

# BANKERS PROFESSIONAL LIABILITY INSURING AGREEMENT

Policy Number: [POLICYNBR]

In consideration of the premium paid and in reliance upon all statements made and the 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 Insuring Agreement, as follows:

1. The attached **Policy** is amended by adding an additional Insuring Agreement as follows:

## **BANKERS PROFESSIONAL LIABILITY INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insured**, **Loss** resulting from **Claims** first made during the **Policy Period** or Discovery Period, brought by or on behalf of a customer of the **Company**, against the **Insured** for which the **Insured** is legally obligated to pay for **Wrongful Professional Services Acts**.

2. For the purpose of the coverage afforded by this Insuring Agreement, all of the terms and conditions set forth in the **Policy** and any amendments thereto shall apply except:

- A. Section II (B), entitled "Not-for-Profit Directorships", is deleted.

- B. The definitions of **Interrelated Wrongful Acts** and **Wrongful Act** and all references used throughout the **Policy** are deleted and replaced as follows:

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

**Wrongful Professional Services Act** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured** in the rendering or failure to render **Professional Services**.

- C. Section IV, entitled "Definitions", is further amended to add the following:

**Loan Servicing** means the servicing of any loan, lease or extension of credit (not including financing for investment banking, or leveraged or management buy-outs). Loan Servicing includes the following servicing activities: record keeping, billing and disbursements of principal and interest, receipt or payment of insurance premiums and taxes, credit reporting or statements of a customer's credit worthiness, or the determination of the depreciation amount of property (but not projections of or an appraisal for residual or future value of property).

Loan Servicing does not include the purchase, acquisition or sale of any loan, lease or extension of credit, any act of restructure, termination, transfer, and repossession or foreclosure of any loan, lease or extension of credit.

**Professional Services** means only those services performed or required to be performed by an **Insured** for or on behalf of a customer of the **Company**:

- (1) for a fee, commission or other monetary compensation;
- (2) where a fee, commission or other monetary compensation would usually be received by the **Insured** but for business or other reasons is waived by the **Insured**; or

(3) for other remuneration which inures to the benefit of the **Insured**.

**Professional Services** does not include: (i) medical or health care services; (ii) real estate appraisal services; (iii) architectural or construction management services; (iv) the practice of law or the rendering of legal services; (v) the rental of a safe deposit box; (vi) services provided to customers as an enrolled actuary as that term is used in or in connection with **ERISA**; and (vii) any services performed by or for any entity to which the **Insured** shall have acquired ownership or control as security for a loan, lease or other extension of credit.

D. All of the exclusions set forth in Section V, entitled "Exclusions Applicable to all Insuring Agreements", shall apply except the "Brokerage/Advisory Services Exclusion" and "Insurance Services Exclusion" which are deleted.

E. Section V, entitled "Exclusions Applicable to all Insuring Agreements", is further amended to add the following:

**Bonding/Insurance Company Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** that is brought directly or indirectly by or for the benefit of any insurance carrier or bond carrier of the **Company**, or any affiliate of the **Company**, regardless in whose name such **Claim** is actually made.

**Contract Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim**:

- (1) arising out of or in any way involving the assumption of any liability to defend, indemnify, or hold harmless any person or entity, other than an **Insured Person**, under any written contract or agreement, unless such liability would be imposed regardless of the existence of such contract or agreement; or
- (2) for the intentional breach, in fact, of any express written or oral contract or amounts the **Company** is obligated to pay pursuant to any express written or oral contract. If it is established in fact that such **Claim** involves an intentional breach of contract, the **Insured** agrees to reimburse **Defense Costs**.

**Fee Dispute 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 disputes over fees, commissions, or charges for the **Company's** services.

**Insolvency 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:

- (1) insolvency, receivership, liquidation or bankruptcy of any insurance company the **Insured** represents; or
- (2) bankruptcy of or suspension of payment by any bank, banking firm, broker or dealer in securities or commodities or any other financial institution, provided, however, that this Exclusion shall not apply with respect to the **Insured's** investment on behalf of a customer in the stock of any such entities.

**Investment Banking/Securities Underwriting 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) underwriting, syndicating or promoting any security (except loan syndications or equity or debt securities issued by the **Company**);

- (2) rendering of advice or recommendations regarding any actual or attempted or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction, bankruptcy, reorganization, restructuring, recapitalization, spin-off, offering of securities, dissolution or sale of all or substantially all of the assets or stock of an entity;
- (3) rendering of any fairness opinion;
- (4) proprietary trading;
- (5) any acquisition or sale of securities of the **Company** for its own account; or
- (6) any other investment banking activity,

including any disclosure requirements in connection with any of the foregoing.

**Lender Liability/Loan Servicing 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 **Loan Servicing** or **Wrongful Professional Services Acts** relating to any extension of credit, any agreement or refusal to extend credit, or the collection, or restructuring of any extension of credit.

**Mechanical Malfunction 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 mechanical or electronic failure, breakdown or malfunction of any machine or system of machines.

**Notary 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 notarization or certification of a signature of a person unless that person or someone claiming to be that person physically appeared before the **Insured** at the time of notarization or certification.

**Receivership 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 **Company's** function or activity as receiver, trustee in bankruptcy, or assignee for the benefit of creditors.

3. This Insuring Agreement shall be effective as of 12:01 a.m. on [ENDORSEMENTEFFDT].

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the **Policy** other than as above stated.