

**IMPORTANT NOTE: THIS IS CLAIMS MADE COVERAGE. PLEASE READ THIS POLICY CAREFULLY.**

**THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD, THE AUTOMATIC DISCOVERY PERIOD OR THE ADDITIONAL EXTENDED DISCOVERY PERIOD, IF EXERCISED. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS.**

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**DIRECTORS AND OFFICERS**

**AND**

**COMPANY**

**LIABILITY POLICY**

**-NEW YORK-**

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THIS POLICY IS NOT COMPLETE UNLESS A DECLARATIONS PAGE IS ATTACHED

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## DIRECTORS & OFFICERS AND COMPANY LIABILITY COVERAGE

In consideration of payment of the premium and in reliance upon the statements made in the Application, which are made a part hereof and deemed attached hereto, and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy, the Insurer, the Company and the Insured Persons agree as follows:

### **I. INSURING AGREEMENTS**

#### **A. Directors and Officers Individual Coverage**

If Insuring Agreement A coverage is granted pursuant to Item 2 of the Declarations, the Insurer shall pay on behalf of the Insured Persons Loss for which the Insured Persons are not indemnified by the Company and which the Insured Persons become legally obligated to pay on account of any Claim first made against them, individually or otherwise, during the Policy Period, the Automatic Discovery Period or, if exercised, during the Additional Extended Discovery Period, for a Wrongful Act taking place before or during the Policy Period.

#### **B. Company Indemnification Coverage**

If Insuring Agreement B coverage is granted pursuant to Item 2 of the Declarations, the Insurer shall pay on behalf of the Company Loss for which the Company grants indemnification to the Insured Persons, as permitted or required by law, and which the Insured Persons have become legally obligated to pay on account of any Claim first made against them, individually or otherwise, during the Policy Period, the Automatic Discovery Period or, if exercised, during the Additional Extended Discovery Period, for a Wrongful Act taking place before or during the Policy Period.

#### **C. Company Securities Claim Liability Coverage**

If Insuring Agreement C coverage is granted pursuant to Item 2 of the Declarations, the Insurer shall pay on behalf of the Company Loss for which the Company becomes legally obligated to pay on account of any Securities Claim first made against the Company during the Policy Period, the Automatic Discovery Period or, if exercised, during the Additional Extended Discovery Period, for a Wrongful Act taking place before or during the Policy Period.

### **II. EXTENSIONS**

#### **A. Estates and Legal Representatives**

This Policy shall afford coverage for Claims for the Wrongful Acts of Insured Persons made against the estates, heirs, legal representatives or assigns of Insured Persons who are deceased or against the legal representatives or assigns of Insured Persons who are incompetent, insolvent or bankrupt to the extent that in the absence of such death, incompetence, insolvency or bankruptcy, such Claims would have been covered by this Policy.

#### **B. Spousal Liability**

If a Claim against an Insured Person includes a claim against the Insured Person's lawful spouse solely by reason of (i) such spouse's legal status as a spouse of the Insured Person, or (ii) such spouse's ownership interest in property which the claimant seeks as recovery for alleged Wrongful Acts of the Insured Person, all loss which such spouse becomes legally obligated to pay by reason of such Claim shall be treated for purposes of this Policy as Loss which the Insured Person becomes legally obligated to pay on account of the Claim made against the Insured Person. All terms and conditions of this Policy, including without limitation the Retention Amount, applicable to Loss incurred by such Insured Person in the Claim shall also apply to such spousal loss.

The coverage extension afforded by this Subsection II.B. does not apply to the extent the Claim alleges any wrongful act or omission by the Insured Person's spouse.

### **C. Outside Position Liability**

Subject to all of its terms and conditions, this Policy covers any Insured Person serving in an Outside Position. Any such coverage shall be specifically excess of any indemnity and insurance available from or provided by the entity in which the Insured Person serves in the Outside Position.

### **D. Automatic Discovery Period and Additional Extended Discovery Period**

#### 1. Automatic Discovery Period

If the Insurer or the Insureds do not renew this Policy or if the Parent Company terminates this Policy, the Insureds shall have the right to an extension of the coverage granted by this Policy for the period of sixty (60) days following the effective date of such nonrenewal or termination, herein called the Automatic Discovery Period, but only with respect to a Wrongful Act otherwise covered under this Policy taking place prior to the effective date of such nonrenewal or termination. Any Claim made during the Automatic Discovery Period shall be deemed to have been made during the Policy Period.

