

FIDUCIARY LIABILITY DECLARATIONS

PLAZA INSURANCE COMPANY ("Insurer")
700 WEST 47th STREET, SUITE 350
KANSAS CITY, MO 64112

THIS POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE DISCOVERY PERIOD, IF PURCHASED, AND REPORTED TO THE INSURER PURSUANT TO SECTION VIII. THE LIMITS OF LIABILITY AND ANY RETENTION SHALL BE REDUCED BY DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

Policy Number: _____

Item 1. Parent Company / Named Sponsor

Address:

Item 2. Policy Period: From _____ to _____ 12:01 A.M. Local Time at the Address in Item 1.

Item 3. Limit of Liability (inclusive of **Defense Costs) for all **Claims****

- A. Aggregate Limit of Liability for all **Loss** under all coverage combined \$ _____
- B. Aggregate Sublimit for all **Voluntary Settlements** and **Defense Costs** under Insuring Clause 2 \$ _____
- C. Sublimit for **Covered Penalties**
 - 1. Section 502(c) Penalties: \$ _____
 - 2. Pension Protection Act Penalties \$ _____
 - 3. HIPAA Penalties \$ _____
 - 4. Health Care Reform Penalties \$ _____
 - 5. Section 4975 Penalties \$ _____

Item 4. Discovery Period

- A. Discovery Period Premium \$ _____
- B. Discovery Period Duration _____

Item 5. Retention

- A. Solely with respect to each **Claim** other than a **Securities Claim**,
the Retention for Indemnifiable **Loss** is: \$

- B. Solely with respect to each **Securities Claim**,
the Retention for Indemnifiable **Loss** is: \$

Item 6. Pending and Prior Litigation Date:

Date

Authorized Company Representative

FIDUCIARY LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** in the Application forming a part hereof and its attachments and the material incorporated therein, **Insurer** and the **Insureds** agree as follows:

Section I. Insuring Clauses

All Coverage granted for **Loss** under this Policy is provided solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or any applicable Discovery Period and reported to the **Insurer** as required by Section VIII of this Policy. Subject to the foregoing and the other terms, conditions and limitations of this Policy, this Policy affords the following coverage:

Clause 1 FIDUCIARY LIABILITY COVERAGE

The **Insurer** will pay on behalf of the **Insureds**, **Loss** which the **Insureds** are legally obligated to pay as a result of **Claims** made against the **Insureds** for a **Wrongful Act** by the **Insureds** or by any natural person for whose **Wrongful Act** the **Insureds** are legally responsible.

Clause 2 VOLUNTARY SETTLEMENT PROGRAMS

The **Insurer** shall pay on behalf of the **Insureds** any **Voluntary Settlement** and **Defense Costs** which the **Insureds** are legally obligated to pay as a result of a **Settlement Program Notice** first given to the **Insurer** during the **Policy Period**, provided such **Voluntary Settlement** and **Defense Costs** are incurred after such **Settlement Program Notice** is first given to the **Insurer**.

Section II. Discovery Period

A. *Bi Lateral Discovery Options*

If the **Named Sponsor** shall cancel or the **Named Sponsor** or the **Insurer** shall refuse to renew or replace this Policy, the **Insureds** shall have the right to purchase an extension of the coverage afforded by this Policy for the Discovery Period listed in Item 4B of the Declarations Page. Such extension of coverage shall apply to **Claims** first made or deemed to be first made against an **Insured** during said Discovery Period but only to the extent such **Claims** are for **Wrongful Acts** that occur prior to the end of the **Policy Period**.

B. *Conversion to Run Off Option*

If a transaction described in Section IX.D, Conversion to Run Off, occurs, the **Insureds** shall have the right to request an offer from the **Insurer** of an extension of the coverage afforded by this Policy after the end of the **Policy Period**. The **Insurer** shall offer such extension of coverage for such length of time ("Discovery Period") and subject to such terms, conditions, exclusions and additional premium as the **Insurer** may reasonably decide. Such extension of coverage shall apply to **Claims** first made or deemed to be first made against an **Insured** during such Discovery Period but only to the extent such **Claims** are for **Wrongful Acts** that occur prior to the effective date of such transaction.

