

Replacement Capital Covenant, dated as of March 7, 2007 (this “*Replacement Capital Covenant*”), by Liberty Mutual Group Inc., a Massachusetts stock holding company (together with its successors and assigns, the “*Corporation*”), in favor of and for the benefit of each Covered Debtholder (as defined below).

Recitals

A. On the date hereof, the Corporation is issuing \$700,000,000 aggregate principal amount of its Series A Junior Subordinated Notes (the “*Series A Notes*”) and \$300,000,000 aggregate principal amount of its Series B Junior Subordinated Notes (the “*Series B Notes*”) and, together with the Series A Notes, the “*Notes*” and each a “*Series*”), irrevocably and unconditionally guaranteed on an unsecured junior subordinated basis by each of Liberty Mutual Holding Company Inc. and LMHC Massachusetts Holdings Inc. (each, and each successor guarantor of the Notes, a “*Guarantor*”); *provided* that each such entity shall be a “*Guarantor*” for the purpose of this Replacement Capital Covenant only as long as its guarantee of the Notes remains in place.

B. This Replacement Capital Covenant is the “*Replacement Capital Covenant*” referred to in the Offering Memorandum, dated February 28, 2007, relating to the Notes (the “*Offering Memorandum*”).

C. The Corporation 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 Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation 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 Corporation 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, Repayment, Defeasance and Purchase of Notes*. The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not repay, redeem, defease or purchase all or any part of either Series on or before the RCC Termination Date for such Series unless the principal amount repaid or defeased or the applicable redemption or purchase price does not exceed the sum of the following amounts raised during the applicable Measurement Period:

(i) the Applicable Percentage of (a) the aggregate amount of net cash proceeds received by the Corporation and its Affiliates from the sale of Common Stock and Warrants (including Common Stock and Warrants issued pursuant to the Corporation's dividend reinvestment plan or employee benefit plans) to Persons other than the Corporation and its Affiliates; and (b) the Current Price of any Common Stock that the Corporation and its Affiliates have issued to Persons other than the Corporation and its Affiliates in connection with the conversion of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Affiliates has received equity credit from any NRSRO, 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 Corporation and its Affiliates 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 Common Equity and Debt Exchangeable for Preferred Equity to Persons other than the Corporation and its Affiliates; plus

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

provided that any net cash proceeds raised by either of the Guarantors will only be counted for purposes of the foregoing if the proceeds so received have been contributed to the Corporation within the relevant Measurement Period. For the avoidance of doubt, the foregoing limitation shall not restrict the repayment or redemption of any Notes that the Corporation has previously defeased in accordance with this Replacement Capital Covenant.

SECTION 3. *Covered Debt.* (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation 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 Corporation 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 Corporation'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;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the next Redesignation Date;

(iv) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to this Section 3(b) 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(b); and

(v) in connection with such identification of a new series of Covered Debt, the Corporation shall give the notice provided for in Section 3(c) within the time frame provided for in such section.

(c) *Notice.* In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that (i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (A) give notice to the Holders of the Initial Covered Debt, in the manner provided in the Fiscal Agency Agreement, of this Replacement Capital Covenant and the rights granted to such Holders hereunder, (B) post a copy of this Replacement Capital Covenant on the Corporation's website (currently: www.libertymutual.com) (C) 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 (available at Bloomberg screen 53079EAM6<CORP><DES><GO>) or any successor Bloomberg screen or similar vendor's screen the Corporation reasonably believes is appropriate (each an "*Investor Screen*"), and (D) 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) if a series of the Corporation's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, it shall (A) give notice of such occurrence within 30 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, (B) as promptly as practicable, post a notice of such change on the Corporation's website, (C) 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 (D) in the case of any long-term indebtedness for money borrowed that has become Covered Debt, cause a hyperlink to the execution copy of this Replacement Capital Covenant to be included on the Investor Screen for such Covered Debt; (iii) at least once annually, it shall verify that the postings required in clauses (i)(B), (i)(C), (i)(D), (ii)(B), (ii)(C) and (ii)(D) are functional and accessible and, if necessary, cause such functionality and accessibility to be restored; (iv) if the Corporation or a Guarantor becomes and remains a reporting company under the Securities Exchange Act, the Corporation shall, or shall cause such Guarantor to, (A) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Current Report on Form 8-K under the Securities Exchange Act, (B) include in each Annual Report on Form 10-K filed

with the Commission under the Securities 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, and (C) if a series of the Corporation's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, report such change in a Current Report on Form 8-K, which must include or incorporate by reference this Replacement Capital Covenant, and in the Corporation's, or such Guarantor's, next Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as applicable; and (v) promptly upon request by any Holder of Covered Debt, it shall provide such Holder with an executed copy of this Replacement Capital Covenant.