The Insureds shall not be entitled to an Automatic Discovery Period under this Subsection II.D. if an extension of coverage is elected pursuant to Subsection V.G.(2) of this Policy.

#### 2. Additional Extended Discovery Period

If the Insurer or the Insureds do not renew this Policy or if the Parent Company terminates this Policy, the Insureds shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this Policy for the period set forth in Item 7(B) of the Declarations (Additional Extended Discovery Period), which shall not be less than ten months, following the effective date of such nonrenewal or termination, but only with respect to a Wrongful Act otherwise covered under this Policy taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the Insureds to the Insurer within sixty (60) days following the effective date of termination or nonrenewal. Any Claim made during the Additional Extended Discovery Period shall be deemed to have been made during the Policy Period.

The premium due for the Additional Extended Discovery Period shall equal that percent set forth in Item 7(A) of the Declarations of the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the Policy Period set forth in Item 4 of the Declarations. The entire premium for the Additional Extended Discovery Period shall be deemed fully earned and non-refundable upon payment.

The Insureds shall not be entitled to elect the Additional Extended Discovery Period under this Subsection II.D. if an extension of coverage is elected pursuant to Subsection V.G.(2) of this Policy.

## **III. DEFINITIONS**

When used in this Policy:

- A. Application** means all signed applications, including attachments and materials submitted therewith, for this Policy or for any policy of which this Policy is a renewal or replacement. All such applications, attachments and materials are deemed attached to and incorporated into this Policy.

**B. Claim** means:

1. a written demand against any Insured Person or, with respect to Insuring Agreement C, the Company for monetary damages,
2. a civil proceeding against any Insured Person or, with respect to Insuring Agreement C, the Company commenced by the service of a complaint or similar pleading,
3. a criminal proceeding against any Insured Person commenced by a return of an indictment, or
4. a formal civil administrative or regulatory proceeding against any Insured Person commenced by the filing of a notice of charges, formal investigative order or similar document,

for a Wrongful Act, including any appeal therefrom.

**C. Company** means, collectively, the organization(s) named in Item 1 of the Declarations and their Subsidiaries.

**D. Defense Costs** means that part of Loss consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the Company) incurred in defending or investigating Claims and the premium for appeal, attachment or similar bonds.

**E. Executive Officers**, either in the singular or plural, means the chairperson, chief executive officer, chief financial officer and in-house general counsel of the Company.

**F. Financial Impairment** means the status of the Company resulting from (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Company, or (2) the Company becoming a debtor in possession.

**G. Insureds**, either in the singular or plural, means the Insured Persons and, solely with respect to Insuring Agreements B and C, the Company

**H. Insured Persons**, either in the singular or plural, means:

1. any one or more persons who were, now are or shall be duly elected or appointed directors or officers of the Company, or, with respect to a Company incorporated outside the United States, their functional equivalent;
2. if coverage is granted for employees pursuant to Item 2 of the Declarations, any one or more other natural persons not described in subparagraph (1) above who were, now are or shall be full or part-time employees of the Company, provided that with respect to any Claim other than a Securities Claim or Claim for employment-related Wrongful Acts, this subparagraph (2) shall apply only if the Claim is initially made against both such natural person and one or more Insured Persons described in subparagraph (1) above; and
3. any one or more natural persons described in subparagraph (1) above who were, now are or shall be serving in an Outside Position.

**I. Interrelated Wrongful Acts** means all 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.

**J. Loss** means the amount which the Insured Persons or, with respect to Insuring Agreement C, the Company become legally obligated to pay on account of each Claim and for all Claims in the Policy Period and the Automatic Discovery Period and the Additional Extended Discovery Period, if exercised, made against them for Wrongful Acts for which coverage applies, including, but not limited to, damages, judgments,

settlements and Defense Costs. Loss does not include (1) any amount for which the Insureds are absolved from payment, (2) taxes, fines or penalties imposed by law, (3) the multiple portion of any multiplied damage award or punitive or exemplary damages incurred by Insureds, or (4) matters uninsurable under the law pursuant to which this Policy is construed; provided this definition does not exclude punitive or exemplary damages incurred by the Insureds to the extent such damages are insurable under applicable law.

