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City of Glendale

**Retiree Health Savings Plan
BASIC PLAN AND TRUST DOCUMENT**

Original Effective Date: July 1, 2008

Amended and Restated: February 12, 2013

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ARTICLE I. INTRODUCTION

1.1 **Establishment.** The executed Adoption Agreement plus this Basic Plan and Trust Document constitute the "Plan" for an Adopting Employer. The Effective Date of the Plan is set forth in the Adoption Agreement.

1.2 **Purpose.** The purpose of the Plan is to provide certain Employees with an opportunity to receive reimbursement for certain Health Care Expenses as provided in this Plan. It is the intention of the Adopting Employer that the benefits payable under this Plan be eligible for exclusion from the gross income of Participants as provided by Sections 105(b) and 106 of the Code. In addition, it is the intention of the Adopting Employer that the Plan qualify as a Health Reimbursement Arrangement ("HRA") under IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).

The purposes of the Trust are (1) to provide a source of funds to pay benefits under the Plan, and (2) to permit Trust assets to be invested and such earnings be not taxable under Section 115 of the Code.

1.3 **HIPAA Privacy and Security Rules.** This Plan is a "covered entity" for purposes of the Privacy Rules and Security Rules as described in Article VIII.

1.4 **Not ERISA Plan.** This Plan is not an employee welfare benefit plan for purposes of ERISA.

ARTICLE II. DEFINITIONS

The following words and phrases are used in this Plan and shall have the meanings set forth in this Article unless a different meaning is clearly required by the context or is defined within an Article.

- 2.1 **Adopting Employer** means the entity that adopts this Plan by completing and executing an Adoption Agreement, which may include a joint powers agreement.
- 2.2 **Adoption Agreement** means the separate agreement completed, or portions thereof, and executed by an Adopting Employer setting forth the Adopting Employer's selection of options under the Plan.
- 2.3 **Authorized Representative** means, for the claims and appeal procedures, the person entitled to act on behalf of the claimant with respect to a benefit claim or appeal. In order for the Plan to recognize a person as an Authorized Representative, written notification to that effect signed by the claimant and notarized must be received by the Plan. An assignment for purposes of payment is *not* designation of an "Authorized Representative."
- 2.4 **Basic Plan and Trust Document** means this document, which together with an executed Adoption Agreement constitutes the Plan for an Adopting Employer.
- 2.5 **Claims Administrator** means, unless specifically noted otherwise in the Adoption Agreement, EBC, LLC. If for any reason there is no entity so identified or the contractual relationship ends, the Adopting Employer shall act as the Claims Administrator.
- 2.6 **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- 2.7 **Covered Individual** means a Participant, the legal Dependent of a Participant and the Spouse of a Participant, and any other person appropriately covered under the Plan.
- 2.8 **Dependent** means, unless specifically noted in the Adoption Agreement, a person who is a dependent for purposes of Section 105(b) and Section 152 of the Code determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof.
- 2.9 **Employee** means any person employed by the Adopting Employer on or after the Effective Date, except that it shall not include a self-employed individual as described in Section 401(c) of the Code. All employees who are treated as employed by a single employer under Subsections (b), (c) or (m) of Section 414 of the Code are treated as employed by a single employer for purposes of this Plan.

Employee does not include the following:

- (a) Any employee included within a unit of employees covered by a collective bargaining unit unless such agreement expressly provides, whether specifically or generally, for coverage of the employee under this Plan;
- (b) Any employee who is a nonresident alien and receives no earned income from the Adopting Employer from sources within the United States; and
- (c) Any employee who is a leased employee as defined in Section 414(n)(2) of the Code.

- 2.10 **EBC, Inc.** means Educators Benefit Consultants, LLC
- 2.11 **ERISA** means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time. Plans sponsored by public sector entities are not subject to ERISA.
- 2.12 **Employer Contribution** means a non-elective contribution made by the Adopting Employer on behalf of each Participant in the Plan. The Employer Contribution is an amount that has not been actually or constructively received by the Participant, and it is made available to the Participant exclusively for reimbursement under the Plan.
- 2.13 **Entry Date** means the date as of which an Employee becomes a Participant in this Plan as set forth in the Adoption Agreement.
- 2.14 **ePHI** means PHI maintained or transmitted in electronic media, including, but not limited to, electronic storage media (i.e., hard drives, digital memory medium) and transmission media used to exchange information in electronic storage (i.e., internet, extranet, and other networks). PHI transmitted via facsimile and telephone is not considered to be transmissions via electronic media.
- 2.15 **HC Account** means "health care account" and is the record keeping account established by the Plan for each Participant.
- 2.16 **Health Care Expense** means, unless otherwise specifically noted in the Adoption Agreement, an expense incurred by a Covered Individual for medical care to the maximum extent permitted by law, but only to the extent that the Covered Individual incurring the expense is not reimbursed for the expense through another source, including other insurance or other accident or health plan. Notwithstanding the foregoing, if the Adopting Employer sponsors a cafeteria plan, Health Care Expense shall not include premiums that may be paid on a pre-tax basis in accordance with the terms of such cafeteria plan, which may include premiums for major medical coverage provided by the Employer and premiums for coverage under an insurance contract, health maintenance organization agreement, or other benefit agreement providing coverage issued on a non-group, individual basis.
- A Health Care Expense shall include medical care as defined in Section 213(d) of the Code as modified to the extent required by law. To the extent Health Care Expense is defined in the Adoption Agreement to include premiums for qualified long-term care insurance, the amount of such premium that will qualify as a Health Care Expense shall be limited to the portion that constitutes "eligible long-term care premiums" as defined in Section 213(d)(10) of the Code.
- A Health Care Expense is incurred at the time the medical care or service which gave rise to the expense is furnished.
- 2.17 **HIPAA** means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- 2.18 **Health Reimbursement Arrangement ("HRA")** means an employer funded medical reimbursement program within the meaning of IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002). The City of Glendale's Retirement Health Savings Plan is an HRA by definition.
- 2.19 **Highly Compensated Individual** means an individual who is (1) one of the five (5) highest paid officers, (2) a shareholder who owns more than 10 percent in value of the stock of the

employer, or (3) among the highest paid twenty-five percent (25%) of all Employees, except (1) Employees who have not completed 3 years of service, (2) Employees who have not attained age twenty-five (25), (3) part-time or seasonal Employees, (4) Employees not included in the plan who are included under a collective bargaining agreement, and (5) Employees who are nonresident aliens and who receive no earned income from a source within the United States.

2.20 **Managing Body** means the person or persons with authority to make decisions for the Adopting Employer.

2.21 **Participant** means an Employee who has become and not ceased to be a Participant pursuant to Article IV. In addition, Participant includes persons "deemed" to be Participants under specific provision of this Plan.

2.22 **PHI** means health information that:

- (a) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse;
- (b) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- (c) either identifies the individual or reasonably could be used to identify the individual.

PHI includes ePHI.