SECTION 4. *Termination, Amendment and Waiver.* (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect with respect to the applicable Series until the earliest date (the "*RCC Termination Date*") to occur of (i) with respect to the Series A Notes, March 1, 2067 and, with respect to the Series B Notes, March 1, 2047, (ii) the date, if any, on which the Holders 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 Corporation hereunder, and (iii) the date on which the Corporation has no series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (ii) of the definition of each such term). Moreover, if an event of default under the Indenture resulting in an acceleration of a Series occurs, the Corporation and the Guarantors shall not be required to comply with this Replacement Capital Covenant with respect to such Series at any time immediately following such acceleration. From and after the RCC Termination Date applicable to a Series, this Replacement Capital Covenant with respect to such Series shall be of no further force and effect and the Corporation shall not have any obligations hereunder with respect to such Series.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders 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 Corporation (and without the consent of the Holders of the then-effective series of Covered Debt) if any of the following apply (it being understood that any such amendment or supplement may fall into one or more of the following): (i) the effect of such amendment or supplement is solely to impose additional restrictions on, or to eliminate certain of, the types of securities qualifying as Replacement Capital Securities (which amendment or supplement, for the avoidance of doubt, may affect our obligations under this instrument with respect to one or both Series), and an officer of the Corporation 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) such amendment or supplement is not adverse to the rights of the Covered Debtholders hereunder and an officer of the Corporation 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 stating that, in his or her determination, such amendment or supplement is not adverse to the Covered Debtholders, or (iii) such amendment or supplement eliminates Common Stock, Warrants, Mandatorily Convertible

Preferred Stock and/or Debt Exchangeable for Common Equity as Replacement Capital Securities if, in the case of this clause (iii), the Corporation 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 Corporation's earnings per share as calculated for financial reporting purposes.

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

For the avoidance of doubt, any amendment to this instrument may affect the terms of this instrument with respect to one or both Series.

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 Corporation 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 Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation 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).

(c) All demands, notices, requests and other communications to the Corporation 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 Corporation, 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 Corporation by a national or international courier service, on the date of receipt by the Corporation (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 Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Liberty Mutual Group Inc.
175 Berkeley Street
Boston, Massachusetts 02117

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

Liberty Mutual Group Inc.

By: /s/ Dennis J. Langwell
Name: Dennis J. Langwell
Title: Chief Financial Officer

Definitions

“*Affiliate*” means, at any time, when used with reference to the Corporation, a Guarantor or any Subsidiary of the Corporation.

“*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 Corporation and/or any Publicly Traded Guarantor 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 requiring the Corporation to 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 Corporation 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 Corporation or any of its Subsidiaries as consideration for such securities) that the Corporation and/or any Publicly Traded Guarantor has received and, in the case of a Publicly Traded Guarantor, contributed to the Corporation during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap in the case of APM Qualifying Securities that are Qualifying Non-Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock;

(b) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to use eligible proceeds to pay deferred Distributions and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds (other than following an acceleration of such securities or the occurrence of the final maturity thereof);

(c) if deferral of Distributions continues for more than one year, require the Corporation, the Guarantors and Subsidiaries not to redeem or repurchase any of the Guarantors’ or the Corporation’s capital stock or the Corporation’s securities that rank *pari passu* with or junior to the most senior issuable APM Qualifying Securities until at least one year after all deferred Distributions have been paid (a “*Share Repurchase Provision*”);

(d) limit the obligation of the Corporation and/or any Publicly Traded Guarantor to issue (or use commercially reasonable efforts to issue) APM Qualifying Securities to:

(i) in the case of APM Qualifying Securities that are Common Stock or Warrants, during the first five years of any deferral period, a number of shares of Common Stock or Warrants exercisable for a number of shares of Common Stock not in excess of 2% of the total number of issued and outstanding shares of Common Stock of such issuer (the “*Common Maximum Obligation*”); 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 Qualified Non-Cumulative Perpetual Preferred Stock and unconverted Mandatorily Convertible Preferred Stock pursuant to such Alternative Payment Mechanism) equal to 25% of the liquidation or principal amount of the securities that are the subject of the related Alternative Payment Mechanism (the “*Preferred Cap*”);