**K. Non-Profit Entity** means any non-profit corporation, community chest, fund or foundation that is (i) not included in the definition of Company, and (ii) exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

**L. Outside Position** means the position of director, officer, manager, trustee or other equivalent executive position held by any duly elected or appointed director or officer of the Company in:

1. any Non-Profit Entity, if Non-Profit Outside Positions coverage is granted pursuant to Item 2 of the Declarations, or
2. any other entity, if such coverage is specifically granted by endorsement to this Policy,

if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the Insured Person by, the Company.

**M. Parent Company** means the organization first named in Item 1 of the Declarations.

**N. Policy** means, collectively, the Declarations, the Application, this policy form and any endorsements hereto.

**O. Policy Period** means the period of time specified in Item 4 of the Declarations, subject to prior termination in accordance with Subsection V.J. of this Policy.

**P. 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 locality counterpart thereof. Such substances shall include, without limitation, 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 emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products.

**Q. Securities Claim** means any Claim which in whole or in part is:

1. brought by one or more securities holders of the Company, in their capacity as such, or
2. based upon, arising out of or attributable to the purchase or sale of, or offer to purchase or sell, any equity or debt securities issued by the Company, whether such purchase, sale or offer involves a transaction with the Company or occurs in the open market (including without limitation any such Claim brought by the Securities and Exchange Commission or any other claimant);

provided, however, that this definition shall apply only with respect to equity or debt securities issued by the Company for the purpose of raising capital for the Company and not securities issued in the course of the Company's business.

**R. Subsidiary**, either in the singular or plural, means any organization in which more than 50% of the outstanding voting securities representing the present right to vote for election of directors is owned, directly or indirectly, in any combination, by one or more Companies.

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**S. Wrongful Act means:**

1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the Insured Persons in their capacity as such, or in an Outside Position or, with respect to Insuring Agreement C, by the Company, or
2. any matter claimed against the Insured Persons solely by reason of their serving in such capacity or in an Outside Position.

Except as may be otherwise specifically provided in this Policy, Wrongful Act does not include any conduct actually or allegedly committed or attempted by Insured Persons in their capacity as a director, officer, trustee or employee of any organization other than the Company, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the Insured Person by, the Company.

**IV. EXCLUSIONS**

**A. Exclusions Applicable to All Insuring Agreements**

The Insurer shall not be liable for Loss on account of any Claim made against any Insured Person, or with respect to Insuring Agreement C, the Company:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Policy is a renewal or replacement;
2. based upon, arising out of, or attributable to any prior or pending litigation against the Company or any Insured Person as of the applicable Prior Litigation Date set forth in Item 8 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. brought or maintained by or on behalf of the Company or any Insured Person in any capacity except:
  - (a) a Claim that is a derivative action brought or maintained on behalf of the Company by one or more persons who are not Insured Persons and who bring and maintain the Claim without the solicitation, assistance or active participation of the Company or any Insured Person,
  - (b) a Claim brought or maintained by any Insured Person for any actual or alleged employment-related Wrongful Act,
  - (c) a Claim brought or maintained by any Insured Person for contribution or indemnity, if the Claim directly results from another Claim covered under this Policy, or
  - (d) a Claim brought or maintained by any employee of the Company described in Subsection III.H(2);
4. for a Wrongful Act by an Insured Person in an Outside Position if such Claim is brought or maintained by or on behalf of the entity in which the Insured Person serves or by or on behalf of any director, officer or trustee of such entity except:
  - (a) a Claim that is a derivative action brought or maintained on behalf of such entity by one or more persons who are not directors, officers, or trustees of such entity and who bring and maintain the Claim without the solicitation, assistance or active participation of such entity or such directors, officers or trustees, or
  - (b) a Claim brought or maintained by a director, officer or trustee of such entity for any actual or alleged employment-related Wrongful Act;

5. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 or amendments thereto or similar provisions of any federal, state or local statutory law or common law upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the Company;
6. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, or for libel, slander, defamation of character or violation of a person's right of privacy; provided this exclusion shall not apply with respect to any actual or alleged mental anguish, emotional distress, libel, slander, defamation of character or violation of a person's right of privacy in any Claim by a past, present or prospective employee of the Company for any employment-related Wrongful Act; or
7. based upon, arising out of, or attributable to (1) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or (2) any direction or request that the Company or the Insured Persons test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so; including without limitation any Securities Claim or any other Claim by or on behalf of the Company, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion.