C. *Premium Payment and Election Requirements*

As a condition precedent to the right to purchase a Discovery Period, the total premium for this Policy must have been paid and a written request must be provided to the **Insurer** no later than thirty (30) days following the effective date of such non-renewal, cancellation or transaction. Any coverage extension provided by this Policy by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

Section III. Definitions

"**Administration**" means one or more of the following administrative duties or activities, but only with respect to an **Insured Plan**:

- a). counseling employees, participants and beneficiaries; or

- b). providing interpretations; or
- c). affecting enrollment, termination or cancellation of employees, participants and beneficiaries; or
- d). maintaining records.

“**Application**” means the application submitted to the **Insurer** for this Policy together with any attachments thereto and other materials and information incorporated therein or submitted to the **Insurer** in connection with the underwriting of this Policy.

“**Benefits**” shall mean any obligation under an **Insured Plan** to a participant or beneficiary of an **Insured Plan**.

“**Claim**” means:

- 1) a written demand for monetary or non-monetary relief made against any **Insured** (including any request to toll or waive any statute of limitation); or
- 2) a civil proceeding against any **Insured** commenced by the service of complaint or similar pleading; or
- 3) a criminal proceeding against any **Insured** commenced by the return of an indictment or information; or
- 4) an administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges, formal investigative order or similar document; or
- 5) an investigation of an **Insured** (including a fact finding investigation by the United States Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental authority) commenced by the receipt of a target letter or similar written notice from a governmental authority identifying such **Insured** as one against whom a proceeding may be commenced; or
- 6) an arbitration or mediation proceeding against any **Insured**;

including any appeal therefrom.

Solely for purposes of coverage under Insuring Clause 2., **Claim** means a **Settlement Program Notice**.

“**Defense Costs**” means reasonable legal fees, costs and expenses incurred in the investigation, adjustment, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond but will not include the obligation to apply for or furnish such bonds. **Defense Costs** shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**.

“**Covered Penalties**” means solely in connection with an **Insured Plan** and subject to the applicable sub limits as set forth in Item 3C of the Declarations Page:

- 1) The 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
- 2) The 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
- 3) The civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act;
- 4) The civil penalties under the Pension Protection Act of 2006;
- 5) The civil penalties for violations of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);
- 6) The civil penalties imposed under rules and regulations (including interim final rules and regulations) provided by governmental agencies (including the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the U.S. Internal Revenue Service (“IRS”), the DOL, the Office of

Consumer Information and Insurance Oversight, and the Employee Benefits Security Administration) for inadvertent violations by an **Insured of Health Care Reform Law**; and

- 7) The 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, with respect to covered judgments.

“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 **Named Sponsor**.

“Employee” means any natural person whose labor or service is engaged by and directed by the **Named Sponsor**. **Employee** shall not include any independent contractor, leased employee, temporary worker or outside service provider

“ERISA” means the Employee Retirement Income Security Act of 1974 (as amended) (including, but not limited to, amendments relating to **ERISA** contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, Health Insurance Portability and Accountability Act of 1996, the Newborns’ and Mothers’ Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women’s Health and Cancer Rights Act of 1998, the Pension Protection Act of 2006 and the **Health Care Reform Law**), and including any rules or regulations under **ERISA** and any similar common or statutory law of any other jurisdiction anywhere in the world to which a **Insured Plan** is subject.

“ESOP” means any employee stock ownership plan as defined in **ERISA**, or any other **Insured Plan** under which investments are made primarily in securities of or issued by (i) the **Named Sponsor**, (ii) the parent of the **Named Sponsor**, or (iii) any parent of any acquired **Subsidiary**.

“Fiduciary” means a fiduciary as defined in **ERISA** and any rules or regulations under **ERISA** with respect to an **Insured Plan** or a person or entity who exercises discretionary control in the management of a **Insured Plan** or the disposition of its assets.

“Fiduciary Wrongful Act” means:

- 1) any violation of any of the responsibilities, obligations or duties imposed upon any **Fiduciary** by **ERISA** with respect to an **Insured Plan** solely by reason of their service as a **Fiduciary** of an **Insured Plan**;
- 2) any negligent act, error or omission in the **Administration** of an **Insured Plan** committed, attempted or allegedly committed by any **Insured**; or
- 3) any other matter claimed against such **Insured** solely by reason of their service as a **Fiduciary** of any **Insured Plan**.

“Financial Insolvency” means the **Named Sponsor** becoming a debtor in possession, or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Named Sponsor**.

“Health Care Reform Law” means the Patient Protection and Affordable Care Act (“PPACA”) and the Health Care and Education Reconciliation Act of 2010.

