



XN RISK™ FIDUCIARY INSURANCE

Effected with certain Lloyd's Underwriters (hereinafter called the "Insurer") through

XN RISK INSURANCE SERVICES INC.

BOCA RATON, FLORIDA

Attaching to and forming part of Certificate Number:

FIDUCIARY COVERAGE SECTION

In consideration of the payment of premium, in reliance upon the statements in the **Application** and subject to all of the provisions of this Certificate and this Coverage Section, Underwriters and the **Assureds** agree as follows.

A. **INSURING CLAUSE**

Underwriters shall pay on behalf of the **Assureds Loss** resulting from any **Claim** first made during the **Certificate Period** for a **Wrongful Act** which is reported to Underwriters pursuant to Section F. of this Coverage Section.

B. **DEFINITIONS**

The following terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B of the General Terms and Conditions section of this Certificate.

1. **Administration** means giving advice to employees or effecting enrollment, termination or cancellation of employees under any of the **Benefit Plans**.
2. **Assureds** means:
 - a) the **Sponsor Organization**,
 - b) any **Benefit Plans**,
 - c) any **Assured Persons**, or
 - d) any other persons or organizations who were, now are, or shall be acting as a plan administrator of any of the **Benefit Plans** at the written request and consent of the **Sponsor Organization**.
3. **Assured Persons** means:
 - a) any persons who were, now are, or shall be serving as a trustee, director, officer or employee of the **Sponsor Organization** or of any of the **Benefit Plans**,

- b) any persons who were, now are, or shall be serving as a fiduciary of any of the **Benefit Plans**, or
 - c) any persons for whose **Wrongful Acts** any of the **Assureds** are legally responsible, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
4. **Insured Plan** means any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Sponsor Organization**.
5. **Benefit Plans** means:
- a) any **Sponsored Plan**, or
 - b) any **Insured Plan**, established before or after the inception of this Certificate.
6. **Claim** means:
- a) any written or oral demand for damages or other relief against any of the **Assureds**, or
 - b) any judicial, administrative or arbitration proceeding against any of the **Assureds** in which they may be subjected to a binding adjudication of liability for damages or other relief, including:
 - (i) any proceeding or investigation brought by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar federal, state or local governmental body, and
 - (ii) any appeal therefrom.
7. **Continuity Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
8. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred by the **Assureds** in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:
- a) salaries, wages, overhead or benefit expenses associated with officers or employees of any of the **Assureds**, or
 - b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

9. **Employee Benefit Plan** means any plan so defined by the Employee Retirement Income Security Act of 1974, as amended.
10. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
11. **Loss** means damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Assureds**, but shall not include:
- a) that portion of any multiplied damages awarded which exceeds the amount multiplied,
 - b) taxes, criminal or civil fines or penalties imposed by law, or
 - c) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed.
12. **Plan Termination** means the termination, suspension, merger or dissolution of any of the **Benefit Plans**.
13. **Pension Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
14. **Sponsor Organization** means the **Assured Organization**.
15. **Sponsored Plan** means:
- a) any **Employee Benefit Plan, Pension Benefit Plan, or Welfare Benefit Plan** which is operated by the **Sponsor Organization** for the benefit of the employees of the **Sponsor Organization**,
 - b) any other plan, fund or program specifically included as a **Sponsored Plan** by endorsement to this Certificate, or
 - c) any other employee benefit plan or program not subject to Title 1 of the Employee Retirement Income Security Act of 1974, as amended, sponsored by the **Sponsor Organization** for the benefit of the employees of the **Sponsor Organization**, including any employee stock ownership plan;
- provided, however, that the **Sponsored Plan** shall not include any multi-employer plan, as defined in the Employee Retirement Income Security Act of 1974, as amended.
16. **Welfare Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.

17. **Wrongful Act** means:

- a) with respect to a **Sponsored Plan**:
- (1) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsored Plan** by the Employee Retirement Income Security Act of 1974, as amended, or by similar statutory or common law;
 - (2) any other matter claimed against the **Sponsor Organization** or any of the **Assured Persons** solely because of their service for the **Sponsor Organization** or any of the **Assured Persons** as a fiduciary of any Sponsored Plan, or
 - (3) any actual or alleged act, error or omission in the **Administration** of any **Sponsored Plan**, or
- b) with respect to an **Insured Plan**, any act, error or omission in the **Administration** of such **Insured Plan**.