2.23 **Plan** means the Adopting Employer's plan as may be amended from time to time. It consists of a completed Adoption Agreement plus the Basic Plan and Trust Document. The name of the Plan is set forth in the Adoption Agreement.

2.24 **Plan Administrator** means the entity, person or persons responsible for the Plan's administration as determined under Section 7.1.

2.25 **Plan Year** means the twelve (12) month period beginning and ending as indicated in the Adoption Agreement. The initial Plan Year may be a "short" Plan Year beginning and ending as indicated in the Adoption Agreement. The records of the Plan will be kept based upon the Plan Year.

2.26 **Privacy Rules** means the *Standards and Privacy of Individually Identifiable Health Information* at 45 C.F.R. part 160 and part 164 at subparts A and E.

2.27 **Security Incident** means "security incident" as defined in 45 C.F.R. Section 164.304, which generally defines "security incident" to include attempted or successful unauthorized access, use, disclosure, modification, or destruction of ePHI.

2.28 **Security Rules** means the *Security Standards and Implementation Specifications* at 45 CFR Part 160 and Part 164, subpart C.

2.29 **Sponsor** means the Adopting Employer.

2.30 **Spouse** means, unless specifically noted in the Adoption Agreement, an individual who is legally married to a Participant (and who is treated as a spouse under the Code).

- 2.31 **Trust** means a trust described under Section 115 of the Code for the purpose of accepting and holding Employer Contributions, and limited to other contributions made under the Plan.
- 2.32 **Trustee** means the individual and/or entity identified in the Adoption Agreement.
- 2.33 **Trust Custodian** means the entity designated by Trustee to custody funds as outlined in the custodial agreement.

**ARTICLE III.
ADOPTING EMPLOYER**

- 3.1 **Adoption of Plan.** An eligible employer may adopt the Plan by resolution duly adopted by its Managing Body, as represented and warranted in the Adoption Agreement, and upon execution of an Adoption Agreement.
- 3.2 **Cessation of Employer Participation.** An Adopting Employer may cease to be an Adopting Employer in accordance with Article IX.
- 3.3 **Recordkeeping and Reporting.** An Adopting Employer shall furnish, or arrange for the furnishing, to the Claims Administrator the information with respect to each Covered Individual necessary to enable the Claims Administrator to maintain records sufficient to determine the benefits due to or which may become due and to prepare and provide any reports required by law.

**ARTICLE IV.
ELIGIBILITY AND PARTICIPATION OF EMPLOYEES**

- 4.1 **Eligibility Requirements.** Each Employee shall be eligible to participate in this Plan upon meeting the eligibility requirements set forth in the Adoption Agreement.
- 4.2 **Participant Status.** An Employee who has met the eligibility requirements described in Section 4.1 shall be a Participant as of the Employee's Entry Date.
- 4.3 **Conditions of Participation.** As a condition of participation and receipt of benefits under this Plan, the Participant agrees to:
- (a) Observe all Plan rules and regulations;
 - (b) Consent to inquiries by the Claims Administrator and Plan Administrator with respect to any provider of services involved in a claim under this Plan;
 - (c) Submit to the Plan Administrator all reports, bills, and other information required by the Plan or which the Claims Administrator and Plan Administrator may reasonably require; and
 - (d) Cooperate with all reasonable requests of the Claims Administrator and Plan Administrator that may be necessary for the proper administration of the Plan.

Failure to do so relieves the Plan, Plan Administrator, Claims Administrator and Sponsor of any obligations under this Plan with respect to that Participant and any others claiming entitlement to benefits under this Plan through that Participant.

- 4.4 **Termination of Contributions.** A Participant shall cease to be eligible to receive contributions under this Plan at midnight of the following dates:
- (a) The date of the death of the Participant;
 - (b) The date of termination of the Participant's employment with the Adopting Employer (does not include termination payments that were agreed upon while actively employed);
 - (c) The date of the Participant's failure to meet the eligibility requirements of Section 4.1, as may be amended from time to time in accordance with Article X; or
 - (d) The date of termination of the Plan in accordance with Article X.

Termination of contributions under this Plan shall not prevent a Participant from receiving continuation coverage required by applicable law.

4.5 **Termination of Participation.** A Participant automatically ceases to be a Participant (i.e., access to the HC Account terminates) at midnight of the earliest of the following dates:

- (a) The date of the death of the Participant;
- (b) The date the balance of the Participant's HC Account reaches zero, if no further contributions will be made to said account under Article X;
- (c) The date of the termination of the Participant's employment with the Adopting Employer;
or
- (d) The date of termination of the Plan in accordance with Article X.

Termination of participation in this Plan shall not prevent a former Participant from receiving continuation coverage required by applicable law.

4.6 **Deemed Participants.** For certain purposes, persons that were not Employees are deemed to be Participants as required by law.

**ARTICLE V.
BENEFITS UNDER THE PLAN**

- 5.1 **Health Care ("HC") Account.** The HC Account will be credited with the Employer Contribution. A Participant's HC Account will be decreased from time to time in the amount of payments made to the Participant for Health Care Expenses.
- 5.2 **Claims for Reimbursement.** Claims for reimbursement under this Plan shall be made by completing a claim form and submitting such form to the Claims Administrator of this Plan. The claim form shall be accompanied by a third party receipt or invoice substantiated the incurred expense. The Claims Administrator is entitled to rely on the information provided on the claim form in processing claims under this Plan. Unless otherwise specifically noted in the Adoption Agreement, a claim must be submitted for payment within 365 days from the date it is incurred. Where circumstances beyond the Participant's control prevent submission within the described time frame, notice of a claim with an explanation of the circumstances may be accepted by the Claims Administrator as a timely filing. Claims shall be determined in accordance with Article VII.
- 5.3 **Incurred Expenses.** To be reimbursable, the Participant must have incurred a Health Care Expense after his/her Entry Date. An expense is "incurred" when the Participant is provided with the care giving rise to the Health Care Expense, not when the service is billed or paid. Reimbursement shall not be made for future projected expenses.
- 5.4 **Timing of Reimbursement.** Unless specifically provided otherwise in the Adoption Agreement, a Participant shall be reimbursed at least (a) once per month, or (b) when the total reimbursement for Health Care Expenses first equals or exceeds \$50.00.
- 5.5 **Maximum Reimbursement.** Unless specifically provided otherwise in the Adoption Agreement, the maximum reimbursement a Participant may receive at any time shall be the amount of the Participant's HC Account balance at the time the reimbursement request is processed. Except as limited by the preceding sentence, there is no maximum reimbursement amount a Participant may receive during a Plan Year. The maximum reimbursement requirements apply to the Participant, Spouse, and Dependents on an aggregate basis, not an individual basis. If a Participant's claim is for an amount that is more than the Participant's current HC Account balance, the excess, unreimbursed part of the claim will be carried into the subsequent month(s), to be paid as the balance of the Participant's HC Account becomes adequate. Notwithstanding the foregoing, the excess, unreimbursed portion of a claim will not be carried over into the subsequent month(s) if: (a) the claim has been pending at least eighteen (18) months; or (b) no further contributions will be made to the Participant's HC Account under Article VI.
- 5.6 **Participant's Death.** In the event a Participant dies having incurred a Health Care Expense which would have been reimbursable out of the Participant's HC Account had the Participant not died and a person or the Participant's estate has paid for or assumed liability for the expense, reimbursement may be made to that person or the estate for that payment or assumption. Participant's Spouse and/or legal Dependent shall have continued access to account for eligible health care expenses as Participants in the Plan until such time as the account balance is \$0.00 (zero).