(e) for as long as the terms of the Corporation’s reorganization in 2001 require Liberty Mutual Holding Company Inc. or any other Guarantor to maintain beneficial direct or indirect ownership of at least 51% of the equity value of Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company or Employers Insurance Company of Wausau, no term of any Alternative Payment Mechanism shall require the Corporation to issue shares of its Common Stock or Warrants exercisable for a number of shares of its Common Stock, or require any Guarantor to sell shares of the Corporation's Common Stock, to the extent such issuances and sales would, in the aggregate with all prior issuances by the Corporation or sales by any Guarantor of the Corporation’s Common Stock (whether pursuant to any Alternative Payment Mechanism or otherwise), exceed 49% of the Corporation's equity value; and

(f) in the case of securities other than non-cumulative perpetual preferred stock, include a Bankruptcy Claim Limitation Provision;

provided (and it being understood) that:

(a) the Alternative Payment Mechanism may in the discretion of the Corporation include a Share Cap (provided that such Share Cap shall not represent a lower proportion of the outstanding shares of Common Stock of the Corporation or a Publicly Traded Guarantor as of the date of issuance of such securities than the Share Cap for the Notes represents as a proportion of the Corporation’s or such publicly traded Guarantor’s outstanding shares of Common Stock as of the date of the Offering Memorandum);

(b) neither the Corporation nor any Publicly Traded Guarantor shall 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;

(c) if, due to a Market Disruption Event or otherwise, the Corporation and/or any Publicly Traded Guarantor is able to raise and the Corporation is able to apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Maximum Obligation, Preferred Cap and Share Cap, as and if applicable; and

(d) if the Corporation 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 Corporation and/or any Publicly Traded Guarantor from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Maximum Obligation, Preferred Cap and Share Cap, as applicable, in proportion to the total amounts that are due on such securities.

“*APM Qualifying Securities*” means, with respect to an Alternative Payment Mechanism, one or more of the following (as designated in the transaction documents for the Qualifying Capital Securities that include an Alternative Payment Mechanism or Debt Exchangeable for Preferred Equity):

- (i) Common Stock or Warrants;
- (ii) Mandatorily Convertible Preferred Stock; and
- (iii) Qualifying Non-Cumulative Perpetual Preferred Stock, in each case of the Corporation and/or a Publicly Traded Guarantor;

provided that if the APM Qualifying Securities for any Alternative Payment Mechanism include both Common Stock and Warrants, such Alternative Payment Mechanism may permit, but need not require, the Corporation to issue Warrants, Qualifying Non-Cumulative Perpetual Preferred Stock or Mandatorily Convertible Preferred Stock; *provided* further that if such Alternative Payment Mechanism includes all of the securities included in (i) through (iii) above, such Alternative Payment Mechanism may allow for an amendment of the terms of such security to eliminate Common Stock, Warrants and Mandatorily Convertible Preferred Stock as APM Qualifying Securities if the Corporation 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 Corporation’s or any Guarantor’s earnings per share as calculated for financial reporting purposes.

“*Applicable Percentage*” means in the case of any Common Stock or Warrants, a percentage equivalent of one divided by (a) 75% with respect to any repayment,

redemption, defeasance or purchase on or prior to the First Threshold Date, (b) 50% with respect to any repayment, redemption, defeasance or purchase after the First Threshold Date and on or prior to the Second Threshold Date and (c) 25% with respect to any repayment, redemption, defeasance or purchase after the Second Threshold Date.

“*Bankruptcy Claim Limitation Provision*” means, with respect to any securities or combination of securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision (together in this definition, “*such securities*”), 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 to Distributions that accumulate during (A) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (B) 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 having a Mandatory Trigger Provision, to:

(i) in the case of securities having an Alternative Payment Mechanism or Mandatory Trigger Provision 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 securities then outstanding; and

(ii) in the case of any other securities, an amount not in excess of the sum of (x) the amount of accumulated and unpaid Distributions (including compounded amounts) that relate to the earliest two years of the portion of the deferral period for which Distributions have not been paid 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 and unconverted Mandatorily Convertible Preferred Stock that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision; *provided* that the holders of such securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in subclause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had such claim ranked *pari passu* with the interests of the holders, if any, of Qualifying Non-Cumulative Perpetual Preferred Stock.

