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THE CITY OF ROCHESTER HILLS, MICHIGAN

**RETIREMENT HEALTHCARE FUNDING PLAN
(RHFP)**

**RESTATED:
September 25, 2023**

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THE CITY OF ROCHESTER HILLS, MICHIGAN RETIREE HEALTHCARE FUNDING PLAN (RHFP)

The employer identified in the RHFP Adoption Agreement (“Employer”) hereby adopts and establishes a retiree benefit plan (herein referred to as the “Plan”) for the benefit of its Eligible Employees, their eligible Dependents and Beneficiaries by completion of the RHFP Adoption Agreement.

BABBITT MUNICIPALITIES INC. (“BMI”), an Illinois limited liability company and the Employer intend that this Plan and the Trust attached hereto, and by reference incorporated herein, constitute an “employee welfare benefit plan” and a voluntary employees’ beneficiary association under section 501(c)(9) of the Internal Revenue Code of 1986, as amended.

ARTICLE 1
DEFINITIONS

- 1.1 “Account Balance” means the aggregate value of the Participant’s Account
- 1.2 “Accrued Leave Contribution” means a contribution to the Participant’s Account made by the Employer, to the extent such contribution is selected in the Adoption Agreement.
- 1.3 “Administrator” means the individual, entity or group designated by the Employer pursuant to Section 2.2 hereof to administer the Plan on behalf of the Employer and the Participants.
- 1.4 “Adopting Employer” means a corporation or other organization other than the Employer which adopts this Plan by executing an Adoption Agreement setting forth its terms of adoption pursuant to Article 10 hereof.
- 1.5 “Adoption Agreement” means the RHFP Plan Adoption Agreement document dated August 2, 2011, attached hereto and incorporated herein by reference, by which the Employer establishes or by which an Adopting Employer adopts a Retiree Welfare Benefit plan pursuant to the terms of this Plan for the benefit of its Eligible Employees.
- 1.6 “Adoption Date” means the date as of which the Employer adopts this Plan as set forth in the Adoption Agreement.
- 1.7 “Allocation Date” means the date as of which Employer contributions are credited to the account of Participants as elected in the Adoption Agreement.
- 1.8 “Anniversary Date” means the last day of each Plan Year.
- 1.9 “Authorized Leave of Absence” means a temporary cessation of active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, maternity or paternity leave, or any other reason. An Authorized Leave of Absence shall not be considered a termination of employment.
- 1.10 “Beneficiary” or “Beneficiaries” means the person or persons designated by the Participant pursuant to Section 8 to receive benefits payable from the Plan (or directly from insurance policies purchased by the Plan) in the event of the Participant’s death.
- 1.11 “BMI” means BABBITT MUNICIPALITIES INC. and any successor that shall maintain this Plan document.
- 1.12 “Break-in-Service” means a 12-consecutive month period set forth in the Adoption Agreement during which an Employee fails to complete more than 500 Hours of Service.
- 1.13 “Code” means the Internal Revenue Code of 1986, as amended or replaced from time to time.

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- 1.14 “Collective Bargaining Agreement” means a bona fide agreement between the Employer and Employee representatives provided that health and benefits for retirees were the subject of good faith bargaining between such Employee representatives and the Employer. The term “Employee representatives” does not include an organization more than half of whose members are owners, officers or executives of the Employer.
- 1.15 “Compensation” with respect to a Participant means the total wages or salary, overtime, commissions, bonuses, and any other taxable remuneration earned while a Participant from the Employer and actually paid (determined as elected in the Adoption Agreement) during the 12-month period elected in the Adoption Agreement, the Employer may elect in the Adoption Agreement to exclude as Compensation any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under Code sections 125, 402(e)(3), 402(h), or 403(b). The Employer may also elect in the Adoption Agreement to eliminate categories of Compensation which do not result in discrimination in favor of Highly-Compensated Employees, including:
- a) Amounts paid in overtime compensation;
 - b) Contributions under a salary reduction agreement to a cash or deferred plan under Code section 457(b)
 - c) Compensation in excess of a maximum amount specified.
- 1.16 “Covered Group” means those Employees whom the Employer has elected to cover under this Plan in the Adoption Agreement.
- 1.17 “Custodian” means the Custodian of the assets as selected by the Trustees.
- 1.18 “Dependent” means, with respect to any Participant:
- a) The Participant’s spouse;
 - b) A child of the Participant or the Participant’s spouse (including a child placed for adoption with or under legal guardianship of the Participant or spouse) who is unmarried and is less than 19 years of age or is less than 25 years of age and is a full-time student at an accredited educational institution during at least five (5) months of the calendar year. The age requirement is waived for any child who is mentally or physically disabled prior to age 19, is incapable of self-sustaining employment and who is a “dependent” of the Participant within the meaning of section 152 of the Code;
 - c) Any other person that the Administrator, relying on information furnished by the Participant, in good faith determines to meet the definition of a dependent within the meaning of section 152(a) of the Code.
- 1.19 “Disability” means a physical or mental condition of a Participant expected to last for a continuous period of not less than twelve (12) months, resulting from bodily injury, disease, or mental disorder which renders the Employee incapable of engaging in or continuing his or her usual and customary employment. A licensed physician selected by

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the Administrator shall determine the Disability of a Participant. The determination shall be applied uniformly to all Participants.

1.20 “Discretionary Contribution” or “Employer Discretionary Contribution” means a contribution to the Participant’s account made by the Employer, to the extent such contribution is selected in the Adoption Agreement.

1.21 “Early Retirement Date” means the first day of the month (prior to the Normal Retirement Date) coinciding with or following the date on which a Participant or former Participant attains age 55 and has completed at least 5 Years of Service with the Employer (Early Retirement Age). A Participant shall become fully vested upon satisfying this requirement if still employed at his or her Early Retirement Age.

A former Participant who separates from service after satisfying the service requirement for Early Retirement and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan.

1.22 “Earned” means that portion of a Participant’s Account to which the Participant has become entitled by virtue of his or her age and Years of Service (or Years of Participation) in accordance with the Earned Benefit and Forfeiture schedule set forth in Section 7 of the Adoption Agreement.

1.23 “Effective Date” means the date on which this Retiree Welfare Benefit Plan initially is effective, as set forth in the Adoption Agreement.

1.24 “Eligible Employee” means the Mayor, all Full-Time employees who are employed for forty (40) hours or more per week on a regular basis, and all members of those collective bargaining units which elect to participate in this Plan including AFSCME #2491, AFSCME #1917, and IAFF Local #3472. Eligible Employee does not include Part-Time (i.e. hired to work fewer than 40 hours per week on a regular basis).