5.7 **Nondiscrimination.** This Plan is intended to be nondiscriminatory and to meet the requirements under applicable sections of the Code. If the Plan Administrator determines before or during any Plan Year, that the Plan may fail to satisfy any nondiscrimination requirement imposed by the Code or any limitation on benefits provided to Highly Compensated Individuals, the Plan Administrator shall take such action as the Plan Administrator deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirements or limitation. Such action may include recharacterizing the HC Account or HC Accounts as "restricted" to insurance premium reimbursement.

5.8 **HC Account Forfeitures.** Unless specifically provided otherwise in the Adoption Agreement, any amount remaining in a Participant's HC Account shall be forfeited following the later to occur of:

- (a) The termination of Participant's participation in the Plan due to death, leaving behind no eligible beneficiaries,
- (b) The termination of any continuation coverage provided by the Plan under applicable law, or
- (c) The termination of any coverage provided by the Plan in lieu of continuation coverage required by applicable law.
- (d) Separation from service of Employer prior to attainment of benefit eligibility or vesting criteria.

The Plan Administrator may use such forfeited amounts to defray the reasonable administrative costs of the Plan or for any other purpose permitted by law. Any amounts remaining after payment of fees will be divided among all existing participants on a per capita basis. However, under no circumstances will the amounts revert to the Adopting Employer.

5.9 **Medical Support Orders.** Notwithstanding any provision of this Plan to the contrary this Plan shall recognize medical child support orders as required under applicable state law. Participants involved in a divorce or child custody matter should be directed to have their legal counsel contact the Claims Administrator.

5.10 **Coordination with Cafeteria Plan.** To the extent the Adopting Employer also sponsors a cafeteria plan within the meaning of Section 125 of the Code, and a Covered Individual incurs expenses eligible for reimbursement under both programs, unless specifically provided otherwise in the Adoption Agreement, the cafeteria plan will pay first. However, the choice cannot be left to the Participant.

5.11 **Further Limitations on Benefits.**

- (a) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are payable under any worker's compensation law or other employer, union, association or governmental sponsored group insurance plan;
- (b) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are received by the Participant, the Participant's Spouse or the Participant's Dependent under any health and accident insurance policy or program, whether or not premiums are paid by the Adopting Employer or by the Participant, the Participant's Spouse or the Participant's Dependent child.

- (c) Amounts reimbursed under a dependent care assistance program described in Section 129 of the Code shall not be reimbursed under this Plan.
- (d) Other limitations, if any, as set forth in the Adoption Agreement.

ARTICLE VI. CONTRIBUTIONS

- 6.1 **Employer Contributions.** The Adopting Employer shall make a fixed contribution per Participant as set forth in the Adoption Agreement. The amount of the Employer Contribution, and any restrictions on the use thereof, shall be identified in the Adoption Agreement and communicated to the Participants. The amount of the Employer Contribution may change from year to year as announced by the Adopting Employer prior to the Plan Year start and reflected in the Adoption Agreement. Unless specifically provided otherwise in the Adoption Agreement, the Employer Contribution shall be available for reimbursement as soon as received by the Trustee and placed in the Trust.
- 6.2 **No Employee Contributions.** Except for contributions required for continuation coverage as described in Section 5.10, no contributions other than Employer Contributions are required nor will they be accepted.
- 6.3 **Trust.** All contributions shall be held in the Trust.

**ARTICLE VII.
CLAIMS DETERMINATIONS AND REVIEW OF DENIED CLAIM**

Unless otherwise specifically noted in the Adoption Agreement, the following procedures apply:

7.1 Initial Claim Determination.

- (a) **Time Frame for Decision.** The decision maker must determine the claim within thirty (30) days of receipt of the claim.
- (b) **Extension of Time.** If the decision maker is not able to determine the claim within this time period due to matters beyond its control, the decision maker may take an additional period of up to fifteen (15) days to determine the claim. If this additional time will be needed, the decision maker must notify the claimant or the claimant's Authorized Representative prior to the expiration of the initial thirty (30) day time period for determining the claim. This extension is only available once.
- (c) **Notification:** The notification of the need for the extension must include a description of the "matters beyond the Plan's control" that justify the extension and the date by which a decision is expected.
- (d) **Incomplete Claims.** There is no special rule if a claim is incomplete. Incomplete claims can be addressed through the extension of time described above. If the reason for the extension is the failure to provide necessary information and the claimant is appropriately notified, the decision maker's period of time to make a decision is "tolled."
- (e) **Tolling: The period of time in which the decision maker must determine a claim is suspended from the date upon which notification of the missing necessary information is sent until the date upon which the claimant responds.**
- (f) **Notification: For this purpose, notification can be made orally to the claimant or the health care professional, unless the claimant requests written notice.**

The notification will include a time frame in which the necessary information must be provided. Once the necessary information has been provided, the decision maker must decide the claim within the extension described above. If the requested information is not provided within the time specified, the claim may be decided without that information.

7.2 **Decision.**

- (a) **Notification of Decision.** Written (or electronic) notification of the decision maker's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided only where the decision is adverse.

"Adverse" means:

- A denial, reduction, or termination of, or
- A failure to provide or make payment (in whole or in part) for a benefit.

- (b) **Adverse Decision.** For adverse claim determinations, the notification shall reflect at least the following:

- state the specific reason(s) for determination;
- reference specific Plan provision(s) upon which the determination is based;
- describe additional material or information necessary to complete the claim and why such information is necessary;
- describe Plan procedures and time limits for appeal of the determination, and the right to obtain information about those procedures and the right to sue in federal court; and
- disclose any internal rule, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request); and
- where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request.

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

- (c) **Not Adverse Decision.** For claim determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the claim has been accepted.

7.3 **Access to Relevant Documents.**

In order (1) to evaluate whether to request review of an adverse determination, and (2) if review is requested, to prepare for such review, the claimant or the claimant's Authorized Representative will have access to all relevant documents.

Relevant: A document, record or other information is "relevant" if it was relied upon in making the determination, or was submitted to the Plan, considered by the Plan, or generated in the course of making the benefit determination without regard to whether it was relied upon.

7.4 **Appeal a Denied Claim.**

If a claim is denied, in whole or part, the claimant or the claimant's Authorized Representative may request the denied claim be reviewed.