“*Business Day*” means any day, other than (i) a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (ii) with respect to either Series, on or after the Final Fixed Rate Interest Payment Date for such series a day that is not a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

“*Common Maximum Obligation*” has the meaning specified in the definition of Alternative Payment Mechanism.

“*Common Stock*” means, with respect to any issuer, common stock of such issuer (including treasury shares of common stock and shares of common stock sold pursuant to such issuer’s dividend reinvestment plan and employee benefit plans), a security that ranks *pari passu* upon the Corporation’s liquidation, dissolution or winding-up to such issuer’s common stock and that tracks the performance of, or relates to the results of, a business, unit or division of such issuer, and any securities issued in exchange therefor in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

“*Corporation*” 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 3.3(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 Corporation during the period that such long-term indebtedness for money borrowed is Covered Debt.

“*Current Price*” means, for the Common Stock of any issuer on any date, the closing sale price per share (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 such Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which such Common Stock is traded or quoted. If such Common Stock is not listed on any U.S. securities exchange on the relevant date, the “current price” shall be the last quoted bid price for such Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If such Common Stock is not so quoted, the “current price” shall be the average of the mid-point of the last bid and ask prices for such Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose. If such Common Stock is not so quoted, and if bid and ask prices for such Common Stock are not available, the “current price” shall be determined by the expert opinion of a nationally recognized independent investment banking firm selected by the Corporation’s Board of Directors for this purpose.

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

- gives the holder a beneficial interest in (i) the Corporation’s or the issuing Affiliate’s, as applicable, debt securities and (ii) a fractional

interest in a stock purchase contract for a share of the Corporation's or such issuing Affiliate's Common Stock that will be settled in three years or less, with the number of shares of Common Stock purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of such debt securities;

- provides that the investors directly or indirectly grant the Corporation or the issuing Affiliate, as applicable, 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 the Corporation's or such issuing Affiliate's Common Stock pursuant to such stock purchase contracts;
- includes a remarketing feature pursuant to which the Corporation's or the issuing Affiliate's, as applicable, debt securities are remarketed to new investors commencing not later than the first Distribution Date that is at least 1 month prior to the settlement date of the purchase contract; and
- provides for the proceeds raised in the remarketing to be used to purchase the Corporation's or the issuing Affiliate's, as applicable, Common Stock 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 Corporation or such issuing Affiliate foreclosing on the Corporation's respective 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:

- gives the holder a beneficial interest in (a) the Corporation's or the issuing Affiliate's, as applicable, subordinated debt securities that include a provision requiring the Corporation or a publicly traded Guarantor 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 Corporation's or such issuing Affiliate's most junior subordinated debt (or rank *pari passu* with the Corporation's or such issuing Affiliate's most junior subordinated debt) (in this definition, the Corporation's or such issuing Affiliate's “*Subordinated Debt*”) and

(b) a fractional interest in a stock purchase contract for a share of the Corporation's or such issuing Affiliate's non-cumulative perpetual preferred stock that ranks *pari passu* with or junior to all of the Corporation's or such issuing Affiliate's other preferred stock (in this definition, "*Preferred Stock*");

- provides that the investors directly or indirectly grant to the Corporation or the issuing Affiliate, as applicable, 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 the Corporation's or such issuing Affiliate's Preferred Stock pursuant to such stock purchase contracts;
- includes a remarketing feature pursuant to which the Corporation's or the issuing Affiliate's, as applicable, Subordinated Debt 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 such 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;
- provides for the proceeds raised in the remarketing to be used to purchase the Corporation's or the issuing Affiliate's, as applicable, Preferred Stock 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 Corporation or such issuing Affiliate foreclosing on the Corporation's respective Subordinated Debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Preferred Equity;
- is accompanied by 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, if applicable, to the Corporation's or the issuing Affiliate's Preferred Stock, and will not include Debt Exchangeable for Preferred Equity as a replacement security; and
- if applicable, after the issuance of such Preferred Stock, provides the holders of such securities with a beneficial interest in such Preferred Stock.

“*Distribution*” means, as to a security or combination of securities, any dividend, interest payment or other income distribution to the holders thereof that are not Subsidiaries of the Corporation.

