

# FIDUCIARY LIABILITY INSURING AGREEMENT

Policy Number: [POLICYNBR]

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 Insuring Agreement, as follows:

1. The attached **Policy** is amended by adding the following Insuring Agreements:

## **FIDUCIARY LIABILITY INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insured**, **Loss** resulting from **Claims** first made during the **Policy Period** or the Discovery Period against the **Insured** for which the **Insured** is legally obligated to pay for **Wrongful Acts** resulting from the **Administration** of any **Employee Benefit Plan** or the violation of any of the responsibilities, obligations or duties imposed by **ERISA**, and any regulations applicable thereto, or any common law or statutory law relating to any **Employee Benefit Plan**.

## **VOLUNTARY CORRECTION PROGRAM INSURING AGREEMENT**

The **Insurer** will pay on behalf of the **Insured**, **Voluntary Correction Fees** and **Defense Costs** with respect to a **Voluntary Correction Program Notice** first given to the **Insurer** during the **Policy Period** or the Discovery Period, provided:

- (a) the **Voluntary Correction Program Fees** and **Defense Costs** are incurred after such **Voluntary Correction Program Notice** is first given to the **Insurer**; and
  - (b) the **Insurer's** maximum Limit of Liability for all **Voluntary Correction Program Fees** and **Defense Costs** with respect to all **Voluntary Correction Program Notices** shall be \$100,000, which amount will be included within and not in addition to the Fiduciary Liability Insuring Agreement Limit of Liability set forth in Item 9 of the Declarations. For purposes of the coverage afforded by this Insuring Agreement only, no Retention shall apply.
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. Section IV, entitled "Definitions", is amended to add the following:

**Administration** means counseling **Employees** with respect to, interpreting, handling records in connection with, or effecting enrollment or cancellation of **Employees** under any **Employee Benefit Plan**.

**Employee Benefit Plan** means any **Employee Welfare Benefit Plan** or any **Employee Pension Benefit Plan** operated solely by the **Company** or jointly by the **Company** and a labor organization for the benefit of the **Employees** of the **Company**.

**Employee Pension Benefit Plan** means any plan, fund, or program established or maintained by the **Company** for its **Employees**, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program provides retirement income to **Employees** or results in a deferral of income by **Employees** for periods extending to the termination of employment or beyond.

**Employee Welfare Benefit Plan** means any plan, fund, or program established or maintained by the **Company** for its **Employees** for the purpose of providing benefits for its participants or their beneficiaries, through the purchase of insurance or otherwise, including:

- (1) medical, surgical, or hospital care or benefits; benefits in the event of sickness, accident, disability, death or unemployment; vacation benefits, apprenticeship or other training programs; day care centers; scholarship funds; prepaid legal services; or
- (2) any benefit described in Section 186(c) of **ERISA**.

**Voluntary Correction Program** means the Voluntary Correction Program, as described in the Employee Plans Compliance Resolutions System (“EPCRS”), IRS Rev. Proc. 2006-27, as amended, or the Voluntary Compliance Resolution Program, the Walk-In Closing Agreement Program, the Tax Sheltered Annuity Voluntary Correction Program (“TVC”), or any similar voluntary settlement program.

**Voluntary Correction Program Fees** means fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Correction Program** for the actual or alleged inadvertent non-compliance by an **Employee Benefit Plan** with any statute, rule or regulation. Voluntary Correction Plan Fees shall not include:

- (1) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or
- (2) any fees, fines, penalties or sanctions relating to an **Employee Benefit Plan** which, as of the earlier inception of this **Policy** or the inception of the first **Policy** of which this **Policy** is a renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

**Voluntary Correction Program Notice** means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Correction Program**.

- C. Section IV, entitled "Definitions", is further amended to delete and replace the definition of **Insured** and **Loss** as follows:

**Insured**, either in singular or plural, means the **Insured Persons**, the **Company**, any **Employee Benefit Plan** existing before the **Policy Period**, any **Employee Benefit Plan** created during the **Policy Period**, and any **Employee Benefit Plan** acquired during the **Policy Period** pursuant to Section XI.

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

- (1) taxes, criminal or civil fines or penalties imposed by law; provided that this exception to the definition of **Loss** shall not apply to any **Voluntary Correction Fees** or to the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed under Section 502 (i) or (l), respectively, of **ERISA**;
- (2) any unpaid, unrecoverable or outstanding loan, lease or extension of credit to any customer or any forgiveness of debt;

- (3) 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 complying with any other federal, state or local laws of any kind;
  - (4) any restitution, disgorgement, or payment of similar sums including but not limited to the return of fees, commissions or charges for the **Company's** services; or
  - (5) any matters which are uninsurable under the law pursuant to which this Insuring Agreement shall be construed.
- D. All of the exclusions set forth in Section V, entitled "Exclusions Applicable to all Insuring Agreements", shall apply except the "ERISA Exclusion" and the "Insured vs. Insured 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** 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: (1) would be imposed regardless of the existence of such contract or agreement; or (2) was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established.

**Failure to Collect Contribution/Benefits Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** for:

- (1) the failure to collect contributions owed to an **Employee Benefit Plan** or other **Employee Program** unless such failure is due to the negligence of the **Insured**;
- (2) the return or reversion to an employee of any contribution or asset; or
- (3) benefits paid or payable to a participant or beneficiary of any **Employee Benefit Plan** or other **Employee Programs**, or benefits which would be payable to such a participant or beneficiary if the **Employee Benefit Plan** or other **Employee** program complied with applicable law.

**Violation of Employment Law 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 actual or alleged violation of the responsibilities, obligations or duties imposed by any Worker's Compensation, Unemployment Insurance, Social Security or disability benefits law, the Fair Labor Standards Act, National Labor Relations Act, Worker Adjustment and Retraining Notification Act, Occupational Safety and Health Act, any rules or regulations promulgated under any of the above statutes, or similar provisions of any federal, state or local statutory, administrative or common law.

- F. Section VI (A), entitled "Limit of Liability", is amended to add the following Subsection:

- (4) The **Insurer** agrees to provide, without additional charge, a one-time reinstatement of the Limit of Liability under this Insuring Agreement to the extent such Limit of Liability is diminished by paid **Loss** resulting from paid **Claims** under this Insuring Agreement. Should a **Claim** exhaust the Limit of Liability under this Insuring Agreement, the Limit of Liability will only be reinstated for subsequent **Claims**. This reinstatement shall not serve to increase the Limit of Liability for any single **Claim**.

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.

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