

RLI INSURANCE COMPANY

FIDUCIARY LIABILITY COVERAGE SECTION

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, RLI Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

INSURING CLAUSES

1. The Insurer will pay on behalf of the **Insureds**, **Loss** which the **Insureds** are legally obligated to pay as a result of **Claims** first made during the Policy Period, or during the Discovery Period (if purchased), against the **Insureds** for a **Wrongful Act** by the **Insureds** or by any natural person for whose **Wrongful Act** the **Insureds** are legally responsible.
2. The Insurer will indemnify the **Insureds** for all **Compliance Fees** incurred by the **Insureds** as a result of any **Voluntary Compliance Program** initiated during the Policy Period, or during the Discovery Period (if purchased).

DEFINITIONS

3. When used in this coverage section:

"**Administration**" means:

- i) giving advice, counsel or interpretation to employees regarding an **Insured Plan**, or
- ii) affecting enrollment, termination or cancellation of employees under an **Insured Plan**.

"**Claim**" means:

- i) a written demand for monetary or non-monetary relief against any **Insured**, or
- ii) a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading, or
- iii) a criminal proceeding against any **Insured Person** commenced by the return of an indictment, or
- iv) an administrative or regulatory proceeding against any **Insured Person** commenced by the filing of a notice of charges, formal investigative order, or similar document, or
- v) a formal civil, criminal, administrative or regulatory investigation against any **Insured Person** commenced by the service upon or other receipt by the **Insured Person** of a written notice or subpoena from the investigating authority identifying specific alleged **Wrongful Acts** by such **Insured Person**;

including any appeal thereof.

Solely for purposes of coverage under Insuring Clause 2, **Claim** means a **Voluntary Compliance Program** initiated by or against an **Insured**.

"**Class Action**" means a civil proceeding against any **Insured** by or on behalf of a putative or certified class of past or present trustees, directors, officers, or employees of the **Entity** or of any **Insured Plan**, pursuant to Rule 23, Federal Rules of Civil Procedure, or a similar state rule of civil procedure.

"**Compliance Fees**" means VCR compliance fees, compliance correction fees and Audit CAP sanctions paid to the IRS by any **Insured** in connection with any **Voluntary Compliance Program** involving the actual or alleged noncompliance by any **Insured Plan** with any statute, rule or regulation. **Compliance Fees** does not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, taxes or damages.

"**Defense Expenses**" means reasonable and necessary fees and expenses (including without limitation attorneys' fees and experts' fees) incurred in the defense or appeal of a **Claim** after notice of such **Claim** is given to the Insurer. **Defense Expenses** shall not include salaries, wages, overhead or benefit expenses of any trustee, director, officer or employee of the **Entity** or **Insured Plan**.

"**Entity**" means the organization(s) designated in Item 4 of the Declarations for this coverage section.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Fiduciary**" means a fiduciary (as defined in **ERISA**) of an **Insured Plan**, or a person or entity who exercises discretionary control with respect to the management of an **Insured Plan** or the disposition of its assets.

"Financial Impairment" means the status of the **Entity** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Entity**, or the **Entity** becoming a debtor in possession.

"Insured," either in the singular or plural, means:

- i) the **Entity**,
- ii) the **Insured Plan(s)**,
- iii) the **Insured Person(s)**, and
- iv) any other organization, plan or natural person listed in Item 5 of the Declarations for this coverage section.

"Insured Person," either in the singular or plural, means: i) any natural persons who were, now are, or shall become duly elected or appointed trustees, directors, officers, or employees of the **Entity** or of any **Insured Plan**, in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**, and ii) any other natural person who was, now is, or shall become a **Fiduciary** of an **Insured Plan** and is named in Item 5 of the Declarations for this coverage section. In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

"Insured Plan," either in the singular or plural, means:

- i) any employee benefit plan, as defined by **ERISA**, which is operated solely by the **Entity** or jointly by the **Entity** and a labor organization solely for the benefit of the employees of the **Entity** located anywhere in the world, if such plan existed as of the inception date of the Policy Period and is noted in the Application for this coverage section or is afforded coverage pursuant to subsection 11 of this coverage section;
- ii) any other employee benefit plan not subject to Title 1 of **ERISA** sponsored solely by the **Entity** for the benefit of the employees of the **Entity**, if such plan existed as of the inception date of the Policy Period and is noted in the Application for this coverage section or is afforded coverage pursuant to subsection 11 of this coverage section; or
- iii) any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Entity**.

Provided, however, **Insured Plan** shall not include any multiemployer plan as defined in **ERISA**.

"Loss" means monetary damages, judgments, settlements, including but not limited to punitive or exemplary damages where insurable under applicable law, and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a covered **Claim** under Insuring Clause 1.