“*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 pursuant to the terms of such securities.

“*Distribution Period*” means, as to any securities or combination of securities, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

“*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 long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding-up of such issuer, ranks most senior among such 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 Redesignation 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 such 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 such issuer’s then-outstanding long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding-up of such issuer, ranks subordinate to such 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 such 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.

"Final Fixed Rate Interest Payment Date" means, with respect to the Series A Notes, March 15, 2037 and, with respect to the Series B Notes, March 15, 2017.

"First Threshold Date" means, with respect to the Series A Notes, March 1, 2037 and, with respect to the Series B Notes March 1, 2017.

"Fiscal Agency Agreement" means the Fiscal Agency Agreement among the Corporation, as issuer, the Guarantors, as guarantors, and JPMorgan Chase Bank, National Association, as fiscal agent, dated as of August 15, 2006, which governs the Initial Covered Debt.

"Guarantors" has the meaning specified in Recital A.

"Holder" means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

"Indenture" means the Indenture, dated as of March 7, 2007, among the Corporation, as issuer, the Guarantors, as guarantors, and The Bank of New York Trust Company, N.A., as trustee, which governs the Notes.

"Initial Covered Debt" means the Corporation's 7.50% Senior Notes due 2036, CUSIP No. 53079EAM6.

"Intent-Based Replacement Disclosure" means, as to any security or combination of securities (together in this definition, *"such 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 Securities and Exchange Commission made by the issuer under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer will redeem or repurchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of redemption or repurchase that are as or more equity-like than the securities then being redeemed or repurchased, raised within 180 days prior to the applicable redemption or repurchase date.

"Investor Screen" has the meaning specified in Section 3(c).

"Mandatorily Convertible Preferred Stock" means preferred stock 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 the preferred stock converts into the

Corporation's or the issuing Affiliate's, as applicable, Common Stock within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock.

“*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:

(i) require, or at its option in the case of non-cumulative perpetual preferred stock permit, the issuer of such security or combination of securities to make payment of Distributions on such securities only pursuant to the issuance and sale of APM Qualifying Securities within 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 (A) if the Mandatory Trigger Provision does not require such issuance and sale within one year of such failure, the amount of Common Stock or Warrants the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Maximum Obligation, and (B) the amount of Qualifying Non-Cumulative Perpetual Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed the Preferred Cap;

(ii) if the provisions described in clause (i) do not require such issuance and sale within one year of such failure, require the issuer of such security, any direct or indirect parent of the issuer that is permitted to issue APM Qualifying Securities, and such issuer's subsidiaries not to redeem or repurchase any of such issuer's or such issuer's parents' capital stock or such issuer's securities that rank *pari passu* with or junior to the most senior issuable APM Qualifying Securities until at least six months after such issuer applies the net proceeds of the sales described in clause (i) to pay such unpaid Distributions in full; and

(iii) other than in the case of non-cumulative perpetual preferred stock, include a Bankruptcy Claim Limitation Provision.

No remedy other than Permitted Remedies will 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. For the avoidance of doubt, no terms of any securities containing a Mandatory Trigger Provision or Optional Deferral Provision shall be deemed to restrict in any manner the ability of any Subsidiary of the Corporation to pay dividends or make any Distributions to the Corporation.

“*Market Disruption Events*” means one or more events or circumstances substantially similar to those listed as “Market Disruption Events” in the Offering Memorandum.

“*Measurement Date*” means with respect to any repayment, defeasance, redemption or purchase of a Series (i) on or prior to the Scheduled Maturity Date, the date 180 days prior to delivery of notice of such repayment, defeasance or redemption or the date of such purchase and (ii) after the Scheduled Maturity Date, the date 90 days prior to the date of such repayment, defeasance, redemption or purchase, net cash proceeds described above were received but no repayment, defeasance, redemption or purchase was made in connection therewith, the Measurement Date shall be the date upon which such 90-day (or shorter) period prior to the 90-day period prior to the date of such repayment, defeasance, redemption or purchase began.

“*Measurement Period*” with respect to any notice date or purchase date means 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 for the same Series cannot run concurrently.