1.25 “Employee” means any person employed by the Employer who receives compensation for personal services to the Employer that is subject to withholding for federal income tax purposes and is considered a full time Employee by the Employer. The term “Employee” does not include an independent contractor or leased employee or any individual who is classified by the Employer other than as an Employee even if it is later determined that the classification is incorrect.

1.26 “Employer” means City of Rochester Hills and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a tax-exempt governmental organization, with principal offices in the State of Michigan.

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- 1.27 “Entry Date” means the date on which an Employee commences participation in the Plan as elected by the Employer in the Adoption Agreement. After an Employee’s Entry Date, such Employee shall be considered to be a Participant in the Plan.
- 1.28 “ERISA” means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.
- 1.29 “Fiduciary” means any person who: (i) exercises any discretionary authority or control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets; (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the Plan or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of the Plan, including, but not limited to, the Trustees, the Employer and the Administrator.
- 1.30 “Fund” or “Trust Fund” means the assets of the Plan held in trust, as the same shall exist from time to time, including earnings and appreciation thereon.
- 1.31 “Highly Compensated Employee” means any Employee who (i) for the preceding year received Compensation from the Adopting Employer (or from all entities required to be aggregated with the Adopting Employer pursuant to sections 414(b), (c) or (m) of the Code) in excess of \$80,000 [as adjusted pursuant to Code section 415(d)], and was in the “top-paid group of employees” (as described in Code section 414(q) for such preceding year.
- 1.32 “Highly Compensated Individual”, for purposes of testing whether the Plan meets the requirements of Code section 105(h) means an individual who is:
- a) One of the five (5) highest paid officers,
 - b) Among the highest paid twenty-five percent (25%) of all Employees (other than employees described in section 105(h)(3)(B) who are not participants in this Plan or in any self-insured medical or health maintenance organization plan maintained by the Employer).

The status of an Employee as an officer is determined with respect to a particular benefit on the basis of the Employee’s officer status at the time during the Plan Year at which the benefit is provided. In calculating the highest paid twenty-five percent (25%) of all Employees, the number of Employees included will be rounded to the next highest number. The level of an Employee’s compensation is determined on the basis of the Employee’s compensation for the Plan Year. For purposes of the preceding sentence, fiscal year plans may determine Employee compensation on the basis of the calendar year ending within the Plan Year.

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- 1.33 “Hour of Service” means
- (i) each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer, and
 - (ii) each hour (up to a maximum of 501 hours) for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or Authorized Leave of Absence. Hours of Service shall be determined on the basis elected in the Adoption Agreement.

Hours of Service shall be credited for employment with the Employer and with any Adopting Employer or other entity required to be aggregated with the Employer pursuant to Code section 414(o) and the Regulations thereunder. Hours of Service shall also be credited for any individual considered an Employee for purposes of this Plan under Code section 414(n) or Code section 414(o) and the Regulations thereunder.

Solely for purposes of determining whether a Break in Service, as defined in paragraph 1.11, for purposes of participation and earning of benefits has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence by reason of the pregnancy of the individual, by reason of a birth of a child of the individual, by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following computation period. No more than 501 hours will be credited under this paragraph.

- 1.34 “Investment Manager” means any person, firm or corporation who registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company, and
- a) Has the power to manage, acquire, or dispose of Plan assets, and
 - b) Acknowledges fiduciary responsibility to the Plan in writing.

- 1.35 “Key Employee” means any Employee or former Employee (and the Beneficiaries of such Employee) who at any time during the determination period was an officer of the Employer if such individual’s annual Compensation exceeds 50% of the dollar limitation under Code section 415(b)(1)(A) (the defined benefit maximum annual benefit). For purposes of determining who is a Key Employee, annual Compensation means Compensation determined under Code section 415, but including amounts deferred to a

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cash or deferred plan under code section 401(k), a simplified employee pension plan under Code section 408(k), a cafeteria plan under Code section 125, a tax-deferred annuity under Code section 403(b) or deferred compensation under Code section 457(b). The determination period is the Plan Year containing the Determination Date. The determination of who is Key Employee will be made in accordance with Code section 416(i)(1) and the Regulations thereunder.

- 1.36 “Late Retirement Date” means the first day of the month coinciding with or next following a participant’s actual Retirement Date after having reached his or her Normal Retirement Date.
- 1.37 “Leased Employee” means any person (other than an Employee of the recipient) who, pursuant to an agreement between the recipient and any other person (“leasing organization”), has performed services for the recipient [or for the recipient and related persons determined in accordance with Code section 414(n)(6)] on a substantially full-time basis for a period of at least one (1) year, and such services are under the primary direction or control of the recipient Employer.
- 1.38 “Medical Expense” means any expense paid for medical care of a Participant, their spouse and other Dependents within the meaning of Section 213 of the Code. Such expenses include physician’s and hospital charges, dental charges, hearing and vision expenses, prescriptions, ambulance, laboratory fees, convalescent and nursing home care, hospice care, private nursing care, Medigap or Medicare supplement insurance premiums, other medical insurance premiums, convalescent or nursing home care, the cost of medications and/or prescriptions, private nursing and hospice care, amounts paid or due as deductibles, co-pay amounts, co-insurance costs, and other medical expenses within the meaning of Section 213(d) of the Internal Revenue Code.
- 1.39 “Normal Retirement Date” means the first day of the month following the date the Participant attains age 65 and completes five years of service.
- 1.40 “Participant” means any Eligible Employee who has not for any reason become ineligible to participate in the Plan.
- 1.41 “Participant Account” means the accounts established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan and Trust resulting from the Employer contributions and mandatory Participant contributions.
- 1.42 “Plan” means the retiree welfare benefit plan adopted by the Employer under this Plan document, the Adoption Agreement and the separate Trust Agreement, including all amendments thereto, all of which are incorporated by reference and made a part hereof.

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- 1.43 “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.
- 1.44 “Policy” means an insurance or annuity policy or policies, either group or individual, issued by an insurer.
- 1.45 “Qualified Medical Child Support Order” means a signed judgment, decree or order (including approval of a settlement agreement) issued by a state court or administrative agency which requires or purports to require a Participant to provide medical or health insurance to a Dependent child.
- 1.46 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.
- 1.47 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on or after a Participant’s Normal Retirement Date, Early, or Late Retirement Date. The Early Retirement Date and Normal Retirement Date are set forth in the Adoption Agreement.
- 1.48 “Service” means the period of current or prior employment with the Employer. If the Employer maintains a plan of a predecessor Employer, Service for the predecessor shall be treated as Service for the Employer.
- 1.49 “Severance” or “Severance of Employment” means the termination of a period of Service with the Employer, other than an Authorized Leave of Absence, for reasons other than death, disability or retirement.
- 1.50 “Severed Participant” means a Participant whose employment has been terminated for reasons other than death or retirement.
- 1.51 “Spouse” means the spouse of the Participant, who has met all requirements of a valid marriage contract in the state of marriage of such parties.
- 1.52 “Trustee” means two (2) individuals, one (1) of whom shall hold the office of Chief Financial Officer for the City of Rochester Hills, and the second shall be either a Participant or Retired Participant appointed by the Chief Financial Officer.
- 1.53 “Trust” or “Trust Fund” means the separate trust or trusts created pursuant to this Plan, incorporated herein by reference.
- 1.54 “Valuation Date” means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants’ accounts during the Plan Year, which may include any day that the Trustees,

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DEFINITIONS

any transfer agent appointed by the Trustees or the Employer, or any stock exchange used by such agent, are open for business.

