmental authority of or in Bermuda with the power to tax, (b) any jurisdiction from or through which the Company or its paying agent is making payments on the Series A Preference Shares or any political subdivision or governmental authority of or in that jurisdiction with the power to tax, or (c) any other jurisdiction in which the Company or its successor company is organized or generally subject to taxation or any political subdivision or governmental authority of or in that jurisdiction with the power to tax.

(iv) **Tax Event on Consolidation.** If the entity formed by a consolidation, merger or amalgamation involving the Company or the entity to which the Company conveys, transfers or leases substantially all of its properties and assets would be required to pay additional amounts in respect of any tax, assessment or governmental charge imposed on any Series A Holder as a result of a change in tax law that occurred after the date of the consolidation, merger, amalgamation, conveyance, transfer or lease, and the payment of those amounts cannot be avoided by the use of any reasonable measures available to the Company or any successor company, the Company shall be entitled to at any time thereafter, upon not less than thirty (30) days’ nor more than sixty (60) days’ prior written notice to the Series A Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph (e) below, to redeem, in whole but not in part, the Series A Preference Shares outstanding at such time, if any, pursuant to this paragraph for cash at a redemption price equal to the Make Whole Amount for the Series A Preference Shares described in clause (vi) below, plus any declared and unpaid dividends with respect to the then- current Series A Dividend Period to the date of redemption, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period to the extent not declared and payable in respect of such Series A Dividend Period.

(v) **Redemption upon the Occurrence of a Rating Agency Event.** At any time prior to September 30, 2017, *provided* that at such time some or all of the Series

A Preference Shares are outstanding, if there shall occur a Rating Agency Event in respect of the Series A Preference Shares, the Company shall be entitled, upon not less than thirty (30) days' nor more than sixty (60) days' prior written notice to the Series A Holders, in such form and given in such manner as the Directors shall from time to time determine and in accordance with paragraph (e) below, to redeem all of the outstanding Series A Preference Shares pursuant to this paragraph for cash at a redemption price equal to the Make Whole Amount for the Series A Preference Shares described in clause (vi) below, plus any declared and unpaid dividends with respect to the then- current Series A Dividend Period to the date of redemption, without interest on such declared and unpaid dividends and without accumulation of dividends for any prior Series A Dividend Period to the extent not declared and payable in respect of such Series A Dividend Period.

For purposes of the preceding paragraph, "Rating Agency Event" means a change by any nationally recognized statistical rating organization within the meaning of Rule 15c3- 1 under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), that currently publishes a rating for the Company (a "Rating Agency") to the Company's equity credit criteria for the Series A Preference Shares, as such criteria are in effect on the date of the final Offering Memorandum (the "Current Criteria"), which change results in (a) the shortening of the length of time for which such current equity credit is scheduled to be in effect with respect to the Series A Preference Shares, or (b) a lower equity credit being given to the Series A Preference Shares as of the date of such change than the equity credit that would have been assigned to the Series A Preference Shares as of the date of such change by such Rating Agency pursuant to its Current Criteria.

- (vi) **Make Whole Amount.** With respect to the Series A Preference Shares, the "Make Whole Amount" will be in US dollars and will be equal to the greater of (i) the aggregate liquidation preference of the Series A Preference Shares to be redeemed and (ii) the sum of the present values of the aggregate liquidation preference of the Series A Preference Shares to be redeemed and the remaining scheduled payments of dividends on the Series A Preference Shares to be redeemed up to but excluding September 30, 2017 discounted to the redemption date on a semi- annual basis (assuming a 360- day year consisting of twelve 30- day months) at a rate equal to the Treasury Rate (as defined below) plus 50 basis points.

For the purposes of the preceding paragraph:

- "Comparable Treasury Issue" means the United States Treasury security selected by the Reference Treasury Dealer as having a maturity comparable to the period from and including the redemption date to but excluding September 30, 2017 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to such period of time. If no United States Treasury security has a maturity which is within a period from three



months before to three months after the remaining life, the two most closely corresponding United States Treasury securities, as selected by the Reference Treasury Dealer, shall be used as the Comparable Treasury Issue, and the adjusted Treasury Rate shall be interpolated or extrapolated on a straight- line basis, rounding to the nearest month, using such securities.

- “Comparable Treasury Price” means, with respect to any redemption date, (i) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third Business Day preceding such distribution date, as set forth in the H.15 Daily Update published on such Business Day, or (ii) if such release (or any successor release) is not published or does not contain prices on such Business Day, the Reference Treasury Dealer Quotation actually obtained by the calculation agent for such redemption date.
- “H.15 (519)” means the weekly statistical release entitled “H.15 (519) Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System.
- “H.15 Daily Update” means the daily update of H.15 (519) available through the world wide website of the Board of Governors of the Federal Reserve System or any successor site or publication.
- “Reference Treasury Dealer” means a nationally recognized investment bank that is a primary U.S. government securities dealer in New York City selected by the Company.
- “Reference Treasury Dealer Quotation” means, with respect to the Reference Treasury Dealer and redemption date, the average, as determined by the calculation agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the calculation agent by the Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.
- “Treasury Rate” means, with respect to any redemption date, the rate per annum equal to the semi- annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

**(e) Notices of Redemption**

Notice of any redemption at the option of the Company described herein will be mailed at least thirty (30) days but not more than sixty (60) days before the redemption date to each Series A Holder of record of Series A Preference Shares to be redeemed at the address

shown in the register of members of the Company; *provided* that, if the Series A Preference Shares are then held in book- entry form through The Depository Trust Company (“DTC”), the Company may give notice to the Series A Holders in any manner permitted by DTC. Each notice will state as appropriate: (1) the redemption date; (2) the number of Series A Preference Shares to be redeemed; (3) the redemption price; (4) the place or places where certificates for Series A Preference Shares are to be surrendered for payment of the redemption price if any such certificates are outstanding; and (5) where applicable, that dividends on the Series A Preference Shares to be redeemed will cease to accrue on such redemption date. If fewer than all Series A Preference Shares are to be redeemed, the notice provided to each such Series A Holder will also specify the number of Series A Preference Shares to be redeemed from such Series A Holder. The notice shall contain (i) the name and address of the relevant bank or trust company to be used for purposes of redemption (if any) and (ii) a statement as to the deposit or intent to deposit the redemption funds in such trust account.

**(f) Directors Determine Shares Redeemed**

If fewer than all of the Series A Preference Shares are to be redeemed at the option of the Company, the number of shares to be redeemed will be determined by the Directors in their absolute discretion and such Series A Preference Shares may be redeemed *pro rata* from the Series A Holders of record in proportion to the number of Series A Preference Shares held by such Series A Holders (with adjustments to avoid redemption of fractional shares), or by lot.

**(g) Dividends Cease**

If notice of redemption of any Series A Preference Shares has been given and if the funds necessary for such redemption have been set apart by the Company in trust for the benefit of the Series A Holders of such Series A Preference Shares so called for redemption, then from and after the redemption date, dividends will cease to accrue on the Series A Preference Shares being redeemed, the Series A Preference Shares so redeemed will no longer be deemed to be outstanding and all rights of the Series A Holders of such Series A Preference Shares will terminate, except the right to receive the redemption price.

**(h) Dividends Payable to Record Date**

If a redemption date falls after a dividend record date with respect to which a dividend has been declared and prior to the corresponding Series A Dividend Payment Date, the Series A Holders at the close of business on the dividend record date will be entitled to receive the dividend payable with respect to such Series A Preference Shares on the corresponding Series A Dividend Payment Date notwithstanding the redemption thereof between the dividend record date and the corresponding Series A Dividend Payment Date or a default in the payment of the dividend due on such Series A Dividend Payment Date.

(i)

**Dividends Paid**

Unless full dividends on the Series A Preference Shares and all Series A Parity Shares for the then- current Series A Dividend Period shall have been declared and paid, or declared and a sum sufficient for the payment thereof set apart for payment for all such dividends on or prior to the date of a redemption, purchase or other acquisition, no Series A Preference Shares or Series A Parity Shares may be redeemed, purchased or otherwise acquired by the Company unless all outstanding Series A Preference Shares and any Series A Parity Shares are redeemed; *provided* that the Company may acquire fewer than all of the outstanding Series A Preference Shares or any Series A Parity Shares pursuant to a purchase or exchange offer made on the same terms to Series A Holders of all outstanding Series A Preference Shares and Series A Parity Shares as determined in good faith by the Board of Directors of the Company.

(j)

**Right to Purchase Series A Preference Shares**

Subject to (1) the terms of the Replacement Capital Covenant, (2) certain limitations contained in the Memorandum of Association, (3) certain limitations contained in the Company's Bye- laws, (4) the special rights granted to any of the Company's issued and outstanding shares and (5) applicable law, the Company may, at any time and from time to time, purchase outstanding Series A Preference Shares. Any such purchase made by the Company may be made in the open market, by tender to all Series A Holders, by private agreement or otherwise as the Directors see fit. Any Series A Preference Shares purchased by the Company for its own account (other than in the ordinary course of business of dealing in securities) will be cancelled by the Company and will no longer be issued and outstanding.

(k)

**Redemption Proceeds**

Under Bermuda law, the Company may not redeem or purchase the Series A Preference Shares except out of its profits, from the proceeds of a new issue of shares made for the purpose of the redemption or purchase, out of capital or from the share premium account. The premium, if any, payable on redemption or purchase must be provided for out of funds that would otherwise be available for dividend or distribution or out of the Company's share premium account before or at the time the Series A Preference Shares are redeemed or purchased.

(l)

**Cancellation of Share Certificates**

Payment of the redemption amount shall only be effected upon surrender to the Company for cancellation of any share certificate in respect of the Series A Preference Shares (to the extent such certificates are outstanding) to be redeemed and shall be made as promptly as practicable. If any certificate so surrendered includes Series A Preference Shares not being redeemed, a new certificate for the remaining Series A Preference Shares shall be issued to the Series A Holder in accordance with the Memorandum of Association and Bye- laws without charge to such Series A Holder.

**(n) Redemption Process**

The Directors may make such further regulations concerning the administrative process of redemption as they shall from time to time deem necessary so long as the rights of the Series A Holders are not varied.

**(n) Rights Not Varied**

The rights conferred upon the Series A Holders of the Series A Preference Shares shall not be deemed to be varied by the creation or issue of any Series A Parity Shares, Series A Junior Shares or Series A Fully Junior Shares.

**(o) Payments of Additional Amounts**

All payments on the Series A Preference Shares shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 3.3(d)(iii) of these Resolutions, unless the deduction or withholding of such taxes, assessments or other governmental charges is required by law, regulations or rulings or the application or official interpretation of such law, regulations or rulings. In that event, the Company shall pay, or cause to be paid, additional amounts to the registered Series A Holders as additional dividends to make up for any deduction or withholding for any present or future taxes, assessments or other governmental charges imposed by any jurisdiction, political subdivision or taxing authority described in paragraph 3.3(d)(iii) of these Resolutions in respect of any amounts that the Company or a successor company must pay with respect to the Series A Preference Shares, so that the net amounts paid to the Series A Holders, after that deduction or withholding, shall equal the respective amounts that would have been receivable by such Series A Holders had no such withholding or deduction been required. For the avoidance of doubt, all references to payments on the Series A Preference Shares, including without limitation, payments of liquidation amounts, redemption prices and dividends, shall be deemed to include the payment of any such additional dividends in respect of additional amounts. However, the Company shall not be obligated to pay additional amounts to any Series A Holder that:

- (i) resides in or is a citizen of the jurisdiction, political subdivision or taxing authority imposing the taxes, assessments or other governmental charges that would otherwise trigger the Company's obligation to pay additional amounts; or
- (ii) is a fiduciary, partnership, limited liability company or other pass-through entity if, and to the extent that, the payment of additional amounts would be required by a jurisdiction, political subdivision or taxing authority described in paragraph 3.3(d)(iii) of these Resolutions to be included in the income for tax purposes of a beneficiary or settlor with respect to that fiduciary or a member of that partnership, limited liability company or other pass-through entity who would not have

been entitled to any additional amounts had that beneficiary, settlor or member held those Series A Preference Shares directly.

**(p) No Payment of Additional Amounts**

In addition, the Company shall not be obligated to pay any additional amounts to a Series A Holder on account of:

- (i) any tax, assessment or other governmental charge that would not have been imposed but for the existence of any present or former connection between the Series A Holder and the taxing jurisdiction or political subdivision, or any Series A Preference Share presented for payment more than thirty (30) days after the relevant date, which means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has not been received by the depository on or prior to such due date, it means the first date on which the full amount of such moneys having been so received and being available for payments to Series A Holders, and notice to that effect shall have been duly given to the Series A Holders;
- (ii) any estate, inheritance, gift, sales, transfer, personal property or similar tax, assessment or other governmental charge;
- (iii) any tax, assessment or other governmental charge that is payable other than by withholding or deduction from payment of the liquidation preference of or any dividends on the Series A Preference Shares;
- (iv) any tax, assessment or other governmental charge that is imposed or withheld by reason of the failure by the Series A Holder or the beneficial owner of the Series A Preference Shares to promptly comply with a request by the Company to (a) provide information, documents, certifications or other evidence concerning the nationality, residence or identity of the Series A Holder or beneficial owner of such Series A Preference Shares or (b) make and deliver any declaration or other similar claim, other than a claim for refund of a tax, assessment or other governmental charge withheld by the Company, or satisfy any information or reporting requirements, which, in the case of clause (a) or (b) of this subparagraph, is required or imposed by a statute, treaty, regulation or administrative practice of the taxing jurisdiction as a precondition to exemption from all or part of that tax, assessment or other governmental charge; or
- (v) any combination of the items identified by the subparagraphs above.

**(q) No Preemptive Rights**

The Series A Preference Shares shall not be entitled to the benefits of any sinking fund. No Series A Holder, solely by reason of being a Series A Holder, has or will have any preemptive right to subscribe for any additional issue of the Company's shares of any

class or series or to any security convertible into or carrying rights or options to purchase any such shares.

(r)

### **Ranking**

Any class or series of shares of the Company shall be deemed to rank (1) senior to the Series A Preference Shares, as to the payment of dividends and as to any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, if holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up, as the case may be, of the Company in preference or priority to the Series A Holders and the holders of the Series A Parity Shares, (2) *pari passu* with the Series A Preference Shares as to the payment of dividends and as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof shall be different from those of the Series A Preference Shares, if holders of such class or series, the Series A Preference Shares shall be entitled to the receipt of dividends and of amounts distributable upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company in proportion to their respective amounts of accrued but unpaid dividends per share or liquidation preferences, without preference or priority of one over the other or (3) junior to the Series A Preference Shares, as to the payment of dividends or as to distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up of the Company, if such class or series is common shares or other shares ranking junior in right of payment to the Series A Preference Shares as to dividends or as to the distribution of assets upon any voluntary or involuntary return of assets on liquidation, dissolution or winding up on the basis set out above of the Company.

3.4

### **Election of Directors**

(a) RESOLVED that, in the event that the Series A Holders may, voting together with any other Series A Parity Shares as necessary, select two persons and nominate such elected persons for appointment by the Board of Directors as additional Directors of the Company pursuant to paragraph 3.3(c)(iii) of these Resolutions during a Series A Voting Period, the Board of Directors hereby, pursuant to Article 8 of the By-laws, increase the number of persons consisting of the Board of Directors by two persons (subject to the limit in the number of Directors stated in Article 8) and hereby appoint, pursuant to Article 11 of the By-laws, such persons elected and nominated by the holders of Preference Shares as additional Directors of the Company. Such additional Directors shall be apportioned among the classes of Directors in accordance with Article 8(3) of the By-laws. Such appointment is conditional upon and subject to the following:

(i) The term of office of each such Director shall in all events automatically expire at the end of the applicable voting period; and

(ii) Prior to the appointment of each such elected person as a Director becoming effective, each such person shall provide to the Company notice in writing that he resigns from the office of Director, in the form attached to these Resolutions, which form is hereby approved, such notice to only be effective upon the earliest of: (i) the expiration of the applicable voting period during which such Director was appointed or (ii) the passing of an ordinary resolution by the holders of the relevant series of outstanding preference shares for the removal of such Director (in accordance with paragraph 3.3(c)(iv) of these Resolutions).

(b) RESOLVED that, in the event that it is necessary for any Director elected and nominated by the Series A Holders to be removed from office in accordance with the provisions of paragraph 3.3(c)(iv) of these Resolutions, the Board of Directors shall put a special resolution to the Company at the immediately following Annual General Meeting of the Company for the removal of such Director or Directors pursuant to Article 11 of the Bye-laws.

(c) RESOLVED that, in the event that to give effect to the rights granted to the Series A Holders by the provisions of paragraph 3.3(c)(iii) of these Resolutions it is necessary to increase the limit in the number of Directors specified in Article 8 of the Bye-laws, the Directors shall put an ordinary resolution to the Company at the next Annual General Meeting of the Company to increase the limit in the number of Directors.