#### **B. Exclusions Applicable to Insuring Agreement A Only**

The Insurer shall not be liable under Insuring Agreement A for Loss on account of any Claim made against any Insured Person:

1. for an accounting of profits in fact made from the purchase or sale by such Insured Person of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 or amendments thereto or similar provisions of any federal, state or local statutory law or common law;
2. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation if a judgment or other final adjudication adverse to such Insured Person establishes that such Insured Person committed such an act, omission or willful violation; or
3. based upon, arising out of, or attributable to such Insured Person gaining in fact any personal profit, remuneration or financial advantage to which such Insured Person was not legally entitled.

#### **C. Exclusions Applicable to Insuring Agreement C Only**

The Insurer shall not be liable under Insuring Agreement C for Loss on account of any Securities Claim made against the Company:

1. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation if a judgment or other final adjudication adverse to the Company establishes that an Executive Officer of the Company committed such an act, omission or willful violation;
2. based upon, arising out of, or attributable to the Company gaining in fact any profit, remuneration or financial advantage to which the Company was not legally entitled; or
3. based upon, arising out of, or attributable to the actual or proposed payment by the Company of allegedly inadequate consideration in connection with the Company's purchase of securities issued by any Company.

## D. Severability of Exclusions

No fact pertaining to or knowledge possessed by any Insured Person shall be imputed to any other Insured Person for purposes of applying the exclusions set forth in this Section IV. Only facts pertaining to or knowledge possessed by an Executive Officer shall be imputed to the Company for purposes of applying the exclusions set forth in this Section IV.

## V. GENERAL CONDITIONS AND LIMITATIONS

### A. Limit of Liability, Retention and Coinsurance

For the purposes of this Policy, all Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds shall be deemed one Claim, and such Claim shall be deemed to be first made on the date the earliest of such Claims is first made against them, regardless of whether such date is before or during the Policy Period.

The Insurer's maximum liability for Loss on account of all Claims first made during the same Policy Period, whether covered under one or more Insuring Agreements, shall be the Limit of Liability for each Policy Period set forth in Item 3 of the Declarations.

Except as otherwise provided in this Subsection V.A., the Insurer's liability with respect to Loss arising from each Claim shall apply only to that part of Loss which is excess of the applicable Retention Amount set forth in Item 5 of the Declarations and such Retention Amount shall be borne by the Insureds uninsured and at its own risk. With respect to any Securities Claim, and under Insuring Agreements B and C only, the applicable Retention Amount shall apply only to Defense Costs, not to any settlement, judgment or other damage.

If Loss arising from a single Claim is covered in part under more than one Insuring Agreement, the applicable Retention Amount set forth in Item 5 of the Declarations shall be applied to that part of the Loss covered by the respective Insuring Agreement. The largest applicable Retention Amount set forth in Item 5 of the Declarations for such Insuring Agreements shall be the maximum Retention Amount applicable to all Loss on account of such Claim.

With respect only to the first one million dollars of Loss covered under Insuring Agreement A (excess of the applicable Retention Amount) originating in any one Policy Period, the Insured Persons shall bear uninsured at their own risk the applicable percent of such Loss specified as the Coinsurance Percent in Item 6 (A) of the Declarations, and the Insurer's liability hereunder shall apply only to the remaining percent of such Loss. With respect to Loss covered under Insuring Agreements B or C (excess of the applicable Retention Amount) originating in any one Policy Period, the Company shall bear uninsured at its own risk the applicable percent of such Loss specified as the Coinsurance Percent in Item 6 (B) or (C) of the Declarations, respectively, and the Insurer's liability hereunder shall apply only to the remaining percent of such Loss.

Defense Costs shall be part of and not in addition to the Limits of Liability set forth in Item 3 of the Declarations, and Defense Costs shall reduce such Limit of Liability.

