

# DIRECTORS AND OFFICERS & CORPORATE SECURITIES LIABILITY POLICY DECLARATIONS

**PLAZA INSURANCE COMPANY (“Insurer”)**

700 WEST 47<sup>th</sup> 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 INSUREDS 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. THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND THE INSUREDS. PLEASE READ THIS POLICY CAREFULLY.**

Policy Number: \_\_\_\_\_

Item 1. **Parent Company:**

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** \$ \_\_\_\_\_

B. Sublimit of Liability for **Investigation Costs** under Insuring Clause 4 \$ \_\_\_\_\_

Item 4. Discovery Period

A. Discovery Period Premium \$ \_\_\_\_\_

B. Discovery Period \$ \_\_\_\_\_

Item 5. Retention

A. Each **Securities Claim** \$ \_\_\_\_\_

B. Each **Claim** Other than a **Securities Claim** \$ \_\_\_\_\_

*Retention is not applicable to Insuring Clause 1 or Insuring Clause 4*

Item 6. Pending and Prior Litigation Date: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Company Representative

# DIRECTORS AND OFFICERS & CORPORATE SECURITIES LIABILITY 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- INSURED PERSON COVERAGE

**Insurer** will pay the **Loss** on behalf of an **Insured Person** for which the **Insured Person** is legally obligated to pay as a result of a **Claim** (including a **Securities Claim**) made against such **Insured Person** for any **Wrongful Act** of such **Insured Person**, except when and to the extent that the **Company** has indemnified such **Insured Person** for such **Loss**.

### Clause 2- INDEMNIFICATION OF AN INSURED PERSON BY THE COMPANY

**Insurer** will pay the **Loss** on behalf of an **Insured Person** for which the **Insured Person** is legally obligated to pay as a result of a **Claim** (including a **Securities Claim**) made against such **Insured Person** for any **Wrongful Act** of such **Insured Person**, but only when and to the extent that the **Company** has indemnified such **Insured Person** for such **Loss**.

### Clause 3 -ENTITY SECURITIES COVERAGE

**Insurer** will pay the **Loss** on behalf of the **Company** for which the **Company** is legally obligated to pay as a result of a **Securities Claim** made against the **Company** for any **Wrongful Act** of such **Company**.

### Clause 4 -INVESTIGATION COSTS FOR SECURITYHOLDER DERIVATIVE DEMANDS

**Insurer** will pay the **Investigation Costs** on behalf of the **Company** resulting from any **Securityholder Derivative Demand**.

### Clause 5 – OUTSIDE ENTITY EXECUTIVE LIABILITY INSURANCE

Coverage under Clause 1 and Clause 2 above includes coverage for **Loss** of a **Director** or **Officer** resulting from a **Claim** made against any such **Director** or **Officer** for any **Wrongful Act** while serving in an **Outside Position** with an **Outside Entity**. Such coverage shall be specifically excess of any indemnification and insurance available from or provided by such **Outside Entity**.

## Section II. Discovery Period

### A. *Bi Lateral Discovery Options*

If the **Company** shall cancel or the **Company** 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 such 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**

**“Application”** means all publicly available documents filed by the **Company** with the Securities and Exchange Commission during the twelve (12) months preceding the effective date of this Policy. **Application** shall also include the written statements and representations made by an **Insured** and all warranties executed by or on behalf of an **Insured**, or contained in any application or other materials or information, provided to the **Insurer** in connection with the negotiation and underwriting of this Policy.

**“Claim”** means:

- 1) a written demand for monetary or non-monetary relief made against any **Insured**, including a request to toll or waive any statute of limitations;
- 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 Person** commenced by the filing of a notice of charges, formal investigative order or similar document, including any such proceeding initiated against any **Insured Person** before the Equal Employment Opportunity Commission or any similar state or local governmental body;
- 5) an **Insured Person Investigation**;
- 6) an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
- 7) an arbitration or mediation proceeding against any **Insured**; or
- 8) solely with respect to Insuring Clause 4, a **Securityholder Derivative Demand**;

including any appeal therefrom.