### 3.5 **Transfer Restrictions on the Series A Preference Shares**

(a) Definitions. The following terms shall have the meanings set forth below for purposes of this Section 3.5.

“144A Global Preference Share” means a Global Preference Share bearing the Global Preference Share Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee.

“Applicable Procedures” means, with respect to any transfer or exchange of or for beneficial interests in any Global Preference Share, the rules and procedures of the Depositary, Euroclear and/or Clearstream that apply to such transfer or exchange.

“Broker-Dealer” means any broker or dealer registered under the Exchange Act.

“Custodian” means the Transfer Agent, as custodian with respect to the Preference Shares in global form, or any successor entity thereto.

“Definitive Preference Share” means a certificated Preference Share registered in the name of the Holder thereof.

“Depositary” means, with respect to the Preference Shares issuable or issued in whole or in part in global form, the Person specified in the section captioned “Depositary; Registrar and Paying Agent” hereof as the Depositary with respect to the Preference Shares,

and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of these Resolutions.

“Global Preference Share Legend” means the legend set forth in under the section captioned, “Legend” hereof, which is required to be placed on all Global Preference Shares issued under these Resolutions.

“Global Preference Shares” means, individually and collectively, each of the Restricted Global Preference Shares and the Unrestricted Global Preference Shares.

“Holder” means the person in whose name a Preference Share is registered on the Registrar's books.

“Indirect Participant” means a Person who holds a beneficial interest in a Global Preference Share through a Participant.

“Letter of Transmittal” means the letter of transmittal to be prepared by the Company and sent to all Holders of the Preference Shares for use by such Holders in connection with the Exchange Offer.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Transfer Agent. The counsel may be an employee of or counsel to the Company or the Transfer Agent.

“Participant” means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

“Private Placement Legend” means the legend set forth under the caption “Transfer and Exchange” hereof to be placed on all Preference Shares issued under these Resolutions, except where otherwise permitted by the provisions of these Resolutions.

“Regulation S Global Preference Share” means a Global Preference Share bearing the Global Preference Share Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee.

“Restricted Definitive Preference Share” means a Definitive Preference Share bearing the Private Placement Legend.

“Restricted Global Preference Shares” means a Global Preference Share bearing the Private Place Legend.

“Transfer Agent” means The Bank of New York, as transfer agent, until a successor replaces it and thereafter means the successor serving hereunder.

“Unrestricted Definitive Preference Share” means one or more Definitive Preference Shares that do not bear and are not required to bear the Private Placement Legend.



“Unrestricted Global Preference Share” means a permanent Global Preference Share that bears the Global Preference Share Legend, and that is deposited with or on behalf of and registered in the name of the Depository, representing Preference Shares that do not bear the Private Placement Legend.

(b) Depository; Registrar and Paying Agent.

The Company initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Global Preference Shares.

The Company initially appoints the Transfer Agent to act as the Paying Agent and Registrar for the Preference Shares and to act as Custodian with respect to the Global Preference Shares.

(c) Transfer and Exchange.

(i) Transfer and Exchange of Global Preference Shares. Except as otherwise set forth in this Section, a Global Preference Share may be transferred, in whole and not in part, only to another nominee of the Depository or to a successor Depository or a nominee of such successor Depository. A beneficial interest in a Global Preference Share may not be exchanged for a Definitive Preference Share unless (i) the Depository (x) notifies the Company that it is unwilling or unable to continue as Depository for such Global Preference Share or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Company within 120 days or (ii) there shall have occurred and be continuing an Event of Default with respect to the Preference Shares. Upon the occurrence of any of the preceding events in (i) or (ii) above, Definitive Preference Shares delivered in exchange for any Global Preference Share or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures). Global Preference Shares also may be exchanged or replaced, in whole or in part, as provided herein. Every Preference Share authenticated and delivered in exchange for, or in lieu of, a Global Preference Share or any portion thereof, shall be authenticated and delivered in the form of, and shall be, a Global Preference Share, except for Definitive Preference Shares issued subsequent to any of the preceding events in (i) or (ii) above. A Global Preference Share may not be exchanged for another Preference Share other than as provided in this Section; provided, however, beneficial interests in a Global Preference Share may be transferred and exchanged as provided in these Resolutions.

(ii) Transfer and Exchange of Beneficial Interests in the Global Preference Shares. The transfer and exchange of beneficial interests in the Global Preference Shares shall be effected through the Depository, in accordance with the provisions of these Resolutions. Beneficial interests in the Restricted Global Preference Shares shall be subject to restrictions on transfer comparable to those set forth herein to

the extent required by the Securities Act. Transfers of beneficial interests in the Global Preference Shares also shall require compliance with either subparagraph (A) or (B) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(A) Transfer of Beneficial Interests in the Same Global Preference Share. Beneficial interests in any Restricted Global Preference Share may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Preference Share in accordance with the transfer restrictions set forth in the Private Placement Legend. Beneficial interests in any Unrestricted Global Preference Share may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Preference Share. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers set forth in this Section.

(B) All Other Transfers and Exchanges of Beneficial Interests in Global Preference Shares. In connection with all transfers and exchanges of beneficial interests under the caption "Transfer and Exchange" hereof, the transferor of such beneficial interest must deliver to the Company either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Preference Share in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Preference Share in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Preference Share shall be registered to effect the transfer or exchange referred to in (1) above. Upon consummation of an Exchange Offer by the Company in accordance with the Registration Rights Agreement, the requirements of this Section shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Preference Shares. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Preference Shares contained in these Resolutions and the Preference Shares or otherwise applicable under the Securities Act, the Transfer Agent shall adjust the aggregate number of the relevant Global Preference Share(s).

(C) Transfer of Beneficial Interests to Another Restricted Global Preference Share. A beneficial interest in any Restricted Global Preference Share may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Preference Share if the transfer complies with the requirements hereof and receives the following:

(1) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Preference Share, then the transferor must deliver a certificate in the form of Exhibit A hereto, including the certifications in item (1) thereof, or

(2) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Preference Share, then the transferor must deliver a certificate in the form of Exhibit A hereto, including the certifications in item (2) thereof.

(D) Transfer and Exchange of Beneficial Interests in a Restricted Global Preference Share for Beneficial Interests in an Unrestricted Global Preference Share. A beneficial interest in any Restricted Global Preference Share may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Preference Share or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Preference Share if the exchange or transfer complies with the requirements hereof and:

(1) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker- Dealer, (2) a Person participating in the distribution of the Exchange Preference Shares or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(2) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(3) such transfer is effected by a Broker- Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(4) the Company receives the following:

(I) if the holder of such beneficial interest in a Restricted Global Preference Share proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Preference Share, a certificate from such Holder

substantially in the form of Exhibit B hereto, including the certifications in item (1)(a) thereof; or

- (II) if the holder of such beneficial interest in a Restricted Global Preference Share proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Preference Share, a certificate from such holder in the form of Exhibit A hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (4), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (2) or (4) above at a time when an Unrestricted Global Preference Share has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with the provisions hereof, the Transfer Agent shall authenticate one or more Unrestricted Global Preference Shares in an aggregate number of Preference Shares equal to the aggregate number of beneficial interests transferred pursuant to subparagraph (2) or (4) above.

Beneficial interests in an Unrestricted Global Preference Share cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Preference Share.

(iii) Transfer or Exchange of Beneficial Interests for Definitive Preference Shares.

- (A) Beneficial Interests in Restricted Global Preference Shares to Restricted Definitive Preference Shares. If any holder of a beneficial interest in a Restricted Global Preference Share proposes to exchange such beneficial interest for a Restricted Definitive Preference Share or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Preference Share, then, upon the occurrence of any of the events hereof and receipt by the Company of the following documentation:
  - (1) if the holder of such beneficial interest in a Restricted Global Preference Share proposes to exchange such beneficial interest for a Restricted Definitive Preference Share, a certificate from such

holder substantially in the form of Exhibit B hereto, including the certifications in item (2)(a) thereof;

- (2) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (1) thereof;
- (3) if such beneficial interest is being transferred to a Non- U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (2) thereof;
- (4) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(a) thereof;
- (5) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(b) thereof; or
- (6) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(c) thereof,

the Transfer Agent shall cause the aggregate number of the applicable Global Preference Shares to be reduced accordingly, and the Company shall execute and the Transfer Agent shall authenticate and mail to the Person designated in the instructions a Definitive Preference Share in the applicable number of Preference Shares. Any Definitive Preference Share issued in exchange for a beneficial interest in a Restricted Global Preference Share pursuant to this Section shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Transfer Agent shall mail such Definitive Preference Shares to the Persons in whose names such Preference Shares are so registered. Any Definitive Preference Share issued in exchange for a beneficial interest in a Restricted Global Preference Share pursuant to this Section shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

**(B) Beneficial Interests in Restricted Global Preference Shares to Unrestricted Definitive Preference Shares.** A holder of a beneficial interest in a Restricted Global Preference Share may exchange such beneficial interest for

an Unrestricted Definitive Preference Share or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Preference Share and if:

- (1) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker- Dealer, (2) a Person participating in the distribution of the Exchange Preference Shares or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;
- (2) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;
- (3) such transfer is effected by a Broker- Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(4) the Company receives the following:

- (I) if the holder of such beneficial interest in a Restricted Global Preference Share proposes to exchange such beneficial interest for an Unrestricted Definitive Preference Share, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (1)(b) thereof; or
- (II) if the holder of such beneficial interest in a Restricted Global Preference Share proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Preference Share, a certificate from such holder substantially in the form of Exhibit A hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (4), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(C) Beneficial Interests in Unrestricted Global Preference Shares to Unrestricted Definitive Preference Shares. If any holder of a beneficial interest

in an Unrestricted Global Preference Share proposes to exchange such beneficial interest for a Definitive Preference Share or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Preference Share, and satisfaction of the conditions set forth hereof, the Transfer Agent shall cause the aggregate number of the applicable Global Preference Shares to be reduced accordingly, and the Company shall execute and the Transfer Agent shall authenticate and mail to the Person designated in the instructions a Definitive Preference Share in the applicable number of Preference Shares. Any Definitive Preference Share issued in exchange for a beneficial interest pursuant to this Section shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depositary and the Participant or Indirect Participant. The Transfer Agent shall mail such Definitive Preference Shares to the Persons in whose names such Preference Shares are so registered. Any Definitive Preference Share issued in exchange for a beneficial interest pursuant to this Section shall not bear the Private Placement Legend.

(iv) Transfer and Exchange of Definitive Preference Shares for Beneficial Interests.

(A) Restricted Definitive Preference Shares to Beneficial Interests in Restricted Global Preference Shares. If any Holder of a Restricted Definitive Preference Share proposes to exchange such Preference Share for a beneficial interest in a Restricted Global Preference Share or to transfer such Restricted Definitive Preference Share to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Preference Share, then, upon receipt by the Company of the following documentation:

- (1) if the Holder of such Restricted Definitive Preference Share proposes to exchange such Preference Share for a beneficial interest in a Restricted Global Preference Share, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (2)(b) thereof;
- (2) if such Restricted Definitive Preference Share is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (1) thereof;
- (3) if such Restricted Definitive Preference Share is being transferred to a Non- U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (2) thereof;

- (4) if such Restricted Definitive Preference Share is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(a) thereof;
- (5) if such Restricted Definitive Preference Share is being transferred to the Company or any of its subsidiaries, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(b) thereof; or
- (6) if such Restricted Definitive Preference Share is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit A hereto, including the certifications in item (3)(c) thereof,

the Transfer Agent shall cancel the Restricted Definitive Preference Share, increase or cause to be increased the aggregate number of, in the case of clause (1) above, the applicable Restricted Global Preference Share, in the case of clause (2) above, the applicable 144A Global Preference Share, and in the case of clause (3) above, the applicable Regulation S Global Preference Share.

(B) Restricted Definitive Preference Shares to Beneficial Interests in Unrestricted Global Preference Shares. A Holder of a Restricted Definitive Preference Share may exchange such Preference Share for a beneficial interest in an Unrestricted Global Preference Share or transfer such Restricted Definitive Preference Share to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Preference Share only if:

- (1) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a Broker- Dealer, (2) a Person participating in the distribution of the Exchange Preference Shares or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;
- (2) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;
- (3) such transfer is effected by a Broker- Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or



(4)

the Company receives the following:

- (I) if the Holder of such Definitive Preference Shares proposes to exchange such Preference Shares for a beneficial interest in the Unrestricted Global Preference Share, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (1)(c) thereof; or
- (II) if the Holder of such Definitive Preference Shares proposes to transfer such Preference Shares to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Preference Share, a certificate from such Holder substantially in the form of Exhibit A hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (4), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section, the Transfer Agent shall cancel the Definitive Preference Shares and increase or cause to be increased the aggregate number of the Unrestricted Global Preference Shares.

- (C) Unrestricted Definitive Preference Shares to Beneficial Interests in Unrestricted Global Preference Shares. A Holder of an Unrestricted Definitive Preference Share may exchange such Preference Share for a beneficial interest in an Unrestricted Global Preference Share or transfer such Definitive Preference Shares to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Preference Share at any time. Upon receipt of a request for such an exchange or transfer, the Transfer Agent shall cancel the applicable Unrestricted Definitive Preference Share and increase or cause to be increased the aggregate number of one of the Unrestricted Global Preference Shares.

If any such exchange or transfer from a Definitive Preference Share to a beneficial interest is effected pursuant to subparagraph (B)(2), (B)(4) or (C) above at a time when an Unrestricted Global Preference Share has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with the provisions under the caption "Transfer and Exchange" hereof, the Transfer Agent shall authenticate one or more Unrestricted Global Preference Shares in

an aggregate number of Preference Shares equal to the number of Definitive Preference Shares so transferred.

(v) Transfer and Exchange of Definitive Preference Shares for Definitive Preference Shares. Upon request by a Holder of Definitive Preference Shares and such Holder's compliance with the provisions of this Section, the Registrar shall register the transfer or exchange of Definitive Preference Shares. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Preference Shares duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section:

(A) Restricted Definitive Preference Shares to Restricted Definitive Preference Shares. Any Restricted Definitive Preference Share may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Preference Share if the Company receives the following:

- (1) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit A hereto, including the certifications in item (1) thereof;
- (2) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate in the form of Exhibit A hereto, including the certifications in item (2) thereof; or

(3) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit A hereto, including the certifications required by item (3) thereof, if applicable.

(B) Restricted Definitive Preference Shares to Unrestricted Definitive Preference Shares. Any Restricted Definitive Preference Share may be exchanged by the Holder thereof for an Unrestricted Definitive Preference Share or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Preference Share if:

(1) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is

not (1) a Broker- Dealer, (2) a Person participating in the distribution of the Exchange Preference Shares or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(2) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(3) any such transfer is effected by a Broker- Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(4) the Company receives the following:

(I) if the Holder of such Restricted Definitive Preference Shares proposes to exchange such Preference Shares for an Unrestricted Definitive Preference Share, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (1)(d) thereof; or

(II) if the Holder of such Restricted Definitive Preference Shares proposes to transfer such Preference Shares to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Preference Share, a certificate from such Holder substantially in the form of Exhibit A hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (4), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(C) Unrestricted Definitive Preference Shares to Unrestricted Definitive Preference Shares. A Holder of Unrestricted Definitive Preference Shares may transfer such Preference Shares to a Person who takes delivery thereof in the form of an Unrestricted Definitive Preference Share. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Preference Shares pursuant to the instructions from the Holder thereof.

(vi) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Company shall issue and, upon receipt of an Authentication Order, the Transfer Agent shall authenticate (i) one or more Unrestricted Global Preference Shares in an aggregate number of Preference Shares equal to the number of the beneficial interests in the Restricted Global

Preference Shares tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Broker-Dealers, (y) they are not participating in a distribution of the Exchange Preference Shares and (z) they are not affiliates (as defined in Rule 144) of the Company, and accepted for exchange in the Exchange Offer and (ii) Unrestricted Definitive Preference Shares in an aggregate number of Preference Shares equal to the number of the Restricted Definitive Preference Shares tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Broker-Dealers, (y) they are not participating in a distribution of the Exchange Preference Shares and (z) they are not affiliates (as defined in Rule 144) of the Company, and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Preference Shares, the Transfer Agent shall cause the aggregate number of Preference Shares of the applicable Restricted Global Preference Shares to be reduced accordingly, and the Company shall execute and the Transfer Agent shall authenticate and mail to the Persons designated by the Holders of Definitive Preference Shares so accepted Unrestricted Definitive Preference Shares in the applicable principal amount. Any Preference Shares that remain outstanding after the consummation of the Exchange Offer, and Exchange Preference Shares issued in connection with the Exchange Offer, shall be treated as a single class of securities under these Resolutions.

