

DIRECTORS & OFFICERS LIABILITY POLICY

Policy Number: [POLICYNBR]

IMPORTANT NOTICE: This is a claims-made policy. Defense Costs are included within the Limit of Liability. Amounts incurred as Defense Costs will reduce the Limit of Liability available to pay judgments or settlements. Please read this Policy carefully.

In consideration of the premium paid and in reliance upon all statements made and information contained in the Declarations and **Application**, the **Insurer** and the **Insured** agree that coverage will be provided subject to all of the terms, conditions and limitations of this **Policy**, as follows:

SECTION I - INSURING AGREEMENTS

It is understood and agreed that coverage will not be provided under any Insuring Agreement unless a Limit of Liability, Retention and premium for such Insuring Agreement are set forth in the Declarations.

- A. **INSURED PERSONS LIABILITY COVERAGE** - The **Insurer** will pay on behalf of the **Insured Persons**, **Loss** resulting from **Claims** first made during the **Policy Period** or the Discovery Period against the **Insured Persons** for **Wrongful Acts** for which the **Insured Persons** are legally obligated to pay, except for **Loss** the **Company** pays as indemnification.
- B. **COMPANY INDEMNIFICATION COVERAGE** - The **Insurer** will pay on behalf of the **Company**, **Loss** resulting from **Claims** first made during the **Policy Period** or the Discovery Period against the **Insured Persons** for **Wrongful Acts** for which the **Company** has agreed to or is legally permitted or required by law to indemnify the **Insured Persons**.

SECTION II - ADDITIONAL COVERAGES

- A. **ESTATES, HEIRS AND MARITAL ESTATE LIABILITY** - This **Policy** shall cover **Loss** resulting from **Claims** for **Wrongful Acts** of an **Insured Person** made against:
- (1) the estates, heirs, legal representatives or assigns of any **Insured Persons** who are deceased, incompetent, insolvent or bankrupt, provided that such **Claims** would have been covered by this **Policy** in the absence of such death, incompetency, insolvency or bankruptcy; and
 - (2) the lawful spouse or **Domestic Partner** of an **Insured Person** solely by reason of such person's status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

The coverage provided by this Subsection shall not apply with respect to any loss arising from any act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

- B. **NOT-FOR-PROFIT DIRECTORSHIPS** - This **Policy** shall cover **Loss** resulting from **Claims** for **Wrongful Acts** committed by **Insured Persons** while serving on the board of directors, board of trustees, or as officers of any not-for-profit entity at the direction of the **Company**; provided, however, that this coverage shall be excess over any other insurance or indemnification provided to the **Insured Persons**.

SECTION III - DISCOVERY PERIOD

- A. If the **Company** or the **Insurer** cancels or nonrenews this **Policy** or any Insuring Agreement, or if the **Policy** converts subject to Section XII (C)(1)(b), the **Insured** shall have the right to purchase an optional extended reporting period (herein called the Discovery Period) for the period set forth in Item 4 of the Declarations. It is understood that if the **Insurer** cancels this **Policy** due to nonpayment of premium, the **Insured** shall not be entitled to the Discovery Period.
- B. The Discovery Period is not an extension of coverage, but rather an extended reporting period for **Claims** first made during the Discovery Period resulting from **Wrongful Acts** that occurred prior to the effective date of cancellation, nonrenewal or conversion and otherwise covered under this **Policy**. Notice of facts and circumstances that may give rise to a **Claim**, pursuant to Section X (B), must be given during the **Policy Period** and shall not be effective if given during the Discovery Period.
- C. If the **Insured** elects to purchase the Discovery Period, the premium will be calculated by multiplying the annual premium set forth in Item 11(a) of the Declarations by the percentage set forth in Item 4 of the Declarations. The Discovery Period is noncancellable and the entire premium shall be deemed fully earned at its commencement.
- D. The **Insureds'** right to purchase the Discovery Period shall lapse unless the **Insurer** receives written notice of the **Insureds'** election and full payment of the additional premium due within sixty (60) days after the effective date of such cancellation, nonrenewal or conversion.
- E. The Limit of Liability with respect to **Claims** made during the Discovery Period shall be part of and not in addition to the Limit of Liability set forth in Item 9 of the Declarations, for each respective Insuring Agreement, for all **Claims** made during the immediately preceding **Policy Year**. Any **Claim** made during the Discovery Period shall be deemed to be made during the **Policy Year** immediately preceding the Discovery Period.
- F. The offer by the **Insurer** and acceptance by the **Insured** of continued coverage under terms, conditions, Limits of Liability, Retentions, or premiums different from those applicable to the expiring **Policy** shall not constitute a refusal to renew and shall not entitle any **Insured** to exercise the Discovery Period.