“*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. Securities that include an Alternative Payment Mechanism shall also be deemed to be Non-Cumulative for all purposes of this Replacement Capital Covenant, other than the definitions of APM Qualifying Securities and Qualifying Non-Cumulative Perpetual Preferred Stock, and debt securities that include an Alternative Payment Mechanism shall be deemed to be Non-Cumulative for purposes of the definition of Debt Exchangeable for Preferred Equity (it being understood that such Alternative Payment Mechanism for purposes of the definition of Debt Exchangeable for Preferred Equity need not include a Common Maximum Obligation, a Preferred Cap, a Share Repurchase Provision or a Bankruptcy Claim Limitation Provision).

“*Notes*” has the meaning specified in Recital A.

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

“*Offering Memorandum*” has the meaning specified in Recital B. A copy of the Offering Memorandum may be obtained from the Corporation upon request.

“*Optional Deferral Provision*” means, as to any securities, a provision 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) such securities are subject to 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 Maximum Obligation or a 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.

“*Other Qualifying Capital Replacement Covenant*” means a replacement capital covenant, as identified by the Corporation’s Board of Directors acting in good faith and in its reasonable discretion 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 proceeds of specified replacement capital securities that have terms and provisions at the time of redemption or repurchase that are as or more equity-like than the securities then being redeemed or repurchased, raised within 180 days prior to the applicable redemption or repurchase date.

“*Permitted Remedies*” means, with respect to any securities (in this definition “*such 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 on the issuer of such securities and/or its direct or indirect parent that is permitted to issue APM Qualifying Securities paying Distributions on, or repurchasing, repaying or redeeming, any of their capital stock, or making payments on, or repurchasing, repaying or redeeming any other securities that rank *pari passu* with or junior as to Distributions to such securities, or making guarantee payments on any of such issuer’s guarantees with respect to debt securities of its subsidiaries that rank *pari passu* or junior to such securities, for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

For the avoidance of doubt, no terms of any securities containing Permitted Remedies shall be deemed to restrict in any manner the ability of any Subsidiary of the Corporation to pay dividends or make any Distributions to the Corporation.

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

“*Preferred Cap*” has the meaning specified in the definition of Alternative Payment Mechanism.

“*Publicly Traded*” means, with respect to the Corporation or either Guarantor, that the Common Stock of such entity has been listed for trading on a national securities exchange or traded in a public over-the-counter market.

“*Qualifying Capital Securities*” means securities (other than Common Stock, Warrants and securities convertible into Common Stock, such as Mandatorily Convertible Preferred Stock and Debt Exchangeable for Common Equity) that, in the determination of the Corporation’s Board of Directors reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

- in connection with any repayment, redemption, defeasance or purchase of the Notes prior to the First Threshold Date:
 - debt securities and guarantees issued by the Corporation or the Corporation’s Affiliates with respect to trust preferred securities if such debt securities and guarantees (a) rank *pari passu* with or junior to the Notes upon the Corporation’s liquidation, dissolution or winding-up, (b) are Non-Cumulative, (c) have no maturity or a maturity of at least 60 years and (d) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant;
 - securities issued by the Corporation or the Corporation’s Affiliates that (a) rank *pari passu* with or junior to the Notes upon the Corporation’s liquidation, dissolution or winding-up, (b) have no maturity or a maturity of at least 60 years and (c) (i) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant or (ii) have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure; or
 - securities issued by the Corporation or the Corporation’s Affiliates that (a) rank *pari passu* with or junior to the Notes upon the Corporation’s liquidation, dissolution or winding up, (b) have no maturity or a maturity of at least 40 years, (c) are

subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (d) have a Mandatory Trigger Provision, and an Optional Deferral Provision; or

- in connection with any repayment, redemption, defeasance or purchase of the Notes after the First Threshold Date and on or prior to the Second Threshold Date:
 - all securities that would be Qualifying Capital Securities on or prior to the First Threshold Date;
 - securities issued by the Corporation or the Corporation's Affiliates that (a) rank *pari passu* with or junior to the Notes upon the Corporation's liquidation, dissolution or winding-up, (b) have no maturity or a maturity of at least 60 years, (c) are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (d) have an Optional Deferral Provision;
 - securities issued by the Corporation or the Corporation's Affiliates that (a) rank *pari passu* with or junior to the Notes upon the Corporation's liquidation, dissolution or winding-up, (b) are Non-Cumulative, (c) have no maturity or a maturity of at least 60 years and (d) have Intent-Based Replacement Disclosure;
 - securities issued by the Corporation or the Corporation's Affiliates that (a) rank *pari passu* with or junior to the Notes upon the Corporation's liquidation, dissolution or winding-up, (b) have no maturity or a maturity of at least 40 years and (c) are Non-Cumulative and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant or have a Mandatory Trigger Provision, an Optional Deferral Provision and Intent-Based Replacement Disclosure;
 - cumulative preferred stock issued by the Corporation or the Corporation's Affiliates that (a) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, and (b) (1) has no maturity or a maturity of at least 60 years and (2) is subject to a replacement capital covenant substantially similar to this Replacement Capital