“Insured” means the **Named Sponsor**, any **Insured Plan**, any **Insured Person** solely in his or her capacity as a **Fiduciary** of an **Insured Plan**, or any other person or entity added as an additional **Insured** to this Policy by specific written endorsement.

“Insured Person” shall mean:

- 1) any natural person past, present or future director, officer, general partner, trustee or **Employee** of a **Named Sponsor** or of any **Insured Plan**;

- 2) any other natural persons who were, now are or shall hereafter be a **Fiduciary** of an **Insured Plan** and included by specific written endorsement attached to this Policy, provided further that such **Fiduciary** is sued in his or her capacity as a **Fiduciary** of an **Insured Plan**.

“**Insured Plan**” shall mean:

- 1) any government-mandated insurance program for workers’ compensation, unemployment, social security or disability benefits for **Employees** of the **Named Sponsor**;
- 2) any welfare benefit or pension plan as defined in **ERISA** which is sponsored solely by the **Named Sponsor** or jointly by the **Named Sponsor** and a labor organization solely for the benefit of the **Employees** of the **Named Sponsor** located anywhere in the world and which existed on the inception date of this Policy;
- 3) any other employee benefit plan which is not subject to regulation under Title I of **ERISA** or which does not meet the qualification requirements under Section 401(a) of the Internal Revenue Code of 1986, as amended, that was, is, or becomes sponsored solely by the **Named Sponsor** exclusively for the benefit of the **Employees** of the **Named Sponsor**, but only for **Fiduciary Wrongful Acts**; and
- 4) any plan, fund or program specifically listed as an **Insured Plan** in the **Application** to this Policy; and
- 5) any **ESOP** disclosed to the **Insurer** in the **Application**;

which existed on or before the Inception Date stated in Item 2 of the Declarations. **Insured Plan** also includes any plan, fund or program described in 1 through 4 above which is created or acquired after the Inception Date, provided that any coverage with respect to the **Insureds** of such plan, fund or program created or acquired during the **Policy Period** shall apply only for **Fiduciary Wrongful Acts** committed, attempted or allegedly committed or attempted after the effective date of such creation or acquisition.

The term “**Insured Plan**” shall not include any “multiemployer plan” (as defined by **ERISA**).

“**Insurer**” means the insurance company identified on the Declarations.

“**Loss**” means damages, settlements, judgments (including pre- and post-judgment interest on a covered judgment), and **Defense Costs** in excess of the Retention. **Loss** also includes punitive or exemplary damages and the multiple portion of any multiplied damage award, to the extent insurable under the law of any applicable jurisdiction most favorable to insurability, including without limitation the jurisdiction in which the **Named Sponsor**, the **Insured Persons**, the **Insured Plan**, the **Insurer** or the **Claim** is located. **Loss** shall not include: 1) the return or reversion to any employer of any contribution or assets of a **Insured Plan**; 2) fines, taxes or penalties, other than **Covered Penalties**; 3) any amount for which an **Insured** is legally or financially absolved from payment; 4) any sum, amount or payment which constitutes restitution or disgorgement, including the return of any fees or expenses in the **Administration** of an **Insured Plan**; or 5) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Fiduciary Wrongful Act** and is payable as a personal obligation of an **Insured Person**, provided, however, this exclusion 5 shall not apply to a monetary award or fund for settling a **Claim** against any **Insured** to the extent the **Claim** alleges a loss to an **Insured Plan** or loss in the actual accounts of participants in an **Insured Plan** by reason of a change in value of the investments held by that **Insured Plan**, including, but not limited to the securities of the **Named Sponsor**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits”; 6) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; or 7) any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

“**Management Control**” means that the **Named Sponsor** has either:

- 1) an ownership interest of more than fifty percent (50%) that entitles the **Named Sponsor**; or

- 2) the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization,

to elect, appoint or designate a majority of the Board of Directors or equivalent executives of such organization.

“**Named Sponsor**” means the **Parent Company** and any **Subsidiary**. In the event any such entity is subject to bankruptcy, **Named Sponsor** includes such entity as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code.

“**Parent Company**” means the entity or organization identified in Item 1 of the Declarations.

“**Policy Period**” means the period from the Inception Date to the Expiration Date as set forth in Item 2 of the Declarations, or its earlier termination if applicable.