The law of the jurisdiction most favorable to the insurability of those punitive or exemplary damages shall control whether such damages are insurable, provided that such jurisdiction is where:

- i) those damages were awarded or imposed;
- ii) any **Wrongful Act** occurred for which such damages were awarded or imposed;
- iii) the **Entity** is incorporated or has its principal place of business; or
- iv) the Insurer is incorporated or has its principal place of business.

Loss under Insuring Clause 1 shall not include the multiple portion of multiplied damages, taxes, civil or criminal fines or penalties imposed by law, any amount not indemnified by the **Entity** or an **Insured Plan** for which the **Insured** is absolved from payment, or matters uninsurable under the law pursuant to which this coverage section shall be construed.

Solely for purposes of coverage under Insuring Clause 2, **Loss** means **Compliance Fees**.

"Pollutants" means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or a state, county, municipality or local-city counterpart thereof. Such substances shall include, but not be limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emissions, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic fields and any noise.

"Related Claims" means all **Claims** for **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

"Subsidiary" means any corporation while the **Entity** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such corporation's directors.

Subject to subsection 11 of this coverage section, coverage afforded under this coverage section with respect to **Claims** made against a **Subsidiary** or any **Insured Person** or **Insured Plan** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time such **Subsidiary** became a **Subsidiary** and prior to the time such **Subsidiary** ceased to be a **Subsidiary**.

"Voluntary Compliance Program" means:

- i) the Audit Closing Agreement Program (Audit CAP), the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program or the Administrative Policy Regarding Self-Correction, as described in the Employee Plans Compliance Resolution System, IRS Rev. Proc. 98-22, as amended; and
- ii) the Tax Sheltered Annuity Voluntary Correction Program, as described in IRS Rev. Proc. 95-24, as amended.

"Wrongful Act" means:

- i) any actual or alleged breach of the responsibilities, obligations or duties imposed upon **Fiduciaries** of any **Insured Plan** by **ERISA** or by the common or statutory law of the United States or any state or other jurisdiction anywhere in the world;
- ii) any other matter claimed against the **Entity** or an **Insured Person** solely because of their service as **Fiduciaries** of any **Insured Plan**; or
- iii) any negligent act, error or omission solely in the **Administration** of any **Insured Plan**.

EXCLUSIONS

4. The Insurer shall not be liable to make any payment for that part of **Loss**, other than **Defense Expenses**:
 - a) which constitutes civil or criminal fines or penalties, taxes or the multiple portion of any multiplied damage award, other than the five percent or less, or the twenty percent or less, penalties imposed upon an **Insured** as a **Fiduciary** under Section 502(i) or (l), respectively, of **ERISA**;
 - b) which is based upon, arises out of, directly or indirectly results from, or is in consequence of, the failure to collect from employers any contributions owed to an **Insured Plan** or the failure to fund an **Insured Plan**, unless the failure is because of the negligence of an **Insured**; or
 - c) which constitutes benefits due or to become due under the terms of an **Insured Plan**, or benefits which would be due under the terms of an **Insured Plan** if such terms complied with all applicable law, unless and to the extent that (i) the **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and (ii) recovery for the benefits is based upon a covered **Wrongful Act**.
5. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
 - a) for libel, slander, bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or any damage to or destruction of any tangible property including loss of use thereof;
 - b) for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement; however, 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 **Insured Plan** was established;
 - c) for such **Insured** gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled; or
 - d) for discrimination in violation of any law other than **ERISA**.
6. The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any of the **Insureds** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
 - a) any fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given under any prior policy or coverage section for fiduciary liability or other similar insurance, of which this coverage section is a direct or indirect renewal or replacement;
 - b) the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including but not limited to any **Claim** for financial **Loss** to the **Entity**, the **Insured**

Plan, its security holders, participants, beneficiaries, or creditors based upon, arising out of, directly or indirectly resulting from, or in consequence of, the matters described in this exclusion;

- c) any litigation or administrative or regulatory proceeding against any **Insured** pending on or before the Prior or Pending Date set forth in Item 7 of the Declarations for this coverage section, or any actual or alleged fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - d) any **Wrongful Act** committed or allegedly committed by the **Insured** with respect to an **Insured Plan**, if when such **Wrongful Act** occurred no **Entity** sponsored, was a **Fiduciary** of or was responsible for the **Administration** of, the **Insured Plan**;
 - e) an actual or alleged obligation of any **Insured** under any law governing workers compensation, unemployment insurance, social security, disability benefits or similar law, except the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; or
 - f) any deliberately fraudulent or dishonest act or omission or any willful violation of any statute or regulation by such **Insured**; however, this exclusion shall not apply unless a judgment or other final adjudication adverse to such **Insured** establishes such a deliberately fraudulent or dishonest act or omission or willful violation.
7. The Insurer shall not be liable to make any payment for **Compliance Fees** on account of any matter relating to an **Insured Plan** which, as of the earlier of inception of this coverage section or inception of the first coverage section or policy in an uninterrupted series of coverage sections or policies issued by the **Insurer** of which this coverage section is a renewal or replacement, any **Fiduciary** knew to be actually or allegedly noncompliant with any applicable statute, rule or regulation.