- (vii) Legends. The following legends shall appear on the face of all Global Preference Shares and Definitive Preference Shares issued under these Resolutions unless specifically stated otherwise in the applicable provisions of these Resolutions:

(A) Private Placement Legend.

- (1) Except as permitted by subparagraph (2) below, each Global Preference Share and each Definitive Preference Share (and all Preference Shares issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

“THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR OTHER SECURITIES LAW. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE

HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING ITS SECURITY IN AN "OFFSHORE TRANSACTION" PURSUANT TO RULE 904 OF REGULATIONS UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT PRIOR TO (X) THE DATE WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(K) UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR OF ANY PREDECESSOR OF THIS SECURITY) OR THE LAST DAY ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE "RESALE RESTRICTION TERMINATION DATE"), OFFER, SELL OR OTHERWISE TRANSFER THIS PREFERENCE SHARE EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON- U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED THAT THE COMPANY, THE TRANSFER AGENT AND THE REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATIS-

FACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION”, “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.”

- (2) Notwithstanding the foregoing, any Global Preference Share or Definitive Preference Share issued pursuant to subparagraph (ii)(D), (iii)(C), (iii)(D), (iv)(B), (iv)(C), (v)(B), (v)(C) or (vi) under the section captioned “Transfer and Exchange” hereof (and all Preference Shares issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

- (B) Global Preference Share Legend. Each Global Preference Share shall bear a legend in substantially the following form:

“THIS GLOBAL PREFERENCE SHARE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE RESOLUTIONS SETTING FORTH THE TERMS, RIGHTS AND PREFERENCES OF THIS PREFERENCE SHARE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRANSFER AGENT MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO THE RESOLUTIONS, (II) THIS GLOBAL PREFERENCE SHARE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO THE RESOLUTIONS, (III) THIS GLOBAL PREFERENCE SHARE MAY BE DELIVERED TO THE TRANSFER AGENT FOR CANCELLATION PURSUANT TO THE RESOLUTIONS AND (IV) THIS GLOBAL PREFERENCE SHARE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR PREFERENCE SHARES IN DEFINITIVE FORM, THIS PREFERENCE SHARE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (“DTC”) TO THE COMPANY OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CER-

TIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

- (viii) Cancellation and/or Adjustment of Global Preference Shares. At such time as all beneficial interests in a particular Global Preference Share have been exchanged for Definitive Preference Shares or a particular Global Preference Share has been redeemed, repurchased or canceled in whole and not in part, each such Global Preference Share shall be returned to or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in a Global Preference Share is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Preference Share or for Definitive Preference Shares, the number of Preference Shares represented by such Global Preference Share shall be reduced accordingly and an endorsement shall be made on such Global Preference Share by the Transfer Agent or by the Depositary at the direction of the Transfer Agent to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Preference Share, such other Global Preference Share shall be increased accordingly and an endorsement shall be made on such Global Preference Share by the Transfer Agent or by the Depositary at the direction of the Transfer Agent to reflect such increase.

### 3.6 **Approval of Transactions and Share Offering**

- (a) RESOLVED that the Company be, and it hereby is, authorized to issue and sell up to the Series A Aggregate Available Liquidation Preference of Series A Preference Shares, par value US\$0.01 per share, in accordance with the terms and conditions of the Purchase Agreement. All determinations in respect of the Series A Preference Shares made by any officer or director of the Company, including, without limitation, approval of the form of share certificates, are hereby ratified and confirmed.
- (b) RESOLVED that the Company is, and it hereby is, authorized to make any periodic payments required under the Documents.
- (c) RESOLVED that any officer or director of the Company be, and each of them individually hereby is, authorised and directed in the name and on behalf of the Company to agree (in his or their absolute discretion and including any variations to the forms and terms thereof) to the terms and conditions of and (where appropriate) to execute under hand, under seal or as a deed and deliver, in the name and on behalf of the Company, the

documents relating to the Series A Preference Shares and the Transactions (including, without limitation, the Documents) and any and all other documents, instruments and certificates considered in the absolute discretion of such director or officer necessary, desirable or advisable to complete the Transactions described at the Meeting, execution thereof by any officer or Director of the Company being conclusive evidence of his or their and the Company's agreement to the final terms and conditions of such Documents or any other documents.

(d) RESOLVED that the Company is hereby authorized to appoint The Bank of New York to serve as Transfer Agent, Paying Agent and Registrar with respect to the Series A Preference Shares.

(e) RESOLVED that the Company is hereby authorized to appoint CT Corporation System, New York, New York to serve as its authorized agent for service of process with respect to the Series A Preference Shares.

### 3.7

#### **Approval of General Enabling Resolutions**

(a) RESOLVED that any officer or Director of the Company be, and each of them individually hereby is, authorized and directed in the name and on behalf of the Company, to (i) take or cause to be taken any and all such further actions (including, without limitation, execution and delivery of such deeds, contracts, agreements, instruments, documents and certificates as each of them shall deem in his or her absolute discretion necessary, advisable or desirable, such execution and delivery being conclusive evidence of it being so deemed) and to cause the Company to prepare, execute and deliver and where necessary or appropriate, file or cause to be filed with the appropriate governmental authorities, all such other instruments and documents, including, but not limited to, all certificates, contracts, bonds, agreements, documents, instruments, receipts or other papers, (ii) incur and pay or cause to be paid all fees and expenses, and (iii) engage such persons as they shall in their judgment determine to be necessary or appropriate to carry out fully the intent and purposes of the foregoing resolutions and each of the transactions contemplated thereby.

(b) RESOLVED that any person dealing with any officer or Director of the Company in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such officer or Director and by his execution of any document, agreement, instrument or certificate, the same shall be a valid and binding obligation of the Company enforceable in accordance with its terms.

(c) RESOLVED that all actions previously taken by any officer or Director of the Company in connection with the actions contemplated by the foregoing resolutions be, and each hereby is, adopted, ratified, confirmed and approved in all respects.



## FORM OF CERTIFICATE OF TRANSFER

Security Capital Assurance Ltd  
 One Bermudiana Road  
 Hamilton HM 11  
 Bermuda  
 Fax No.:  
 Attention:

The Bank of New York  
 101 Barclay Street (12W)  
 New York, New York 10128

Fax:  
 Attention: Corporate Trust Administration

Re: Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares

Reference is hereby made to the Resolutions, dated as of March 29, 2007 (the "Resolutions"), of the Subcommittee of the Board of Directors of Security Capital Assurance Ltd. Capitalized terms used but not defined herein shall have the meanings given to them in the Resolutions.

\_\_\_\_\_ (the "Transferor") owns and proposes to transfer the [ ] Preference Share[s] or interest in such Preference Share[s] specified in Annex A hereto or interests (the "Transfer"), to \_\_\_\_\_ (the "Transferee"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL PREFERENCE SHARE OR A DEFINITIVE PREFERENCE SHARE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Preference Share is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Preference Share for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2.  CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL PREFERENCE SHARE OR A DEFINITIVE PREFERENCE SHARE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Resolutions, the transferred beneficial interest or Definitive Preference Share will be subject to the restrictions on Transfer enumerated in the Resolutions and the Securities Act.

3.  CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE DEFINITIVE PREFERENCE SHARE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Preference Shares and Restricted Definitive Preference Shares and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a)  such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b)  such Transfer is being effected to the Company or a subsidiary thereof;

or

(c)  such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act.

4.  CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL PREFERENCE SHARE OR OF AN UNRESTRICTED DEFINITIVE PREFERENCE SHARE.

(a)  CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Resolutions and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Resolutions, the transferred beneficial interest or Definitive Preference Shares will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Preference Share, on Restricted Definitive Preference Shares and in the Resolutions.

(b)  CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Resolutions and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Resolutions, the transferred beneficial interest or Definitive Preference Share will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Preference Shares, on Restricted Definitive Preference Shares and in the Resolutions.

(c)  CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Resolutions and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Resolutions, the transferred beneficial interest or Definitive Preference Shares will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Preference Shares or Restricted Definitive Preference Shares and in the Resolutions.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Transferor]

By: \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a)  a beneficial interest in the:

(i)  144A Global Preference Share ([CUSIP [ ]/ISIN [ ] or

(ii)  Regulation S Global Preference Share ([CUSIP [ ]/ISIN [ ] or [CUSIP [ ]/ISIN [ ]])

(b)  a Restricted Definitive Preference Share.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a)  a beneficial interest in the:

(i)  144A Global Preference Share ([CUSIP [ ]/ISIN [ ] or [CUSIP [ ]/ISIN [ ]]), or

(ii)  Regulation S Global Preference Share ([CUSIP [ ]/ISIN [ ] or [CUSIP [ ]/ISIN [ ]]) or

(iii)  Unrestricted Global Preference Share ([CUSIP [ ]/ISIN [ ] or [CUSIP [ ]/ISIN [ ]])

(b)  a Restricted Definitive Preference Share; or

(c)  an Unrestricted Definitive Preference Share, in accordance with the terms of the Resolutions.

## FORM OF CERTIFICATE OF EXCHANGE

Security Capital Assurance Ltd  
 One Bermudiana Road  
 Hamilton HM 11  
 Bermuda  
 Fax No.:  
 Attention:

The Bank of New York  
 101 Barclay Street (12W)  
 New York, New York 10128

Fax:  
 Attention: Corporate Trust Administration

Re: Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares

Reference is hereby made to the Resolutions, dated as of March 29, 2007 (the "Resolutions"), of the Subcommittee of the Board of Directors of Security Capital Assurance Ltd. Capitalized terms used but not defined herein shall have the meanings given to them in the Resolutions.

\_\_\_\_\_ (the "Owner") owns and proposes to exchange  Preference Share[s] or interest in such Preference Share[s] specified herein (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE PREFERENCE SHARES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL PREFERENCE SHARES FOR UNRESTRICTED DEFINITIVE PREFERENCE SHARES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL PREFERENCE SHARES

a)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL PREFERENCE SHARE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL PREFERENCE SHARE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Preference Share for a beneficial interest in an Unrestricted Global Preference Share in an equal number of shares, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Preference Shares and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities

Act and (iv) the beneficial interest in an Unrestricted Global Preference Share is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

b)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL PREFERENCE SHARE TO UNRESTRICTED DEFINITIVE PREFERENCE SHARE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Preference Share for an Unrestricted Definitive Preference Share, the Owner hereby certifies (i) the Definitive Preference Share is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Preference Shares and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Preference Share is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

c)  CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE PREFERENCE SHARE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL PREFERENCE SHARE. In connection with the Owner's Exchange of a Restricted Definitive Preference Share for a beneficial interest in an Unrestricted Global Preference Share, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Preference Shares and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

d)  CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE PREFERENCE SHARE TO UNRESTRICTED DEFINITIVE PREFERENCE SHARE. In connection with the Owner's Exchange of a Restricted Definitive Preference Share for an Unrestricted Definitive Preference Share, the Owner hereby certifies (i) the Unrestricted Definitive Preference Share is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Preference Shares and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Resolutions and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Preference Share is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE PREFERENCE SHARES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL PREFERENCE SHARES FOR

RESTRICTED DEFINITIVE PREFERENCE SHARES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL PREFERENCE SHARES

a)  CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL PREFERENCE SHARES TO RESTRICTED DEFINITIVE PREFERENCE SHARE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Preference Share for a Restricted Definitive Preference Share with an equal number of shares, the Owner hereby certifies that the Restricted Definitive Preference Share is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Resolutions, the Restricted Definitive Preference Share issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Preference Share and in the Resolutions and the Securities Act.

b)  CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE PREFERENCE SHARE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL PREFERENCE SHARE. In connection with the Exchange of the Owner's Restricted Definitive Preference Share for a beneficial interest in the  144A Global Preference Share  Regulation S Global Preference Share, with an equal number of shares, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Preference Share and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Resolutions, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Preference Share and in the Resolutions and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and are dated.

[Insert Name of Transferor]

By: \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

SECURITY CAPITAL ASSURANCE LTD

Certificate of Claude LeBlanc

pursuant to authority vested by the Subcommittee of the Finance and Risk Oversight Committee; which Subcommittee has been established pursuant to meetings of the Board of Directors held on February 27, 2007 and the meetings of the Finance and Risk Oversight Committee held on March 23, 2007

WHEREAS, at a meeting held on February 27, 2007, the Board of Directors (the "Board of Directors") of Security Capital Assurance Ltd (the "Company") resolved that the Company may issue and sell (the "Issuance"), at any time or from time to time, up to US\$350 million of long- term debt and/or preference securities and delegated to the Finance and Risk Oversight Committee of the Board of Directors (the "FROC") and/or any subcommittee thereof appointed thereby, either of which committees or subcommittees being given full power to sub- delegate to a subcommittee appointed thereby, the right and power to determine all of the terms and conditions of each and any such Issuance (including, without limitation, the terms and conditions of any such securities, the manner of issuance and sale thereof, all pricing and pricing- related terms, and whether or not any replacement capital covenant ought to be provided for rating agency and/or similar purposes, and to execute under hand or seal any other documents, agreements, contracts, instruments and certificates to which the Company is a party or is affected, and considered to be necessary, desirable or advisable to in connection with any such Issuance).

WHEREAS, at a meeting of the FROC held on March 23, 2007 the FROC approved certain transactions and documents generally and delegated to a subcommittee (the "Subcommittee") consisting of Paul S Giordano, Michael P. Esposito and Robert M. Lichten the full right and power to determine all of the terms and conditions of each and any such issuance.

WHEREAS, at a meeting of the Subcommittee held on March 29, 2007 the Subcommittee delegated to either Paul Giordano or Claude LeBlanc, each with the authority to act individually, the authority to determine the liquidation preference of the Company's Fixed/Floating Series A Perpetual Non-Cumulative Preference Shares (the "Preference Shares") of either US\$25 or US\$1,000 per share.

WHEREAS, the undersigned has determined it is in the best interests of the Company that the Preference Shares be issued with a liquidation of US\$1,000 per share.

NOW THEREFORE, after full and careful consideration of the legal, commercial and financial consequences, direct and indirect, of the determination as to liquidation preference of the Preference Shares, I, Claude LeBlanc, on March 29, 2007, do hereby determine that the liquidation preference of the Preference Shares shall be US\$1,000 per share.



SECURITY CAPITAL ASSURANCE LTD

/s/ Claude LeBlanc

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Name: Claude LeBlanc

Title Executive Vice President, Corporate  
Development and Strategy

**REGULATION S GLOBAL PREFERENCE SHARE CERTIFICATE**

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UNLESS THIS GLOBAL PREFERENCE SHARE CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR THE BANK OF NEW YORK, AS TRANSFER AGENT AND REGISTRAR, OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY GLOBAL PREFERENCE SHARE CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE OR ANY PORTION HEREOF IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING ITS SECURITY IN AN “OFFSHORE TRANSACTION” PURSUANT TO RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT PRIOR TO (X) THE DATE WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(K) UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR OF ANY PREDECESSOR OF THIS SECURITY) OR THE LAST DAY ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE “RESALE RESTRICTION TERMINATION DATE”), OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE

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ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON- U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED THAT THE COMPANY AND THE TRANSFER AGENT AND REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

**SECURITY CAPITAL ASSURANCE LTD**

Certificate No.: S- 1

CUSIP: U81394 AA3  
ISIN: USU81394AA39

**Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares**

Security Capital Assurance Ltd, a Bermuda limited company with corporate address at One Bermudiana Road, Hamilton HM11, Bermuda (the "Company") hereby certifies that Cede & Co., as nominee of The Depository Trust Company, is the registered holder of 5,400 (FIVE THOUSAND FOUR HUNDRED) Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares of the Company, par value \$0.01 per share and liquidation preference of US\$1,000 per share (the "Preference Shares"). The specific rights, preferences, limitations and other terms of the Preference Shares represented hereby are set forth in, and subject to, the provisions of the resolutions of an authorized subcommittee of the board of directors of the Company and the certificate of Claude LeBlanc, each dated as of March 29, 2007 (together, the "Subcommittee Resolutions"). Capitalized terms used herein but not defined shall have the respective meanings given them in the Subcommittee Resolutions. This Certificate is not valid unless countersigned by the Transfer Agent and Registrar.

THIS REGULATION S GLOBAL PREFERENCE SHARE CERTIFICATE IS ISSUED BY the Company on this 5 day of April, 2007.

SECURITY CAPITAL ASSURANCE LTD

By: /s/ Thomas W. Currie

\_\_\_\_\_  
Name: Thomas W. Currie

Title: Senior Vice President and Chief Risk Officer

COUNTERSIGNED AND REGISTERED BY THE  
BANK OF NEW YORK, AS  
TRANSFER AGENT AND REGISTRAR

By: /s/ Anthony Bausa  
Authorized Officer

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**ASSIGNMENT FORM**

For value received the undersigned hereby sells, assigns and transfers unto:

---

Please insert social security or other identifying number of assignee:

---

Please print or type name and address, including zip code, of assignee:

---

\_\_\_\_\_ Preference Shares and does hereby irrevocably constitute and appoint \_\_\_\_\_ as Attorney to transfer the Preference Shares on the books of the Company with full power of substitution in the premises.