- 1.55 “Year of Participation” means a Year of Service during which an Employee is eligible to participate in the plan.
- 1.56 “Year of Service” means the computation period of twelve (12) consecutive months, set forth in the Adoption Agreement, during which an Employee is credited by the Employer with the number of Hours of Service specified in the Adoption Agreement. Notwithstanding the foregoing, a Participant shall be credited with a Year of Service for any Plan Year in which he performs an average of thirty (30) Hours of Service per week or is credited with 1,560 Hours of Service total.

Years of Service with the Employer and with a predecessor Employer or any Adopting Employer shall be recognized. Years of Service for eligibility to participate in the Plan, for Employer contributions and for earning of benefits may be different, as elected in the Adoption Agreement. To determine Years of Service and Breaks in Service for purposes of eligibility, the 12-consecutive month period shall commence on the date on which an Employee first performs an Hour of Service for the Employer and each anniversary thereof, such that the succeeding 12-consecutive month period commences with the employee’s first anniversary of employment and so on.

**ARTICLE 2
ADMINISTRATION**

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

The Employer shall have the following duties, powers and responsibilities with regard to the Administration of the Plan:

- a) To appoint and remove the Trustees and the Administrator from time to time as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of this Plan, the Adoption Agreement, the Trust, the Code and other applicable federal and state laws and any applicable Collective Bargaining Agreement.
- b) To periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

2.2 APPOINTMENT OF ADMINISTRATOR

The Plan Administrator or Administrator means the Employer or an individual, entity or group designated by the Employer in the Adoption Agreement. The Plan Administrator is a fiduciary for operation and management of the Plan and shall have the powers and duties set forth below.

2.3 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan in accordance with the Code and Regulations and other applicable laws, subject to the specific terms of the Plan, if more restrictive. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons.

The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Trust shall be deemed to be qualified under the terms of Code section 501(c)(9), and shall comply with the terms of all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan, as including the following:

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ADMINISTRATION**

- a) The discretion to determine all questions relating to benefits under the Plan;
- b) To compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant, Dependent or Beneficiary shall be entitled hereunder;
- c) To authorize and direct the Trustee with respect to all non-discretionary or otherwise directed disbursements from the Trust;
- d) To maintain all necessary records for the administration of the Plan;
- e) To determine the size and type of any Policy or Policies to be purchased from any insurer, and to assist the Trustee with respect to the purchase thereof. All policies shall be issued on a uniform basis as of each Anniversary Date with respect to all Participants under similar circumstances;
- f) To provide information to any Participant regarding his participation in and rights, benefits, or elections available under the Plan, including the administration of all claims procedures;
- g) In conjunction with the Employer and Trustees to communicate to Employees, Participants and their Beneficiaries a summary plan description outlining the provisions of the Plan;
- h) To advise the Trustee or custodian with respect to payments made from Participants' Accounts within the Trust Fund;
- i) To file any returns and reports with the Internal Revenue Service, or any other governmental agency;
- j) To compute and certify to the Employer and to the Trustees from time to time the sums of money necessary or desirable to be contributed to the Plan;
- k) To consult with the Employer and the Trustees regarding the short and long-term liquidity needs of the Plan in order that the Trustees can exercise any investment discretion in a manner designed to accomplish specific objectives; and
- l) To determine the validity of, and take appropriate action with respect to, any domestic relations order received by it.

2.4 RESIGNATION, REMOVAL AND SUCCESSION OF ADMINISTRATOR

- a) The Administrator may resign at any time by mailing by registered or certified mail, addressed to such Employer at their last known address, at least ninety (90) days before the effective date thereof.

**ARTICLE 2
ADMINISTRATION**

- b) The Employer may remove the Administrator by mailing by registered or certified mail, addressed to such Administrator at their last known address, at least thirty (30) days before its effective date, a written notice of its removal and a copy, certified by the Employer of the resolution adopted effecting its removal.
- c) Upon the death, resignation, incapacity, dissolution or removal of any Administrator, the Employer shall, prior to the effective date thereof, appoint a successor Administrator. Upon being notified of such appointment, the Administrator shall deliver its records to its successor on the effective date of the resignation or removal, or as soon thereafter as practicable, and such delivery shall not waive any lien the Administrator may have upon the Trust Fund for its compensation or expenses.
- d) In the event that the Employer does not name a successor Administrator by the effective date of the removal or resignation of the Administrator, the Employer shall be deemed the successor Administrator.
- e) The successor Administrator, upon accepting such appointment in writing and delivering same to the Employer and receiving the records, in good form, from the proceeding Administrator, shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of his predecessor with like respect as if he were originally named as the Administrator herein. Until such a successor is appointed, the remaining Administrator or Administrators shall have full authority to act under the terms of this agreement.
- f) The Employer may designate a successor Administrator prior to the resignation or removal of an Administrator. In the event a successor is so designated by the Employer and accepts such designation and the records of the proceeding Administrator, the successor shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of the predecessor with the like effect as if they were originally named as Administrator herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

2.5 APPOINTMENT OF ADVISORS

The Administrator may appoint counsel, specialists, advisers, agents (including non-fiduciary agents), and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to, agents and advisers to assist with the administration and management of the Plan, and thereby to provide (among such other duties as the Administrator may specify), assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

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ADMINISTRATION**

2.6 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of accounts, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.7 INFORMATION FROM EMPLOYER

To enable the Administrator to perform their functions, the Employer shall supply full and timely information to the Administrator on all matters relating to the Compensation of all Participants, their Hours of Service, their Years of Service, their retirement, death, Disability or Severance, and such other pertinent facts as the Administrator may require. The Administrator shall advise the Trustee of the foregoing facts as may be pertinent to the Trustee's duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All expenses of administration, as stated in the Adoption Agreement may be paid out of Participant Accounts unless paid by the Employer. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.9 CLAIMS PROCEDURE

a) Claims Procedures: Claims for benefits under the Plan must be filed with the Administrator on forms supplied by the Administrator within ninety (90) days following the end of the Plan Year in which the expense was incurred. Claims submitted after this period will not be eligible for payment. If an application for benefits is made, the Administrator shall accept, reject, or modify such request. Written notice of the disposition of a claim shall be furnished to the claimant as set forth below:

- 1) Time Periods for Notification of Adverse Benefit. If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person (now called claimant) of its denial with written or electronic notification within the time periods indicated below. (insert period)
- 2) Pre-Service Claims. Pre-service claims means any claim for a benefit where the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care. The Administrator shall notify the claimant of the plan's adverse benefit not later than fifteen (15) days after receipt of the claim for pre-service claims.