“**Pollutants**” means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof including, but not limited to nuclear material or nuclear waste. Such substances shall include, without limitation, solids, liquids, gaseous, biological, radiological or thermal irritants, contaminants or smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals or waste materials, including but not limited to, materials to be recycled, reconditioned or reclaimed; and any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

“**Related Wrongful Acts**” means all **Wrongful Acts** which are connected by reason of any common nucleus of fact, circumstance, situation, transaction, casualty, event or decision.

“**Securities Claim**” means a **Claim** which in whole or in part is based upon, arises out of, directly or indirectly results from, or is in consequence of any actual or alleged purchase or sale, or failure to purchase or sell, any securities issued by the **Named Sponsor** or any actual or alleged misrepresentation or omission of information in connection with such securities.

“**Settlement Program**” means any voluntary compliance program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

“**Settlement Program Notice**” means prior written notice to the **Insurer** by any **Insured** of the **Insured’s** intent to enter a **Settlement Program**.

“**Subsidiary**” means:

- 1) any for-profit organization under the **Management Control** of the **Named Sponsor**, either directly or indirectly, on or before the inception of the **Policy Period**;
- 2) automatically, any for-profit organization that comes under the **Management Control** of the **Named Sponsor**, either directly or indirectly, during the **Policy Period**, provided that (i) the securities of the organization are not publicly traded, (ii) the total assets of the organization are less than 35% of the total consolidated assets of the **Parent Company** as set forth in the **Parent Company’s** then most recent audited consolidated financial statements;
- 3) any for-profit organization, other than those described in paragraph (2) above, that comes under the **Management Control** of the **Named Sponsor**, either directly or indirectly, during the **Policy Period**, provided that the **Named Sponsor** provides the **Insurer** with the full particulars of the new **Subsidiary**

within 90 days of it becoming a **Subsidiary** and the **Named Sponsor** pays such additional premium and accepts such policy amendments as the **Insurer** may reasonably require.

The term **Subsidiary** will not include any entity formed as a partnership

“**Voluntary Settlement**” means any fees, fines, penalties or sanctions paid or agreed to be paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by an **Insured Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties or sanctions relating to an **Insured Plan** which, as of the earlier of the inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this Policy is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

“**Wrongful Act**” means a **Fiduciary Wrongful Act**.

Section IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. *Conduct Exclusion*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

- 1) such **Insured** gaining, in fact, any profit, financial advantage or remuneration that he, she or it was not legally entitled to receive; or
- 2) the committing, in fact, of any deliberately fraudulent or dishonest act or any deliberately criminal act of such **Insured**;

B. *Discrimination*

for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **ERISA**;

C. *Prior Written Notice*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act**, fact, circumstances or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any directors and officers, employment practices, fiduciary or comparable liability policy, provided the insurer of such policy does not reject such notice as invalid;

D. *Pending and Prior Litigation*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any civil, criminal, administrative, or investigative proceeding involving the **Named Sponsor** or any **Insured** pending on or before the Pending and Prior Date stated in Item 6 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

E. *Bodily Injury & Property Damage*

for bodily injury (other than emotional distress and mental anguish), sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;

F. *Non-Insured Wrongful Acts*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** as respects an **Insured Plan** taking place at the time when the **Named Sponsor** did not sponsor such **Insured Plan** or when the **Insured Person** was not a **Fiduciary** of the **Insured Plan**;

- G.** *Assumed Liability*
for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement, but this exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established;
- H.** *Government-Mandated Insurance*
based upon, arising out of, relating to, directly or indirectly resulting from, or in consequence of, or in any way involving, any actual or alleged obligation of any **Insured** pursuant to any government-mandated insurance for worker's compensation, unemployment, social security or disability benefits; provided this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996, as amended.

The **Wrongful Act** of any **Insured** shall not be imputed to any **Insured Person** for the purpose of determining the applicability of the foregoing Exclusions.

Section V. Limit of Liability

- A.** The **Insurer** shall be liable to pay covered **Loss** in excess of the applicable Retention amount stated in Item 5 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B.** **Defense Costs** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Defense Costs** shall serve to reduce the Limit of Liability.
- C.** The maximum liability of the **Insurer** for all **Loss** arising from all **Claims** combined shall be the amount stated in Item 3.A of the Declarations. The maximum liability of the **Insurer** for all **Voluntary Settlement** and **Defense Costs** under Insuring Clause 2 combined shall be the amount stated in Item 3.B of the Declarations. The maximum liability of the **Insurer** for **Covered Penalties** shall be the respective amount stated in Item 3.C of the Declarations. The amounts in Items 3.B and 3.C are sublimits that are part of and not in addition to the aggregate Limit of Liability in Item 3.A of the Declarations. The amounts in Item 3 shall be the maximum respective liability of the **Insurer** for the **Policy Period** and Discovery Period, if purchased, regardless of the time of payment or the number of **Claims**.