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

Your Signature: \_\_\_\_\_

(Sign exactly as your name appears on the Regulation S  
Global Preference Share Certificate)

The issuance on the Closing Date is 5,400 Preference Shares. The following exchanges of a part of this Regulation S Global Preference Share Certificate have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in number of shares represented by this Regulation S Global Preference Share Certificate</b>	<b>Amount of increase in number of shares represented by this Regulation S Global Preference Share Certificate</b>	<b>Number of shares represented by this Regulation S Global Preference Share Certificate following such decrease or increase</b>	<b>Signature of authorized officer of Registrar</b>
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**RULE 144A GLOBAL PREFERENCE SHARE CERTIFICATE**

UNLESS THIS GLOBAL PREFERENCE SHARE CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR THE BANK OF NEW YORK, AS TRANSFER AGENT AND REGISTRAR, OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY GLOBAL PREFERENCE SHARE CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE OR ANY PORTION HEREOF IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING ITS SECURITY IN AN “OFFSHORE TRANSACTION” PURSUANT TO RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT PRIOR TO (X) THE DATE WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(K) UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR OF ANY PREDECESSOR OF THIS SECURITY) OR THE LAST DAY ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE “RESALE RESTRICTION TERMINATION DATE”), OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE

ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON- U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED THAT THE COMPANY AND THE TRANSFER AGENT AND REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

**SECURITY CAPITAL ASSURANCE LTD**

Certificate No.: R- 1

CUSIP: 81413U AA2  
ISIN: US81413UAA25

**Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares**

Security Capital Assurance Ltd, a Bermuda limited company with corporate address at One Bermudiana Road, Hamilton HM11, Bermuda (the "Company") hereby certifies that Cede & Co., as nominee of The Depository Trust Company, is the registered holder of 244,600 (TWO HUNDRED FORTY- FOUR THOUSAND SIX HUNDRED) Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares of the Company, par value \$0.01 per share and liquidation preference of US\$1,000 per share (the "Preference Shares"). The specific rights, preferences, limitations and other terms of the Preference Shares represented hereby are set forth in, and subject to, the provisions of the resolutions of an authorized subcommittee of the board of directors of the Company and the certificate of Claude LeBlanc, each dated as of March 29, 2007 (together, the "Subcommittee Resolutions"). Capitalized terms used herein but not defined shall have the respective meanings given them in the Subcommittee Resolutions. This Certificate is not valid unless countersigned by the Transfer Agent and Registrar.

THIS RULE 144A GLOBAL PREFERENCE SHARE CERTIFICATE IS ISSUED BY the Company on this 5 day of April, 2007.

SECURITY CAPITAL ASSURANCE LTD

By: /s/ Thomas W. Currie

\_\_\_\_\_  
Name: Thomas W. Currie

Title: Senior Vice President and Chief Risk Officer

COUNTERSIGNED AND REGISTERED BY THE  
BANK OF NEW YORK, AS  
TRANSFER AGENT AND REGISTRAR

By: /s/ Anthony Bausa  
Authorized Officer

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**ASSIGNMENT FORM**

For value received the undersigned hereby sells, assigns and transfers unto:

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Please insert social security or other identifying number of assignee:

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Please print or type name and address, including zip code, of assignee:

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\_\_\_\_\_ Preference Shares and does hereby irrevocably constitute and appoint \_\_\_\_\_ as Attorney to transfer the Preference Shares on the books of the Company with full power of substitution in the premises.

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

Your Signature: \_\_\_\_\_

(Sign exactly as your name appears on the Rule 144A  
Global Preference Share Certificate)

The issuance on the Closing Date is 244,600 Preference Shares. The following exchanges of a part of this Rule 144A Global Preference Share Certificate have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in number of shares represented by this Rule 144A Global Preference Share Certificate</b>	<b>Amount of increase in number of shares represented by this Rule 144A Global Preference Share Certificate</b>	<b>Number of shares represented by this Rule 144A Global Preference Share Certificate following such decrease or increase</b>	<b>Signature of authorized officer of Registrar</b>
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**REPLACEMENT CAPITAL COVENANT**

**Replacement Capital Covenant**, dated as of April 5, 2007 (this “*Replacement Capital Covenant*”), by Security Capital Assurance Ltd, a Bermuda exempted company (together with its successors and assigns, the “*Company*”), in favor of and for the benefit of each Covered Debtholder (as defined below).

RECITALS

A. On the date hereof the Company is issuing 250,000 Series A Perpetual Non- Cumulative Preference Shares, liquidation preference U.S. \$1,000 per share (the “*Series A Preference Shares*”). The Company may from time to time elect to issue additional Series A Preference Shares, and all such additional Series A Preference Shares would be deemed to form a single series with the 250,000 Series A Preference Shares being issued on the date hereof.

B. The Series A Preference Shares and this Replacement Capital Covenant are described in an offering memorandum dated March 29, 2007 (the “*Offering Memorandum*”), which has been submitted confidentially to a limited number of U.S. institutional investors and non- U.S. investors in connection with the offering of the Series A Preference Shares.

C. The Company is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Company be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Company acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Company and that, were the Company to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

**NOW, THEREFORE**, the Company hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

*SECTION 1. Definitions.* Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

*SECTION 2. Limitations on Redemption or Purchase of Series A Preference Shares.* The Company hereby promises and covenants to and for the benefit of each Covered Debtholder that, on or before the RCC Termination Date, neither the Company nor any of its Subsidiaries shall redeem or purchase all or any part of the Series A Preference Shares, except to the extent that (A) the applicable redemption or purchase price (exclusive of declared and unpaid dividends thereon) does not exceed the sum of the following amounts:

- (i) the Applicable Percentage of (a) the aggregate amount of net cash proceeds received by the Company and its Subsidiaries from the sale of Common Shares and Qualifying Warrants to Persons other than the Company and its Subsidiaries and
-



(b) the Market Value of any Common Shares that the Company and its Subsidiaries have issued to persons other than the Company and its Subsidiaries in connection with the conversion of any convertible or exchangeable securities, other than securities for which the Company or any of its Subsidiaries has received equity credit from any NRSRO (as defined below), in each case since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period); plus

(ii) 100% of the aggregate amount of net cash proceeds received by the Company and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period) from the sale of Mandatorily Convertible Preferred Stock, Debt Exchangeable for Preferred Equity and Debt Exchangeable for Common Equity to Persons other than the Company and its Subsidiaries; plus

(iii) 100% of the aggregate amount of net cash proceeds received by the Company and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period) from the sale of any other Qualifying Capital Securities to Persons other than the Company and its Subsidiaries,

or (B) the Series A Preference Shares are exchanged for (i) at least an equal aggregate principal amount or liquidation preference of Qualifying Capital Securities (including Preference Shares with terms substantially identical to the Series A Preference Shares pursuant to the registered exchange offer described in the Offering Memorandum) or (ii) consideration that includes Common Shares with a Market Value equal to at least 75% of the aggregate liquidation preference of the Series A Preference Shares that are exchanged.

### *SECTION 3. Covered Debt.*

(a) The Company represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) The Company shall follow the procedures set forth in Section 3(c) for redesignating the Covered Debt in the event that the Covered Debt then in effect is Eligible Senior Debt and the Company subsequently issues Eligible Subordinated Debt, in which case the Company shall redesignate such newly- issued Eligible Subordinated Debt as the Covered Debt. In addition, the Company shall follow the procedures set forth in Section 3(c) for redesignating the Covered Debt on (i) the date that is two years prior to the final maturity date of the Covered Debt then in effect or (ii) the applicable redemption or purchase date in the event the Company elects to redeem, or the Company or a Subsidiary of the Company elects to purchase, such Covered Debt in whole or in part with the consequence that after giving effect to such redemption or purchase, the outstanding principal amount of such Covered Debt is less than \$100,000,000.

(c) During the 30- calendar- day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Company shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

- (i) the Company shall identify each series of its then outstanding long- term indebtedness for money borrowed that is Eligible Debt;
- (ii) if only one series of the Company's then outstanding long- term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date; and
- (iii) if the Company has more than one outstanding series of long- term indebtedness for money borrowed that is Eligible Debt, the series that has the latest occurring final maturity date shall become the Covered Debt on the related Redesignation Date.

The series of outstanding long- term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (c)(ii) or (c)(iii) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to, but not including, the Redesignation Date as of which a new series of outstanding long- term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(c).

In connection with the identification of any new series of Covered Debt, the Company shall give the notices and/or make the filings or website postings provided for in Section 3(d) within the time frame provided for in such section.

(d) *Notice.* In order to give effect to the intent of the Company described in Recital C, the Company covenants that:

- (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall give notice to the Holder(s) of the Initial Covered Debt, in the manner provided in the indenture, fiscal agency agreement or other instrument relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holder(s) hereunder and (A) if the Initial Covered Debt includes securities issued in the United States, file a copy of this Replacement Capital Covenant with the U.S. Securities and Exchange Commission (the "*Commission*") as an exhibit to a Current Report on Form 8- K under the Exchange Act or (B) if the Initial Covered Debt was predominately offered outside of the United States, (I) post a copy of this Replacement Capital Covenant on the Company's website (currently: [www.scafg.com](http://www.scafg.com)), (II) as promptly as practicable, cause a notice of the execution of this Replacement Capital Covenant to be posted on the Bloomberg screen for the Initial Covered Debt or any successor Bloomberg screen or similar vendor's screen the Company reasonably believes is appropriate (each an "*Investor Screen*") and (III) cause a hyperlink to the execution copy of this Replacement Capital Covenant to be included on the Investor Screen for the Initial Covered Debt;
- (ii) it shall, if a series of the Company's long- term indebtedness for money borrowed that includes securities issued in the United States (1) becomes Covered Debt or (2) ceases to be Covered Debt, (A) give notice of such occurrence within 30

calendar days to the holders of such long- term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long- term indebtedness for money borrowed was issued and (B) if and so long as it is a reporting company under the Exchange Act, report such change by filing a Current Report on Form 8- K under the Exchange Act containing a description of the covenant set forth in Section 2 and identifying the series of long- term indebtedness for borrowed money that is Covered Debt as of the date of such filing and including or incorporating by reference a copy of this Replacement Capital Covenant as an exhibit;

- (iii) it shall, if a series of the Company's long- term indebtedness for money borrowed that was predominately offered outside of the United States (1) becomes Covered Debt or (2) ceases to be Covered Debt, (A) give notice of such occurrence within 30 calendar days to the holders of such long- term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long- term indebtedness for money borrowed was issued, (C) as promptly as practicable, post a notice of such change on the Company's website, (D) as promptly as practicable, cause a notice of such occurrence to be posted on the Investor Screen for the then- effective series of Covered Debt and (E) cause a hyperlink to the execution copy of this Replacement Capital Covenant to be included on the Investor Screen for such Covered Debt;
- (iv) to the extent that the Company has posted information pursuant to clause (i)(B) or clause (iii), at least once annually, it shall verify that the postings required in such clauses are functional and accessible and, if necessary, cause such functionality and accessibility to be restored;
- (v) if and so long as it is a reporting company under the Exchange Act, the Company shall include in each annual report filed with the Commission on Form 10- K under the Exchange Act a description of the covenant set forth in Section 2 and identify the series of long- term indebtedness for borrowed money that is Covered Debt as of the date such Form 10- K is filed with the Commission;
- (vi) if and so long as it is not a reporting company under the Exchange Act, the Company shall (A) post on its website the information required by clauses (d)(ii) and (d)(v) and (B) cause a notice of any occurrence described under clauses (d)(i)(A) and (d)(ii)(B) to be posted on the Investor Screen for the then- effective series of Covered Debt; and
- (vii) promptly upon request by any Holder of Covered Debt, provide such Holder with an executed copy of this Replacement Capital Covenant.

*SECTION 4. Termination, Amendment and Waiver.*

- (a) The obligations of the Company pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the "*Termination Date*") to occur of:

(i) September 30, 2047, subject to extension as provided in Section 4(b)(iii);

(ii) the date, if any, on which the Holder(s) of a majority by principal amount of the then- effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Company hereunder;

(iii) the date on which the Company does not have any series of outstanding Eligible Subordinated Debt or Eligible Senior Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term); and

(iv) the date on which the Company does not have any outstanding Series A Preference Shares.

From and after the Termination Date, the obligations of the Company pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Company with the consent of the Holder(s) of a majority by principal amount of the then- effective series of Covered Debt, *provided* that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Company (and without the consent of the Holder(s) of the then- effective series of Covered Debt) if:

(i) the effect of such amendment or supplement is solely to impose additional restrictions on the types of securities qualifying as Replacement Capital Securities, and an officer of the Company has delivered to the Holders of the then- effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect;

(ii) the effect of such amendment or supplement is solely to eliminate Common Shares, Mandatorily Convertible Preference Shares or Debt Exchangeable for Common Equity as a security or securities covered by Sections 2(i) and (ii), *provided* that the Company has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Company's earnings per share as calculated for financial reporting purposes;

(iii) the effect of such amendment or supplement is solely to impose additional restrictions on the ability of the Company to redeem or purchase Series A Preference Shares in any circumstance, including extending the termination date specified in Section 4(a)(i), the dates specified in the definition of Applicable Percentage and the dates specified in the definition of Qualifying Capital Securities; or

(iv) such amendment or supplement is not adverse to the Holder(s) of the then- effective series of Covered Debt and an officer of the Company has delivered to

the Holder(s) of the then effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holder(s) of the then- effective series of Covered Debt.

(c) For purposes of Sections 4(a) and 4(b), the Holder(s) whose consent or agreement is required to terminate, amend or supplement the obligations of the Company under this Replacement Capital Covenant shall be the Holder(s) of the then- effective series of Covered Debt as of a record date established by the Company that is not more than 30 calendar days prior to the date on which the Company proposes that such termination, amendment or supplement becomes effective.

*SECTION 5. Miscellaneous.*

**(a) This Replacement Capital Covenant shall be governed by, and construed in accordance with, the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Company and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time- to- time (it being understood and agreed by the Company that any Person who is a Covered Debtholder at the time such Person initiates a claim or proceeding to enforce such Person's rights under this Replacement Capital Covenant after the Company has violated its covenants in Section 2 and before the series of long- term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long- term indebtedness for money borrowed no longer being Covered Debt until the termination of such claim or proceeding). Except as specifically provided herein, this Replacement Capital Covenant shall have no other beneficiaries, and no Persons other than a Holder of Covered Debt is entitled to rely on this Replacement Capital Covenant.