SECTION IV - DEFINITIONS

Application means:

- (1) the application signed for the procurement of this **Policy** and any materials submitted to the **Insurer** in support of the procurement of this **Policy** or any **Policy** for which this **Policy** is a direct or indirect renewal or replacement; and
- (2) any publicly available information published or filed by or with a recognized source, agency or institution regarding the **Insured** in the three (3) years preceding the **Policy's** inception, and any amendments thereto, whether or not submitted with any signed application.

The Application is deemed to be attached to and incorporated into this **Policy**, as if physically attached.

Brokerage/Advisory Services means the purchase or sale of mutual funds, annuities, variable annuities, or life, accident or health insurance or securities as defined in Section 202(18) of the Investment Advisers Act of 1940, as amended, to be transacted through an **Employee** or a third party service provider pursuant to a contract between the **Company** and the service provider. In connection with the foregoing activities, Brokerage/Advisory Services also includes the provision of:

- (1) economic advice, financial advice or investment advisory services; and
- (2) financial planning advice including without limitation any of the following activities in conjunction therewith: the preparation of financial plans or personal financial statements, and the giving of advice with regard to insurance, savings, investments, retirement planning or taxes.

Brokerage/Advisory Services shall not include rendering advice with regard to the FDIC-insured component of any deposit account or the sale of credit life or disability insurance incidental to the issuance of a loan.

Claim, either in singular or plural, means any of the following instituted against an **Insured Person** or against the **Company**, but only to the extent coverage is granted to the **Company**:

- (1) a written or oral demand for monetary damages or non-monetary relief;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by a return of an indictment;
- (4) an arbitration or mediation proceeding in which monetary damages are sought;
- (5) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
- (6) a written request to toll or waive a statute of limitations, relating to a potential **Claim** described in Subsections (1) through (5) above,

for a **Wrongful Act** including any appeal from such proceeding.

Company means the entity or entities set forth in Item 1 of the Declarations, any **Subsidiary** created or acquired as of the inception date set forth in Item 2 of the Declarations, and, subject to Section XI (B), any bank **Subsidiary** created or acquired during the **Policy Period**.

Defense Costs means reasonable and necessary legal fees and expenses incurred in defending or investigating any **Claim** and the cost of appeal, attachment or similar bonds. **Defense Costs** shall not include salaries, wages, overhead, or benefit expenses incurred by the **Insured**.

Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.

ERISA means the Employment Retirement Income Security Act of 1974, as amended.

Employee, either in singular or plural, means any natural person, other than an Independent Contractor, who is a past, present or future employee of the **Company** including any part-time, seasonal or temporary employee, acting in their capacity as such. The term Employee shall also include **Leased Employees**.

Financial Impairment means the status of the **Company** resulting from:

- (1) the appointment by any state or federal official, regulatory agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage, or liquidate the **Company** or any **Subsidiary**; or
- (2) the **Company** or any **Subsidiary** becoming a debtor in possession.

Insured, either in singular or plural, means the **Insured Persons** or the **Company**, if coverage for the **Company** is set forth by Insuring Agreement made part of this **Policy**.

Insured Person, either in singular or plural, means any past, present or future director, member of the board of trustees, officer, **Employee**, honorary or advisory director, or honorary or advisory member of the board of trustees of the **Company**.

Insurance Services means any of the following services performed by an **Insured** as insurance agent, insurance broker, insurance consultant or insurance managing general agent:

- (1) sale and placement of insurance;
- (2) identification, analysis and evaluation of a client's insurance needs, including work performed for prospective clients;
- (3) appraisal of property and inspections for insurance purposes;
- (4) adjustment of claims on behalf of insurance companies, including loss payments; or
- (5) arrangement of premium financing for clients.

Interrelated Wrongful Acts means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of related facts, circumstances, situations, events or transactions.

Leased Employee means any natural person, other than a director or officer, **Employee** or Independent Contractor, who is leased to the **Company** to perform work for the **Company** and for whom the **Company** controls the means and manner of the work performed; provided that:

- (1) any coverage afforded under this **Policy** for such **Leased Employee** only applies to the extent that the **Company** indemnifies such **Leased Employee**; and
- (2) any such coverage shall be specifically excess of any other indemnity and insurance otherwise available to such **Leased Employee**.