To determine the applicability of the foregoing Exclusions: (i) no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**, and (ii) only **Wrongful Acts** of any past, present or future officer, director or trustee of the **Entity** or **Insured Plan** will be imputed to the **Entity** or **Insured Plan**.

CONDITIONS

8. Notice/Claim Reporting Provisions

If, during the Policy Period, or the Discovery Period (if purchased):

- i) an **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**,
- ii) the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**, and
- iii) the **Insureds** request coverage under this coverage section for any subsequent **Claim** arising from such **Wrongful Act**,

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the Policy Period.

As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after it is first made.

9. Defense Coverage

The Insurer shall have the right and duty to defend any **Claim** covered under Insuring Clause 1 of this coverage section, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend shall cease upon exhaustion of the Limit of Liability set forth in Item 2 of the Declarations for this coverage section.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests, including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings. In the event of a **Claim** the **Insureds** will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

10. Limit of Liability and Retention

The amount stated in Item 2 of the Declarations for this coverage section shall be the maximum aggregate liability of the Insurer under this coverage section for all **Loss** and **Compliance Fees** from all **Claims** for which this coverage section provides coverage, regardless

of the time of payment by the Insurer, and regardless of whether such **Claims** are made or initiated during the Policy Period or during any Discovery Period (if purchased). The amount stated in Item 8 of the Declarations for this coverage section will be the maximum aggregate liability of the Insurer for all **Compliance Fees** covered under Insuring Clause 2 which are incurred by the **Insureds** as a result of all **Voluntary Compliance Programs** for which this coverage section provides coverage, regardless of the time of payment by the Insurer, and regardless of whether such **Voluntary Compliance Programs** were initiated during the Policy Period, or during the Discovery Period (if purchased). The amount stated in Item 8 of the Declarations for this coverage section is a sublimit which further limits and does not increase the Insurer's maximum liability under this coverage section.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, regardless of whether such date is before or during the Policy Period. The applicable Retention shall apply only once to each such single **Claim**.

The Insurer's liability with respect to all **Loss** resulting from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 3 of the Declarations for this coverage section, which shall be borne by the **Entity** uninsured and at its own risk.

No Retention shall apply to **Loss** incurred by any **Insured Person** for which the **Entity** or **Insured Plan** is not permitted or required by common or statutory law to indemnify or is permitted or required by law to indemnify but does not do so by reason of **Financial Impairment**. The Retention for Indemnifiable **Claims** set forth in Item 3(a) of the Declarations for this coverage section shall apply to all other **Loss**, except as otherwise provided in the next succeeding paragraph. For purposes of this subsection 10 the resolutions of the **Entity** or **Insured Plan** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by common or statutory law.

If the **Entity** or **Insured Plan** is permitted or required by common or statutory law to ultimately indemnify the **Insured Persons** for any **Loss**, or to advance **Defense Expenses** on their behalf, and does not in fact do so other than for reasons of **Financial Impairment**, then any payment of such **Loss** or any advancement of such **Defense Expenses** by the Insurer shall not be subject to any Retention amount, but the **Entity** shall reimburse and hold harmless the Insurer for such **Loss** up to the Retention amount set forth in Item 3(a) of the Declarations for this coverage section.

The Retention for Indemnifiable **Claims** set forth in Item 3(a) of the Declarations for this coverage section shall apply to **Compliance Fees** covered under Insuring Clause 2.

If **Loss** resulting from a **Claim** is subject in part to no Retention and in part to the Retention for Indemnifiable **Claims**, the Retention for Indemnified **Claims** shall be applied only to that part of the **Loss** otherwise subject to such Retention.

Defense Expenses will be part of and not in addition to the Limit of Liability, and payment of **Defense Expenses** by the Insurer will reduce its Limit of Liability.

If the Limit of Liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this coverage section will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this coverage section.

Solely with respect to **Claims** under this coverage section which are **Class Actions** and which are fully and finally resolved with prejudice in favor of all **Insureds** without any **Insureds** becoming legally obligated to pay any monetary damages or settlement or judgment amounts arising out of the **Claim**, the Insurer shall reimburse the amount of the Retention paid by the **Insureds** for **Defense Expenses** in such **Claim**.

If such a **Class Action Claim** is dismissed in its entirety without prejudice and without any **Insureds** becoming legally obligated to pay any monetary damages or settlement, such reimbursement shall occur 90 days after the date of dismissal as long as the **Claim** is not brought again within that time, and further subject to an undertaking by the **Insureds** in a form acceptable to the Insurer that such reimbursement shall be paid back by the **Insureds** to the Insurer in the event the **Claim** is brought after such 90 day period and before the expiration of the statute of limitations for such **Claim**.