(c) All demands, notices, requests and other communications to the Company under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and:

- (i) if served by personal delivery upon the Company, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day);
- (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Company by a national or international courier service, on the date of receipt by the Company (or, if such date of receipt is not a Business Day, the next succeeding Business Day); or
- (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, *provided* that the telecopy is promptly confirmed by telephone confirmation thereof,

and in each case to the Company at the address set forth below, or at such other address as the Company may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Security Capital Assurance Ltd  
1 Bermudiana Road  
Hamilton HM 11  
Bermuda  
Attention:  
Facsimile No:

**IN WITNESS WHEREOF**, the Company has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

Security Capital Assurance Ltd

By: /s/ Thomas W. Currie  
Name: Thomas W. Currie  
Title: Senior Vice President  
and Chief Risk Officer

## DEFINITIONS

“**Alternative Payment Mechanism**” means, with respect to any securities or combination of securities (together in this definition, “such securities”), provisions in the related transaction documents requiring the Company to issue (or use commercially reasonable efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such securities and apply the proceeds to pay unpaid Distributions on such securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Company pays current Distributions on such securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

- (a) define “eligible proceeds” to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Company or any of its Subsidiaries as consideration for such securities) that the Company has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap (as defined in paragraph (f) below) in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock;
  - (b) permit the Company to pay current Distributions on any Distribution Date out of any source of funds but prohibit the Company from paying deferred Distributions out of any source of funds other than eligible proceeds;
  - (c) if deferral of Distributions continues for more than one year (or such shorter period as provided for in the terms of such securities), require the Company not to repay, redeem or purchase any APM Qualifying Securities of the Company or any securities of the Company that on a bankruptcy or liquidation of the Company rank *pari passu* or junior to such APM Qualifying Securities until at least one year after all deferred Distributions have been paid;
  - (d) may include a provision that, notwithstanding the Common Cap (as defined in paragraph (f) below) and the Preferred Cap, for purposes of paying deferred Distributions, limits the ability of the Company to sell Common Shares, Qualifying Warrants, or Mandatorily Convertible Preferred Stock above an aggregate cap specified in the transaction documents (a “**Share Cap**”), subject to the Company’s agreement to use commercially reasonable efforts to increase the Share Cap amount (i) only to the extent that it can do so and simultaneously satisfy its future fixed or contingent obligations under other securities and derivative instruments that provide for settlement or payment in Common Shares or (ii) if the Company cannot increase the Share Cap amount as contemplated in the preceding clause, by requesting its Board of Directors to adopt a resolution for shareholder
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vote at the next occurring annual shareholders meeting to increase the number of shares of the Company's authorized Common Shares for purposes of satisfying the Company's obligations to pay deferred Distributions;

(e) permit the Company, at its option, to provide that if the Company is involved in a merger, consolidation, amalgamation or conveyance, transfer or lease of assets substantially as an entirety to any other person (a "**business combination**") where immediately after the consummation of the business combination more than 50% of the voting stock of the surviving entity of the business combination, or the person to whom all or substantially all of the Company's assets are conveyed, transferred or leased, is owned by the shareholders of the other party to the business combination, then clauses (a), (b) and (c) above will not apply to any deferral period that is terminated on the next interest payment date following the date of consummation of the business combination; and

(f) limit the obligation of the Company to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities up to:

(i) in the case of APM Qualifying Securities that are Common Shares or Qualifying Warrants, an aggregate amount of all Common Shares issued or issuable upon the exercise of such Qualifying Warrants pursuant to the Alternative Payment Mechanism with respect to deferred Distributions during the first five years of any deferral period equal to 2% of the total number of issued and outstanding shares of the Common Shares of the Company as of the date of the Company's most recently publicly available consolidated financial statements as of the date of such issuance (the "**Common Cap**"), *provided* (and it being understood) that the Common Cap shall cease to apply to such deferral period by a date (as specified in the related transaction documents) which shall be not later than the fifth anniversary of the commencement of such deferral period; and

(ii) in the case of APM Qualifying Securities that are Qualifying Non- Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock, an amount from the issuance thereof pursuant to the related Alternative Payment Mechanism (including at any point in time from all prior issuances of Qualifying Non- Cumulative Perpetual Preferred Stock and still- outstanding Mandatorily Convertible Preferred Stock pursuant to such Alternative Payment Mechanism) equal to 25% of the initial principal or stated amount of the securities that are the subject of the related Alternative Payment Mechanism (the "**Preferred Cap**");

*provided* (and it being understood) that:

(a) the Company shall not be obligated to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;



- (b) if, due to a Market Disruption Event or otherwise, the Company is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Company will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, the Preferred Cap and the Share Cap (if any), as applicable; and if the Company has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a pro rata basis in proportion to the total amounts that are due on such securities.

*provided* (and it being understood) that:

**“APM Qualifying Securities”** means:

- (a) Common Shares;
- (b) Qualifying Warrants;
- (c) Qualifying Non- Cumulative Perpetual Preferred Stock; or
- (d) Mandatorily Convertible Preferred Stock.

**“Applicable Percentage”** means: 1 divided by (i) 75% with respect to any repayment, redemption or purchase prior to September 30, 2017, (ii) 50% with respect to any repayment, redemption or purchase on or after September 30, 2017 and prior to September 30, 2037 and (iii) 25% with respect to any repayment, redemption or purchase on or after September 30, 2037 (for example, prior to September 30, 2017, the Applicable Percentage in the case of such securities will be 133.33%).

**“Bankruptcy Claim Limitation Provision”** means, with respect to any Qualifying Capital Securities that have a Mandatory Trigger Provision or a No Payment Provision, provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such securities (other than non-cumulative perpetual Preference Shares) to Distributions that accumulate during (A) any period in which the issuer fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities that have a Mandatory Trigger Provision, or (B) any deferral period, in the case of securities that have a No Payment Provision, to:

- (a) in the case of Qualifying Capital Securities with respect to which the APM Qualifying Securities do not include Qualifying Non-Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock, 25% of the stated or principal amount of such Qualifying Capital Securities then outstanding; and

- (b) in the case of any other Qualified Capital Securities, an amount not in excess of the sum of (x) two years of accumulated and unpaid Distributions (including compound amounts thereon) and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Non- Cumulative Perpetual Preferred Stock that the issuer has applied to pay such Distributions pursuant to the Mandatory Trigger Provision or No Payment Provision; *provided* that the holders of such Qualifying Capital Securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in clause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had the claim for such excess ranked *pari passu* with the interests of the holders, if any, of Qualifying Non- Cumulative Perpetual Preferred Stock.

“**Business Day**” means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York or Bermuda are authorized or required by law or executive order to remain closed.

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

“**Common Shares**” means the Common Shares of the Company (including treasury shares), Common Shares issued pursuant to any dividend reinvestment plan or employee benefit plan of the Company, a security ranking upon the liquidation, dissolution or winding up of the Company junior to the Qualifying Non- Cumulative Perpetual Preferred Stock and *pari passu* with the Common Shares of the Company, that tracks the performance of, or relates to the results of, a business, unit or division of the Company, and any securities issued in exchange therefor in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

“**Company**” has the meaning specified in the introduction to this instrument.

“**Covered Debt**” means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

“**Covered Debtholder**” means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long- term indebtedness for money borrowed of the Company during the period that such long- term indebtedness for money borrowed is Covered Debt.

“**Debt Exchangeable for Common Equity**” means a security or combination of securities (together in this definition, “such securities”) that:

- (a) gives the holder a beneficial interest in (i) debt securities of the Company that are not redeemable prior to settlement of the stock purchase contract referred to in subclause (ii) hereof and (ii) an interest in a stock purchase contract for a Common Share of

the Company that will be settled in three years or less, with the number of Common Shares purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of such debt securities;

(b) provides that the investors directly or indirectly grant to the Company a security interest in such debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors' direct or indirect obligation to purchase Common Shares of the Company pursuant to such stock purchase contracts;

(c) includes a remarketing feature pursuant to which the debt securities of the Company are remarketed to new investors commencing not later than 30 days prior to the settlement date of the purchase contract;

(d) provides for the proceeds raised in the remarketing to be used to purchase Common Shares of the Company under the stock purchase contracts and, if there has not been a successful remarketing by the settlement date of the purchase contract, provides that the stock purchase contracts will be settled by the Company foreclosing on its debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Common Equity.

**“Debt Exchangeable for Preferred Equity”** means a security or combination of securities (together in this definition, “such securities”) that:

(a) gives the holder a beneficial interest in (i) subordinated debt securities of the Company that include a provision requiring the Company to issue (or use commercially reasonable efforts to issue) one or more types of APM Qualifying Securities raising proceeds at least equal to the deferred Distributions on such subordinated debt securities commencing not later than the second anniversary of the commencement of such deferral period and that are the most junior subordinated debt of the Company (or rank *pari passu* with the Most Junior Subordinated Debt Securities of the Company) (in this definition, “subordinated debt” of the Company) and (ii) an interest in a stock purchase contract for a share of non-cumulative perpetual preferred stock of the Company that ranks *pari passu* with or junior to all other Preference Shares of the Company (in this definition, “preferred stock” of the Company);

(b) provides that the investors directly or indirectly grant to the Company a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors' direct or indirect obligation to purchase preferred stock of the Company pursuant to such stock purchase contracts;

(c) includes a remarketing feature pursuant to which the subordinated debt of the Company is remarketed to new investors commencing not later than the first Distribution Date that is at least five years after the date of issuance of securities or earlier in the event of an early settlement event based on: (i) the dissolution of the

issuer of such debt exchangeable for preferred equity or (ii) one or more financial tests set forth in the terms of the instrument governing such debt exchangeable for preferred equity;

(d) provides for the proceeds raised in the remarketing to be used to purchase Preference Shares of the Company under the stock purchase contracts and, if there has not been a successful remarketing by the first Distribution Date that is six years after the date of issuance of such securities, provides that the stock purchase contracts will be settled by the Company foreclosing on its subordinated debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Preferred Equity;

(e) includes a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant that will apply to such securities and to the preferred stock of the Company, and will not include Debt Exchangeable for Preferred Equity or Debt Exchangeable for Common Equity as a Replacement Capital Security; and

(f) if applicable, after the issuance of such preferred stock of the Company, provides the holders of such securities with a beneficial interest in such preferred stock of the Company.

**“Distribution Date”** means, as to any securities or combination of securities, the dates on which periodic Distributions on such securities are scheduled to be made.

**“Distribution Period”** means, as to any securities or combination of securities, each period from and including the later of the issue date and a Distribution Date for such securities to but excluding the next succeeding Distribution Date for such securities.

**“Distributions”** means, as to a security or combination of securities, dividends, interest payments or other income distributions to the holders thereof that are not Subsidiaries of the Company.

**“Eligible Debt”** means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

**“Eligible Senior Debt”** means, at any time in respect of any issuer, each series of outstanding unsecured long- term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding- up of the issuer, ranks most senior among the issuer’s then outstanding classes of indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (*provided* that this clause (b) shall apply on a Resignation Date only if on such date the issuer has outstanding senior long- term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long- term indebtedness for

money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long- term indebtedness for money borrowed that is separate from each other series of such indebtedness.

**“Eligible Subordinated Debt”** means, at any time in respect of any issuer, each series of the issuer's then outstanding unsecured long- term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding- up of the issuer, ranks subordinate to the issuer's then outstanding series of indebtedness for money borrowed that ranks most senior, (b) is then assigned a rating by at least one NRSRO (*provided* that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long- term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long- term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long- term indebtedness for money borrowed that is separate from each other series of such indebtedness.

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

**“Holder”** means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the register maintained by or on behalf of the Company with respect to such Covered Debt.

**“Initial Covered Debt”** means the first issue of Eligible Debt that the Company so designates as Initial Covered Debt.

**“Intent- Based Replacement Disclosure”** means, as to any security or combination of securities (together in this definition, “securities”), that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer, to the extent the securities provide the issuer with equity credit, will repay, redeem or purchase such securities only with replacement capital securities that have terms and provisions at the time of repayment, redemption or purchase that are as or more equity- like than the securities then being repaid, redeemed or purchased, or the proceeds of such replacement capital securities raised within 180 days prior to the applicable repayment, redemption or purchase date.

**“Mandatorily Convertible Preferred Stock”** means Preference Shares with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) a requirement that such Preference Shares convert into Common Shares within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of such Preference Shares.

“**Mandatory Trigger Provision**” means, as to any security or combination of securities (together in this definition, “securities”), provisions in the terms thereof or of the related transaction agreements that (a) require or, at its option in the case of non-cumulative perpetual Preference Shares, permit the issuer of such securities to make payment of Distributions on such securities only pursuant to the issue and sale of APM Qualifying Securities, within no more than two years of a failure to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in an amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and in either case require the application of the net proceeds of such sale to pay such unpaid Distributions, *provided* that: (1) if the APM Qualifying Securities issued and sold are Qualifying Non-Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock, the amount of the net proceeds of Qualifying Non-Cumulative Perpetual Preferred Stock and Mandatorily Convertible Preferred Stock applied, together with the net proceeds of all prior issuances of Qualifying Non-Cumulative Preferred Stock and any still-outstanding Mandatorily Convertible Preferred Stock applied during the current and all prior deferral periods, to pay such Distributions pursuant to such provision may not exceed 25% of the initial liquidation or principal amount of such securities and (2) if the APM Qualifying Securities issued and sold are Common Shares or Qualifying Warrants and if the Mandatory Trigger provision does not require such issuance and sale within one year of such failure, the number of Common Shares issued or issuable upon the exercise of such Qualifying Warrants plus the number of Common Shares previously issued or issuable upon the exercise of previously issued Qualifying Warrants may not exceed 2% of the total number of issued and outstanding shares of the Company’s Common Shares as of the date of the Company’s most recent publicly available consolidated financial statements as of the date of such issuance, *provided* (and it being understood) that: (1) the Company shall not be obligated to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing and (2) if, due to a Market Disruption Event or otherwise, the Company is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Company will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Share Cap (if any); and if the Company has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Company from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a pro rata basis in proportion to the total amounts that are due on such securities, (b) prohibit the issuer from purchasing any APM Qualifying Securities or any of the Company’s securities that on the Company’s bankruptcy or liquidation rank *pari passu* or junior to such APM qualifying securities prior to the date that is six months after the issuer applies the net proceeds of the sales described in clause (a) to pay such unpaid Distributions, and (c) include a Bankruptcy Claim Limitation Provision. No remedy other than Permitted Remedies may arise by the terms of such securities or related transaction agreements in favor of the holders of such securities as a result of the issuer’s failure to pay Distributions because of the Mandatory Trigger Provision or as a result of the issuer’s exercise of its right under an Optional Deferral Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

“**Market Disruption Events**” means the occurrence or existence of any of the following events or sets of circumstances:

- (a) trading in securities generally, or shares of our securities specifically, on the New York Stock Exchange or any other national securities exchange, or in the over-the-counter market on which any APM Qualifying Securities or Qualifying Capital Securities, as the case may be, are then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices such that trading shall have been materially disrupted shall have been established on any such exchange or market by the Commission, the relevant exchange or by any other regulatory body or governmental agency having jurisdiction;
- (b) the Company would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities pursuant to the alternative payment mechanism or to issue Qualifying Capital Securities pursuant to the Company’s repayment obligations in respect thereof, as the case may be, and that consent or approval has not yet been obtained notwithstanding the Company’s commercially reasonable efforts to obtain that consent or approval;
- (c) a banking moratorium shall have been declared by the federal or state authorities of the United States such that market trading in the APM Qualifying Securities or the Qualifying Capital Securities, as applicable, has been disrupted or ceased; a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States such that market trading in the APM Qualifying Securities or the Qualifying Capital Securities, as applicable, has been disrupted or ceased;
- (d) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis such that market trading in the APM Qualifying Securities or the Qualifying Capital Securities, as applicable, has been disrupted or ceased;
- (e) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, or the effect of international conditions on the financial markets in the United States shall be such that trading in any of the APM Qualifying Securities or Qualifying Capital Securities, as the case may be, has been materially disrupted;
- (f) an event occurs and is continuing as a result of which the offering document for the offer and sale of APM Qualifying Securities or Qualifying Capital Securities, as the case may be, would, in the Company’s reasonable judgment, contain an

untrue statement of a material fact or omit to state a material fact required to be stated in that offering document or necessary to make the statements in that offering document not misleading and either (a) the disclosure of that event at such time, in the Company's reasonable judgment, is not otherwise required by law and would have a material adverse effect on our business or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction, *provided* that no single suspension period described in this bullet shall exceed 90 consecutive days and multiple suspension periods described in this bullet shall not exceed an aggregate of 180 days in any 360- day period; or

- (g) the Company reasonably believes that the offering document for the offer and the sale of APM Qualifying Securities or Qualifying Capital Securities, as the case may be, would not be in compliance with a rule or regulation of the Commission (for reasons other than those described in the immediately preceding bullet) and the Company determines that it is unable to comply with such rule or regulation or such compliance is unduly burdensome, *provided* that no single suspension period described in this bullet shall exceed 90 consecutive days and multiple suspension periods described in this bullet shall not exceed an aggregate of 180 days in any 360- day period.

**"Market Value"** means, on any date, the closing sale price per share of Common Shares (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Shares are not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Shares are traded or quoted; if the Common Shares are not either listed or quoted on any U.S. securities exchange on the relevant date, the market price will be the average of the mid- point of the bid and ask prices for the Common Shares on the relevant date submitted by at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

**"Measurement Date"** means, with respect to any redemption or purchase of the Preference Shares, the date that is 180 days prior to delivery of notice of such redemption or the date of such purchase.

**"Measurement Period"** means, with respect to any notice date or purchase date, the period (i) beginning on the Measurement Date with respect to such notice date or purchase date and (ii) ending on such notice date or purchase date. Measurement Periods cannot run concurrently.

**"Most Junior Subordinated Debt Securities"** mean debt securities of the Company that rank upon a liquidation, dissolution or winding- up of the Company junior to all of the Company's other long- term indebtedness for money borrowed (other than the Company's long- term indebtedness for money borrowed from time to time outstanding that by its terms ranks *pari passu* with such securities) and *pari passu* with the claims of the Company's trade creditors.



“**No Payment Provision**” means a provision or provisions in the transaction documents for securities (referred to in this definition as “such securities”) that include the following:

- (a) an Alternative Payment Mechanism;
- (b) an Optional Deferral Provision modified and supplemented from the general definition of that term to provide that the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event has occurred and is continuing, ten years, without any remedy other than Permitted Remedies and the obligations (and limitations on obligations) described in the definition of “Alternative Payment Mechanism” applying; and
- (c) a Bankruptcy Claim Limitation Provision.

“**Non- Cumulative**” means, with respect to any securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies. Any securities that include a No Payment Provision shall also be deemed to be Non- Cumulative for all purposes of this Replacement Capital Covenant.