- (a) **Requesting Review.** The claimant or the claimant's Authorized Representative has a period of one hundred eighty (180) days to appeal the claim determination. The appeal request must be in writing and should be sent to the address specified in the notification of adverse decision described above.
- (b) **Submission & Consideration of Comments.** The claimant or the claimant's Authorized Representative will have the opportunity to submit documents, written comments, or other information in support of the appeal. The review of the adverse benefit determinations will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.
- (c) **Consultation with Independent Medical Expert.** In the case of a claim denied on the grounds of a medical judgment, a health professional with appropriate training and experience will be consulted. The health care professional who is consulted on appeal will not be the individual who was consulted, if any, during the initial determination or a subordinate of that individual.

Disclosure: If the advice of a medical or vocational expert was obtained by the Plan in connection with the claim denial, the names of each such expert shall be provided, regardless of whether the advice was relied upon.

- (d) **Time Frame for Decision.** If claimant or the claimant's Authorized Representative requests a review of a denied claim within the time frame described above, the decision maker shall review of claim and make a determination no later than sixty (60) days from the date the review request was received.
- (e) **Decision.** The review of the appeal will be conducted by the Plan Administrator. It will be made by a person different from the person who made the initial determination and such person will not be a subordinate of the original decision maker. The information in the administrative record shall be reviewed. Additional information submitted shall be considered. The decision shall be based upon that information plus the terms of the Plan and past interpretations of the same and similar Plan provisions. The decision maker may rely upon protocols, guidelines, or other criterion.
- (f) **Notification of Decision.** Written (or electronic) notification of the decision maker's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided whether the decision is adverse or not adverse.

"Adverse" means:

- A denial, reduction, or termination of, or
- A failure to provide or make payment (in whole or in part) for a benefit.

(g) **Adverse Decision.** For adverse appeal determinations, the notification shall reflect at least the following:

- state the specific reason(s) for determination;
- reference specific Plan provision(s) upon which the determination is based;
- describe Plan procedures and time limits for appeal of the determination, and the right to obtain information about those procedures and the right to sue in federal court;
- disclose any internal rules, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request);
- a statement indicating entitlement to receive upon request, and without charge, reasonable access to or copies of all documents, records or other information relevant to the determination; and
- where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request.

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

(h) **Not Adverse Decision.** For appeal determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the decision has been reversed, and the claim accepted.

ARTICLE VIII.
HIPAA PRIVACY AND SECURITY PROVISIONS

The Privacy Rules and Security Rules under HIPAA apply to this Plan. For purposes of this Section, "Plan Sponsor" refers to the Adopting Employer as the Plan Sponsor and as the entity capable of acting on behalf of the covered entity, the Plan.

8.1 **Use and Disclosure of PHI.** The Plan will use PHI to the extent of and in accordance with the uses and disclosures permitted by HIPAA. Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations. The Plan will also use and disclose PHI as permitted by authorization of the subject of PHI.

(a) **Payment** includes activities undertaken by the Plan to obtain premiums or determine or fulfill its responsibility for coverage and provision of Plan benefits that relate to an individual to whom health care is provided. These activities include, but are not limited to, the following:

- (1) Determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and co-payments as determined for an individual's claim);
- (2) Coordination of benefits;
- (3) Adjudication of health benefits claims (including appeals and other payment disputes);
- (4) Subrogation of health benefit claims;
- (5) Establishing employee contributions;
- (6) Risk adjusting amounts due based on enrollee health status and demographic characteristics;
- (7) Billing, collection activities and related health care data processing;
- (8) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to participant inquiries about payments;
- (9) Obtaining payment under a contract for reinsurance (including stop-loss and excess of loss insurance);
- (10) Medical necessity reviews or reviews of appropriateness of care or justification of charges;
- (11) Utilization review, including pre-certification, preauthorization, concurrent review and retrospective review;
- (12) Disclosure to consumer reporting agencies related to the collection of premiums or reimbursement (the following PHI may be disclosed for payment purposes: name and address, date of birth, Social Security number, payment history, account number and name and address of provider and/or health Plan; and

(13) Reimbursement to the Plan.

(b) **Health care operations** include, but are not limited to, the following activities:

- (1) Quality assessment;
- (2) Population-based activities relating to improving health or reduction health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;
- (3) Rating provider and Plan performance, including accreditation, certification, licensing or credentialing activities;
- (4) Underwriting, premium rating and other activities relating to the creation , renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance);
- (5) Conducting or arranging for medical review, legal services and auditing function, including fraud and abuse detection and compliance programs;
- (6) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Plan, including formulary development and administration, development or improvement of payment methods or coverage policies;
- (7) Business management and general administration activities of the Plan, including, but not limited to:
 - a. Management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements;
 - b. Customer service, including data analyses for policyholders;
- (8) Resolution of internal grievances;
- (9) Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity under HIPAA or following completion of the sale or transfer, will become a covered entity.

8.2 **Plan Sponsor's Obligations under Privacy Rule.** Under HIPAA, The Plan may not disclose PHI to the Plan Sponsor (as defined in the Privacy Rules under HIPAA) unless the Plan Sponsor agrees to certain conditions. As the Plan Sponsor, the Adopting Employer agrees to the following conditions, thereby allowing the Plan to disclose PHI to the Adopting Employer. The Adopting Employer will:

- (a) Not use or further disclose PHI other than as permitted or required by the Plan document or as required by law;

- (b) Ensure that any agents, including a subcontractor, to whom the Plan provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such PHI;
- (c) Not use or disclose PHI for employment related actions and decision unless authorized by an individual;
- (d) Not use or disclose PHI in connection with any other benefit or employee benefit plan of the Plan Sponsor unless authorized by an individual;
- (e) Report to the Plan any PHI use or disclosure, that is inconsistent with the uses or disclosures provided for, of which it becomes aware;
- (f) Make available to an individual for inspection and copying PHI about the individual as allowed by and in accordance with HIPAA;
- (g) Make PHI available for amendment and incorporate any amendments to PHI in accordance with HIPAA;
- (h) Make available the information required to provide an accounting of disclosures;
- (i) Make internal practices, books and records relating to the use and disclosure of PHI received from Plan available to the HHS Secretary for the purposes of determining the Plan's compliance with HIPAA; and,
- (j) If feasible, return or destroy all PHI received for the Plan that the Plan Sponsor still maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made (or if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible).

8.3 Plan Sponsor's Obligations under Security Rules. If the Plan Sponsor creates, receives, maintains, or transmits ePHI, the Plan Sponsor will:

- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI;
- (b) Ensure that any agents, including subcontractors, to whom the Plan Sponsor provides ePHI or to whom ePHI is provided on behalf of Plan Sponsor implement reasonable and appropriate security measures to protect the ePHI;
- (c) Report to the Plan any Security Incident of which it becomes aware; and
- (d) Implement reasonable and appropriate security measures to ensure that only those persons identified in Section 8.4 have access to ePHI and that such access is limited to the purposes identified in Section 8.5.