**“Company”** means the **Parent Company** and any **Subsidiary**. In the event any such entity is subject to bankruptcy,

**Company** includes such entity as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code.

**“Defense Costs”** means reasonable legal fees, costs and expenses incurred with the **Insurer’s** consent 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**. **Defense Costs** also means the following fees, costs and expenses resulting from a covered **Claim**:

- 1) reasonable fees, costs and expenses incurred by a **Director** or **Officer** of the **Company** to oppose any efforts by an **Enforcement Authority** to seize or otherwise enjoin the personal assets or real property of

such **Director** or **Officer** or to obtain the discharge or revocation of a court order in any way impairing the use of such personal assets or real property; provided the **Insurer's** maximum liability under this Policy for all such fees, costs and expenses shall be \$25,000 per **Director** or **Officer** and \$100,000 in the aggregate for all **Directors** and **Officers**; and

- 2) reasonable fees, costs and expenses (including the premium or origination fee for a loan or bond) incurred by the Chief Executive Officer, Chief Financial Officer or any other executive officer of the **Company** solely to facilitate the return of amounts required to be repaid by such individuals pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, provided (i) such fees, costs and expenses shall not include the payment, return, reimbursement, disgorgement or restitution of any amounts requested or required to be paid by such individuals pursuant to such Section 304(a) or Section 954, and (ii) the **Insurer's** maximum liability under this Policy for all such fees, costs and expenses shall be \$25,000 per individual and \$100,000 in the aggregate for all such individuals.

The **Insurer's** maximum liabilities as described above are sublimits which are part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations.

**"Directors"** and **"Officers"** means all persons who were, now are, or shall be (i) directors, officers, in-house general counsel, controller, director of investor relations, director of human resources or risk manager of a **Company**, or (ii) managers, members of the Board of Managers or equivalent executives of a **Company** that is a limited liability company, or (iii) the functional equivalent of any such positions with a **Company**.

**"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**.

**"Enforcement Authority"** means any federal, state, local or foreign law enforcement or governmental authority (including the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any federal or state attorney general) or the enforcement unit of any securities exchange or similar self-regulatory body.

**"Extradition"** means any formal process by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.

**"Financial Insolvency"** means the **Company** 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 **Company**.

**"Insured(s)"** means any:

- 1) **Insured Person**; or
- 2) **Company**, but only with respect to coverage under Insuring Clause 2, 3 and 4.

**"Insured Persons"** means:

- 1) any **Director** or **Officer**; or
- 2) any employees of the **Company** who are not **Directors** or **Officers**, but solely with respect to (i) **Securities Claims**, or (ii) any other **Claim** while such other **Claim** is brought and maintained against both such employee and a **Director** or **Officer**; or
- 3) any person admitted to practice law who is, was or becomes employed by the **Company**, on a full-time or part-time basis, while providing legal services to the **Company** as an employee of the **Company**; provided, such services shall not include any legal services or advice rendered to any other **Insured Person** or employee as part of an employee benefit or any legal services or advice rendered to any outside third party, whether at the specific request of the **Company** or otherwise.

**"Insured Person Investigation"** means:

- 1) any investigation of an **Insured Person**, commenced with receipt by that person of a target letter (including a Wells notice) or similar written notice from a government authority identifying such individual as one against whom a proceeding may be commenced; or
- 2) the written request or subpoena from an **Enforcement Authority** or a **Company** to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, whether or not the **Insured Person** who received such request or subpoena allegedly committed a **Wrongful Act**; provided such request or subpoena (i) is not part of a routine or regularly scheduled audit, inspection or general oversight or compliance activity, and (ii) shall constitute an **Insured Person Investigation** under this Policy only if the **Insured Person** or **Company** elects to give to the **Insurer** written notice thereof pursuant to Section VIII.

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

“**Investigation Costs**” means reasonable legal fees, costs and expenses incurred by the **Company** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation on behalf of the **Company** of any **Securityholder Derivative Demand**, but shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**.

“**Loss**” means damages, settlements, judgments (including pre- and post-judgment interest on a covered judgment) and **Defense Costs** in excess of the Retention. **Loss** shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any applicable jurisdiction most favorable to insurability, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the **Insurer**, this Policy or the **Claim** is located.

Solely with respect to Insuring Clause 4., **Loss** shall mean **Investigation Costs**.

**Loss** shall not include: 1) civil or criminal fines or penalties, other than civil money penalties assessed against **Insureds** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(B); 2) taxes; 3) any amount for which an **Insured** is legally or financially absolved from payment; 4) any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; 5) any portion of damages, judgments or settlements incurred by the **Company** that represents or is substantially equivalent to an increase in the consideration paid by a **Company** in connection with its purchase of any securities, assets or entity; 6) contractually owed amounts; 7) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed, provided the **Insurer** shall not assert that **Loss** incurred by any **Insured** on account of a **Securities Claim** is uninsurable due to the **Insured's** actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.

“**Management Control**” means that the **Company** has either:

- 1) an ownership interest of more than fifty percent (50%) that entitles the **Company**, 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.

“**Outside Entity**” means any entity chartered and operated as a not-for-profit entity or any for-profit entity but only if such for-profit entity is specifically added as an **Outside Entity** by written endorsement to this Policy; provided **Outside Entity** does not include a **Company**.