“**NRSRO**” means a nationally recognized statistical rating organization within the meaning of Rule 15c3- 1(c)(2)(vi)(F) under the Exchange Act.

“**Offering Memorandum**” has the meaning specified in Recital B.

“**Optional Deferral Provision**” means, as to any securities, provisions in the terms thereof or of the related transaction agreements to the effect of either (a) or (b) below:

- (a) (i) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event is continuing, ten years, without any remedy other than Permitted Remedies and (ii) an Alternative Payment Mechanism (*provided* that such Alternative Payment Mechanism need not apply during the first five years of any deferral period and need not include a Common Cap or Preferred Cap); or
- (b) the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods up to ten years, without any remedy other than Permitted Remedies.

All Preference Shares of the Company shall be deemed to include an Optional Deferral Provision.

“**Other Qualifying Capital Replacement Covenant**” means a replacement capital covenant, as identified by the Company’s Board of Directors acting in good faith and in its reasonable discre-

tion and reasonably construing the definitions and other terms of this Replacement Capital Covenant, (i) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Exchange Act and (ii) that restricts the related issuer from redeeming or purchasing identified securities except from the applicable percentage of the proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or purchased, raised within 180 days prior to the applicable redemption or purchase date.

“**Permitted Remedies**” means, with respect to any securities, one or more of the following remedies:

- (a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded), and
- (b) complete or partial prohibitions preventing the issuer from paying Distributions on or purchasing Common Shares or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

“**Person**” means any individual, Company, partnership, joint venture, trust, limited liability company or Company, unincorporated organization or government or any agency or political subdivision thereof.

“**Preference Shares**” means preference shares of the Company and any securities issued in exchange therefor in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

“**Qualifying Capital Securities**” means securities (other than Common Shares, Qualifying Warrants, Mandatorily Convertible Preferred Stock, Debt Exchangeable for Preferred Equity and Debt Exchangeable for Common Equity) that rank *pari passu* with or junior to the Most Junior Subordinated Debt Securities upon the liquidation, dissolution or winding up of the Company and, in the determination of the Company’s Board of Directors reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

- (a) in connection with any repayment, redemption or purchase of Series A Preference Shares prior to September 30, 2017:
- (i) securities issued by the Company or its Subsidiaries that (A) have no maturity or a maturity of at least 60 years and (B) either (x) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and are Non-Cumulative or (y) have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure and have an Optional Deferral Provision; or

- (ii) securities issued by the Company or its Subsidiaries that (A) have no maturity or a maturity of at least 40 years, (B) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant, (C) have an Optional Deferral Provision and (D) have a Mandatory Trigger Provision; or

(b) in connection with any repayment, redemption or purchase of Series A Preference Shares at any time on or after September 30, 2017 but prior to September 30, 2037:

- (i) all securities described under clause (a) of this definition;

- (ii) securities issued by the Company or its Subsidiaries that (A) have no maturity or a maturity of at least 60 years, (B) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (C) have an Optional Deferral Provision;

- (iii) securities issued by the Company or its Subsidiaries that (A) are Non-Cumulative and (B) (x) have no maturity or a maturity of at least 60 years and (y) are subject to Intent-Based Replacement Disclosure;

(iv) securities issued by the Company or its Subsidiaries that (A) have an Optional Deferral Provision, (B) have a Mandatory Trigger Provision and (C) have no maturity or a maturity of at least 60 years;

(v) securities issued by the Company or its subsidiaries that (A) are Non-Cumulative, (B) have no maturity or a maturity of at least 40 years and (C) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant; or

- (vi) securities issued by the Company or its Subsidiaries that (A) have an Optional Deferral Provision, (B) have a Mandatory Trigger Provision and (C) either (x) have no maturity or a maturity of at least 40 years and Intent-Based Replacement Disclosure or (y) have no maturity or a maturity of at least 25 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant; or

(c) in connection with any repayment, redemption or purchase of Series A Preference Shares at any time on or after September 30, 2037:

- (i) securities described under clause (b) of this definition;

- (ii) securities issued by the Company or its Subsidiaries that (A) (x) have no maturity or a maturity of at least 60 years and (y) is subject to Intent-Based Replacement Disclosure and (B) have an Optional Deferral Provision;
- (iii) securities issued by the Company or its Subsidiaries that (A) have no maturity or a maturity of at least 60 years and (B) are Non- Cumulative;
- (iv) securities issued by the Company or its Subsidiaries that (A) (x) have no maturity or a maturity of at least 40 years and (y) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (B) have an Optional Deferral Provision;
- (v) securities issued by the Company or its Subsidiaries that (A) either (x) have no maturity or a maturity of at least 40 years and are subject to Intent- Based Replacement Disclosure or (y) have no maturity or a maturity at least 25 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (B) are Non- Cumulative; or
  - (vi) securities issued by the Company or its Subsidiaries that (A) have an Optional Deferral Provision, (B) have a Mandatory Trigger Provision, (C) have no maturity or a maturity of more than 30 years and (D) are subject to Intent- Based Replacement Disclosure.

**“Qualifying Non- Cumulative Perpetual Preferred Stock”** means non- cumulative Preference Shares of the Company that rank *pari passu* with or junior to all other Preference Shares of the Company, is perpetual and (a) is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant or (b) is subject to both (i) mandatory suspension of dividends in the event the Company breaches certain financial metrics specified within the offering documents, and (ii) Intent- Based Replacement Disclosure. Additionally, the transaction documents shall provide for no remedies as a consequence of non- payment of Distributions other than Permitted Remedies.

**“Qualifying Warrants”** means any net share settled warrants to purchase the Company’s Common Shares that (1) have an exercise price greater than the current stock market price, determined as specified in the instrument governing such warrants, of the Company’s Common Shares, and (2) the Company is not entitled to redeem for cash and the holders of which are not entitled to require the Company to purchase for cash in any circumstances.

**“RCC Termination Date”** means September 30, 2047.

**“Redesignation Date”** means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Company elects to redeem or repay, or the Company or a Subsidiary of the Company elects to purchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such

redemption, repayment or purchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable redemption, repayment or purchase date and (c) if such Covered Debt is not Eligible Subordinated Debt, the date on which the Company issues long- term indebtedness for money borrowed that is Eligible Subordinated Debt.

“**Replacement Capital Covenant**” has the meaning specified in the introduction to this instrument.

“**Replacement Capital Securities**” means:

- (a) Common Shares and Qualifying Warrants;
- (b) Mandatorily Convertible Preferred Stock;
- (c) Debt Exchangeable for Preferred Equity;
- (d) Debt Exchangeable for Common Equity; and
- (e) Qualifying Capital Securities.

“**Series A Preference Shares**” has the meaning specified in Recital A.

“**Subsidiary**” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

“**Termination Date**” has the meaning specified in Section 4(a).

**REGISTRATION RIGHTS AGREEMENT**

**Dated as of April 5, 2007**

**by and among**

**Security Capital Assurance Ltd,**

**as Issuer,**

**and**

**Lehman Brothers Inc.  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
and  
Wachovia Capital Markets, LLC,**

**as Initial Purchasers**

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This Registration Rights Agreement (this “**Agreement**”) is dated as of April 5, 2007 by and among Security Capital Assurance Ltd, a Bermuda limited company (the “**Company**”) and Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wachovia Capital Markets, LLC as Representatives of other Initial Purchasers (each an “**Initial Purchaser**” and, collectively, the “**Initial Purchasers**”), each of whom has agreed to purchase the Company’s Fixed/Floating Series A Perpetual Non- Cumulative Preference Shares, having a par value of US \$0.01 per share and a liquidation preference of US \$1,000 per share (the “**Preference Shares**”) pursuant to the Purchase Agreement (as defined below).

This Agreement is made pursuant to the Purchase Agreement, dated March 29, 2007 (the “**Purchase Agreement**”), by and among the Company and the Initial Purchasers. In order to induce the Initial Purchasers to purchase the Preference Shares, the Company has agreed to provide the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the obligations of the Initial Purchasers set forth in Section 7(j) of the Purchase Agreement.

The parties hereby agree as follows:

## **SECTION 1. DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings:

**Act:** The U.S. Securities Act of 1933, as amended, or any successor statute and the rules and regulations promulgated by the Commission (as defined below) thereunder.

**Affiliate:** As defined in Rule 144 of the Act.

**Board Resolutions:** The Resolutions of a Subcommittee of the Board of Directors of the Company, dated March 29, 2007, setting forth the rights, preferences and other terms of the Preference Shares.

**Broker- Dealer:** Any broker or dealer registered under the Exchange Act.

**Business Day:** Any day that is not a Saturday, Sunday or other day on which banking institutions in Bermuda and New York, New York are authorized or required by law to close. If the time to perform any action hereunder falls on a day that is not a Business Day, such time will be extended to the next Business Day and no additional dividends shall accrue on such payment for the intervening period.

**Certificated Securities:** Definitive Preference Shares as defined in the Board Resolutions.

**Closing Date:** The date of this Agreement.

**Commission:** The U.S. Securities and Exchange Commission.

**Consummate:** An Exchange Offer shall be deemed “Consummated” for purposes of this Agreement upon the occurrence of (a) the filing and effectiveness under the Act of the Exchange Offer Registration Statement relating to the Exchange Preference Shares to be issued in the Exchange Offer, (b) the maintenance of such Exchange Offer Registration Statement continuously effective and the keeping of the Exchange Offer open for a period not less than the period required pursuant to Section 3(b) hereof and

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(c) the delivery by the Company to the Registrar and Transfer Agent of Exchange Preference Shares in the same aggregate number as the aggregate number of Preference Shares validly tendered by Holders thereof pursuant to the Exchange Offer.

**Consummation Deadline:** As defined in Section 3(b) hereof.

**Dividend Payment Date:** As defined in the Board Resolutions.

**DTC:** As defined in Section 6(c)(v) hereof.

**Effectiveness Deadline:** The Exchange Offer Effectiveness Deadline or the Shelf Effectiveness Deadline, as applicable.

**Exchange Act:** The U.S. Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated by the Commission thereunder.

**Exchange Preference Shares:** The Company's Fixed/Floating Series A Perpetual Non-Cumulative Preference Shares, registered under the Act in the Exchange Offer.

**Exchange Offer:** The exchange and issuance by the Company of an aggregate number of Exchange Preference Shares (which shall be registered pursuant to the Exchange Offer Registration Statement) equal to the outstanding aggregate number of Preference Shares that are validly tendered by such Holders in connection with such exchange and issuance.

**Exchange Offer Effectiveness Deadline:** As defined in Section 3(a) hereof.

**Exchange Offer Filing Deadline:** As defined in Section 3(a) hereof.

**Exchange Offer Registration Statement:** The Registration Statement relating to the Exchange Offer, including the related Prospectus.

**Exempt Resales:** The transactions in which the Initial Purchasers propose to sell the Preference Shares to certain "qualified institutional buyers," as such term is defined in Rule 144A under the Act, and certain persons who are not U.S. Persons (as defined in Regulation S) in offshore transactions pursuant to Regulation S under the Act.

**Filing Deadline:** The Exchange Offer Filing Deadline or the Shelf Filing Deadline, as applicable.

**Free Writing Prospectus:** Each free writing prospectus (as defined in Rule 405 under the Securities Act) prepared by or on behalf of the Company or used or referred to by the Company in connection with the sale of the Preference Shares or the Exchange Preference Shares.

**Holder:** As defined in Section 2 hereof.

**Person:** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

**Prospectus:** The prospectus included in a Registration Statement, including any preliminary prospectus, as amended or supplemented by any prospectus supplement and by all other



amendments thereto, including post- effective amendments, and all material incorporated by reference into such Prospectus.

**Commencement Date:** As defined in Section 6(e) hereof.

**Registrar and Transfer Agent:** The Bank of New York.

**Registration Default:** As defined in Section 5 hereof.

**Registration Period:** As defined in Section 3(c) hereof.

**Registration Statement:** Any registration statement of the Company relating to (a) an offering of Exchange Preference Shares pursuant to an Exchange Offer or (b) the registration for resale of Transfer Restricted Securities pursuant to the Shelf Registration Statement, in each case (i) that is filed pursuant to the provisions of this Agreement and (ii) including the Prospectus included therein, all amendments and supplements thereto (including post- effective amendments) and all exhibits and material incorporated by reference therein.

**Regulation S:** Regulation S promulgated under the Act.

**Rule 144:** Rule 144 promulgated under the Act.

**Shelf Effectiveness Deadline:** As defined in 4(a) hereof.

**Shelf Filing Deadline:** As defined in Section 4(a) hereof.

**Shelf Registration Statement:** As defined in Section 4(a) hereof.

**Shelf Period:** As defined in Section 4(a) hereof.

**Suspension Notice:** As defined in Section 6(e) hereof.

**Transfer Restricted Securities:** (a) Each Preference Share until the earliest to occur of (i) the date on which such Preference Share has been exchanged by a Person other than a Broker- Dealer for an Exchange Preference Share in the Exchange Offer and is entitled to be resold to the public by such Person without complying with the prospectus delivery requirements of the Act, (ii) the date on which such Preference Share has been effectively registered under the Act and disposed of in accordance with the Shelf Registration Statement, (iii) the date on which such Preference Share is distributed to the public pursuant to Rule 144 under the Act, or (iv) the date on which such Preference Share is eligible to be distributed to the public pursuant to Rule 144(k) under the Act, and (b) each Exchange Preference Share acquired by a Broker- Dealer in the Exchange Offer of a Preference Share for such Exchange Preference Share, until the date on which such Exchange Preference Share is sold to a purchaser who receives from such Broker- Dealer on or prior to the date of such sale a copy of the Prospectus contained in the Exchange Offer Registration Statement.

## **SECTION 2. HOLDERS**

A Person is deemed to be a holder of Transfer Restricted Securities (each, a “**Holder**”) whenever such Person owns Transfer Restricted Securities.

### SECTION 3. REGISTERED EXCHANGE OFFER

(a) The Company shall (i) cause the Exchange Offer Registration Statement to be filed with the Commission on or prior to 180 days after the Closing Date (such 180th day being the “**Exchange Offer Filing Deadline**”), (ii) use its commercially reasonable efforts to cause such Exchange Offer Registration Statement to become effective on or prior to 240 days after the Closing Date (such 240th day being the “**Exchange Offer Effectiveness Deadline**”), (iii) in connection with the foregoing use its commercially reasonable efforts to, (A) file all pre-effective amendments to such Exchange Offer Registration Statement as may be necessary in order to cause it to become effective, (B) file, if applicable, a post-effective amendment to such Exchange Offer Registration Statement pursuant to Rule 430A under the Act and (C) cause all necessary filings, if any, in connection with the registration and qualification of the Exchange Preference Shares to be made under the Blue Sky laws of such jurisdictions as are necessary to permit Consummation of the Exchange Offer provided, however, that the Company shall not be required to take any action that would subject it to general service of process or taxation in any jurisdiction where it is not already subject and (iv) as promptly as practicable after the effectiveness of such Exchange Offer Registration Statement, unless the Exchange Offer shall not be permitted by applicable law or Commission policy, commence the Exchange Offer and use its commercially reasonable efforts to consummate the Exchange Offer on or prior to 30 days, or longer, if required by federal securities laws after the date on which the Exchange Offer Registration Statement was declared effective by the Commission. The Exchange Offer shall be on the appropriate form permitting (I) registration of the Exchange Preference Shares to be offered in exchange for the Transfer Restricted Securities and (II) resales of Exchange Preference Shares by Broker-Dealers that tendered into the Exchange Offer Preference Shares that such Broker-Dealers acquired for their own account as a result of market-making activities or other trading activities (other than Preference Shares acquired directly from the Company or any of its Affiliates) as contemplated by Section 3(c) below.

(b) Unless the Exchange Offer shall not be permitted by applicable law or Commission policy (after the procedures set forth in Section 6(a)(A) have been complied with), the Company shall use its commercially reasonable efforts to cause the Exchange Offer Registration Statement to be effective continuously, and shall keep the Exchange Offer open for a period of not less than the minimum period required under applicable federal and state securities laws to consummate the Exchange Offer; *provided, however*, that in no event shall such period be less than 20 Business Days. The Company shall cause the Exchange Offer to comply with all applicable federal and state securities laws. No securities other than the Exchange Preference Shares shall be included in the Exchange Offer Registration Statement. The Company shall use its commercially reasonable efforts to cause the Exchange Offer to be consummated within 30 days after the Exchange Offer Registration Statement has become effective, but in no event (unless required by federal securities laws) later than 270 days after the Closing Date (such 270th day being the “**Consummation Deadline**”).