8.4 **Adequate separation between the Plan and the Plan Sponsor must be maintained.** In accordance with HIPAA, only the following employees or classes of employees may be given access to PHI:

- (1) The benefit manager; and,
- (2) Staff designated by the benefits manager.

The Plan Sponsor shall identify, by name, these persons in writing to the Claims Administrator.

8.5 **Limitation of PHI Access and Disclosure.** The persons described in Section 8.4 above may only have access to and use and disclose PHI for Plan administration functions that the Plan Sponsor performs for the Plan.

8.6 **Noncompliance Issues.** If the person described in Section 8.4 above does not comply with this Plan document, the Plan Sponsor shall provide a mechanism for resolving issues of noncompliance, including, but not limited to, disciplinary sanctions.

**ARTICLE IX.
PLAN ADMINISTRATION**

9.1 Plan Administrator.

- (a) The Plan Administrator shall be responsible for the general supervision of the Plan and therefore shall have authority to control and manage the operation and administration of the Plan. The Plan Administrator shall perform any and all acts necessary or appropriate for the proper management and administration of the Plan.
- (b) The Adopting Employer shall be the Plan Administrator unless its Managing Body designates a person or persons other than the Adopting Employer to be the Plan Administrator. The Adopting Employer shall also be the Plan Administrator if the person or persons so designated cease to be the Plan Administrator.
- (c) The Plan Administrator may designate an individual or entity to act on its behalf with respect to certain powers, duties, and/or responsibilities regarding the operation and administration of this Plan. Unless reflected in the Adoption Agreement otherwise, EBC, Inc. is the Claims Administrator.

9.2 Agent for Service of Legal Process. The agent for service of legal process for the Plan is the Plan Administrator.

9.3 Allocation of Responsibility for Administration. The Plan Administrator shall have the sole responsibility for the administration of this Plan as is specifically described in this Plan. The designated representatives of the Plan Administrator shall have only those specific powers, duties, responsibilities, and obligations as are specifically given to them under this Plan. The Plan Administrator warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan authorizing or providing for such direction, information or action. It is intended under this Plan that the Plan Administrator shall be responsible for the proper exercise of its own powers, duties, responsibilities, and obligations under this Plan and shall not be responsible for any act or failure to act of another Employee of the Adopting Employer. Neither the Plan Administrator (including any designee), nor the Adopting Employer makes any guarantee to any Participant in any manner for any loss or other event because of the Participant's participation in this Plan.

9.4 Rules and Decisions. Except as otherwise specifically provided in the Plan, the Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant, the Adopting Employer, or legal counsel, or other entity acting on behalf of the Adopting Employer or Plan Administrator.

9.5 Records and Reports. The Plan Administrator shall be responsible for complying with all reporting, filing and disclosure requirements for the Plan.

9.6 Authorization of Benefit Payments. The Plan Administrator (or the Claims Administrator as its designee) shall issue directions to the Trustee concerning all benefits which are to be paid from the Trust, pursuant to the provisions of the Plan, and warrants that all such directions are in accordance with the Plan.

9.7 **Compensation and Expenses.** The Claims Administrator shall be entitled to reasonable fees for its services hereunder. Unless specifically provided otherwise in the Adoption Agreement, such fees and any expenses incurred by the Claims Administrator in connection with the Plan (including expenses and fees of persons hired or employed by them) shall be charged to the Plan and paid from the Trust. Also, unless specifically provided otherwise in the Adoption Agreement, the Trust shall be the sole source of payment to the Claims Administrator.

9.8 **Other Powers and Duties of the Administrator.** The Plan Administrator shall also have such other duties and powers as may be necessary to discharge its duties under the Plan including but not limited to the following:

- (a) Discretion to construe and interpret the Plan in a non-discriminatory manner, to decide all questions of eligibility and to determine all questions arising in the administration and application of the Plan;
- (b) To receive from the Adopting Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
- (c) To furnish the Adopting Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate; and
- (d) To appoint individuals to assist in the administration of the Plan and any other agents the Plan Administrator deems advisable including legal and actuarial counsel. The Plan Administrator shall not have the power to add to, subtract from, or modify any of the terms of the Plan, to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under this Plan.

ARTICLE X.
PLAN AMENDMENT AND TERMINATION

- 10.1 **Plan Amendment by Adopting Employer.** The Adopting Employer reserves the right to amend, alter, or wholly revise this Basic Plan and Trust Document or the Adoption Agreement, prospectively or retrospectively, at any time by the action of its Managing Body, and the interest of each Participant is subject to the powers so reserved. The Adopting Employer expressly may amend, alter or wholly revise this Basic Plan and Trust Document or the Adoption Agreement if it determines it necessary or desirable, with or without retroactive effect, to comply with the law. Such changes shall not affect any right to benefits that accrued prior to such amendments. Such amendment shall be made in writing and shall be delivered promptly to the Claims Administrator, Plan Administrator, Trust Custodian and Trustee.

Notwithstanding the above, no amendment may be made that would increase substantially the duties or liabilities of the Trustee without its written consent or that would divert any part of the Trust assets to any use or purpose other than for the exclusive benefit of the Participants and other individuals entitled to benefits under the Plan; provided, however, that any such amendment may be made that may be or become necessary in order that the Trust qualifies under the provisions of Section 115 of the Code, as amended, or in order that all provisions of the Trust will conform to all valid requirements of applicable federal and state laws.

- 10.2 **Adopting Employer's Right to Terminate Plan.** Although the Adopting Employer expects the Plan and Trust to be maintained for an indefinite time, the Adopting Employer reserves the right to terminate the Plan and/or or any portion thereof at any time. In the event of the dissolution, merger, consolidation, or reorganization of the Adopting Employer, the Plan shall terminate unless the Plan is continued by a successor to the Adopting Employer in accordance with the resolution of such successor's Managing Body. Such termination shall not affect any right to benefits that accrued prior to such termination. Such action shall be made in writing and shall be delivered promptly to the Claims Administrator, Plan Administrator, and Trustee.

ARTICLE XI. THE TRUST

- 11.1 **Trust.** All assets of each Plan maintained by the Adopting Employer shall be held in the Trust by the Trustee. The Trust is intended to qualify as an Integral Part Trust under Section 115 of the Code.
- 11.2 **Source of the Trust Funds.** The Trustee shall hold all contributions received by it in trust and administer the Trust in accordance with this Plan.
- 11.3 **Payments from Trust.** The Trust Custodian will, within a reasonable length of time after receipt of written notice from the Plan Administrator (or its designee such as the Claims Administrator under the Plan), make distributions. Such payments may be made directly to such person or persons, natural or otherwise, at such time and in such amounts as the Plan Administrator (or its designee such as the Claims Administrator under the Plan) directs, and the Trust Custodian will have no duty to question the propriety of any such direction.
- 11.4 **Erroneous Contributions.** Notwithstanding any other provision herein to the contrary:
- (a) If a contribution is made by the Adopting Employer by mistake of fact or law, such contribution may be returned to the Adopting Employer within one year of date on which such contribution was made. The amount that may be returned shall be the lesser of: (1) the amount of the contribution, or (2) the amount of the contribution minus any investment losses allocable to the contribution.
 - (b) If a contribution is made by the Adopting Employer upon a condition related to the status of the contribution under applicable law, such contribution may be returned to the Adopting Employer or transferred to another employee benefit plan to be used for the benefit of the Participants. Such contributions shall be returned or transferred within one year of a determination that the condition has not been satisfied. The amount that may be returned to the Adopting Employer shall be the lesser of: (1) the amount of the contribution, or (2) the amount of the contribution minus any investment losses allocable to the contribution. The amount that may be transferred to another plan shall be the greater of: (1) the amount of the contribution, or (2) the amount of the contribution plus any earnings or investment return allocable to such amount.