ARTICLE 2
ADMINISTRATION

- 3) Post-Service Claims. Post-service claims means any claim for a benefit that is not a pre-service claim as described above. The Administrator shall notify the claimant of the plan's adverse benefit not later than thirty (30) days after receipt of the claim for post-service claims.
 - 4) Urgent Care Claims. Urgent care claims means any claim for medical care or treatment where applying the time conditions for non-urgent care could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function or in the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that could not be adequately managed without the care or treatment that is the subject of the claim. The Administrator shall notify the claimant of the plan's adverse benefit not later than seventy-two (72) hours after receipt of the claim for urgent care claims.
 - 5) Concurrent Care Claims. Concurrent care claims means an ongoing course of treatment to be provided over a period of time or number of treatments. The Administrator shall notify the claimant of the plan's adverse benefit at a time sufficiently in advance of the reduction or termination to allow the claimant to appeal and obtain a determination on review before the benefit is reduced or terminated.
- b) Notification Requirements. Each notice to claimant for denial of benefits will include the following:
- 1) The specific reason for the adverse determination.
 - 2) Reference to the specific plan provisions, internal rule, guideline, protocol or other similar criterion on which the adverse determination is based. If the reference is to a medical necessity or experimental treatment or similar exclusion, an explanation of the scientific or clinical judgment for the adverse determination shall be provided.
 - 3) A description of any additional information necessary for the claimant to provide and the reason for the request for such information.
 - 4) A description of the plan's review procedures.
- c) Review Procedures:
- 1) Procedure After Notification of Denial of Claim. Within sixty (60) days after the date on which a claimant receives a written notice of a denied claim (or, if applicable, within sixty (60) days after the date on which such denial is considered

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ADMINISTRATION

to have occurred), such claimant (or his or her duly authorized representative) may:

- (a) File a written request with the Administrator for a review of the denied claim.
- (b) Submit written issues and comments to the Administrator, including all additional information requested by the Administrator.
- (c) Have reasonable access to all information related to the denied claim. If copies are requested, the copies shall be provided to the claimant at no cost.
- (d) Any review of the denied claim must consider all information presented in making the determination of the claim.

d) Appeal Procedures:

- 1) Within one hundred eighty (180) days after the date on which a claimant receives written notice of a denied claim, such claimant (or his or her duly authorized representative) may appeal the adverse determination. This appeal process encompasses the following:
 - (a) The appeal determination will be conducted by an appropriate fiduciary of the plan. The fiduciary cannot be a party previously involved with the first adverse determination.
 - (b) The fiduciary shall consult with a health care professional who has appropriate training and experience in the field that is the subject of the adverse determination. This health care profession cannot be a party previously involved with the first adverse determination.
 - (c) All medical experts whose advice was obtained will be identified to the claimant (or his or her representative), whether or not the advice was relied upon in making the adverse determination.
 - (d) Time Periods for Notification. Notification to the claimant of an adverse benefit determination on appeal shall be in writing and not later than thirty (30) days after receipt of the appeal.

e) Miscellaneous Information:

**ARTICLE 2
ADMINISTRATION**

- 1) Claimant's Failure to Follow Plan's Procedures. Claimants will be notified within five (5) days (24 hours if an urgent care claim is involved) of the filing of a claim of the failure and/or the proper procedures to be followed in filing the initial claim.
- 2) Civil Action. Two (2) appeals of an adverse benefit determination need be filed prior to the claimant bringing a civil action.

2.10 CLAIMS REVIEW PROCEDURE

Any Participant, former Participant, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.9 shall be entitled to request the Administrator to give further consideration to his claim by filing with the Administrator (on a form which may be obtained from the Administrator) a request for a review of the determination. Such request, together with a written statement of the reasons why the claimant believes their claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.9. The Administrator shall make a final decision as to the allowance of the claim within sixty (60) days of receipt of the appeal [unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period]. Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

2.10 FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The "Fiduciaries" of this Plan are: (i) the Administrator, (ii) the Trustees, (iii) the Employer, (iv) Custodian and (v) any Investment Manager appointed hereunder. The Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under this Plan and in the Trust.

Each Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of this Plan, authorizing or providing for such direction, information or action. Furthermore, each as being proper under this Plan, and is not required under this Plan to inquire into the propriety of any such direction, information or action. It is intended under this Plan that each Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under this Plan. A Fiduciary does not guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

ARTICLE 3
ELIGIBILITY AND PARTICIPATION

3.1 CONDITIONS OF ELIGIBILITY

An Employee who is a member of the Covered Group and has completed the service Eligibility Requirements set forth in the Adoption Agreement shall become a Participant in this Plan. The Employer shall give each Participant written notice of his or her Eligibility to participate in the Plan which notice may be in the form of a copy of the Summary Plan Description.

3.2 PARTICIPATION

Employees who meet the eligibility requirements in the Adoption Agreement on the Effective Date of the Plan shall become Participants as of such date. If so elected in the Adoption Agreement, all Employees employed on the Effective Date of the Plan and having completed eligibility requirements shall participate as of the Effective Date. Other Employees shall become a Participants on the Entry Date coinciding with or immediately following the date on which they meet the eligibility requirements specified in the Adoption Agreement provided that they are still employed on such Entry Date. A former Participant who returns to the employer of the Employer shall again become a Participant as of the next Entry Date.

3.3 CHANGE IN CLASSIFICATION OF EMPLOYMENT

In the event an Employee who is not a member of the Covered Group subsequently becomes a member of the Covered Group, such Employee shall participate immediately if he or she has satisfied the Eligibility requirements and would have previously become a Participant had he or she been a member of the Covered Group. In the event a Participant becomes ineligible to participate because he or she is no longer a member of the Covered Group, such Employee may participate immediately upon his or her return to an eligible class of Employees.

3.4 LEASED EMPLOYEES

Any Leased Employee shall be treated as an Employee of the recipient Employer for purposes of discrimination testing to the extent required by law. Leased Employees shall be eligible to participate in the Plan only if so elected in the Adoption Agreement. For purposes of testing for discrimination in favor of Highly-Compensated Employees, contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer.