Loss means **Defense Costs** and any amount which the **Insured** is legally obligated to pay resulting from a **Claim**, including damages, judgments, settlements, and pre- and post-judgment interest. **Loss** shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award where insurable by law. **Loss** shall not include:

- (1) taxes;
- (2) criminal or civil fines or penalties imposed by law;
- (3) any unpaid, unrecoverable or outstanding loan, lease or extension of credit to any customer or any forgiveness of debt;
- (4) costs to comply with any non-monetary or injunctive relief of any kind or any agreement to provide such relief, including but not limited to any damages, costs or expenses incurred in making an accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local laws, or in complying with any other federal, state or local laws of any kind;

- (5) any amounts the **Company** is obligated to pay pursuant to any express written or oral contract or agreement existing prior to the date the **Claim** was made;
- (6) the depreciation (or failure to appreciate) in value of any investment product, including but not limited to securities, commodities, currencies, options or futures due to market fluctuation unrelated to any **Wrongful Act**;
- (7) any restitution, disgorgement, or payment of similar payments including but not limited to the return of fees, commissions or charges for the **Company's** services; or
- (8) any matters which are uninsurable under the law pursuant to which this **Policy** shall be construed.

Loss Information means information on open, closed and potential **Claims**, including date, description, and payment amounts, if any.

Named Insured means the first named entity set forth in Item 1 of the Declarations.

Policy means collectively, the Declarations, the **Application**, this policy form and any Endorsements attached hereto.

Policy Period means the period from the inception date set forth in Item 2 of the Declarations to the expiration date set forth in Item 2 of the Declarations or any earlier termination date.

Policy Year means the period of one year following the effective date and hour of this **Policy** or any anniversary thereof, or if the time between the effective date and termination of the **Policy Period** is less than one year, such lesser period. Any extension of the **Policy Period** shall not result in an increase or reinstatement of the Limit of Liability. If the **Policy Period** is extended beyond its original expiration date, the period of the extension shall be a part of the Policy Year, which would have ended on the original expiration date.

Pollutants include but are not limited to any solid, liquid, gaseous or thermal organism, irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, hazardous substances, nuclear materials, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Subsidiary means:

- (1) any entity in which the **Company** owns, directly or through one or more subsidiaries, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors;
- (2) any limited liability company in which the **Company**, or one or more of its subsidiaries, has the right to appoint or designate fifty percent (50%) or more of such limited liability company's managers; or
- (3) any joint venture in which the **Company**, or one or more of its subsidiaries, has the right to elect, appoint or designate more than fifty percent (50%) of such entity's directors, trustees or other equivalent executives.

Trust Services means any of the following services performed by the **Insured** through a Trust Company or a Trust Department or Trust **Subsidiary** of the **Company**:

- (1) administrator, custodian or trustee under any individual retirement account (IRA) or H.R. 10 Plan (Keogh Plan);
- (2) executor, administrator or personal representative of estates, administrator of guardianships, trustee under personal or corporate trust agreements, or conservator of any person;

- (3) trustee under a pension, profit sharing, health and welfare or any other employee benefit plan or trust, other than an employee benefit plan or trust sponsored or established by the **Company** for its own **Employees**;
- (4) custodian, depository or managing agent for securities or real property, manager of any personal property owned by others, attorney-in-fact, interest or dividend disbursing agent, transfer or paying agent, redemption or subscriptions agent, fiscal agent, tax withholding agent, registrar of securities, agent for voting securities, sinking fund agent, escrow agent or trustee under a corporate bond indenture; or
- (5) trustee exercising any other trust or fiduciary powers permitted by law.

Wrongful Act, either in singular or plural, means any actual or alleged error, omission, misstatement, misleading statement, neglect or breach of duty by:

- (1) any **Insured Person** in the discharge of their duties while acting solely in the capacity as such;
- (2) any **Insured Person** while acting solely in the capacity as director, officer, or member of the board of trustees of a not-for-profit entity pursuant to Section II (B); or
- (3) the **Company** or any person or entity for which the **Company** is legally responsible, but only to the extent that coverage is granted to the **Company** by Insuring Agreement made a part of this **Policy**.

SECTION V - EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The following Exclusions are applicable to all **Insureds** under all Insuring Agreements made a part of this **Policy**.

Bodily/Personal Injury and Property Damage Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** for actual or alleged bodily injury, sickness, disease, or death of any person, damage to or destruction of any tangible or intangible property including loss of use thereof, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, mental anguish, emotional distress, loss of consortium, invasion of privacy, defamation, false light, libel, or slander.

Brokerage/Advisory Services Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Brokerage/Advisory Services**, however, if this **Policy** includes the Broad Form Company Liability Endorsement, this Exclusion shall not apply and the Limit of Liability for all **Insureds** for all covered **Loss** resulting from such **Claims** shall be the Limit of Liability for the Broad Form Company Liability Insuring Agreement.