(c) The Company shall include a “Plan of Distribution” section in the Prospectus contained in the Exchange Offer Registration Statement and indicate therein that any Broker-Dealer who holds Transfer Restricted Securities that were acquired for the account of such Broker-Dealer as a result of market-making activities or other trading activities (other than Transfer Restricted Securities acquired directly from the Company or any Affiliate of the Company), may exchange such Transfer Restricted Securities pursuant to the Exchange Offer. Such “Plan of Distribution” section shall also contain all other information with respect to such sales by such Broker-Dealers that the Commission may require in order to permit such sales pursuant thereto, but such “Plan of Distribution” shall not name any such Broker-Dealer or disclose the amount of Transfer Restricted Securities held by any such Broker-Dealer, except to the extent required by the Commission as a result of a change in policy, rules or regulations after the date of this Agreement. See the Shearman & Sterling no-action letter (available July 2, 1993).

Because such Broker- Dealer may be deemed to be an “underwriter” within the meaning of the Act and must, therefore, deliver a prospectus meeting the requirements of the Act in connection with its initial sale of any Exchange Preference Shares received by such Broker- Dealer in the Exchange Offer, the Company shall permit the use of the Prospectus contained in the Exchange Offer Registration Statement by such Broker- Dealer to satisfy such prospectus delivery requirement. To the extent necessary to ensure that the Prospectus contained in the Exchange Offer Registration Statement is available for sales of Exchange Preference Shares by Broker- Dealers, the Company agrees to use its commercially reasonable efforts to keep the Exchange Offer Registration Statement continuously effective, supplemented, amended and current as required by and subject to the provisions of Section 6(a) and 6(c) hereof and in conformity with the requirements of this Agreement, the Act and the policies, rules and regulations of the Commission as announced from time to time, for a period of one year from the date on which the Exchange Offer is Consummated or such shorter period as will terminate when all Transfer Restricted Securities covered by such Registration Statement have been sold pursuant thereto (the “**Registration Period**”). The Company shall provide sufficient copies of the latest version of such Prospectus to such Broker- Dealers, promptly upon request, and in no event later than one day after such request, at any time during such period.

#### **SECTION 4. SHELF REGISTRATION**

(a) **Shelf Registration.** If (i) the Company is not required to file the Exchange Offer Registration Statement, (ii) the Exchange Offer is not permitted by applicable law or Commission policy (after the Company has complied with the procedures set forth in Section 6(a)(A) hereof), (iii) the Commission shall notify the Company that it shall refuse to declare effective the Exchange Offer Registration Statement filed with the Commission or (iv) if any Holder of Transfer Restricted Securities shall notify the Company prior to the 20th Business Day following the Consummation of the Exchange Offer that (A) such Holder was prohibited by applicable law or Commission policy from participating in the Exchange Offer or (B) such Holder may not resell the Exchange Preference Shares acquired by it in the Exchange Offer to the public without delivering a prospectus and the Prospectus contained in the Exchange Offer Registration Statement is not appropriate or available for such resales by such Holder or (C) such Holder is a Broker- Dealer and holds Preference Shares acquired directly from the Company or any Affiliate of the Company, then the Company shall:

(I) use its commercially reasonable efforts to cause to be filed, on or prior to 30 days after the earlier of (x) the date on which the Company determines that the Exchange Offer Registration Statement is not required to be filed or cannot be filed as a result of clause (a)(i) or (a)(ii) of this Section 4(a) and (y) the date on which the Company receives the notice specified in clause (a)(iii) or (a)(iv) of this Section 4(a) (the 30th day after such earlier date (and in any event within 300 days after the Closing Date), the “**Shelf Filing Deadline**”), a shelf registration statement pursuant to Rule 415 under the Act (which may be an amendment to the Exchange Offer Registration Statement (the “**Shelf Registration Statement**”)), relating to all Transfer Restricted Securities of Holders that have provided information pursuant to Section 4(b) hereof; and

(II) use its commercially reasonable efforts to cause such Shelf Registration Statement to become effective on or prior to 60 days after the Filing Deadline for the Shelf Registration Statement (such 60th day the “**Shelf Effectiveness Deadline**”).

If, after the Company has filed an Exchange Offer Registration Statement that satisfies the requirements of Section 3(a) above, the Company is required to file and make effective a Shelf

Registration Statement solely because the Exchange Offer is not permitted under applicable federal law or Commission policy (*i.e.*, clause (a)(ii) of this Section 4), then the filing of the Exchange Offer Registration Statement shall be deemed to satisfy the requirements of clause (I) above; *provided* that, in such event, the Company shall remain obligated to meet the Effectiveness Deadline set forth in clause (II) above.

To the extent necessary to ensure that the Shelf Registration Statement is available for sales of Transfer Restricted Securities by the Holders thereof entitled to the benefit of this Section 4(a) and the other securities required to be registered therein pursuant to Section 6(b)(ii) hereof, the Company shall use its commercially reasonable efforts to keep any Shelf Registration Statement required by this Section 4(a) continuously effective, supplemented, amended and current as required by and subject to the provisions of Sections 6(b) and 6(c) hereof and in conformity with the requirements of this Agreement, the Act and the policies, rules and regulations of the Commission as announced from time to time, for a period of at least two years (as extended pursuant to Section 6(d)(i) hereof) following the Closing Date, or such shorter period as will terminate when all Transfer Restricted Securities covered by such Shelf Registration Statement have been sold pursuant thereto (the “*Shelf Period*”).

(b) Provision by Holders of Certain Information in Connection with the Shelf Registration Statement. No Holder of Transfer Restricted Securities may include any of its Transfer Restricted Securities in any Shelf Registration Statement pursuant to this Agreement unless and until (i) such Holder furnishes to the Company in writing, within 20 days after receipt of a written request therefor, the information specified in Item 507 or 508 of Regulation S- K, as applicable, of the Act for use in connection with any Shelf Registration Statement or Prospectus or preliminary Prospectus included therein, and (ii) in the case of an underwritten offering, such Holder completes and executes all questionnaires, powers of attorney, underwriting agreements, lock- up letters and other documents reasonably requested by the Company in connection with the terms of the underwritten offering. Furthermore, no Holder of Transfer Restricted Securities may include any of its Transfer Restricted Securities in any Shelf Registration Statement pursuant to this Agreement unless and until such Holder furnishes to the Company in writing, within 10 Business Days after receipt of a request therefor, such Holder’s comments to the disclosure relating to such Holder in the Shelf Registration Statement. No Holder of Transfer Restricted Securities shall be entitled to additional non- cumulative dividends pursuant to Section 5 hereof unless and until such Holder shall have provided all such information. By its acceptance of Transfer Restricted Securities, each Holder agrees to notify the Company promptly if any of the information previously furnished is misleading or inaccurate in any material respect and to promptly furnish additional information required to be disclosed in order to make the information previously furnished to the Company by such Holder not materially misleading.

## **SECTION 5. ADDITIONAL DIVIDENDS**

If (a) any Registration Statement required by this Agreement is not filed with the Commission on or prior to the applicable Filing Deadline, (b) any such Registration Statement has not been declared effective by the Commission on or prior to the applicable Effectiveness Deadline, (c) the Exchange Offer has not been Consummated on or prior to the Consummation Deadline or (d) any Registration Statement required by this Agreement is filed and declared effective but shall thereafter cease to be effective or fail to be usable for its intended purpose during the Registration Period or Shelf Period, as applicable, without being succeeded immediately by a post- effective amendment or an additional Registration Statement that causes the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement) to again be declared effective or made usable (each such event referred to in clauses (a) through (d), a “*Registration Default*”), then the Company hereby agrees to pay to each Holder of Transfer Restricted Securities affected thereby additional dividends at a rate of 0.25% per annum on the liquidation preference of Transfer Restricted Securities held by such Holder for

the first 90- day period immediately following the occurrence of such Registration Default. The amount of the additional non- cumulative dividends shall increase by an additional 0.25% per annum on the liquidation preference of Transfer Restricted Securities with respect to each subsequent 90- day period until all Registration Defaults have been cured, up to a maximum rate of additional non- cumulative dividends of 0.50% per annum on the liquidation preference of Transfer Restricted Securities; *provided* that the Company shall in no event be required to pay additional non- cumulative dividends for more than one Registration Default at any given time. Notwithstanding anything to the contrary set forth herein, (i) upon filing of the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement), in the case of clause (a) above, (ii) upon the effectiveness of the Exchange Offer Registration Statement (and/or, if applicable the Shelf Registration Statement), in the case of clause (b) above, (iii) upon Consummation of the Exchange Offer, in the case of clause (c) above, or (iv) upon the filing of a post- effective amendment to the Registration Statement or an additional Registration Statement that causes the Exchange Offer Registration Statement (and/or, if applicable, the Shelf Registration Statement) to again be declared effective or made usable, in the case of clause (d) above, the additional dividends payable with respect to the Transfer Restricted Securities as a result of such clause (a), (b), (c) or (d), as applicable, shall cease to be payable on the date of such cure.

All additional non- cumulative dividends shall be paid to the Holders entitled thereto, in the manner provided for the payment of dividends in the Board Resolutions, on each Dividend Payment Date, as more fully set forth in the Board Resolutions. Notwithstanding the fact that any securities for which additional dividends are due cease to be Transfer Restricted Securities, all obligations of the Company to pay additional dividends with respect to securities shall survive until such time as such obligations with respect to such securities shall have been satisfied in full.

A Holder of Preference Shares or Exchange Preference Shares who is not entitled to the benefits of a Shelf Registration Statement shall not be entitled to additional dividends with respect to a Registration Default that pertains to such Shelf Registration Statement.

## **SECTION 6. REGISTRATION PROCEDURES**

(a) Exchange Offer Registration Statement. In connection with the Exchange Offer, the Company shall (i) comply with all applicable provisions of Section 6(c) below, (ii) use its commercially reasonable efforts to effect such exchange and to permit the resale of Exchange Preference Shares by any Broker- Dealer that tendered Preference Shares in the Exchange Offer that such Broker- Dealer acquired for its own account as a result of its market- making activities or other trading activities (other than Preference Shares acquired directly from the Company or any Affiliate of the Company) being sold in accordance with the intended method or methods of distribution thereof set forth in the Registration Statement, and (iii) comply with all of the following provisions:

(A) If, following the date hereof there has been announced a change in Commission policy with respect to exchange offers such as the Exchange Offer, that in the reasonable opinion of counsel to the Company raises a substantial question as to whether the Exchange Offer is permitted by applicable federal law, the Company hereby agrees to seek a no- action letter or other favorable decision from the Commission allowing the Company to consummate an Exchange Offer for such Transfer Restricted Securities. The Company hereby agrees to pursue the issuance of such a decision to the Commission staff level but shall not be required to take commercially unreasonable action to effect a change in Commission policy. In connection with the foregoing, the Company hereby agrees to take all such other actions as may be requested by the Commission or otherwise required in connection with the issuance of such decision, including without limitation (I) participating in telephonic conferences with the Commission staff, (II) delivering to the Commission staff an analysis prepared by counsel to the Company setting forth the legal

bases, if any, upon which such counsel has concluded that such an Exchange Offer should be permitted and (III) diligently pursuing a resolution (which need not be favorable) by the Commission staff.

(B) As a condition to its participation in the Exchange Offer, each Holder of Transfer Restricted Securities (including, without limitation, any Holder who is a Broker- Dealer) shall furnish, upon the request of the Company, prior to the Consummation of the Exchange Offer, a written representation to the Company (which may be contained in the letter of transmittal contemplated by the Exchange Offer Registration Statement) to the effect that (I) it is not an Affiliate of the Company, (II) it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any Person to participate in, a distribution of the Exchange Preference Shares to be issued in the Exchange Offer and (III) it is acquiring the Exchange Preference Shares in its ordinary course of business. As a condition to its participation in the Exchange Offer, each Holder using the Exchange Offer to participate in a distribution of the Exchange Preference Shares will be required to acknowledge and agree that, if the resales are of Exchange Preference Shares obtained by such Holder in exchange for Preference Shares acquired directly from the Company or any Affiliate of the Company, it (1) could not, under Commission policy as in effect on the date of this Agreement, rely on the position of the Commission enunciated in Morgan Stanley and Co., Inc. (available March 27, 1991), Morgan Stanley and Co., Inc. (available June 5, 1991) and Exxon Capital Holdings Corporation (available May 13, 1988), as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993, and similar no- action letters (including, if applicable, any no- action letter obtained pursuant to clause (A) above), and (2) must comply with the registration and prospectus delivery requirements of the Act in connection with a secondary resale transaction and that such a secondary resale transaction must be covered by an effective Registration Statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S- K.

(C) Prior to effectiveness of the Exchange Offer Registration Statement, the Company shall, to the extent required by the Commission, provide a supplemental letter to the Commission (I) stating that the Company is registering the Exchange Offer in reliance on the position of the Commission enunciated in Morgan Stanley and Co., Inc. (available March 27, 1991), Exxon Capital Holdings Corporation (available May 13, 1988), Morgan Stanley and Co., Inc. (available June 5, 1991) as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993, and, if applicable, any no- action letter obtained pursuant to clause (A) above, (II) including a representation that the Company has not entered into any arrangement or understanding with any Person to distribute the Exchange Preference Shares to be received in the Exchange Offer and that, to the best of the Company's information and belief, each Holder participating in the Exchange Offer is acquiring the Exchange Preference Shares in its ordinary course of business and has no arrangement or understanding with any Person to participate in the distribution of the Exchange Preference Shares received in the Exchange Offer and (III) any other undertaking or representation required by the Commission as set forth in any no- action letter obtained pursuant to clause (A) above, if applicable.

(b) Shelf Registration Statement. In connection with the Shelf Registration Statement, the Company shall:

(i) comply with all the provisions of Section 6(c) and (d) below and use its commercially reasonable efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof (as indicated in the information furnished to the Company pursuant to Section 4(b) hereof), and pursuant thereto the Company will prepare and file with the Commission a Registration Statement relating to the

registration on any appropriate form under the Act, which form shall be available for the sale of the Transfer Restricted Securities in accordance with the intended method or methods of distribution thereof within the time periods and otherwise in accordance with the provisions hereof; and

(ii) issue, upon the request of any Holder or purchaser of Preference Shares covered by any Shelf Registration Statement contemplated by this Agreement, Exchange Preference Shares in an aggregate number equal to the aggregate number of Preference Shares sold pursuant to the Shelf Registration Statement and surrendered to the Company for cancellation; provided that such Holder provides all documentation reasonably requested by the Company in connection with such issuance; the Company shall register Exchange Preference Shares on the Shelf Registration Statement for this purpose and issue the Exchange Preference Shares to the purchaser(s) of securities subject to the Shelf Registration Statement in the names as such purchaser(s) shall designate.

(c) General Provisions. In connection with any Registration Statement and any related Prospectus required by this Agreement, the Company shall:

(i) use its commercially reasonable efforts to keep such Registration Statement continuously effective and provide all requisite financial statements for the period specified in Section 3 or 4 hereof, as applicable. Upon the occurrence of any event that would cause (A) any such Registration Statement to contain an untrue statement of material fact or omit to state any material fact necessary to make the statements therein not misleading or the Prospectus contained in such Registration Statement to contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (B) such Registration Statement or the Prospectus contained therein not to be effective and usable for resale of Transfer Restricted Securities during the period required by this Agreement, the Company shall file as promptly as practicable an appropriate amendment to such Registration Statement curing such defect, and, if Commission review is required, use its commercially reasonable efforts to cause such amendment to be declared effective as soon as practicable. If at any time the Commission shall issue any stop order suspending the effectiveness of any Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or Blue Sky laws, the Company shall use its commercially reasonable efforts to obtain the withdrawal or lifting of such order at the earliest practicable time;

(ii) prepare and file with the Commission such amendments and post-effective amendments to the applicable Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period set forth in Section 3 or 4 hereof, as the case may be; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Act, and to comply fully with Rules 424, 430A and 462, as applicable, under the Act in a timely manner; and comply with the provisions of the Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in such Registration Statement or supplement to the Prospectus;

(iii) in connection with any sale of Transfer Restricted Securities that will result in such securities no longer being Transfer Restricted Securities, cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends; and to enable such Transfer Restricted Securities to be registered in such denominations and such names as the selling Holders may request at least three Business Days prior to such sale of Transfer Restricted Securities;

(iv) use its commercially reasonable efforts to cause the disposition of the Transfer Restricted Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Transfer Restricted Securities other than as set forth in Section 6(d)(x) hereof; *provided, however*, that the Company shall not be required to register or qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it is not now so qualified or to take any action that would subject it to the service of process in suits or to taxation, other than as to matters and transactions relating to the Registration Statement, in any jurisdiction where it is not now so subject;

(v) provide a CUSIP number for all Transfer Restricted Securities not later than the effective date of a Registration Statement covering such Transfer Restricted Securities and provide The Depository Trust Company (“DTC”) with certificates for the Transfer Restricted Securities which are in a form eligible for deposit with DTC; and

(vi) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make generally available to its security holders with regard to any applicable Registration Statement, as soon as practicable, a consolidated earnings statement meeting the requirements of Rule 158 under the Act (which need not be audited) covering a twelve- month period beginning after the effective date of the registration statement (as such term is defined in paragraph (c) of Rule 158 under the Act).