Section VI. Retention

- A.** The **Insurer's** liability with respect to covered **Loss** resulting from each **Claim** shall be excess of the applicable Retention specified in Item 5 of the Declarations. The applicable Retentions shall be borne by the **Named Sponsor** uninsured and at its own risk, and shall apply to all covered **Loss**, including **Defense Costs**.
- B.** The Retentions specified in Item 5 of the Declarations shall apply as follows:
- 1) Item 5(A) Retention is applicable to **Loss** resulting from each **Claim** other than **Securities Claims**.
 - 2) Item 5(B) Retention is applicable to **Loss** resulting from each **Securities Claim**.

No Retention shall apply to **Claims** under Insuring Clause 2 or to the extent **Claims** are for **Covered Penalties**.

- C.** If a **Named Sponsor** fails or refuses within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if a **Named Sponsor** is financially unable to indemnify or advance covered **Loss** due to its **Financial Insolvency**, the **Insurer** shall pay such covered **Loss** without applying the applicable Retention. The **Named Sponsor** agrees to indemnify and advance on behalf of the **Insured Person** all **Loss** otherwise covered under this Policy to the fullest extent

permitted or required by applicable law. If the **Insurer** pays under this Policy any **Loss** for which the **Named Sponsor** is legally permitted or required and is financially able to advance or indemnify, then the **Named Sponsor** shall reimburse the **Insurer** for such amounts up to the applicable Retention, and such amounts shall become immediately due and payable as a direct obligation of the **Named Sponsor** to the **Insurer**.

- D. One Retention shall apply to each and every **Claim**. The **Named Sponsor** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention, except where the **Named Sponsor** is unable to indemnify the **Insured Person** solely by reason of **Financial Insolvency**.
- E. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earliest date on which any such **Claim** was first made or deemed to be first made, regardless of whether such date is before or during the **Policy Period**.

Section VII. Defense Costs and Settlements

- A. The **Insured** shall not incur **Defense Costs**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. Any **Loss** resulting from any admission of liability, agreement to settle, or **Defense Costs** incurred prior to the express prior written consent of the **Insurer**, shall not be covered hereunder.
- B. Notwithstanding Section VII.A above, if all **Insureds** are able to settle all **Claims** constituting a single **Claim** for an amount that, together with the **Defense Costs**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C. Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to negotiating a settlement, subject to the provisions of this clause. The **Insureds** shall cooperate with the **Insurer** and shall provide the **Insurer** such information as the **Insurer** may reasonably require in connection with the investigation, defense or settlement of any **Claim**.
- D. The **Insurer** may make any investigation it deems necessary and may, with the written consent of the **Insured**, make any settlement of a **Claim** it deems expedient. If the **Insureds** withhold consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount"), plus (2) 70% of covered **Loss** in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 30% of such **Loss** excess of the Settlement Opportunity Amount shall be carried by the **Parent Company** and the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.
- E. If in any **Claim** the **Insureds** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage under this Policy for such **Claim** or incur both **Loss** covered by this Policy and other amounts which are not covered by this Policy, the **Insureds** and the **Insurer** shall allocate such amounts between covered **Loss** and uncovered loss based on the relative legal and financial exposures of the parties to covered and uncovered matters. If the **Insureds** and the **Insurer** cannot agree on an allocation of **Defense Costs**, the **Insurer** shall advance **Defense Costs** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. In such event, such allocation shall be applied retroactively to all **Defense Costs**.

- F. Subject to the preceding paragraph, the **Insurer** shall advance **Defense Costs** on a current basis but no later than ninety (90) days after the **Insurer** receives itemized invoices for such **Defense Costs**; provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.
- G. The **Insurer** will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** this Policy after the applicable Limit of Liability for this Policy as set forth in Item 3 of the Declarations is exhausted by the payment of **Loss**, including **Defense Costs**.