Collusion Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** by any security holder of the **Company**, whether directly or derivatively, unless such security holder bringing such **Claim** is acting independently of, and totally without the solicitation, assistance, participation, or intervention of any **Insured** or any affiliate of the **Company**.

Employment Practices Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving:

- (1) wrongful termination, employment-related discrimination or harassment;

- (2) employment-related misrepresentation or retaliation, humiliation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion, negligent evaluation, negligent hiring, negligent retention, wrongful discipline; or
- (3) any other violation of any statutory or common law relating to employment.

ERISA Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any pension, profit sharing or employee benefit program established in whole or in part for the benefit of **Employees** of the **Company**, including without limitation, any violation of **ERISA** or similar provisions of any federal, state or local statutory law, common law or administrative law.

Foreclosed Property Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the ownership, operation, management or control of any entity or property acquired by the **Company** as security or collateral for any loan, lease or extension of credit. This Exclusion shall not apply to **Claims** resulting from **Wrongful Acts** in connection with the foreclosure process or the ownership, operation, management or control of any one to four family residential property.

Fraud/Violation of Law Exclusion - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** arising out of or in any way involving any fraudulent, dishonest or criminal act or any willful violation of any civil or criminal statute, regulation or law by the **Insured**, provided a final judgment or final adjudication establishes such fraudulent, dishonest, or criminal act or such willful violation of statute, regulation or law.

Illegal Profit/Payment Exclusion - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** arising out of or in any way involving:

- (1) any **Insured** gaining, in fact, any profit, remuneration, or financial advantage to which the **Insured** was not legally entitled;
- (2) payment by the **Company** of inadequate or excessive consideration in connection with its purchase of **Company** securities; or
- (3) conflicts of interest, engaging in self-dealing, or acting in bad faith.

Insurance Services Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Insurance Services** (other than **Insurance Services** relating to credit life or disability insurance incidental to the issuance of a loan); however, if this **Policy** includes the Broad Form Company Liability Endorsement, this Exclusion shall not apply and the Limit of Liability for all **Insureds** for all covered **Loss** resulting from such **Claims** shall be the Limit of Liability for the Broad Form Company Liability Insuring Agreement.

Insured vs. Insured Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** by, on behalf of, or at the behest of the **Company**, any affiliate of the **Company** or any **Insured Person** in any capacity except where such **Claim** is brought and maintained:

- (1) in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded by the terms of the **Policy**;
- (2) by an **Insured Person** solely as a customer of the **Company**; provided such **Claim** is brought independently of, and totally without the solicitation, assistance, participation, or intervention of any other **Insured**; or

- (3) by a security holder of the **Company** as a derivative action on behalf of the **Company** or such affiliate; provided such **Claim** is brought independently of, and totally without the solicitation, assistance, participation, or intervention of any **Insured** or any affiliate of the **Company**.

Internet/Electronic Services Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving:

- (1) Internet banking or electronic banking;
- (2) website development, software development or network security services to third parties; or
- (3) hosting services or services as an Internet Service Provider, Internet Access Provider, Application Service Provider or provider of like services.

Pollution Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving:

- (1) the actual, alleged or threatened discharge, disposal, migration, dispersal, release or escape of **Pollutants**; or
- (2) any direction, order or request to test for, monitor, remediate, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or to pay for or contribute to the costs of undertaking such actions,

including **Claims** alleging damage to the **Company** or its security holders.

Prior Notice Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any **Wrongful Act** or any **Wrongful Act** which is part of any **Interrelated Wrongful Acts**, or any fact, circumstance or situation, which has been the subject of any notice given to any carrier other than the **Insurer** under any similar insurance policy providing protection for any **Insured**.

Prior and Pending Litigation Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any litigation against any **Insured** initiated prior to the respective date set forth in Item 13 of the Declarations, or arising out of or in any way involving the same or substantially the same fact, circumstance or situation underlying or alleged in such prior litigation.

Short-Swing Profit Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving an accounting of profits made from the purchase and sale or sale and purchase of **Company** securities by the **Insured Persons** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any state statutory law or common law.

Subsidiary Wrongful Acts Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** against any **Subsidiary** or its **Insured Persons** acting in the capacity of director, member of the board of trustees, officer or **Employee** of such **Subsidiary** for any **Wrongful Act** or **Interrelated Wrongful Acts** actually or allegedly committed in whole or in part at any time when the entity was not a **Subsidiary** except as provided in Section XII (C)(3).

Trust Services Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Trust Services**.