3.5 ENROLLMENT FORM

Each Eligible Employee shall automatically be a Participant in this Plan as of the Participant's Entry Date; however, in order to receive benefits hereunder, an Eligible Employee shall enroll on a form provided by the Employer and agree to the terms of this Plan. The enrollment form shall be filed before the Participant's Entry Date, shall be effective upon filing.

ARTICLE 3
ELIGIBILITY AND PARTICIPATION

Participant may decline benefits by so indicating on the enrollment form or by failure to return the enrollment form to the Employer prior to the Entry Date. If the Participant declines benefits, such Participant shall be given the opportunity to elect benefits on the next Entry Date.

An Eligible Employee whose eligibility to participate hereunder is provided for under a Collective Bargaining Agreement shall participate in the Plan as provided for in the Adoption Agreement. Upon ratification by the collective bargaining unit, the adoption of the Plan by the members of such unit shall be presumed to be voluntary with respect to Eligible Employee, and no additional action or application shall be required in order to participate hereunder.

Upon the acceptance of any benefits under this Plan, a Participant shall automatically be bound by the terms and conditions of this Plan and all amendments hereto.

3.6 ENTRY DATE

An Eligible Employee shall become a Participant as of the Entry Date set forth in the Adoption Agreement. A Dependent shall participate as of the related Employee's Entry Date.

3.7 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee to participate in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made in accordance with this Plan, Adoption Agreement and the Collective Bargaining Agreement, if applicable.

3.8 OMISSION OF A PARTICIPANT

If, in any Plan Year, any person who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer has been made, the Employer shall make a subsequent contribution with respect to the omitted Participant in the amount which the Employer would have contributed with respect to the omitted Participant had they not been omitted, plus interest computed at the then current money market rate to the date of such subsequent contribution. Such contribution shall be made regardless of whether it is deductible in whole or in part in any taxable year, under applicable provisions of the Internal Revenue Code by such Employer.

ARTICLE 4
CONTRIBUTIONS

4.1 CONTRIBUTIONS BY EMPLOYER

If so elected in the Adoption Agreement, the Employer shall make periodic contributions to the Trust from time to time in cash or property acceptable to the Trustee in accordance with the formula or formulas selected in the Adoption Agreement.

Participant Contributions. As of each Allocation Date, the Employer shall make a contribution to the Plan equal to the amount elected in the Adoption Agreement. If no amount has been elected in the Adoption Agreement, the Employer may make a contribution to the Plan in the amount it determines to be appropriate in its sole discretion.

Accrued Leave Contributions. If so elected in the Adoption Agreement, the Employer shall contribute as of the date elected in the Adoption Agreement an amount calculated pursuant to the formula designated in the Adoption Agreement.

Eligible Participants. Only those Participants who meet the requirements set forth in the Adoption Agreement shall receive Employer Contributions as of a Contribution Date.

Mistake of Fact. In the event a contribution is made due to a mistake of fact, such contribution shall be returned to the Employer within a reasonable period of time but no later than one year after the payment of the contribution.

Responsibility for Contributions. The Employer shall have sole responsibility to determine the amount of Employer Contributions to the Plan. Neither the Trustee nor the Administrator shall be required to determine if the Employer has made a contribution or if the amount contributed is in accordance with the Adoption Agreement or with any law.

**ARTICLE 5
PARTICIPANT ACCOUNTS**

5.1 EMPLOYER CONTRIBUTION

- a) If the Employer has elected Participant Contributions in the Adoption Agreement, the Custodian shall keep an account for each Participant for whom the Employer makes a Contribution. The Employer Contribution shall consist of all amounts contributed pursuant to Section 4.1 hereof (except for the amount of Accrued Leave Contributions), and any adjustments to such account provided in Section (b).
- b) A Participant will become eligible for amounts accumulated in their accounts according to the provisions elected by the Employer in the Adoption Agreement.

5.2 ADJUSTMENTS TO PARTICIPANT ACCOUNT

The Administrator shall make the following adjustments to the Participant's Account:

- a) Add the Participant's share of the Contributions, and forfeitures as determined in the Adoption Agreement and pursuant to this Article since the last Valuation Date;
- b) Deduct premiums, as identified in the Adoption Agreement paid from the Participants Account with respect to any eligible policies with respect to the Participant;
- c) Deduct any withdrawals or payments made on behalf of the Participant, his or her Dependents and Beneficiaries related to eligible out-of-pocket medical expenses as identified in the Adoption Agreement, and
- d) Deduct the Participant's proportionate share of any expenses of the Plan that are not paid by the Employer, as stated in the Adoption Agreement.

5.3 INVESTMENT OF ACCOUNTS

Investment options made available for Participants to choose from shall be under the full control of the Trustees.

5.4 EXPENSES AND FEES

The Employer shall also be authorized to reimburse the Fund for all expenses and fees incurred in the administration of the Plan or Trust and paid out of the assets of the Trust Fund. Such expenses shall include, but shall not be limited to, fees for professional services, insurance policies, legal counsel, fiduciary insurance, printing and postage. Brokerage commissions may not be reimbursed. Apportionment of administration fees between the Employer and the Participants shall be determined in accordance with the Employer's election in the Adoption Agreement.

ARTICLE 5
PARTICIPANT ACCOUNTS

5.5 PARTICIPANT STATEMENTS

The Custodian shall prepare a statement for each Participant showing the additions to and subtractions from his or her account since the last such statement and the fair market value of his or her account as of the date of the statement.

**ARTICLE 6
EARNED BENEFITS**

6.1 PARTICIPANT ACCOUNT

A Participant shall acquire an Earned interest in his or her Account in accordance with the Earned Benefit and Forfeiture schedule selected by the Employer in Section 7 of the Adoption Agreement. A Participant or Beneficiary shall be entitled to use the Earned Account on the terms and under the conditions described in this Plan and in the Adoption Agreement.

6.2 COMPUTATION PERIOD

The computation period for determining Years of Service and Breaks in Service in computing the Earned Participant's Account will be the Plan Year. In the event a former Participant with no Earned Account re-qualifies for participation in the Plan after incurring a Break in Service, such Participant shall be credited with all pre-break and post-break Service in computing his or her Earned benefit.

6.3 RESUMPTION OF PARTICIPATION

For a Participant who resumes participation in the Plan following a termination of employment all Service of the Participant, both prior to and following the termination of employment, shall be counted when computing the Participant's Eligibility to participate.

6.4 CALCULATING EARNED BENEFIT

The Participant's Account shall be considered Earned as set forth in the Adoption Agreement.

6.5 FORFEITURES

Any unearned balance in a Participant Account who has separated from Service shall be forfeited and applied as provided in the Adoption Agreement. If not otherwise specified in the Adoption Agreement, such forfeitures will be allocated to Participants in the same manner as the Employer's contribution. If not otherwise specified in the Adoption Agreement, forfeitures shall be applied as of the end of the Plan Year during which the former Participant incurs a Break in Service.