“**Outside Position**” means the position of director, officer, trustee or other equivalent executive position held by any **Director** or **Officer** in an **Outside Entity** if service in such position is at the written request of the **Company** or is part of the duties regularly assigned to the **Director** or **Officer** by the **Company**.

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

**“Policy Period”** means the period from the Inception Date of this Policy to the Expiration Date of this Policy 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 any **Claim** for a **Wrongful Act** made against an **Insured** alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- 1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the: a) purchase or sale of any securities issued by the **Company**, or b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, or
- 2) brought by a security holder of the **Company** in their capacity as such, whether directly, by class action, or derivatively on behalf of the **Company**;

provided **Securities Claim** does not include any investigation of or administrative or regulatory proceeding against the **Company**.

**“Securityholder Derivative Demand”** means:

- 1) a written demand by one or more securityholders of the **Company** upon the board of directors of the **Company** to bring a lawsuit against any **Insured Person** for a **Wrongful Act**; or
- 2) a lawsuit by a securityholder of the **Company** brought derivatively on behalf of the **Company** against any **Insured Person** for a **Wrongful Act** without first making a demand as described in paragraph 1 above.

**“Subsidiary”** means any entity, other than a partnership, with respect to which the **Company**, either directly or indirectly, has **Management Control**:

- 1) on or before the inception date of this Policy;
- 2) subsequent to the inception date of this Policy by reason of such entity being created or acquired by the **Company** after such date, provided that the created or acquired entity’s total assets as of such creation or acquisition do not exceed thirty-five percent (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; or
- 3) subsequent to the inception date of this Policy by reason of such entity being created or acquired by the **Company** other than as described in (2) above, if the **Company**, within ninety (90) days of such creation or acquisition, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.

**“Wrongful Act”** means:

- 1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by any **Insured Persons** in their capacity as such or by a **Director** or **Officer** in an **Outside Position**;

- 2) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Company**, but only with respect to a **Securities Claim** under Insuring Clause 3; or
- 3) any matter claimed against any **Insured Persons** solely by reason of their serving in such capacity or solely by reason of a **Director** or **Officer** serving in an **Outside Position**.

#### 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 willful violation of any statute, rule or law, or criminal acts of such **Insured**;

provided, however, this Exclusion A shall not apply (i) unless a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the **Insurer** establishes such conduct, or (ii) to any alleged violation of Sections 11, 12 or 15 of the Securities Act of 1933, as amended.

**B.** *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, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any directors and officers or comparable liability policy, provided the insurer of such policy does not reject such notice as invalid;

**C.** *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 action or proceeding involving the **Company** or any **Insured Persons** pending on or before the Pending and Prior Litigation date stated in Item 6 of the Declarations, or any fact, circumstance or situation underlying or alleged in such action or proceeding;

**D.** *Bodily Injury & Property Damage*

for any actual or alleged;

- 1) bodily injury, sickness, disease, or death of any person;
- 2) damage to or destruction of any tangible property, including the loss of use thereof; or
- 3) mental anguish, emotional distress of any person.

provided, however, part (3) of this exclusion shall not apply to any employment related **Claim**, and this entire exclusion shall not apply to any **Securities Claim**;

**E.** *ERISA*

for any violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, and any rules or regulations and amendments thereto, or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall only apply with respect to plans, programs and trusts established or maintained in whole or in part for the benefit of employees of the **Company**;

- F. *Outside Capacity***  
based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving a **Wrongful Act** of any **Insured Person** serving in any capacity for any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**;
- G. *Entity vs Insured Person***  
brought or maintained by or on behalf of the **Company** against an **Insured Person** or brought or maintained by or on behalf of an **Outside Entity** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Position** for such **Outside Entity**; provided this Exclusion shall not apply to **Defense Costs** covered under Insuring Clause 1 or to any **Claim** against an **Insured Person**:
- 1) that is a derivative lawsuit brought and maintained on behalf of the **Company** or the **Outside Entity** without the active assistance or participation of the **Company**, the **Outside Entity** or any **Director** or **Officer**, unless such assistance or participation is (i) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (ii) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute, rule or regulation;
  - 2) brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, rehabilitator or creditors' committee of the **Company** or the **Outside Entity**, or any assignee of any of the foregoing; or
  - 3) brought and maintained outside the United States or any other common law jurisdiction; or
- H. *Subsidiary Wrongful Acts***  
for any **Wrongful Act** of a **Subsidiary** or any **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** where such **Wrongful Act** first occurred:
- 1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
  - 2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
  - 3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**.