Notwithstanding any other provision in this Policy to the contrary, if any Securities Claim is fully and finally resolved with respect to all defendant Insureds without any defendant Insureds becoming legally liable to pay any monetary damages or settlement on account of such Securities Claim, no Retention Amount or coinsurance percentages shall apply under Insuring Agreements B or C with respect to any Defense Costs on account of such Securities Claim.

For purposes of this Subsection V.A, the Limit of Liability for the Automatic Discovery Period and the Additional Extended Discovery Period, if exercised, shall be part of and not in addition to the Limit of Liability for the Policy Period. The purchase of the Additional Extended Discovery Period shall not increase or reinstate the Limit of Liability set forth in Item 3 of the Declarations, which shall be the

maximum liability of the Insurer for all Loss on account of all Claims first made during such Policy Period and the Additional Extended Discovery Period, if exercised, combined.

## **B. Indemnification**

If the Company is permitted or required by common or statutory law, but fails or refuses, other than for reason of Financial Impairment, to advance Defense Costs or indemnify the Insured Persons for Loss, then, notwithstanding any other conditions, provisions or terms of this Policy to the contrary, any payment by the Insurer of such Defense Costs or other Loss shall be subject to (1) the Insuring Agreement B Retention Amount set forth in Item 5 of the Declarations, (2) the Insuring Agreement B Coinsurance Percent set forth in Item 6 of the Declarations, and (3) all of the Exclusions set forth in Subsections IV.A and B of this Policy.

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

## **C. Notice**

The Insureds shall, as a condition precedent to their rights under this Policy, give to the Insurer or to any licensed agent of the Insurer in the State of New York, with particulars sufficient to identify the Insureds and this Policy, written notice of any Claim made against the Insured Persons, or with respect to Insuring Agreement C, the Company, as soon as reasonably possible and during (i) the Policy Period; (ii) the Automatic Discovery Period; or, if exercised, (iii) the Additional Extended Discovery Period.

If during the Policy Period, the Automatic Discovery Period or the Additional Extended Discovery Period, if exercised, the Insureds become aware of circumstances which could give rise to a Claim for a Wrongful Act taking place before or during the Policy Period and give written notice of such circumstances and the other information referenced below to the Insurer or to any licensed agent of the Insurer in the State of New York, with particulars sufficient to identify the Insureds and this Policy, during the Policy Period, the Automatic Discovery Period or the Additional Extended Discovery Period, if exercised, then any Claims subsequently arising from such circumstances shall be considered to have been made during the Policy Period, the Automatic Discovery Period or the Additional Extended Discovery Period, in which the circumstances were first reported to the Insurer or any licensed agent of the Insurer in the State of New York.

The Insureds shall, as a condition precedent to exercising their rights under this Policy, (1) include within any notice of Claim or circumstance a description of the Claim or circumstances, the nature of the alleged Wrongful Act, the nature of the alleged or potential damage, the names of actual or potential claimants and Insured Persons involved, and the manner in which the Insureds first became aware of the Claim or circumstances, and (2) give to the Insurer such other information and cooperation as the Insurer may reasonably request.

All notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the Insureds may be given to the Parent Company at the address as shown in Item 1 of the Declarations. Notice to the Insurer of any Claim or circumstance shall be given to St. Paul Travelers, Attention: Professional E & O Claim Unit, 233 Broadway, 26th Floor, New York, New York 10279, [telephone number (212) 898-9200], or to any licensed agent of the Insurer in the State of New York, with particulars sufficient to identify the Insureds and this Policy. All other notices to the Insurer under this Policy shall be given to the same addressee but at 385 Washington Street, St. Paul, MN 55102-1396, to the attention of the Financial and Professional Services Unit. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

## **D. Defense and Settlement**

Subject to this Subsection V.D, it shall be the duty of the Insureds and not the duty of the Insurer to defend any Claim.

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

With respect to any Claim submitted for coverage under this Policy, the Insurer shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by, the Insureds regarding (1) the selection of appropriate defense counsel, (2) substantive defense strategies, including without limitation decisions regarding the filing and content of substantive motions, and (3) settlement negotiations.