6.6 AMENDMENT OF EARNED BENEFIT SCHEDULE

If the Earned benefit schedule of the Plan is amended, or the Plan is amended in any way that directly or indirectly affects any Participant's Earned benefits, or if the Plan is deemed amended by an automatic change to or from another Earned benefit schedule, each Participant with at least five (5) Years of Service with the Employer may elect, within a reasonable period after the adoption of the amendment or change, to have his or her Earned benefits computed under the Plan without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the later of sixty (60) days after:

ARTICLE 6
EARNED BENEFITS

- a) The amendment is adopted; domicile of the Adopting Employer or
- b) The Amendment becomes effective; or
- c) The Participant receives written notice of the amendment from the Employer or the Trustee.

ARTICLE 7
MEDICAL BENEFITS

7.1 INSURANCE COVERAGES

- a) If elected in the Adoption Agreement, a Participant with an Earned Account, upon retirement or Severance of Employment, may receive reimbursement for qualified health plan or health insurance Policy approved by the Administrator. The Administrator may approve for reimbursement from among the various coverages available, including the Employer's health plan and any of the following types of insurance policies:
- (i) Medicare Part B coverage (or other Medicare premiums);
 - (ii) Medicare-supplement ("Medigap") insurance;
 - (iii) COBRA continuation coverage;
 - (iv) Other health insurance approved by the Administrator, including any post-retirement medical plan sponsored by the Sponsoring Entity;
 - (v) Dental coverage;
 - (vi) Vision care coverage;
 - (vii) Prescription drug coverage;
 - (viii) Qualified long-term care insurance; and
 - (ix) Reimbursement of out-of-pocket medical expenses such as deductibles, co-pays, prescription drugs, eyeglasses, dental work, hearing aids, etc. including all Section 213(d) Eligible Medical Expenses

Premiums to purchase the medical benefits coverage provided for in this Section shall be paid from the Earned portion of the Participant's Account.

7.2 MEDICAL REIMBURSEMENT BENEFIT

- a) If so elected in the Adoption Agreement, the Plan will provide a Medical Reimbursement Benefit. Such benefit will pay or reimburse the Participant for Medical Expenses that are not eligible for payment under a health plan of the Employer, or other plan or policy providing health coverage, including Medicare.
- b) Payment of benefits under this Section shall be made from the Earned portion of the Participant's Account.

**ARTICLE 7
MEDICAL BENEFITS**

7.3 REQUIREMENTS

- a) In General. The benefits provided under Section 7.2 constitute a self-insured medical reimbursement benefit under Code section 105(h). In accordance with Code section 105(a), amounts received by in Employee pursuant to Section 7.2 hereof that are attributable to Employer contributions are not included in the Employee's gross income if such amounts are paid directly or indirectly to the Employee to reimburse for expenses incurred by the Employee and his or her Dependents for Medical Expenses so long as the Plan is nondiscriminatory under Code Section 105(h).

- b) Nondiscrimination Requirements. The Plan may not discriminate in favor of Highly Compensated Individuals as to eligibility to participate nor as to benefits provided under a self-insured medical reimbursement plan. For purposes of this Section, the requirements of Code sections 105(b) and 105(h) and the Regulations thereunder are incorporated by reference.

7.4 CLAIMS FOR BENEFITS

In order to obtain payment or reimbursement of medical benefits provided, a Participant or Dependent shall file a claim for benefits on a form and/or in such manner as provided by the Administrator. The Administrator may require such proper proof of claim and such evidence of the right of any person to receive a medical benefit payable as a result of incurring medical treatment of a Participant or Dependent as the Administrator may deem desirable.

The Plan Administrator shall pay only those medical expenses that are submitted on acceptable claim forms with appropriate evidence of claim.

The Plan Administrator's determination of Medical Expenses and the right of a person to receive payment shall be conclusive.

7.5 PAYMENT OF MEDICAL BENEFITS.

Medical benefits hereunder shall be paid upon the Administrator's receipt of claims for medical expenses from the Participant or their Dependent. The Administrator shall reimburse a Participant's claim for Medical Expenses. Participants will be required to adequately substantiate claims in accordance with procedures established by the Plan Administrator. The Administrator shall not be required to verify Medical Expenses submitted by the Participant but may rely upon an explanation of benefits from the administrator of the Employer's health plan or from the insurance company issuing a health insurance Policy.

7.6 LIMITATION OF BENEFITS

Medical Benefits payable under this Article are subject to the following limitations:

ARTICLE 7
MEDICAL BENEFITS

- a) No benefit payable to any Participant or Beneficiary shall exceed the Participant's Account Balance. In no event shall the Administrator pay amounts in excess of the Participant's Account Balance. In the event there are insufficient Trust assets to pay in full any benefit for which the Participant is otherwise eligible, neither the Administrator nor the Employer shall bear any liability to any Participant or Beneficiary on account of such insufficiency.
- b) The benefits provided under this Article are for the purpose of paying or reimbursing Medical Expenses not covered under Medicare, an Employer-provided health insurance Policy, or under any other plan of health insurance. No benefit shall be payable in connection with this Plan for which payment has been received or which may be eligible for payment or reimbursement from any other public or private benefit plan. Medical benefits payable hereunder are secondary to all medical and health coverages under which the Participant is covered.
- c) Except as required to avoid duplicate payments under this Section, the Administrator shall not be required to coordinate benefits paid with any other medical benefit program.

7.7 TERMINATION OF COVERAGE

- a) Subject to any continuation coverage requirements imposed under applicable federal or state laws, the right of a Participant to receive a benefit from this Plan shall terminate upon the earliest of:
 - (1) The depletion of the Participant's Account Balance;
 - (2) The death of the Participant;
- b) Subject to the terms of the Adoption Agreement, in the event that amounts remain in the Participant's Account after the death of the Participant, the said amount shall be available to provide the Participant's Dependents with payment or reimbursement of Medical Expenses. In the event that no Dependent survives a Participant (or after the demise of all surviving Dependents prior to exhaustion of the Participant's Account Balance), such remaining amount shall be forfeited and to offset future administrative expenses of the Plan or be allocated to the participant accounts in the Plan on a pro rata basis.

ARTICLE 8
PAYMENT OF BENEFITS

8.1 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, his legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Administrator and the Employer, either of whom may require such Participant, legal representative, Beneficiary, Guardian or committee, as a condition precedent to such payment, to execute a waiver and release thereof in such form as shall be determined by the Administrator.

8.2 PAYMENT FOR MINOR BENEFICIARY

In the event a payment is to be made to a minor, then the Administrator may, in the Administrator's sole discretion, direct that such payment be paid to the legal guardian, or, if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his or her residence, or to a custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Any such payment shall fully discharge the Trustee, the Employer, and the Plan from further liability on account thereof.