SECTION VI - LIMIT OF LIABILITY, RETENTION AND INDEMNIFICATION

A. LIMIT OF LIABILITY

- (1) The **Insurer's** maximum Limit of Liability under this **Policy** for all Insuring Agreements combined shall not exceed the Total Policy Limit set forth in Item 3 of the Declarations regardless of whether such Insuring Agreement is provided as a sublimit or a separate limit. Amounts incurred as **Defense Costs** will reduce and shall be part of and not in addition to the Limit of Liability.
- (2) Unless otherwise specified in Item 8 of the Declarations, the **Insurer's** maximum Limit of Liability for each Insuring Agreement for all **Loss** resulting from all **Claims** first made for each **Policy Year** during the **Policy Period** shall be a part of and not in addition to the D&O Limit of Liability set forth in Item 9 of the Declarations.
- (3) If a **Claim** against the **Company** is subject to more than one Insuring Agreement, the **Insurer's** maximum Limit of Liability for such **Claim** shall not exceed the highest Limit of Liability provided by any Insuring Agreement providing coverage to the **Company**; provided, however, that this provision shall not apply where a separate Limit of Liability is set forth in Item 8 of the Declarations.

B. RETENTION AND INDEMNIFICATION

- (1) Covered **Defense Costs** will be applied against the Retention. The **Insurer** shall only pay for covered **Loss**, including covered **Defense Costs**, in excess of the applicable Retention for each **Claim** as set forth in Item 10 of the Declarations. No Retention shall apply to **Loss** incurred by the **Insured Persons** for which the **Company** is:
 - (a) not permitted or required by law to advance **Defense Costs** or indemnify the **Insured Persons**; or
 - (b) permitted or required to advance **Defense Costs** or indemnify the **Insured Persons** but does not do so by reason of **Financial Impairment**.
- (2) If the **Company** is legally permitted or required to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**, regardless of whether actual indemnification or advancement is granted, the Retention applicable to Insuring Agreement B (Company Indemnification Coverage) shall apply to such **Loss**, unless the **Company**, solely by reason of its **Financial Impairment**, does not make indemnification or advancement.
- (3) One Retention shall apply to covered **Loss** resulting from each **Claim**. If **Loss** from a **Claim** is covered under more than one Insuring Agreement, the applicable Retention shall be applied separately to the part of the **Loss** covered by each Insuring Agreement, and the highest Retention shall be applicable to the **Claim**. If a single Retention applies to multiple **Insureds**, the Retention shall be prorated among the applicable **Insureds**. The total Retention shall in no event exceed the largest of such applicable Retentions set forth in Item 10 of the Declarations.
- (4) Except for the payment of **Defense Costs**, the **Insurer** shall pay or reimburse one hundred percent (100%) of covered **Loss**, in excess of the applicable Retention, upon final disposition of the **Claim**.

- C. SINGLE CLAIM - Claims based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** committed by one or more **Insureds** shall be considered a single **Claim**, and only one Retention and Limit of Liability shall apply to such single **Claim**. Each such single **Claim** shall be deemed to be first made on the date the earliest of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**.**

SECTION VII - NON-EROSION OF INSURING AGREEMENT A AND ORDER OF PAYMENTS

A. NON-EROSION OF INSURING AGREEMENT A

- (1) If the Limit of Liability for any Insuring Agreement extending coverage to the **Company** is a sublimit of the D&O Policy, the Limit of Liability applicable to Insuring Agreement A (Insured Persons Liability Coverage) shall not be reduced by the payment of **Loss** resulting from **Claims** covered by such Insuring Agreement. If a separate Limit of Liability is set forth in Item 8 of the Declarations this provision shall not apply.
- (2) If the Retention applicable to Insuring Agreement B (Company Indemnification Coverage) applies to **Loss** pursuant to Section VI (B)(2), regardless of whether actual indemnification is granted, such **Loss** shall be deemed to be paid under Insuring Agreement B (Company Indemnification Coverage).

B. ORDER OF PAYMENTS - In the event one or more **Claims** result in a potential or actual **Loss** which, in aggregate, in the **Insurer's** judgment could reasonably exceed the Total Policy Limit set forth in Item 3 of the Declarations, then:

- (1) the **Insurer** shall pay first for such **Loss** for which coverage is provided under Insuring Agreement A (Insured Persons Liability Coverage); then
- (2) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss**, the **Insurer** shall pay such **Loss** for which coverage is provided under Insuring Agreement B (Company Indemnification Coverage); then
- (3) pay such **Loss** for which coverage is provided to the **Company** under any Insuring Agreement extending coverage to the **Company**.

The **Financial Impairment** of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Policy** pursuant to this Subsection.