(d) Additional Provisions Applicable to Shelf Registration Statements and Certain Exchange Offer Prospectuses. In connection with each Shelf Registration Statement, and each Exchange Offer Registration Statement if and to the extent that an Initial Purchaser has notified the Company that it is a holder of Transfer Restricted Securities (for so long as such Preference Shares are Transfer Restricted Securities or for the period provided in Section 3 hereof, whichever is shorter), with respect to any Holder selling pursuant to the Shelf Registration Statement or with respect to any such Initial Purchaser, the Company shall:

(i) advise such Holder as promptly as practicable and, if requested by such Holder, confirm such advice in writing, (A) when the Prospectus or any Prospectus supplement or post- effective amendment has been filed, and, with respect to any applicable Registration Statement or any post- effective amendment thereto, when the same has become effective, (B) of any request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto, (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement under the Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, (D) of the existence of any fact or the happening of any event that makes any statement of a material fact made in the Registration Statement, the Prospectus, any amendment or supplement thereto or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement in order to make the statements therein not misleading, or that requires the making of any additions to or changes in the Prospectus in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) subject to Section 6(c)(i) hereof, if any fact or event contemplated by Section 6(d)(i)(D) above shall exist or have occurred, prepare a supplement or post- effective amendment to the Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;



(iii) furnish to such Holder in connection with such exchange or sale, if any, before filing with the Commission, copies of any Registration Statement or any Prospectus included therein (except the Prospectus included in the Exchange Offer Registration Statement at the time it was declared effective) or any amendments or supplements to any such Registration Statement or Prospectus (including all documents incorporated by reference after the initial filing of such Registration Statement), which documents will be subject to the review and comment of such Holders in connection with such sale, if any, for a period of not less than five Business Days, and the Company will not file any such Registration Statement or Prospectus or any amendment or supplement to any such Registration Statement or Prospectus (including all such documents incorporated by reference) to which such Holders shall reasonably object within five Business Days after the receipt thereof. A Holder shall be deemed to have reasonably objected to such filing if such Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains an untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading or fails to comply with the applicable requirements of the Act;

(iv) promptly prior to the filing of any document that is to be incorporated by reference into a Registration Statement or Prospectus, provide copies of such document, upon request, to such Holder in connection with such exchange or sale, if any, make the Company's representatives reasonably available for discussion of such document and other customary due diligence matters and include such information in such document prior to the filing thereof as such Holders may reasonably request;

(v) subject to a confidentiality agreement reasonable acceptable to the Company, make available, at reasonable times, for inspection by such Holder and any attorney or accountant retained by such Holders, all financial and other records, pertinent corporate documents of the Company reasonably requested by such persons and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Holder, attorney or accountant, in connection with such Registration Statement or any post-effective amendment thereto subsequent to the filing thereof and prior to its effectiveness;

(vi) if requested by any such Holders in connection with such exchange or sale, promptly include in any Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such Holders may reasonably request to have included therein, including, without limitation, information relating to the "Plan of Distribution" of the Transfer Restricted Securities; and make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after the Company is notified of the matters to be included in such Prospectus supplement or post-effective amendment;

(vii) upon request, furnish to such Holder in connection with such exchange or sale, without charge, at least one copy of the Registration Statement, as first filed with the Commission, and of each amendment thereto (without all documents incorporated by reference therein or exhibits thereto, unless requested);

(viii) upon request, deliver to such Holder without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Holder reasonably may request. The Company hereby consents to the use (in accordance with law) of the Prospectus and any amendment or supplement thereto by each selling Holder in connection with the

offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto;

(ix) upon the reasonable request of any such Holder, enter into such agreements (including underwriting agreements containing customary terms) and make such reasonable and customary representations and warranties and take all such other reasonable and customary actions in connection therewith in order to expedite or facilitate the disposition of the Transfer Restricted Securities pursuant to any applicable Registration Statement contemplated by this Agreement as may be reasonably requested by any such Holder in connection with any sale or resale pursuant to any applicable Registration Statement. In such connection, the Company shall:

(A) upon the reasonable request of such Holder, furnish (or in the case of paragraphs (2) and (3), use its commercially reasonable efforts to cause to be furnished) to each such Holder, upon Consummation of the Exchange Offer or upon the effectiveness of the Shelf Registration Statement, as the case may be:

(1) a certificate in customary form, dated such date, signed on behalf of the Company by (x) the President or any Vice President and (y) a principal financial or accounting officer of the Company, confirming, as of the date thereof, the type of matters set forth in Section 7(j) of the Purchase Agreement with respect to the Registration Statement and the securities registered thereunder and such other similar matters as such Holders may reasonably request;

(2) an opinion in customary form, dated the date of Consummation of the Exchange Offer or the date of effectiveness of the Shelf Registration Statement, as the case may be, of counsel for the Company covering matters set forth in the opinions provided on the Closing Date pursuant to Sections 7(c) through (f) of the Purchase Agreement and such other matters as such Holder may reasonably request; and

(3) a customary comfort letter, dated the date of Consummation of the Exchange Offer, or as of the date of effectiveness of the Shelf Registration Statement, as the case may be, from the Company's independent accountants, in the customary form and covering matters of the type customarily covered in comfort letters to underwriters in connection with underwritten offerings, and affirming the matters set forth in the comfort letters delivered pursuant to Section 7(g) of the Purchase Agreement; and

(B) deliver such other documents and certificates as may be reasonably requested by the selling Holders and as are customarily delivered in similar offerings to evidence compliance with the matters covered in clause (A) above and with any customary conditions contained in any agreement entered into by the Company pursuant to this clause (ix);

(x) prior to any public offering of Transfer Restricted Securities, cooperate with the selling Holders and their counsel in connection with the registration and qualification of the Transfer Restricted Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders may reasonably request and use its commercially reasonable efforts to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the applicable Registration Statement; *provided, however*, that the Company shall not be required to register or qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it is not now so qualified or to take any action that would subject it to the service of process in suits or to taxation, other than as to matters and transactions relating to the Registration Statement, in any jurisdiction where it is not now so subject; and

(xi) provide as promptly as practicable to each such Holder, upon request, each document filed with the Commission pursuant to the requirements of Section 13 or Section 15(d) of the Exchange Act.

(e) **Restrictions on Holders.** Each Holder's acquisition of a Transfer Restricted Security constitutes such Holder's agreement that, upon receipt of the notice referred to in Section 6(d)(i)(C) or any notice from the Company of the existence of any fact of the kind described in Section 6(d)(i)(D) hereof (in each case, a "**Suspension Notice**"), such Holder will forthwith discontinue disposition of Transfer Restricted Securities pursuant to the applicable Registration Statement until (i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 6(d)(ii) hereof, or (ii) such Holder is advised in writing by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus (in each case, the "**Recommendation Date**"). Each Holder receiving a Suspension Notice shall be required to either (I) destroy any Prospectuses, other than permanent file copies, then in such Holder's possession that have been replaced by the Company with a more recently dated Prospectus or (II) deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such Holder's possession of the Prospectuses covering such Transfer Restricted Securities that was current at the time of receipt of the Suspension Notice. The time periods regarding such Registration Statement set forth in Section 3 or 4 hereof, as applicable, shall be extended by a number of days equal to the number of days in the period from and including the date of delivery of the Suspension Notice to the date of delivery of the Recommendation Date.

## **SECTION 7. REGISTRATION EXPENSES**

(a) All expenses incident to the Company's performance of or compliance with this Agreement (other than underwriting discounts and commissions) will be borne by the Company, regardless of whether a Registration Statement becomes effective, including without limitation: (i) all registration and filing fees and expenses; (ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws; (iii) all expenses of printing (including certificates for the Exchange Preference Shares to be issued in the Exchange Offer and printing of Prospectuses), messenger and delivery services and telephone; (iv) all fees and disbursements of counsel for the Company and all reasonable fees and disbursements of one counsel for the Holders of Transfer Restricted Securities (which shall be Simpson Thacher & Bartlett LLP or such other counsel as may be selected by a majority of such Holders); and (v) all fees and disbursements of independent certified public accountants of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Company will, in any event, bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Company.

(b) In connection with any Registration Statement required by this Agreement (including, without limitation, the Exchange Offer Registration Statement and the Shelf Registration Statement), the Company will reimburse the Initial Purchasers and the Holders of Transfer Restricted Securities who are tendering Preference Shares into in the Exchange Offer and/or selling or reselling Preference Shares or Exchange Preference Shares pursuant to the "Plan of Distribution" contained in the Exchange Offer Registration Statement or the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel (who shall be Simpson Thacher & Bartlett LLP unless another firm shall be chosen by the Holders of a majority of the Transfer Restricted Securities for whose benefit such Registration Statement is being prepared). The Company shall not be

required to pay any underwriting discounts, commissions or similar fees related to the sale of any securities, except as contemplated by the Purchase Agreement.

## **SECTION 8. INDEMNIFICATION**

(a) The Company will indemnify and hold harmless each Holder, its directors, officers and each Person, if any, who controls such Holder (within the meaning of Section 15 of the Act or Section 20 of the Exchange Act), against any losses, claims, damages or liabilities, joint or several, to which such Holder may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, Prospectus, Free Writing Prospectus or any "issuer information" (as defined in Rule 433 of the Act) filed or required to be filed pursuant to Rule 433(d) under the Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Holder for any legal expenses of one counsel (which shall be Simpson Thacher & Bartlett LLP or such other counsel as may be selected by a majority of Holders in addition to any local counsel as may be selected by a majority of such Holders) engaged reasonably incurred by such Holder in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Registration Statement, Prospectus, Free Writing Prospectus or any "issuer information," in reliance upon and in conformity with written information furnished to the Company by any Holder expressly for use therein.

(b) By its acquisition of Transfer Restricted Securities, each Holder of Transfer Restricted Securities will indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, Prospectus, Free Writing Prospectus or any "issuer information," or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any Registration Statement, Prospectus, Free Writing Prospectus or any "issuer information," in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for use therein, and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred, including the reasonable fees and expenses of one counsel (in addition to any applicable local counsel).

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation (except as set

forth below). Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party, and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (1) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Holders on the other from the initial sale by the Company of the Transfer Restricted Securities (or in the case of Exchange Preference Shares that are Transfer Restricted Securities, the sale of the Preference Shares for which such Exchange Preference Shares were exchanged). If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Holders on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Holders on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total purchasing discounts and commissions received by the Holders. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Holders on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contributions pursuant to this subsection (d) were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Transfer

Restricted Securities purchased by it, pursuant to the Registration Statement, and distributed to the public were offered to the public exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations in this subsection (d) to contribute are several in proportion to their respective purchasing obligations and not joint.

(e) The obligations of the Company under this Section 8 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Holder within the meaning of the Act; and the obligations of the Holders under this Section 8 shall be in addition to any liability which the respective Holders may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Act.

## **SECTION 9. RULE 144A and Rule 144**

The Company agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding and during any period in which the Company (a) is not subject to Section 13 or 15(d) of the Exchange Act, to make available, upon request of any Holder, or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities designated by such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A, and (b) is subject to Section 13 or 15(d) of the Exchange Act, to use its commercially reasonable efforts to make all filings required thereby in a timely manner in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144.

## **SECTION 10. MISCELLANEOUS**

(a) Remedies. The provisions of Section 5 represent the sole monetary remedy available to the Holders in connection with any failure by the Company to comply with their obligations under Sections 3 and 4 hereof. The Company acknowledges and agrees that any failure by the Company to comply with its obligations under Sections 3 and 4 hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Company's obligations under Sections 3 and 4 hereof. The Company further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) Free Writing Prospectus. The Company represents, warrants and covenants that it (including its agents and representatives) will not prepare, make, use, authorize, approve or refer to any "written communication" (as defined in Rule 405 under the Securities Act) in connection with the issuance and sale of the Preference Shares and the Exchange Preference Shares, other than any communication pursuant to Rule 134, Rule 135 or Rule 135c under the Securities Act, any document constituting an offer to sell or solicitation of an offer to buy the Preference Shares or the Exchange Preference Shares that falls within the exception from the definition of prospectus in Section 2(a)(10)(a) of the Securities Act or a prospectus satisfying the requirements of section 10(a) of the Securities Act or of Rule 430, Rule 430A, Rule 430B, Rule 430C or Rule 431 under the Securities Act.

(c) No Inconsistent Agreements. The Company will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights

granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. The Company has not previously entered into any agreement granting any registration rights with respect to its securities to any Person that would require such securities to be included in any Registration Statement filed hereunder. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Company's securities under any agreement in effect on the date hereof.

(d) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given unless (i) in the case of Section 5 hereof and this Section 10(d)(i), the Company has obtained the written consent of Holders of all outstanding Transfer Restricted Securities and (ii) in the case of all other provisions hereof, the Company has obtained the written consent of Holders of a majority of the outstanding Transfer Restricted Securities (excluding Transfer Restricted Securities held by the Company or its Affiliates). Notwithstanding the foregoing, a waiver of or consent to departure from the provisions hereof that relates exclusively to the rights of Holders whose Transfer Restricted Securities are being tendered pursuant to the Exchange Offer, and that does not affect directly or indirectly the rights of other Holders whose Transfer Restricted Securities are not being tendered pursuant to such Exchange Offer, may be given by the Holders of a majority of the outstanding Transfer Restricted Securities subject to such Exchange Offer.

(e) Third Party Beneficiary. The Holders shall be third party beneficiaries to the agreements made hereunder between the Company, on the one hand, and the Initial Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect their rights hereunder.

(f) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand- delivery, first- class mail (registered or certified, return receipt requested), telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the Registrar and Transfer Agent, with a copy to the Registrar and Transfer Agent; and

(ii) if to the Company:

Security Capital Assurance Ltd  
One Bermudiana Road  
Hamilton HM 11  
Bermuda  
Attention: Kirstin Romann Gould  
Fax: (441) 295- 2840

with a copy to:

Cahill Gordon & Reindell LLP  
Eighty Pine Street  
New York, New York 10008  
Attention: Michael Becker, Esq.  
Fax: (212) 328- 2165

All such notices and communications shall be deemed to have been duly given at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage

prepaid, if mailed; when receipt is acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders; *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Transfer Restricted Securities in violation of the terms hereof or of the Purchase Agreement. If any transferee of any Holder shall acquire Transfer Restricted Securities in any manner, whether by operation of law or otherwise, such Transfer Restricted Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Transfer Restricted Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement, including the restrictions on resale set forth in this Agreement and, if applicable, the Purchase Agreement, and such Person shall be entitled to receive the benefits hereof.

(h) Submission to Jurisdiction. The Company irrevocably (i) agrees that any legal suit, action or proceeding against the Company brought by any Initial Purchaser or by any person who controls any Initial Purchaser arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal district court for the Southern District of New York and the New York County Court, (ii) waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding and (iii) submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The Company has appointed CT Corporation System, New York, New York, as its authorized agent (the "**Authorized Agent**") upon whom process may be served in any such action arising out of or based on this Agreement or the transactions contemplated hereby which may be instituted in the federal district court for the Southern District of New York and the New York County Court by any Initial Purchaser or by any person who controls any Initial Purchaser, expressly consents to the jurisdiction of any such court in respect of any such action, and waives any other requirements of or objections to personal jurisdiction with respect thereto. Such appointment shall be irrevocable. The Company represents and warrants that the Authorized Agent has agreed to act as such agent for service of process and agrees to take any and all action, including the filing of any and all documents and instruments that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent and written notice of such service to the Company shall be deemed, in every respect, effective service of process upon the Company.

(i) Judgment Currency. In respect of any judgment or order given or made for any amount due hereunder that is expressed and paid in a currency (the "judgment currency") other than United States dollars, the Company will indemnify each Initial Purchaser against any loss incurred by such Initial Purchaser as a result of any variation between (i) the rate of exchange at which the United States dollar amount is converted into the judgment currency for the purpose of such judgment or order and (ii) the rate of exchange at which an Initial Purchaser is able to purchase United States dollars with the amount of judgment currency actually received by such Initial Purchaser. The foregoing indemnity shall constitute a separate and independent obligation of the Company and shall continue in full force and effect notwithstanding any such judgment or order aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of or conversion into United States dollars.



(j) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(k) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(l) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(m) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(n) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

*[Signature Pages to Follow]*

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

SECURITY CAPITAL ASSURANCE LTD

By: /s/ Thomas W. Currie

\_\_\_\_\_  
Name: Thomas W. Currie

Title: Senior Vice President and Chief Risk Officer

LEHMAN BROTHERS INC.  
MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED  
WACHOVIA CAPITAL MARKETS, LLC

By: LEHMAN BROTHERS INC.

By: /s/ William Gartland

\_\_\_\_\_  
Authorized Representative

On behalf of each of the Initial Purchasers