The Trust Custodian shall return or transfer contributions under this Section 11.4 only in accordance with instructions from the Plan Administrator, and the Trustee shall have no duty to determine whether the return of such contributions is permitted under this Section 11.4 and the Plan.

- 11.5 **Transfer of Assets.** If directed by the Adopting Employer, upon termination of the Trust, the Trust Custodian shall transfer all of the Trust's assets to another Section 115 trust or any other funding vehicle. The Trust Custodian shall be entitled to rely upon the representations of the Adopting Employer that the recipient trust is qualified to accept the transfer. To the extent the transfer adversely affects this Trust or the recipient trust, the Adopting Employer shall indemnify and hold harmless this Trust Custodian, the Claims Administrator, and all others so negatively impacted.

ARTICLE XII. DUTIES AND POWERS OF TRUSTEE

- 12.1 **General Responsibility.** (If elected in the Adoption Agreement that the Trustee shall be a directed Trustee, then the Trustee's discretionary duties hereunder shall be exercised by the Plan Administrator). The general responsibilities of the Trustee shall be as follows:
- (a) Except as expressly provided otherwise herein, the Trustee shall have exclusive authority and discretion to manage and control the assets of the Plan held in the Trust.
 - (b) The Trustee shall hold, administer, invest and reinvest, and disburse the Trust assets in accordance with the powers and subject to the restrictions stated herein. (Or if elected in the Adoption Agreement: The duties of the Trustee hereunder are as a directed trustee and the Trustee shall act solely in accordance with the instructions of the Plan Administrator. Nothing in this Agreement is intended to give the Trustee any discretionary responsibility, authority or control with respect to the management or administration of the Plan or the management of the assets of the Plan. Further, the Trustee is not a party to the Plan and has no duties or responsibilities other than those that may be expressly contained in this Agreement and applicable law. In any case in which a provision of this Agreement conflicts with any provision in the Plan, this Agreement shall control.)
 - (c) The Trustee shall disburse monies and other properties from the Trust on direction of the Plan Administrator (the Claims Administrator or its designee under the Plan), pursuant to the provisions of the Plan to the payee or payees at the time or times specified by the Plan Administrator in directions to the Trustee. Such directions shall be in writing and shall be signed by the person or persons thereto authorized by the Plan Administrator. Except as otherwise provided under applicable law, the Trustee shall be under no liability for any distribution made by it pursuant to such directions and shall be under no duty to make inquiry as to whether any distribution made by it pursuant to any such direction is made pursuant to the provisions of the Plan. The receipt of the payee shall constitute a full acquittance to the Trustee.
- 12.2 **Exercise of Trustee's Duties.** The Trustee shall discharge its duties hereunder solely in the best interest of the Participants and other persons entitled to benefits under the Plan, and (a) for the exclusive purpose of (1) providing benefits to Participants and other persons entitled to benefits under the Plan; and (2) defraying reasonable expenses of administering the Trust and the Plan; and (b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a fiduciary capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- 12.3 **General Powers.** With respect to the Trust assets and subject only to the limitations expressly provided in this Basic Plan and Trust Document, the Trustee shall have the following powers, rights and duties in addition to those vested in them elsewhere in this Basic Plan and Trust Document or by law:
- (a) To receive and hold all contributions paid to it; provided, however, that the Trustee shall have no duty to require any contributions to be paid to it, or to determine that the contributions received by it comply with the Plan or with any resolution of the governing body of the Plan Administrator or any resolution of the governing body of any Adopting

Employer; and, further provided that the Trustee shall have no responsibility with respect to the operation or administration of the Plan;

- (b) To manage, operate, sell, contract to sell, grant options with respect to, convey, exchange, partition, transfer, abandon, improve, repair, insure, lease for any term (although commencing in the future or extending beyond the term of this Basic Plan and Trust Document) and otherwise deal with all property, real or personal, in such manner, for such considerations, and on such terms and conditions as the Trustee shall decide;
- (c) To retain in cash (pending investment, reinvestment or payment of benefits) any reasonable portion of the Trust assets and to deposit cash in any depository selected by it, provided such deposits bear a reasonable rate of interest;
- (d) To compromise, contest, arbitrate, settle or abandon claims and demands (exclusive of claims and demands arising under the Plan);
- (e) To begin, maintain or defend any litigation necessary in connection with the investment, reinvestment or administration of the Trust;
- (f) To have all rights of an individual owner, including the power to give proxies, to vote stocks, to join in or oppose (alone or jointly with others) voting trusts, mergers, consolidations, foreclosures, reorganizations, recapitalizations or liquidations, and to exercise or sell stock subscription or conversion rights;
- (g) To hold securities or other property in the name of the Trustee or its nominee, or nominees, or in such other form as it determines best, with or without disclosing the trust relationship, provided the records of the Trustee shall indicate the actual ownership of such securities or other property;
- (h) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction;
- (i) To pay any tax, charge or assessment attributable to any benefit which, in the Trustee's opinion, it shall or may be required to pay out of such benefit; and to require before making any payment such release or other document from any taxing authority and such indemnity from the intended payee as the Trustee shall deem necessary for its protection;
- (j) To employ agents, attorneys, investment counsel, accountants or other persons (who also may be employed by or represent the Plan Administrator and/or an Employer) for such purposes as the Trustee considers desirable and appropriate;
- (k) To furnish the Plan Administrator or the Adopting Employer with such information in the Trustee's possession as those entities may need for tax or other purposes; and
- (l) To perform any and all other acts in the judgment of the Trustee necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust assets.