SECTION VIII - DEFENSE AND SETTLEMENT

A. NO DUTY TO DEFEND

- (1) Amounts incurred as **Defense Costs** will reduce and shall be part of and not in addition to the applicable Limit of Liability. It shall be the duty of the **Insured** and not the duty of the **Insurer** to defend **Claims**. The **Insured** shall only retain counsel that is mutually agreed upon with the **Insurer**, consent for which shall not be unreasonably withheld.
- (2) The **Insured** shall not incur **Defense Costs**, admit liability for, settle, or offer to settle any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision as to such consent.

- (3) The **Insurer** shall have the right but not the duty to associate with the **Insured** in the settlement and defense of any **Claim** that appears reasonably likely to involve the **Insurer**. Such association shall include, but not be limited to, participation in the formation of litigation strategy, review of pleadings and other pertinent papers prior to filing, and participation in the settlement negotiations.

B. ADVANCEMENT OF DEFENSE COSTS

- (1) Subject to Section IX, the **Insurer**, if requested by the **Insured**, shall advance covered **Defense Costs** on a current basis, except when advancement of **Defense Costs** is prohibited by law or regulation. The **Insured** shall repay any advanced **Defense Costs** to the **Insurer** in the event it is established that the **Insurer** has no liability under this **Policy** for such **Defense Costs**.
- (2) Prior to advancing or indemnifying **Defense Costs**, the **Insurer** shall be entitled to sufficient information and documentation as to the amount and purpose of any **Defense Costs** to enable it to evaluate the reasonableness and necessity of such **Defense Costs** and to verify that such **Defense Costs** were actually incurred.

- C. DUTY TO COOPERATE** - The **Insured** shall promptly furnish the **Insurer** with all information reasonably requested by the **Insurer** including, but not limited to, copies of reports, investigations, pleadings and other papers. As a condition precedent to coverage under this **Policy**, the **Insured** shall provide the **Insurer** with such information, assistance and cooperation as the **Insurer** may reasonably request.

SECTION IX - ALLOCATION AND ARBITRATION
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A. ALLOCATION

- (1) If in any **Claim** the **Insureds** are jointly and severally liable with others (including the **Company** even if no coverage is extended for such **Claim** against the **Company**) for **Loss**, then:
 - (a) 100% of all **Loss**, other than **Defense Costs**, incurred jointly by the **Insured Persons** and the **Company** shall be treated as **Loss** incurred solely by the **Insured Persons**; and
 - (b) all other **Loss** shall be allocated between the **Insured Persons** and others based on the relative legal exposures of the parties to such **Claims**.
- (2) If in any **Claim** the **Insureds** incur an amount consisting of both covered and uncovered **Loss** because the **Claim** includes both covered and uncovered matters, then the amount shall be allocated between covered **Loss** and uncovered loss based on the relative legal exposures of the **Insureds** to the covered and uncovered matters.

- B. ARBITRATION** - The **Insurer** and the **Insured** agree to use their best efforts to reach a proper allocation of **Defense Costs**. If the **Insured** and the **Insurer** cannot agree on an allocation:

- (1) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (2) the **Insurer** shall advance on a current basis **Defense Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined; and

- (3) the **Insurer**, if requested by the **Insured**, shall submit the allocation dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** will be applied retroactively to all **Defense Costs**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss** arising from such **Claim** or any other **Claim**.

SECTION X - NOTICE OF CLAIMS AND POTENTIAL CLAIMS

- A. The **Insured**, as a condition precedent to any rights under this **Policy**, shall give the **Insurer** written notice, as soon as practicable, of any **Claim** first made during the **Policy Period** or the Discovery Period, but in no event later than sixty (60) days after the **Claim** is first made.
- B. If during the **Policy Period**, the **Insured** first becomes aware of circumstances which may give rise to a **Claim**, and gives written notice to the **Insurer** of the circumstances and reasons for anticipating a **Claim**, then any **Claim** subsequently made based upon such circumstances shall be deemed to have been first made during the **Policy Year** in which notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Claims**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Claim**, as well as the identity of the potential plaintiffs and the causes of action to be asserted.
- C. All notices required to be given to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5 of the Declarations.