Covenant or an Other Qualifying Capital Replacement Covenant; or

- other securities issued by the Corporation or its Affiliates that (1) rank upon a liquidation, dissolution or winding-up of the Corporation either (i) *pari passu* with or junior to the Notes or (ii) *pari passu* with the claims of the Corporation's trade creditors and junior to all of the Corporation's long-term indebtedness for money borrowed (other than the Corporation's long-term indebtedness for money borrowed from time to time outstanding that by its terms ranks *pari passu* with such securities on a liquidation, dissolution or winding-up of the Corporation); and (2) have a Mandatory Trigger Provision, an Optional Deferral Provision and either (x) have no maturity or a maturity of at least 40 years and have Intent-Based Replacement Disclosure or (y) have no maturity or a maturity of at least 30 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant; or
- in connection with any repayment, redemption, defeasance or purchase of the Notes at any time after the Second Threshold Date:
 - all of the types of securities that would be Qualifying Capital Securities on or prior to the Second Threshold Date;
 - the Corporation's or the issuing Affiliate's, as applicable, preferred stock that (1) has no maturity or a maturity of at least 60 years and (2) has an Optional Deferral Provision and Intent-Based Replacement Disclosure;
 - securities issued by the Corporation or its Affiliates that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) either (x) have no maturity or a maturity of at least 60 years and Intent-Based Replacement Disclosure or (y) have no maturity or a maturity of at least 30 years and are subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant and (3) have an Optional Deferral Provision;
 - cumulative preferred stock issued by the Corporation or its Affiliates that either (1) has no maturity or a maturity of at

least 60 years and Intent-Based Replacement Disclosure or (2) has a maturity of at least 40 years and is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant.

“*Qualifying Non-Cumulative Perpetual Preferred Stock*” means, for any issuer, its non-cumulative perpetual preferred stock that (i) ranks *pari passu* with or junior to all of such issuer’s other outstanding preferred stock and (ii) contains no remedies other than Permitted Remedies and either is (a) subject to Intent-Based Replacement Disclosure and has a provision that prohibits the Corporation or a Publicly Traded Guarantor from making any Distributions thereon upon the Corporation’s or such Publicly Traded Guarantor’s failure to satisfy one or more financial tests set forth therein or (b) is subject to a replacement capital covenant substantially similar to this Replacement Capital Covenant or an Other Qualifying Capital Replacement Covenant.

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

“*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 Corporation elects to repay, redeem or defease, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption, repayment, defeasance or repurchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is not Eligible Subordinated Debt, the date on which the Corporation 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 Common Stock, Warrants, Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity and Qualifying Capital Securities.

“*Scheduled Maturity Date*” means March 15, 2037.

“*Second Threshold Date*” means, with respect to the Series A Notes, March 1, 2057 and, with respect to the Series B Notes, March 1, 2037.

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

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

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

“*Series B Notes*” has the meaning specified in Recital A.

“*Share Cap*” means a limitation on the Corporation and/or either Guarantor which operates to limit (1) the total number of shares of such entity’s Common Stock that such entity may issue pursuant to an Alternative Payment Mechanism and/or (2) the total number of shares of such entity’s Common Stock into which Warrants which are issued by such entity pursuant to an Alternative Payment Mechanism are exercisable.

“*Share Repurchase Provision*” has the meaning specified in the definition of Alternative Payment Mechanism.

“*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.

“*Warrants*” means, with respect to each issuer thereof, net share settled warrants to purchase Common Stock that:

- have an exercise price greater than the Current Price of the relevant issuer’s Common Stock as of their date of issuance; and
- the relevant issuer is not entitled to redeem for cash and the holders are not entitled to require that issuer to repurchase for cash in any circumstances.