12.4 Investments. Except as otherwise expressly provided herein and subject to Section 12.6, the Trustee shall have exclusive authority and discretion to invest and reinvest the principal and income of the Trust in real or personal property of any kind and shall do so with the care, skill,

prudence, and diligence under the circumstances then prevailing that a prudent man acting in a fiduciary capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustee shall diversify the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances they are clearly prudent not to do so. No investment shall be made which would involve a prohibited transaction under the applicable law. The Trustee shall comply with any applicable laws of any state proscribing or limiting the investment of trust funds by corporate or individual Trustees in or to certain kinds, types, or classes of investments or limiting the value or proportion of the trust assets that may be invested in any one property or kind, type, or class of investment. Investments and reinvestments shall be subject to the above standard, and without limiting the generality of the foregoing, shall also be subject to the following:

- (a) Investments shall be as consistent as reasonably possible with any funding policy communicated to the Trustee in writing by the Plan Administrator. The Trustee may rely on the most recent such communication received by it without further inquiry or verification.
- (b) The Trustee may invest and reinvest principal and income of the Trust savings accounts or savings certificates, short term investments (including commingled short term investment funds) in common, preferred, and other stocks of any corporation; voting trust certificates; interests in investment trusts, including, without limiting the generality thereof, participations issued by an investment company as defined in the Investment Company Act of 1940, as from time to time amended; bonds, notes, and debentures, secured or unsecured; mortgages on real or personal property; conditional sales contracts; and real estate and leases; provided that no investment shall be made in the real property or the stocks, bonds, notes or other obligations of an Adopting Employer or any of its subsidiaries unless there shall first have been obtained an opinion of counsel for the Adopting Employer, or a ruling from the Internal Revenue Service that such investment will not jeopardize the tax exempt status of the Trust under Section 115 of the Code, as the same may be amended from time to time, to be terminated.
- (c) The Trustee may invest and reinvest the principal and income of the Trust through any common or collective trust fund or pooled investment fund maintained by the Trustee for the collective investment of funds held by it in a fiduciary capacity. The provisions of the document governing any such common or collective trust fund as it may be amended from time to time shall govern any investment therein and are hereby made a part of this Basic Plan and Trust Document.

12.5 Compensation and Expenses. The Trustee shall be entitled to reasonable fees for its services hereunder. Unless specifically provided otherwise in the Adoption Agreement, such fees and any expenses incurred by the Trustee in connection with the Trust held hereunder (including expenses and fees of persons employed by them) shall be charged to the Trust. Also, unless specifically provided otherwise in the Adoption Agreement, the Trust shall be the sole source of payment to the Trustee.

12.6 Directed Investments. If indicated in the Adoption Agreement, Participants shall be responsible for directing the investment of their HC Account balances. The following requirements apply to directed investments:

- (a) The Trustee shall select the list of available investments taking into consideration the characteristics of the Plan and persons covered under the Plan.
- (b) The Trustee shall establish direction procedures based upon the types of investments available. Such procedures shall include instructions regarding making and changing investments and allocations of HC Account assets among investments.
- (c) The earnings/losses of the directed investments are allocated only to that particular Participant's HC Account.

12.7 **Investment in Mutual Fund Sponsored by the Trustee.** To the extent the Trustee is authorized to exercise investment discretion pursuant to this Basic Plan and Trust Document, the Trustee is authorized to invest in shares of beneficial interest in one or more investment portfolios (the "Portfolios"), each of which is or shall be established and organized as a diversified company under the Investment Company Act of 1940 and with respect to which the Trustee or affiliates of the Trustee act as custodian or investment advisor. The Plan Administrator represents that it has received (a) a prospectus describing each of the available Portfolios, (b) full and written disclosure of investment advisory and any other fees payable by the Plan Administrator by the Trust and by the Portfolios, and (c) a statement as to the reasons why the Trustee considers purchases of shares of beneficial interest in one or more Portfolios to be appropriate for the Trust. Subject to the limitation of the following sentence, the Plan Administrator hereby approves the Trustee's purchase and sale, in its sole discretion, of shares of beneficial interest in one or more of the Portfolios on behalf of the Trust. This approval is limited to the advisory and other fees paid by the Portfolio in relation to the fees charged to or paid by the Trust and does not relate to any other aspect of the investment of the assets of the Trust in the Portfolios. The Trustee acknowledges that it must notify the Plan Administrator of any change in the rates of these charges with respect to the assets of the Trust invested in the Portfolios.

12.8 **Records and Accounts of the Trustee.** The Trustee shall maintain accurate and detailed records and accounts of all transactions hereunder. Within thirty (30) days following the close of each calendar quarter, or following the close of such other reporting period as may be agreed upon by the Trustee and the Plan Administrator, the Trustee shall file with the Plan Administrator a written account setting forth the balance in the Trust at the beginning of the period, current contributions during the period, distributions from the Trust and the balance in the Trust assets at the end of the period. The Trustee shall also file a written account listing the property held in the Trust as of the close of each period. All such records and accounts shall be open to inspection at all reasonable times by any person designated by the Plan Administrator or Adopting Employer.

12.9 **Annual Report.** As soon as practicable following the close of each fiscal year of the Trust and following the effective date of the removal or resignation of any Trustee, the Trustee shall file with the Plan Administrator a written report (unless the report is waived by the Plan Administrator) setting forth all transactions with respect to the Trust during such fiscal year or during the period from the close of the last fiscal year to the date of such removal or resignation and listing the assets of the Trust and the market value thereof as of the close of the period covered by such report.

12.10 **Approval of Reports.** Upon the receipt by the Trustee of the Plan Administrator's written approval of any such written account or report, or upon the lapse of ninety (90) days after the Plan Administrator's receipt of each written account or report, said written account or report shall be deemed to be approved by it except as to matters, if any, covered by written objections theretofore delivered to the Trustee by the Plan Administrator regarding which the Trustee has not given an explanation or made adjustments satisfactory to it. The Trustee, to the extent

permitted by law, shall be released and discharged as to all items, matters, and things set forth in such written account or report other than the matters covered in such written objections as provided herein. The Trustee, nevertheless, shall have the right to have its accounts approved by judicial proceedings if they so elect, in which event the Trustee and the Plan Administrator shall be the only necessary parties. Further, in the event that the Plan Administrator duly delivers to the Trustee written objections to any matters set forth in any such written account or report and said objections are not explained or adjusted to the satisfaction of the Plan Administrator, each shall likewise have the right to have the Trustee's accounts reviewed by judicial proceedings if they so elect, in which event the Trustee and the Plan Administrator shall be the only necessary parties.

- 12.11 **Decisions of Trustee.** If there should be more than one Trustee, in case of disagreement among the Trustees, the decision of a majority of them shall determine the issue and the act of a majority of them shall be the act of the Trustees.