For purposes of determining the applicability of these Exclusions, the **Wrongful Act** and knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** and only the **Wrongful Acts** and knowledge of a **Company's** chief executive officer or chief financial officer or their functional equivalent shall be imputed to such **Company** and its **Subsidiaries**.

## 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 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 **Investigation Costs** under Insuring Clause 4. combined shall be the amount stated in Item 3.B. of the Declarations, which is a sublimit that is part of and not in addition to the aggregate Limit of Liability in Item 3.A. of the Declarations. The amounts in Item 3.A. and 3.B. 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 paid by the **Company** or by an insurer of a Side A DIC policy excess of this Policy, 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 **Securities Claim**.
  - 2) Item 5.B Retention is applicable to **Loss** resulting from each **Claim** other than a **Securities Claim**.

No Retention shall apply to **Loss** under Insuring Clause 1, including **Defense Costs**, or to **Investigation Costs** under Insuring Clause 4.

- C. If a **Company** fails or refuses within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if a **Company** 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 Insuring Clause 2 Retention. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** 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 **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** shall reimburse the **Insurer** for such amounts up to the applicable Insuring Clause 2. Retention, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the **Insurer**.
- D. One Retention shall apply to each and every **Claim**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention, except where the **Company** is unable to indemnify the **Insured Persons** solely by reason of its **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 **Insureds** 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 **Insurer's** express prior written consent shall not be covered under this Policy.
- 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** for such single **Claim**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C. The **Insureds**, and not the **Insurer**, shall have the duty to defend all **Claims**.
- D. The **Insurer** shall at all times have the right, but not the duty, and shall be given the opportunity, to effectively associate with the **Insureds** in the investigation, defense or settlement of any **Claim** that may implicate coverage under this Policy. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** with such information as the **Insurer** may reasonably require in the investigation, defense or settlement of any **Claim**. The failure of one **Insured Person** to comply with this provision shall not impair the rights of any other **Insured Person** under this Policy.

- 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 such **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** incurred by any **Insureds** are not covered under this Policy, such **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.
- G. The **Insurer** shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** under any Insuring Clause or endorsement after the applicable Limit of Liability for the 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, in-house general counsel, or their functional equivalent, of the **Parent Company** first learns of such **Claim**, but in no event later than (i) sixty (60) days after the end of the **Policy Period**, or (ii) 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 that may reasonably be expected to give rise to a **Claim** being made against an **Insured** and gives 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 deemed to be 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, in-house general counsel, or their functional equivalent, 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 47<sup>th</sup> Street, Suite 350  
Kansas City, MO 64112  
Phone 877 305 7625 (toll free)  
Fax 877 742 8762 (toll free)

By Email:  
[rhnewcasualtyclaims@rhkc.com](mailto:rhnewcasualtyclaims@rhkc.com)

In all cases, such notice shall include reference to the Policy number.

## Section IX. General Conditions

### A. Cancellation or Non-Renewal

- 1) This Policy may be cancelled by the **Company** at any time by prior 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 **Company** 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.

The **Application** shall be construed as a separate **Application** for each **Insured Person**. If any statement in the **Application** was not accurate and complete and either was made with the intent to deceive or materially affected the acceptance of the risk or hazard assumed by the **Insurer** under this Policy, then this Policy shall be void ab initio:

- 1) as to the **Company** under Insuring Clause 2, with respect to its indemnification of any **Insured Person** who knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application**; and
- 2) as to any **Company** and its **Subsidiaries** under Insuring Clause 3 and Clause 4, if its chief executive officer, chief financial officer, in-house general counsel or functional equivalent official knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application**,

whether or not such **Insured Person** or official knew the **Application** contained such inaccurate or incomplete statement.

#### *Non Rescindable / Non Voidable Insuring Clause 1*

The **Insurer** shall not be entitled under any circumstances to rescind or void coverage under Insuring Clause 1 in whole or in part.

### 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 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 transactions 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; (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. 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.

#### F. 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 **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

##### 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 **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Clauses 2, 3 and 4.

#### G. Order of Payments

The **Insurer** shall be entitled to pay **Loss** as it becomes due and payable under this Policy without consideration of other future payment obligations.

However, if such **Loss** exceeds the remaining applicable Limit of Liability, the **Insurer** shall pay such **Loss**, subject to such Limit of Liability, in the following priority: (i) first, the **Insurer** shall pay all **Loss** covered under Insuring Clause 1.; and (ii) second, the **Insurer** shall pay all other **Loss** covered under any other Insuring Clause.

The bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Policy as set forth above.

#### 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 **Company** and **Insured Persons** 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 Persons** or the **Company**. 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 47<sup>th</sup> 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 **Company**, 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 (including italicized 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.