Section VIII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery Period (if purchased). Such notice shall be given as soon as practicable after the risk manager or in-house general counsel of the **Parent Company** first learns of such **Claim**, but in no event later than 1) sixty (60) days after the end of the **Policy Period** or 2) the expiration date of the Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or any **Wrongful Acts**, fact or circumstance alleged therein, shall be deemed first made at the time such prior **Claim** was first made.
- B. If during the **Policy Period** or Discovery Period (if purchased) an **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances, shall be considered made at the time notice of such circumstances was first given to the **Insurer**; provided, however, coverage otherwise applicable to any such subsequent **Claim** shall only apply to **Loss** incurred after such **Claim** is actually made. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable after the risk manager or in-house general counsel of the **Parent Company** first learns of such **Claim**.
- C. Notice to the **Insurer** as provided in Section VIII shall be given to the Director of Claims at

By Mail:
Director of Claims
Plaza Insurance Company
700 W 47th Street, Suite 350
Kansas City, MO 64112
Phone 877 305 7625 (toll free)
Fax 877 742 8762 (toll free)

By Email:
rhnewcasualtyclaims@rhkc.com

In all cases, reference the policy number in the correspondence.

Section IX. General Conditions

A. Cancellation or Non-Renewal

- 1) This Policy may be cancelled by the **Parent Company** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D , in which case the entire premium for this Policy shall be deemed earned.

- 2) This Policy may only be cancelled by the **Insurer** if the **Named Sponsor** does not pay the premium when due, in which case the **Insurer** shall give to the **Parent Company** at least ten (10) days prior written notice of such cancellation.
- 3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Parent Company** with no less than sixty (60) days advance notice thereof.

B. Application

The **Insureds** represent and acknowledge that statements made and information in the **Application** are accurate and complete, are the basis of this Policy and are incorporated in and constitute part of this Policy.

C. Action Against the Insurer

- 1) 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 obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- 2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

D. Conversion to Run-Off Coverage

If during the **Policy Period** any of the following events occur:

- 1) the **Parent Company**: (i) sells all or substantially all of its assets to any other person or entity or affiliated groups of persons or entities; or (ii) merges or consolidates with another entity such that the **Parent Company** is not the surviving entity; or
- 2) any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Parent Company**;

then coverage under this Policy shall continue until expiration of the **Policy Period** or the Discovery Period, if applicable, but only for **Wrongful Acts** taking place prior to the effective date of such transaction. The entire premium for this Policy shall be deemed earned as of the date of such transaction.

E. Termination of Insured Plan

If the **Named Sponsor** terminates any **Insured Plan** before or after the inception date of the **Policy Period**, coverage with respect to such terminated **Insured Plan** and its **Insureds** shall continue until termination of this Policy for those who were **Insureds** at the time of such **Insured Plan** termination, or who would have been **Insureds** at the time of such termination if this Policy had been in effect, with respect to **Wrongful Acts** occurring prior to or after the date of such **Insured Plan** termination. The **Insureds** shall give written notice to the **Insurer** of such **Insured Plan** termination as soon as is practicable together with such information as the **Insurer** may require.

F. Other Insurance

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

G. Coverage Extensions

1) Lawful Spouse or **Domestic Partner** Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Person** is deemed to include the entities or persons who served in equivalent positions in a foreign **Subsidiary**.

3) Estates and Legal Representatives

a) The coverage provided by this Policy also shall apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

b) In the event a bankruptcy proceeding shall be instituted by or against the **Named Sponsor**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Named Sponsor**.

H. **Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Named Sponsor** and **Insured Person** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Named Sponsor**. The **Insurer** shall not exercise its right of subrogation against any **Insured Person** under this Policy unless Exclusion IV.A. applies to such **Insured Person**.

I. **Assignment**

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

J. **Conformity to Statute**

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

K. **Representative of the Insurer**

Rockhill Underwriting Management, 700 W 47th Street, Suite 350, Kansas City, MO 64112 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

L. **Bankruptcy**

Bankruptcy or insolvency of the **Named Sponsor**, any **Subsidiary** or any **Insured Persons** shall not relieve the **Insurer** of any of its obligations under this Policy.

M. **Headings**

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage

under this Policy.

N. Entire Agreement

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

O. Authorization

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provide for in this Policy (except the giving of notice to apply for any Discovery Period), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Parent Company** shall act on their behalf.

P. Waiver of Recourse

The **Insurer** waives its right of recourse against any **Insured** pursuant to Section 410(b)(1) of **ERISA** if the premium for this Policy was paid by an **Insured** other than an **Insured Plan**.