The Insureds agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a Claim the Insureds will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

Subject to Section V.E of this Policy, the Insurer shall advance on behalf of the Insureds Defense Costs which the Insured Persons or, with respect to Insuring Agreement C, the Company, have incurred in connection with Claims made against them, prior to disposition of such Claims, 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, agree to repay the Insurer such Defense Costs.

The Insurer may, with the written consent of the Insured, settle any Claim for solely a monetary amount which the Insurer deems reasonable. If the Insured withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Defense Costs accrued as of the date such settlement was proposed in writing by the Insurer to the Insured.

The Insurer and the Insureds shall not unreasonably withhold any consent referenced in this Section V.D.

#### **E. Allocation**

If in any Claim the Insureds incur Loss jointly with others, including the Company with respect to any Claim not covered under Insuring Agreement C, or incur an amount consisting of both Loss covered by this Policy and loss not covered by this Policy because the Claim includes both covered and uncovered matters, then the Insureds and the Insurer shall allocate such amount between covered Loss and uncovered loss based upon the relative legal exposures of the parties to covered and uncovered matters.

If there can be an agreement on an allocation of Defense Costs, the Insurer shall advance on a current basis Defense Costs allocated to covered Loss. If there can be no agreement on an allocation of Defense Costs, the Insurer shall advance on a current basis Defense Costs which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. Any advancement of Defense Costs shall be subject to, and conditioned upon receipt by the Insurer of, a written undertaking by the Insureds that such advanced amounts shall be repaid to the Insurer by the Insureds severally according to their respective interests if and to the extent the Insureds shall not be entitled under the terms and conditions of this Policy to coverage for such Defense Costs.

Any negotiated, arbitrated or judicially determined allocation of Defense Costs on account of a Claim shall be applied retroactively to all Defense Costs on account of such Claim, notwithstanding any prior advancement to the contrary. Any allocation or advancement of Defense Costs on account of a Claim shall not apply to or create any presumption with respect to the allocation of other Loss on account of such Claim or any other Claim.

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## F. Other Insurance

When both this Policy and any other insurance or self insurance apply to a Claim on the same basis, whether primary, contributory, contingent or excess, the Insurer shall not be liable under this Policy for a greater proportion of Loss than the applicable Limit of Liability under this Policy bears to the total applicable limit(s) of liability of all valid and collectible insurance against such Claim. Subject to the foregoing, in the event a Claim is made involving two or more policies, each of which provides that its insurance is excess, this Policy will contribute pro rata with such other insurance.

## G. Changes in Exposure

### 1. Acquisition or Creation of Another Organization

If during the Policy Period the Company

- (a) acquires securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a Subsidiary, or
- (b) acquires any organization by merger into or consolidation with the Company,

such organization and its Insured Persons shall be covered under this Policy as follows:

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the Company for any such acquisition or creation is less than 20% of the total assets of all of the Companies as reflected in the Companies' most recent financial statements as of the inception of the Policy Period, such organization and its Insured Persons shall automatically be covered under this Policy, but only with respect to Wrongful Acts taking place after such acquisition or creation, unless the Insurer agrees after presentation of a complete application and all appropriate information to provide coverage by endorsement for Wrongful Acts taking place prior to such acquisition or creation.

With respect to all other acquisitions or creations described in subparts (a) or (b) above, such organization and its Insured Persons shall automatically be covered under this Policy but only for ninety (90) days or the remainder of the Policy Period, whichever is less, following the effective date of such acquisition or creation ("Automatic Coverage Period") and only with respect to Wrongful Acts taking place after such acquisition or creation. The Parent Company, as a condition precedent to further coverage with respect to such organization and its Insured Persons after such Automatic Coverage Period, shall give written notice of such acquisition or creation to the Insurer as soon as practicable but in no event later than forty-five (45) days following the effective date of such acquisition or creation, and shall thereafter promptly provide to the Insurer such information as the Insurer may request. Upon receipt of such notice and other information, the Insurer shall promptly provide to the Parent Company a quotation for coverage under this Policy for such organization and its Insured Persons for the remainder of the Policy Period. If the Parent Company fails to comply with such condition precedent, or if within thirty (30) days following receipt of such quotation the Parent Company fails to pay any additional premium or fails to agree to any additional coverage terms and conditions as set forth in such quotation, coverage otherwise afforded by this Subsection V.G(1) for such organization and its Insured Persons shall terminate upon expiration of such Automatic Coverage Period.