8.3 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of an amount payable to a Participant or his or her Beneficiary hereunder shall, at the expiration of five (5) years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his or her Beneficiary, the amount so distributable shall remain in the Trust to be used as part of the general Trust Fund.

ARTICLE 9
AMENDMENT, TERMINATION, AND MERGERS

9.1 AMENDMENT OF PLAN

Subject to the terms of a governing Collective Bargaining Agreement, if applicable, the Employer shall have the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of the Plan or of the Adoption Agreement. However, no such amendment shall authorize or permit any part of the corpus or income of the Trust (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to, or inure privately to individuals or for purposes other than the benefit of Participants, Dependents or Beneficiaries as provided herein, or to revert to or become the property of the Employer; and no such amendment which affects the rights, duties or responsibilities of the Administrator may be made without the Administrator's written consent.

9.2 TERMINATION OF SPONSORSHIP BY BMI

BMI shall have the right at any time to terminate its sponsorship/administration of the Plan by delivering to the Employer and to the Trustees, 90 days before the effective date of the termination, written notice of such termination. Upon such termination of sponsorship, the Employer may either terminate its adoption of the Plan or may amend the Plan to eliminate BMI as the entity administering claims under the Plan and related documents.

9.3 TERMINATION OF ADOPTION BY EMPLOYER

Subject to the terms of a governing Collective Bargaining Agreement, if applicable, the Employer shall have the right at any time to terminate the Plan by delivering to the Administrator and to BMI written notice of termination. If the Plan is terminated or if there is a complete discontinuance of contributions, all amounts credited to the Accounts of Participants shall become non-forfeitable. In the event of termination, the Administrator may direct either:

- a) Complete distribution of the assets in the Trust Fund to the Participants or their Beneficiaries as soon as the Administrator deems it to be in the best interests of the Participants or their Beneficiaries, except, however, such distribution shall only be made: (i) pursuant to the terms of Collective Bargaining Agreement, or (ii) on the basis of objective and reasonable standards which do not result in unequal payments to similarly situated Participants or their Beneficiaries or in disproportionate payments to officers or Highly-Compensated Employees of the Employer; or
- b) That any assets remaining in the Plan, after the satisfaction of all liabilities to existing Participants or their Beneficiaries, be applied to provide such Participants or their Beneficiaries with the benefits set forth in the Plan, provided, however, that such benefits shall not be provided in disproportionate amounts to officers or Highly-Compensated Employees of the Employer.

Upon termination of the Plan, the Employer shall not receive, either directly or indirectly, a refund or other amounts or benefits, nor shall the Employer incur a residual liability beyond the

ARTICLE 9
AMENDMENT, TERMINATION, AND MERGERS

end of the current Plan Year (other than the provision of benefits to Participants and their Beneficiaries by the Plan).

9.4 MERGER, CONSOLIDATION, OR TRANSFER

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to or from another Plan on such terms and conditions as the Administrator, acting pursuant to the direction of the Employer, shall deem appropriate.

- a) In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to any other plan, each Participant in the Employer's Plan shall be entitled to receive benefits immediately after the merger, consolidation, or transfer which are equivalent to or greater than the benefits the Participant or his or her Beneficiaries would have received if the Plan had terminated immediately before the merger, consolidation or transfer.

- b) In the event that the Trustee is an institution, that corporation into which the Trustee or any successor trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee or any successor trustee may be a party, or any corporation to which all or substantially all the trust business of the Trustee or any successor trustee may be transferred, shall be the successor of such Trustee without the filing of any instrument or performance of any further act, before any court.

**ARTICLE 10
ADOPTING EMPLOYERS**

10.1 ADOPTION BY OTHER ENTITIES

With the consent of the Employer, an unrelated employer who is a party to a Collective Bargaining Agreement or an affiliate or subsidiary of the Employer which is a member of a controlled group of corporations [as defined in Code section 414(b)], a commonly controlled trade or business [as defined in Code section 414(c)] or an affiliated service group [as defined in Code section 414(m)] of which the Employer is a part, or any other entity required to be aggregated with the Employer pursuant to Regulations under Code section 414(o), may adopt this Plan and any or all of the provisions hereof.

10.2 REQUIREMENTS OF ADOPTING EMPLOYER

If the Plan is adopted pursuant to the terms of a Collective Bargaining Agreement, the Adopting Employer intends that this Plan comply with the requirements of section 419A(f)(5) of the Code in that it is a plan made available for adoption for groups employed by the Adopting Employer and eligible for adoption.

Each Adopting Employer shall be required to use the Trustee designated in the Trust Agreement.

The Administrator may, but shall not be required to, direct the Trustees to commingle, hold and invest as one Trust Fund all contributions made by Adopting Employers, as well as all increments thereof.

10.3 EMPLOYEE TRANSFERS

It is anticipated that an Employee may be transferred between Adopting Employers. In the event of any such transfer, the Employee involved shall carry with them or their accumulated service and eligibility. No such transfer shall create a Severance hereunder, and the Adopting Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as the Adopting Employer from which the Employee transferred.

10.4 CONTRIBUTIONS FOR ADOPTING EMPLOYER'S EMPLOYEES

All contributions made by an Adopting Employer for its Employees shall be determined separately with respect to the Participants employed by such Adopting Employer. Such contribution shall be paid to and held by the Trustee for the benefit of the Participants, their Dependents and Beneficiaries, subject to all the terms and conditions of this Plan. The Administrator shall keep separate records concerning the affairs of each Adopting Employer hereunder and as to the accounts and credits of the Participants. The Administrator may, but need not, direct the Trustee to register insurance company Policies so as to evidence that a particular Adopting Employer is the interested Adopting Employer hereunder, but in the event of a Participant's transfer from one Adopting Employer to another, the Adopting Employer shall immediately notify the Administrator thereof.

ARTICLE 10
ADOPTING EMPLOYERS

10.5 AMENDMENT BY ADOPTING EMPLOYER

Subject to the terms of a governing Collective Bargaining Agreement, if applicable, the Adopting Employer shall have the right at any time to amend, in whole or in part, its adoption of the Adoption Agreement by executing a new Adoption Agreement. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to inure to private individuals or for purposes other than for the benefit of Participants, Dependents or Beneficiaries as provided herein, or to revert to or become the property of the Adopting Employer.