SECTION XI - MERGERS, ACQUISITIONS AND CHANGES IN BUSINESS ACTIVITIES

- A. If during the **Policy Period**, the **Company**:
- (1) acquires, merges with or creates any non-bank entity;
 - (2) acquires or merges with another entity or creates or acquires a **Subsidiary**, whose assets equal or exceed twenty-five percent (25%) of the **Company's** total assets at the time of the transaction;
 - (3) creates or acquires a financial services holding company or converts from a bank holding company to a financial services holding company;
 - (4) converts from a mutual company to a stock company; or
 - (5) changes or converts its corporate structure from a C-corporation to an S-corporation;
- then no coverage shall be afforded under this **Policy** for any **Loss** incurred by the **Company**, such entity, **Subsidiary**, or its **Insured Persons** resulting from any **Claim** arising out of or in any way involving any transaction or event, prior to:
- (a) the **Company** providing written notice and any requested information regarding the transaction to the **Insurer** as soon as practicable;

- (b) the **Insurer**, at its sole discretion, agreeing in writing to provide such coverage; and
- (c) the **Company** accepting any special terms, conditions and/or Exclusions and paying any additional premium required by the **Insurer**.

However, with respect to (A)(2) above, this provision shall not apply until ninety (90) days after the merger, acquisition or creation.

- B. If during the **Policy Period**, the **Company** creates or acquires a bank or bank **Subsidiary**, whose assets are less than twenty-five percent (25%) of the **Company's** total assets at the time of the transaction, the **Insurer** agrees to provide automatic coverage for such bank, bank **Subsidiary** and its **Insured Persons** for the remainder of the **Policy Period**.
- C. Any coverage otherwise afforded under this **Policy** for a **Loss** in any way involving the **Company**, any **Subsidiary**, or any acquired, merged or created entity or its **Insured Persons** shall not apply to any **Claim** arising out of or directly or indirectly resulting from:
 - (1) any **Wrongful Act** or any fact, circumstance or situation committed or allegedly committed prior to the effective date of such acquisition, merger or creation; or
 - (2) any other **Wrongful Act**, which, together with a **Wrongful Act** committed or allegedly committed prior to effective date of such acquisition, merger or creation constitute **Interrelated Wrongful Acts**.

SECTION XII - CANCELLATION / NONRENEWAL / CONVERSION

- A. **NAMED INSURED CANCELLATION** - The **Named Insured** may cancel this **Policy** or any Insuring Agreement by providing written notice to the **Insurer**. If the **Named Insured** cancels this **Policy**, the **Insurer** shall only return ninety percent (90%) of the unearned premium. For multi-year **Policies**, the **Insurer** shall only return ninety percent (90%) of the unearned premium if the cancellation occurs before the first anniversary. If the cancellation occurs after the first anniversary, unearned premium will be returned on a prorata basis as soon as practicable.
- B. **INSURER CANCELLATION OR NONRENEWAL**
 - (1) **NONRENEWAL** - The **Insurer** shall not be required to renew this **Policy** or any Insuring Agreement upon expiration of the **Policy Period**. This **Policy** or any Insuring Agreement may be nonrenewed by the **Insurer** by giving to the **Named Insured** written notice stating when, not less than sixty (60) days thereafter, such action shall become effective and the reason(s) therefore.
 - (2) **CANCELLATION**
 - (a) This **Policy** or any Insuring Agreement may be cancelled by the **Insurer** by giving to the **Named Insured** written notice stating when such action shall become effective and the reason(s) therefore.
 - (b) The **Insurer** shall provide not less than twenty (20) days notice of its intent to cancel for nonpayment of premium or sixty (60) days notice of its intent to cancel for any other reason.

- (c) If the **Insurer** cancels this **Policy** or any Insuring Agreement, the **Insurer** shall return one hundred percent (100%) of the unearned premium. The return of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
- (3) **NOTICE** - All notices pursuant to Section XII (B) will be mailed to the **Named Insured** by certified mail at the address set forth in Item 1 of the Declarations. The mailing of such notice as aforesaid shall be sufficient proof of notice, and this **Policy** shall terminate at the date and hour specified in such notice.

C. **CONVERSION**

- (1) Upon the occurrence of any of the following events, this **Policy** shall continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before such event, but coverage shall cease with respect to **Claims** for such **Wrongful Acts** committed or allegedly committed after such event (herein called the Conversion Period):
- (a) **Financial Impairment** of the **Company** or any **Subsidiary** comprising more than fifty percent (50%) of the **Company's** total assets;
 - (b) acquisition of the **Company** by another entity or the merger or consolidation of the **Company** into another entity such that the **Company** is not the surviving entity or acquisition of substantially all of the assets of the **Company** by another entity; or
 - (c) the **Company** or any **Subsidiary** ceasing to engage actively in its primary business.
- (2) Pursuant to Subsection C (1) above, this **Policy** may not be cancelled and the entire premium shall be deemed fully earned. The occurrence of any of the foregoing events shall not affect the **Insured's** right to purchase the Discovery Period pursuant to Section III. If the Discovery Period is elected, it will run concurrently with the Conversion Period.
- (3) In the event of **Financial Impairment** or sale of a **Subsidiary** comprising less than fifty percent (50%) of the **Company's** total assets, this conversion provision shall apply only to the **Subsidiary** and its **Insured Persons** and the **Policy** shall continue in full force with respect to all other **Insureds**.