### 2. Acquisition of Parent Company

If during the Policy Period

- (a) the Parent Company merges into or consolidates with another organization, or



(b) another organization, or person or group of organizations and/or persons acting in concert acquire securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the Parent Company,

coverage under this Policy shall continue until termination of this Policy but only with respect to Claims for Wrongful Acts taking place prior to such merger, consolidation or acquisition. As of the effective date of such merger, consolidation or acquisition, all premiums paid or due at any time under this Policy shall be deemed fully earned and non-refundable.

The Parent Company shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may request. Upon receipt of such notice and information and at the request of the Parent Company, the Insurer shall promptly provide to the Parent Company a quotation for a three-year (or such lesser or greater period as may be negotiated with the Insurer) extension of coverage with respect to Claims for Wrongful Acts taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be conditioned upon the Insureds, within sixty (60) days after receipt of such quotation (i) giving to the Insurer written notice of their desire to elect such extended coverage; (ii) paying any additional premium required by the Insurer, which shall be deemed fully earned upon inception of such coverage extension, and (iii) accepting any additional terms and conditions required by the Insurer.

Such coverage extension shall not increase or reinstate the maximum Limit of Liability set forth in Item 3 of the Declarations and the Limit of Liability for such coverage extension shall be part of and not in addition to the Limit of Liability for the Policy Period.

The Insureds shall not be entitled to elect an extension of coverage under this Subsection V.G(2) if an Additional Extended Discovery Period is elected pursuant to Subsection II.D of this Policy.

### 3. Cessation of Subsidiaries

If before or during the Policy Period an organization ceases to be a Subsidiary, coverage with respect to such Subsidiary and its Insured Persons shall continue until termination of this Policy but only with respect to Claims for Wrongful Acts taking place prior to the date such organization ceased to be a Subsidiary.

## H. Representations and Severability

In granting coverage under this Policy, the Insurer has relied upon the statements and representations in the Application. The Insureds represent that all such statements and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth thereof.

The Insureds agree that in the event that any such statements and representations are untrue, this Policy shall not afford any coverage with respect to any of the following Insureds:

1. any Insured Person who knew the facts that were not truthfully disclosed in the Application,
2. the Company, under Insuring Agreement B, to the extent it indemnifies any Insured Person referenced in (1), above, and
3. the Company, under Insuring Agreement C, if any Executive Officer knew the facts that were not truthfully disclosed in the Application,

whether or not such Insured Person or Executive Officer knew of such untruthful disclosure in the Application.

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## I. Territory and Valuation

All premiums, limits, retentions, Loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due, respectively.

Coverage under this Policy shall extend to Wrongful Acts taking place or Claims made anywhere in the world.

## J. Cancellation and Non-renewal

### a. Cancellation

This Policy may be canceled by the Parent Company at any time by delivering to the Insurer at the address shown in subsection V.C., or by delivering to any licensed agent of the Insurer in the State of New York, with particulars sufficient to identify the Insureds and this Policy, written notice stating when the cancellation shall be effective, provided this Policy may not be canceled by the Parent Company after the effective date of the Parent Company merger, consolidation or acquisition as described in Subsection V. G (2).

This Policy is non-cancelable by the Insurer during the Policy Period or any Extended Reporting Period, except for non-payment of premium. This Policy may be canceled by the Insurer for failure to pay a premium when due, by giving to the Parent Company, at the address as shown in Item 1 of the Declarations, and to the Parent Company's authorized agent or broker, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The cancellation shall not be effective if the premium is paid within such fifteen (15) day period. The notice of cancellation shall contain the reason for the cancellation.

The Insurer shall refund the unearned premium computed at a customary short rate if this Policy is canceled by the Parent Company, except as otherwise provided in part b. "Non-renewal" of this subsection. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such cancellation, but such payment shall be made as soon as practicable.