10.6 DISCONTINUANCE OF PARTICIPATION BY ADOPTING EMPLOYER

Subject to the terms of a governing Collective Bargaining Agreement, if applicable, the Adopting Employer shall have the right at any time to discontinue its participation in the Plan by delivering to the Administrator written notice of such discontinuance. Upon such discontinuance of participation:

- a) All amounts in the Participants' Accounts shall be fully vested and nonforfeitable.
- b) The Adopting Employer, by written notice to the Administrator, may direct that:
 - 1) The Trustee retain such assets for the Participants of said Adopting Employer pursuant to the provisions of the Trust. Any Trustee fees or administration fees due shall be paid from the assets of the Trust Fund on a nondiscriminatory basis to the extent not paid by the Adopting Employer. In no such event shall any part of the corpus or income of the Trust as it relates to such Adopting Employer be used or diverted to, or inure to private individuals or for purposes other than the benefit of Participants, Dependents or Beneficiaries as provided herein, or to revert to or become the property of the Adopting Employer; or
 - 2) In the event that the Adopting Employer shall have established a separate plan for the benefit of its Employees, the Trustee shall transfer, deliver and assign Policies and other Trust Fund assets allocable to the Participants of such Adopting Employer to such new Trustee as shall have been designated by the Administrator.
- c) In the event that the Adopting Employer shall fail to notify the Administrator on a timely basis as to the disposition of the assets held on behalf of the Employees of the Adopting Employer, the Administrator shall operate as though the Adopting Employer had directed the Administrator to follow the foregoing paragraph (b)(1) or (b)(2).
- d) Any excess assets remaining in the Plan, after the satisfaction of all liabilities to current Participants or their Beneficiaries, shall be applied to provide such Participants or their Beneficiaries with the benefits set forth in the Plan, provided that such payment shall only be made: (i) pursuant to the terms of a Collective Bargaining Agreement, or (ii) on the

ARTICLE 10
ADOPTING EMPLOYERS

basis of objective and reasonable standards which do not result in unequal payments to similarly situated Participants or their Beneficiaries or in disproportionate payments to officers or Highly-Compensated Employees of the Adopting Employer;

- e) No Adopting Employer shall receive a refund, additional amounts or benefits, and no Adopting Employer shall incur a residual liability beyond the end of the current Plan Year (other than, in the case of the Plan, the provision of benefits to Participants and their Beneficiaries).

**ARTICLE 11
MISCELLANEOUS**

11.1 ALIENATION

- a) Except as provided in paragraph (c) below, no benefit which shall be payable under the Plan to any person (including a Participant or his Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Administrator, except to such extent as may be required by law.
- b) In the event a Participant's benefits are garnished or attached by order of any court, the Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of said action, any benefits that become payable shall be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of said action.
- c) This provision shall not apply to a "Qualified Medical Child Support Order". The Administrator shall establish a written procedure to validate the status of such orders and to administer payments thereunder.

11.2 PROHIBITION AGAINST DIVERSION OR INUREMENT

It shall be impossible by operation of the Plan or by termination thereof, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of assets of the Trust Fund maintained pursuant to the Plan or any funds contributed thereto, to be used for, or diverted to, or to inure (other than through the payment of benefits provided under the terms of the Plan) to the benefit of any private shareholder or individual.

11.3 ADDITIONAL REQUIREMENTS

The Plan is subject to the requirement of section 501 of the Code and shall be operated in accordance with the nondiscrimination requirement and limitations of that section and the Regulations thereunder.

11.4 APPROVAL BY INTERNAL REVENUE SERVICE

The Employer intends that this welfare benefit Plan and the Trust attached hereto meet the requirements of section 501(c)(9) of the Code as a qualified "Voluntary Employee Beneficiary Association."

**ARTICLE 11
MISCELLANEOUS**

- a) The Administrator, within a reasonable time after the initial adoption of the Plan and Trust, shall promptly cause an application to be filed by or on behalf of the Plan and Trust with the Internal Revenue Service requesting a determination letter that the Plan and Trust as adopted or amended by the Employer qualify as tax-exempt under section 501(c)(9) of the Code.
- b) Should the Commissioner of Internal Revenue or any delegate of the Commissioner at any time determine that the Plan and Trust fails to meet the requirements of the Code, the Employer will amend the Plan and Trust to maintain its qualified status.
- c) Notwithstanding anything herein to the contrary, if, pursuant to an application filed by or in behalf of the Trust, the Commissioner of Internal Revenue Service or his delegate should determine that the Trust does not initially qualify as a tax-exempt plan and trust under section 501(c)(9) of the Code, and such determination is not contested, or if contested, is finally upheld, then the Plan shall be void *ab initio* and the Trustee shall direct the Administrator to return all amounts contributed to the Plan by the Employer, less expenses paid, within one year and the Plan shall terminate, and the Administrator shall be discharged from all further obligations.

11.5 ADMINISTRATOR'S PROTECTIVE CLAUSE

Neither the Administrator nor its successor shall be responsible for the validity of any Policy issued hereunder or for the failure on the part of the insurer to make payments provided by any such Policy, or for the action of any person which may delay payment or render a Policy null and void or unenforceable in whole or in part.

11.6 GOVERNING LAW

This Plan shall be construed and enforced according to ERISA, if applicable, and the laws of the state of Michigan to the extent not pre-empted by ERISA, if applicable. The laws of such state shall govern the construction, validity and administration of the Plan, as embodied in the Plan and the Adoption Agreement.

11.7 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.8 PROVISIONS RELATING TO INSURANCE

Any Policies purchased under this Plan shall be held subject to the following rules:

**ARTICLE 11
MISCELLANEOUS**

- a) The Trustee shall be applicant and owner of any Policies issued.
- b) A Participant shall be entitled to designate a Beneficiary under the terms of any Policy issued under the Plan. Such designation shall remain in force until revoked by the Participant, by filing a new Beneficiary designation form with the Administrator.
- c) In the event a Participant is uninsurable or insurable at substandard rates, he or she may elect to receive a reduced amount of insurance, if available, or may waive the purchase of insurance.
- d) All dividends or other returns received on any Policy purchased shall be applied to reduce the next premium due on such policy, or if no further premium is due, such amount shall be credited to the Fund as part of the account of the Participants for whom the policy is held.
- e) Upon the retirement or Severance of Employment of a Participant, the Administrator shall offer the Participant the right to purchase any Policy on the life of such Participant for its cash surrender value. If the Participant shall exercise such right, the Participant's payment shall be credited to the Participant's Account Balance. If the Participant shall not exercise such right, the Administrator shall direct the Trustee to surrender the Participant's policy and credit the proceeds to his or her account for payment under the terms of the Plan.
- f) Any insurer who shall issue Policies hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Policy that it issues hereunder, or the rules of the insurer.

The Administrator shall be solely responsible to see that these insurance provisions are administered properly. If there is any conflict between the provisions of this Plan and any insurance Policies issued, the terms of this Plan will control.

11.9 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

11.10 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract of employment between the Employer and any Participant, or to be a consideration or an inducement for the employment of any