SECTION XIII - REPRESENTATIONS AND SEVERABILITY

- A. **REPRESENTATIONS** - It is agreed and represented that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. By acceptance of this **Policy**, the **Insured** agrees that:
- (1) such **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**;
 - (2) this **Policy** shall not be deemed to be a series of individual insurance contracts with the **Company** and each of the **Insured Persons**; and
 - (3) the statements in the **Application** are their representations, that they are material to the acceptance of the risk or hazard assumed by the **Insurer** under this **Policy**, and that this **Policy** is issued in reliance upon the truth of such representations.

- B. **SEVERABILITY** - The **Insureds** agree that in the event the **Application** contains misrepresentations made with the actual intent to deceive, no coverage will be provided for any **Claim** under this **Policy** with respect to:
- (1) any **Insured Person** who knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**;
 - (2) the **Company**, to the extent the **Company** indemnifies the **Insured Person** reflected in Subpart (1) above; or
 - (3) the **Company**, to the extent coverage is granted to the **Company** by any Insuring Agreement made a part of this **Policy**, if any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**.

The foregoing conditions shall apply whether or not the **Insured Person** actually knew if the misrepresentation or untruthful disclosure was made in the **Application** for coverage.

- C. **SEVERABILITY OF EXCLUSIONS** - With respect to the Exclusions herein, in order to determine if coverage is available:
- (1) no **Wrongful Act**, fact pertaining to, or knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) all facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), shall be imputed to the **Company** with respect to the Fraud/Violation of Law and Illegal Profit/Payment Exclusions.

SECTION XIV - GENERAL TERMS AND CONDITIONS

- A. **SUBROGATION** - In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured Persons'** and the **Company's** rights to recovery therefore, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure the **Insurer's** rights, including the execution of such documents as may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Persons** or the **Company**.
- B. **ASSIGNMENT AND ACCEPTANCE** - By acceptance of this **Policy**, the **Insured** and the **Insurer** agree that this **Policy**, the **Application**, and any written Endorsements attached thereto constitute the entire agreement between the parties. Assignment of interest under this **Policy** shall not bind the **Insurer** until its consent is endorsed hereon.
- C. **CONFORMITY TO STATUTE** - Any terms of this **Policy** which are in conflict with the terms of any applicable laws governing this **Policy** are hereby amended to conform to such laws.
- D. **AUTHORIZATION** - By acceptance of this **Policy**, the **Insureds** agree that the **Named Insured** will act on behalf of all **Insureds** for all purposes under this **Policy** including, but not limited to, giving and receiving of all notices and correspondence, cancellation, nonrenewal or termination of this **Policy**, payment of premiums, the negotiation and acceptance of Endorsements, and receipt of any return premiums that may be due under this **Policy**.

E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop the **Insurer** from asserting any right under the terms of this **Policy**, nor shall the terms, conditions and limitations of this **Policy** be waived or changed, except by written Endorsement issued to form a part of this **Policy**.

F. **ACTION AGAINST THE INSURER** - No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**, and until the **Insured's** obligation to pay is finally determined, either by adjudication or by written agreement of the **Insureds**, the claimant, and the **Insurer**.

No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any **Claim** against the **Insured** nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

G. **OTHER INSURANCE OR INDEMNIFICATION** - This **Policy** shall not be subject to the terms of any other insurance. All **Loss**, including **Defense Costs**, payable under this **Policy** shall be excess to:

- (1) any other existing insurance regardless of whether collectable, including but not limited to, any insurance under which there is a duty to defend, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**; and
- (2) indemnification to which an **Insured** is entitled from any entity other than the **Company**.

H. **LOSS INFORMATION** - The **Insurer** will provide **Loss Information** to the **Company** within ten (10) days of the **Company's** request or, if required by statute, at the same time as any notice of cancellation or nonrenewal of this **Policy**.

I. **INSOLVENCY/BANKRUPTCY** - The **Financial Impairment** of the **Insured** or of the estate of such **Insured** shall not release the **Insurer** from its obligations nor deprive the **Insurer** of its rights under this **Policy**.

J. **HEADINGS AND SUB-HEADINGS** - The descriptions in the headings and sub-headings of this **Policy** are solely for convenience and form no part of the terms and conditions of coverage.

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be signed by its President and Secretary and countersigned, if required, on the Declarations Page by a duly authorized agent of the **Insurer**.