

COVERAGE SECTION 1.

DIRECTORS & OFFICERS LIABILITY INCLUDING COMPANY REIMBURSEMENT



I. INSURING CLAUSES

A. DIRECTORS AND OFFICERS LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if elected, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period**.

B. COMPANY REIMBURSEMENT COVERAGE

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period**.

II. DEFENSE AND SETTLEMENT

Subject to this Subsection II., it shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend **Claims** against the **Insured Persons**.

The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Company** and the **Insured Persons** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that appears reasonably likely to be covered in whole or in part by this Coverage Section.

The **Company** and the **Insured Persons** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** the **Company** and the **Insured Persons** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery.

The Insurer may make any investigation it deems necessary and may, with the written consent of the **Company** or the **Insured Persons**, make any settlement of a **Claim** it deems expedient.

The Insurer, the **Company** and the **Insured Persons** shall not unreasonably withhold any consent referenced in this Subsection II.

III. DEFINITIONS

When used in this Coverage Section:

A. **Claim** means:

1. a written demand for monetary damages or other 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; or
4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against any **Insured Person** for a **Wrongful Act**, including any appeal therefrom.

B. **Defense Costs** means that part of **Loss** consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds; provided, however, the Insurer has no obligation to apply for or to furnish any such bond.

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

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

3. the **Company's** inability to pay its debts as they become due.
- D. **Insured Capacity** means the position or capacity described in the definition of **Insured Persons**.
- E. **Insured Persons**, in the singular or plural, means any person who was, is, or shall be a duly appointed or elected director, officer or trustee of the **Company**.
- F. **Loss** means the total amount which the **Insured Persons** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements and **Defense Costs**. **Loss** does not include (1) any amount not indemnified by the **Company** for which the **Insured Persons** are absolved from payment by reason of any covenant, agreement or court order, (2) any amount incurred by the **Company** (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Company**, (3) any amount incurred in the prosecution of an affirmative claim, counterclaim or cross claim, (4) any amount allocated pursuant to Subsection V.C. of this Coverage Section to uncovered loss, (5) fines or penalties imposed by law or the multiple portion of any multiplied damage award, (6) taxes, or (7) matters uninsurable under the law pursuant to which this policy is construed.
- G. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons**, individually or otherwise, in their **Insured Capacity**, or any matter claimed against them solely by reason of their serving in such **Insured Capacity**.

IV. EXCLUSIONS

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of any **Claim** made against any **Insured Person**:
 1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a renewal or replacement;
 2. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against the **Company** or any **Insured Person** on or prior to the Prior or Pending Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 3. based upon, arising out of, or attributable to any **Claim** for which the **Insured Person** is insured (or would have been insured but for the exhaustion of the limits of liability thereof) under any policy in effect before the inception date of the **Policy Period**;
 4. brought or maintained by or on behalf of the **Company** or any **Insured Person** in any capacity except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the solicitation, assistance or active participation of the **Company** or any **Insured Person**;
 - b. a **Claim** brought or maintained by any **Insured Person** for the actual or alleged wrongful termination of the **Insured Person**, unless such **Claim** for actual or alleged wrongful termination is covered under Coverage Section 4. of this policy, if included; or
 - c. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Coverage Section;
 5. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto, or any similar provisions of federal, state or local law, but only with respect to any plan sponsored by the **Company** for the benefit of its own employees;
 6. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
 7. for service by the **Insured Person** in any position or capacity in any organization other than the **Company** even if the **Company** directed or requested the **Insured Person** to serve in such other position or capacity, except to the extent such coverage is otherwise provided by written endorsement to this Coverage Section;
 8. for libel, slander, false arrest, detention or imprisonment, malicious prosecution, violation of any right of privacy, wrongful entry or eviction or other invasion of any right of private occupancy;
 9. based upon, arising out of, or attributable to:
 - a. any **Wrongful Act** occurring prior to the **Continuity Date**, if on such date any **Insured** knew or reasonably could have foreseen that such **Wrongful Act** could lead to a **Claim**; or

- b. any **Wrongful Act** that has been the subject of any notice given by the **Company** or any **Insured Person** during the **Policy Period** of any prior policy.
- B. The Insurer shall not be liable under Insuring Clause A. for **Loss** on account of any **Claim** made against any **Insured Person**:
1. for an accounting of profits in fact made from the purchase or sale by such **Insured Person** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 or amendments thereto or similar provisions of any federal, state or local statutory law or common law;
 2. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured Person**, if a judgment or other final adjudication adverse to such **Insured Person** establishes such a deliberately fraudulent act or omission or willful violation; or
 3. based upon, arising out of, or attributable to such **Insured Person** gaining in fact any personal profit, remuneration or advantage to which such **Insured Person** was not legally entitled.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in this Subsection IV. B.

V. CONDITIONS

A. PRESUMPTIVE INDEMNIFICATION

If the **Company** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to indemnify the **Insured Persons** for **Loss**, then, notwithstanding any other conditions, provisions or terms of this policy to the contrary, any payment by the Insurer of such **Loss** shall be subject to the Insuring Clause B. Retention Amount set forth in Item 5. of the Declarations.

For purposes of this Subsection V. A., the shareholder and board of director resolutions of the **Company** shall be deemed to provide indemnification for such **Loss** to the fullest extent permitted by law.

B. SEVERABILITY OF APPLICATION

The written application(s) for coverage shall be construed as a separate application for coverage by each of the **Insured Persons**. No statement in the application or knowledge possessed by any of the **Insured Persons** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available under Insuring Clause A. The statements in the application made by and knowledge possessed by each **Insured Person** shall be imputed to the **Company** for the sole purpose of determining if coverage is available under Insuring Clause B. with respect to **Claims** against such **Insured Person**, but shall not be imputed to the **Company** with respect to **Claims** against other **Insured Persons**.

C. ALLOCATION

Subject to this Subsection V.C., if both **Loss** covered by this Coverage Section and loss not covered by this Coverage Section are incurred either because a **Claim** against **Insured Persons** includes both covered and uncovered matters or because a **Claim** is made against both **Insured Persons** and others, including the **Company**, the **Insured Persons**, the **Company** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss based upon the relative exposure of the parties to covered and uncovered matter.

If the Insurer, the **Insured Persons** and the **Company** agree on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** allocated to covered **Loss**. If the Insurer, the **Insured Persons** and the **Company** cannot agree on an allocation, the Insurer shall advance on a current basis the **Defense Costs** which the Insurer believes to be covered under this Coverage Section until a different allocation is negotiated, arbitrated, or judicially determined. Any such negotiated, arbitrated, or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Company** or the **Insured Persons**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured by this Coverage Section.

Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to the allocation of other **Loss** on account of such **Claim**. In any arbitration, suit or other proceeding among the Insurer, the **Insured Persons** or the **Company**, no presumption shall exist concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.