11. Acquisition or Creation of Another Organization or Plan

If during the Policy Period the **Entity** creates or acquires a **Subsidiary** or **Insured Plan** or otherwise becomes a **Fiduciary** of or responsible for the **Administration** of any **Insured Plan** ("Event"), then coverage shall be afforded, subject to the terms and conditions of this coverage section, from the date of the Event for such **Subsidiary**, **Insured Plan**, and any **Insured Persons** and **Entity** with respect

to such **Insured Plan**, but only for **Wrongful Acts** occurring after the Event, unless the Insurer agrees by endorsement to provide coverage for **Wrongful Acts** committed or allegedly committed prior to such date.

If: (1) the total assets of the acquired or created **Subsidiary** are more than 25% of the consolidated total assets of the Sponsor Organization as of the Policy inception date; or (2) the total assets of the acquired or created **Insured Plan(s)** exceed 25% of the consolidated assets of all **Insured Plans** as of the Policy inception date, then as a condition precedent to the coverage afforded pursuant to this subsection 11:

- i) the **Entity** shall give written notice to the Insurer of the Event within 90 days of such Event together with such information the Insurer may require, and
- ii) the **Entity** shall pay any reasonable additional premium required by the Insurer.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this subsection 11 with respect to any employee stock ownership plan or any **Insured Persons** or **Entity** with respect thereto unless the Insurer, by specific endorsement hereto, agrees to afford such coverage. Any such coverage shall be at the terms and conditions and for the premium set forth in such endorsement.

12. Change of Control

If, during the Policy Period:

- i) the **Parent Company** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert; or
- ii) any person or organization or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the **Entity**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then this coverage section shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this coverage section for any **Wrongful Act** occurring after the effective time of the Transaction and the entire premium for this coverage section shall be deemed fully earned as of such time. The **Parent Company** shall also have the right to elect a Discovery Period described in subsection 15 of this coverage section or a greater period as may be negotiated with the Insurer.

The **Parent Company** shall give the Insurer written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

13. Termination of Insured Plan

If the **Entity** terminates any **Insured Plan** before or after the inception date of the Policy Period, coverage under this coverage section with respect to such terminated **Insured Plan** shall continue until termination of this coverage section 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 coverage section 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.

14. Marital Estate

Subject otherwise to the terms hereof, this coverage section shall cover **Loss** arising from any **Claim** made against the lawful spouse (whether such stature is derived by reason of statutory law, common law or any other applicable law of any jurisdiction in the world) of an **Insured Person** for **Claims** arising solely out of his or her capacity as the spouse of an **Insured Person**, including such **Claims** that seek damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse; or property transferred from the **Insured Person** to the spouse; provided, however, this extension shall not afford coverage for **Wrongful Acts** of the spouse. All terms, conditions and other provisions of this coverage section, inclusive of any provision relative to the applicable retention, which would be applicable to **Loss** incurred by the **Insured Person** in such **Claim** shall also apply to **Loss** incurred by the spouse in such **Claim**.

15. Discovery Period

If: (a) the **Parent Company** cancels this coverage section, (b) either the Insurer or the **Parent Company** refuses or declines to renew this coverage section for any reason, or (c) a Transaction described in subsection 12 occurs, and, within thirty (30) days after the end of the Policy Period the **Parent Company** elects to purchase the Discovery Period by paying the additional premium set forth in Item 6 (a)

of the Declarations for this coverage section, then the coverage otherwise afforded by this coverage section will be extended for the period set forth in Item 6 (b) of the Declarations for this coverage section but only for **Wrongful Acts** occurring before the end of the Policy Period or the date of any Transaction under subsection 12, whichever is earlier. The Limit of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, the Limit of Liability for the Policy Period.

As a condition precedent to the right to exercise the Discovery Period, the total premium for this coverage section must have been paid in full.

If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.

Subject to all the terms and conditions of this subsection 15, the Insurer shall, upon request, provide the **Parent Company** with a quotation for a three year Discovery Period.

16. Representations; Severability

The **Insureds** represent the particulars and statements contained in the Application are true, accurate and complete, and agree that this coverage section is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this coverage section, are the basis of this coverage section. In the event any of the particulars or statements in the Application are untrue, this coverage section will be void with respect to any **Insured** who knew the facts that were not truthfully disclosed or to whom such knowledge is imputed, whether or not such **Insured** knew the Application contained the untruthful disclosure. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person** except for material facts or information known to the person or persons who signed the Application.

This coverage section is signed for the Insurer by its authorized officers. It is countersigned on the Declarations, where required by law, by a duly authorized agent of the Insurer.