### b. Non-renewal

If the Insurer non-renews this Policy (note: when used in this subsection V. J. b. the term "non-renewal" means "not to issue or not to offer to issue by the insurer a policy superseding a policy previously issued and delivered by the same insurer), or if the Insurer renews this Policy subject to:

- a change in the type of coverage;
- a decrease in the Limit of Liability;
- a reduction of coverage;
- an increased retention;
- an addition of an exclusion; or
- an increase in premium in excess of 10%, exclusive of any premium increase due to and commensurate with an increase in exposure units, or as a result of experience rating, loss rating, retrospective rating or audit;

the Insurer shall give written notice of the non-renewal or the conditional renewal to the Parent Company, at the address as shown in Item 1 of the Declarations, and to the Parent Company's authorized agent or broker, at least 60 but not more than 120 days before the expiration date of the Policy Period. Such notice shall (i) include the specific reason(s) for non-renewal or conditional renewal, including the amount of any premium increase for conditional renewal and a description of



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any other changes, and (ii) advise the Insureds of the availability of the following loss information under this Policy within twenty days after the Parent Company or the Parent Company's authorized agent or broker, gives to the Insurer a written request for such information.

Upon receipt of such request, the Insurer shall deliver the following loss information covering a period of years specified by the New York Superintendent of Insurance by regulation or the period of time directors and officers liability coverage has been provided by the Insurer to the Insureds, whichever is less:

- (i) information on closed Claims against the Insureds, including date and description of occurrence, and any payments;
- (ii) information on open Claims against the Insureds, including date and description of occurrence, and amounts of any payments; and
- (iii) information on notice of any occurrences submitted under this Policy by the Insureds to the Insurer, including date and description of occurrence.

The Insurer may charge a reasonable fee as determined by the New York Superintendent of Insurance for providing such information, except that the Insurer may not charge a fee for providing any information which the Insurer is otherwise required to provide to the Insureds even in the absence of a request.

If the Insurer violates the above provisions by sending a late or an incomplete non-renewal or conditional renewal notice prior to the expiration of the Policy Period, coverage will remain in effect under this Policy at the same terms and conditions and the Policy Period shall be extended to 60 days after such notice is delivered, unless the Parent Company, during such 60 day period, has replaced or elects to cancel this Policy, in which case any return premium due the Parent Company will be computed on a pro rata basis. Such coverage extension shall be subject to and conditioned upon the Insureds paying to the Insurer an additional premium equal to the pro rata daily premium, applying the lower of the current rates or the immediately preceding Policy Period's rates, multiplied by the number of days the coverage is extended.

If the Insurer violates any of the above provisions by sending a late or an incomplete non-renewal or conditional renewal notice on or after the expiration of the Policy Period, coverage will remain in effect under this Policy at the same terms and conditions for another Policy Period, unless the Parent Company, during this additional Policy Period, has replaced or elects to cancel this Policy, in which case any return premium due the Parent Company will be computed on a pro rata basis. Such coverage extension shall be subject to and conditioned upon the Insureds paying to the Insurer an additional premium equal to the pro rata daily premium for the current or immediately preceding Policy Period, whichever is less, multiplied by the number of days the coverage is extended.

The Insurer shall not be required to send notice of non-renewal or conditional renewal if the Parent Company, or its authorized agent or broker or another insurer of the Parent Company, gives written notice to the Insurer that this Policy has been replaced or is no longer desired.

## **K. Subrogation**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the Company's and the Insured Persons' rights of recovery, including without limitation the Insured Persons' rights to indemnification or advancement from the Company. The Company and the Insured Persons shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Insureds.

## **L. Action Against the Insurer**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and the amount of the Insured's obligation has been finally determined either by judgment against the Insured or by written agreement of the Insureds, the claimants

and the Insurer. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against Insureds to determine Insured's liability nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of an Insured or of the estate of any Insured Person shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

In the event any person or organization or the legal representative thereof has secured a judgment against an Insured and such judgment remains unsatisfied after the expiration of thirty (30) days from the service of notice of entry of the judgment upon the attorney for the Insured and upon the Insurer, then an action may, except during a stay or limited stay of execution against the Insured on such judgment, be maintained against the Insurer, under the terms of this Policy for the amount of such judgment to the extent of the insurance provided by this Policy.

#### **M. Authorization Clause**

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

#### **N. Alteration and Assignment**

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Insurer.

#### **O. Arbitration**

Only if requested by the Insureds, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the Insureds, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

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