C. **EXCLUSIONS**

1. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim**:
- a) to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to comply with any law governing workers' compensation, unemployment, social security or disability benefits or any similar law;
 - b) based upon, arising out of, directly or indirectly resulting from, or in consequence of the liability of others assumed by any of the **Assureds** under any contract or agreement, either oral or writing, except in accordance with the agreement, or declaration of trust pursuant to which any of the **Benefit Plans** was established unless any of the **Assureds** would have been liable in the absence of such assumption;
 - c) to the extent such **Claim** is for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false imprisonment, assault, battery, invasion of privacy, or damage to or destruction of tangible property, including loss of use thereof;
 - d) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (1) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Certificate Period** under any other similar insurance policy, or
- (2) any other **Wrongful Act**, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
 - e) to the extent such **Claim** is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy; provided, however, that this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the limit of liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
 - f) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind;
 - g) to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Plan Termination**; provided, however, this exclusion shall only apply to those **Benefit Plans** which have been the subject of the **Plan Termination**;
 - h) brought about or contributed to by any dishonest, fraudulent or criminal act or omission of, or any personal profit or advantage gained by, any of the **Assureds** to which they are not legally entitled, as determined by a judgment or other final adjudication;
 - i) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any employment or employment-related matters; provided, however, this exclusion shall not apply to any **Claim** where such employment or employment-related matters involve actual or alleged violations of the Employee Retirement Income Security Act of 1974, as amended;
 - j) against any **Subsidiary** or any of the **Assured Persons** of a **Subsidiary** to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or

(2) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the time such entity became a **Subsidiary** would constitute **Interrelated Wrongful Acts**;

k) to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;

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

(1) any prior and/or pending litigation as of the **Continuity Date**, or

(2) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation.

regardless of the legal theory upon which such **Claim** is predicated;

m) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** which any of the **Assureds** had knowledge of prior to the **Continuity Date** where such **Assureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
or

n) for that portion of **Loss** which is covered under any other Coverage Section of this Certificate.

2. Underwriters shall not be liable to make any payment under this Coverage Section, other than **Costs, Charges and Expenses**, in connection with any **Claim**:

a) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or attempted reversion or payment of assets of any of the **Benefit Plans** to the **Sponsor Organization**, or to any successor or assign of the **Sponsor Organization**;

- b) which seeks fines or penalties or the multiple portion of any multiplied damage award, other than the five percent or less, or the twenty percent or less, civil penalties imposed upon any of the **Assureds** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
- c) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to collect employers' contributions owed to any of the **Benefit Plans**, unless the failure is due to the negligence of any of the **Assureds**; or
- d) which seeks benefits due or that become due under the terms of any of the **Benefit Plans**, unless and to the extent that:
 - (1) the **Assured** is a natural person and the benefits are payable to such **Assured** as a personal obligation, and
 - (2) recovery of the benefits is based upon a covered **Wrongful Act**.

D. LIMIT OF LIABILITY AND RETENTION

1. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item C. of the Declarations relating to this Coverage Section in excess of the amount of the Retention up to the Limit of Liability under this Coverage Section, it being warranted that the remaining percentage of **Loss** shall be uninsured.
2. The amount shown in Item C. of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of Underwriters under this Coverage Section.
3. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - b) the time at which the **Claim** involving the same **Wrongful Acts** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause F.2., below.
4. Payment of **Loss** by Underwriters shall reduce the Limit of Liability under this Coverage Section.

5. Underwriters shall pay **Costs, Charges or Expenses** no more than once every 90 days.

E. WAIVER OF RECOURSE

Underwriters shall have no right of recourse against any of the **Assureds** with respect to any **Claim** if this Coverage Section has been purchased by any of the **Assureds** other than any of the **Benefit Plans**.

F. NOTIFICATION

1. The **Assureds** shall, as a condition precedent to their rights to payment under this Coverage Section, give Underwriters notice in writing of any **Claim** as soon as practicable, but in no event later than 60 days after the end of the **Certificate Period**.
2. A **Claim** shall be deemed made when any of the **Assureds** first receive notice of such **Claim**.
3. If, during the **Certificate Period**, any of the **Assureds** first becomes aware of a specific **Wrongful Act** and if the **Assureds**, during the **Certificate Period**, give written notice to Underwriters as soon as practicable of:
 - a) the specific **Wrongful Act**, and
 - b) the consequences which have resulted or may result therefrom, and
 - c) the circumstances by which the **Assureds** first become aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was first given to Underwriters.

4. Notice to Underwriters shall be given to the firm shown under Item H. of the Declarations for this Certificate.