**ARTICLE XIII.
CHANGES IN TRUSTEE**

- 13.1 **Resignation.** A Trustee may resign at any time by giving thirty (30) days advance written notice to the Plan Administrator.
- 13.2 **Removal and Appointment of Successor Trustee.** The Plan Administrator may remove a Trustee by giving thirty (30) days advance written notice to the Trustee, subject to providing the removed Trustee with a copy of the successor Trustee's acceptance of the trusteeship. The Plan Administrator shall appoint a successor Trustee. If no successor is appointed, or for any period during which there is no appointed Trustee, the Plan Administrator shall serve as the Trustee.
- 13.3 **Duties of Resigning or Removed Trustee and of Successor Trustee.** If the Trustee resigns or is removed, that Trustee shall promptly transfer and deliver the assets of the Trust to the successor Trustee, after reserving such reasonable amount as the Trustee shall deem necessary to provide for the Trustee's fees, expenses, and any sums chargeable against the Trust for which the Trustee may be liable. Within one hundred twenty (120) days, the resigned or removed Trustee shall furnish to the Plan Administrator and the successor Trustee an account of the administration of the Trust from the date of its last account (unless the account is waived by the Plan Administrator). Each successor Trustee shall succeed to the title to the Trust vested in the Trustee's predecessor without the signing or filing of any further instrument, but any resigning or removed Trustee shall execute all documents and do all acts necessary to vest title to any successor Trustee. Each successor shall have all the powers, rights and duties conferred by this Trust Agreement as if originally named Trustee. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee.
- 13.4 **Waiver of Written Notice.** Any written notice requirement required under this Article XII may be waived by mutual agreement of the Trustee and the Plan Administrator.

**ARTICLE XIV.
GENERAL PROVISIONS**

- 14.1 **No Reversion to the Plan Administrator or Adopting Employer.** No part of the corpus or income of the Trust shall revert to an Adopting Employer unless otherwise noticed in the Adoption Agreement. No part of the corpus or income of the Trust shall be used for or diverted to, purposes other than the exclusive benefit of Participants and other persons entitled to benefits under the Plan. Should the Trust terminate, any assets remaining shall be used for a purpose consistent with the Plan and as permitted by law.
- 14.2 **Persons Dealing with the Trust.** No person dealing with the Trust shall be required to see to the application of any money paid or property delivered to the Trustee, or to determine whether or not the Trust is acting pursuant to any authority granted to them under the Basic Plan and Trust Document.
- 14.3 **Non-Alienation of Benefits.** Benefits payable under this Plan shall not be subject to anticipation, alienation, sale, transfer, execution, or levy of any kind either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable under the Plan shall be void. The Trustee, Adopting Employer, Plan Administrator and/or Claims Administrator shall not in any manner be made liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.
- 14.4 **Action by Employer.** Whenever the Adopting Employer, under the terms of this Plan, is permitted or required to do or perform any act or matter or thing, it shall be done and performed by the Managing Body of the Adopting Employer or such representatives of the Adopting Employer as the Managing Body may designate.
- 14.5 **Indemnification of the Trustees.** Unless prohibited or specifically required otherwise by applicable law, the Adopting Employer hereby agrees to indemnify the Trustee for and to hold it harmless against any and all liabilities, losses, costs or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted against the Trustee at any time by reason of the Trustee's service under this Basic Plan and Trust Document provided that the Trustee did not act dishonestly or in willful or negligent violation of the law or any applicable regulation under which such liability, loss, cost or expense arose.
- 14.6 **No Guarantee of Tax Consequences.** Notwithstanding any provision in this Plan to the contrary, this Plan makes no commitment or guarantee that any amounts paid to or on behalf of a Participant under this Plan will be excludable from the Participant's gross income for federal or state income tax purposes. It shall be the obligation of each Participant to determine whether each payment is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Plan Administrator if the Participant has reason to believe that any such payment is not so excludable.
- 14.7 **Governing Law.** Unless otherwise specified in the Adoption Agreement, this Plan shall be construed and enforced according to the laws of Arizona except to the extent preempted by federal law.

14.8 **Family and Medical Leave Act of 1993 ("FMLA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with FMLA, to the extent the Adopting Employer is subject to such law.

14.9 **Newborns' and Mothers' Health Protection Act ("NMHPA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with NMHPA. Federal law requires the following statement be included in the Plan document, verbatim:

Under federal law, group health plans and health insurance issuers offering group health insurance generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, the plan or issuer may pay for a shorter stay if the attending physician (e.g., your physician, nurse, or midwife, or a physician assistant), after consultation with the mother, discharges the mother or newborn earlier. Also, under federal law, plans and issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay. In addition, a plan or issuer may not, under federal law, require that a physician or other health care provider obtain authorization for prescribing a length of stay of up 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification. For information on pre-certification, contact your Plan Administrator.

14.10 **Women's Health and Cancer Rights Act of 1998 ("WHCRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with WHCRA.

14.11 **Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with USERRA, and the Plan Administrator shall, within the parameters of the law, establish uniform policies by which to provide such continuation coverage required by USERRA.

14.12 **Plan Not a Contract of Employment.** The Plan is not an employment agreement and does not assure the continued employment of any Employee or Participant for any period of time. Nothing contained in the Plan shall interfere with the Adopting Employer's right to discharge an Employee or Participant at any time, regardless of the effect such discharge may have upon the individual as a Participant in this Plan.

14.13 **Medicare Secondary Payer.** The Plan shall comply with the Medicare secondary payer rules found in 42 U.S.C. § 1395y. The Plan shall pay benefits primary to Medicare if: (a) the Participant is employed by the Adopting Employer and is actually covered by Medicare by reason of obtaining the age of 65; (b) at the time the claim is made the Adopting Employer employs 100 or more employees, the Participant is employed by the Adopting Employer, and the Participant is actually covered by Medicare by reason of disability; and (c) the Participant is entitled to Medicare by reason of end stage renal disease and the claim is made during the twelve (12) month period beginning in the first month in which such Participant is entitled to benefits under Medicare (regardless of whether he/she applies for such benefits). In all other cases, the Plan shall pay benefits secondary to Medicare.

14.14 **Medicare Part D.** The Plan shall cooperate with Medicare Part D prescription drug plans (and Covered Individuals who are enrolled in such plans) with respect to coordination of benefits between the Plan and the Medicare Part D plan, including the provision of information to the

Medicare Part D plan (or the Covered Individuals) regarding the benefits provided under the Plan for costs covered by the Medicare Part D plan. Covered Individuals enrolled in Medicare Part D plans shall cooperate with the Plan so that the Plan may perform its obligations under this subsection.

- 14.15 **Certificates of Creditable Coverage.** When coverage terminates, or upon request by a Covered Individual during coverage or within two (2) years of termination of coverage under this Plan, Covered Individuals will be provided with a certification of creditable coverage by the Plan Administrator (or its designee). A request for a certification of creditable coverage should be directed to the Plan Administrator. Upon request, the Plan Administrator (or its designee) will issue the certification of creditable coverage as soon as reasonably possible.

ARTICLE XV. CONTINUATION COVERAGE

Note: Adopting Employers with less than twenty (20) Employees are not subject to COBRA.

15.1 Generally. The Plan is a group health plan that, unless the Adopting Employer is not subject to COBRA, is subject to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), as amended. If COBRA is applicable, COBRA procedures shall be established and followed consistent with applicable law

15.2 Notification Procedures. The Plan requires the notifications described below with respect to continuation coverage under COBRA:

(a) **Notice of qualifying event.** Under the law, a Covered Individual (or a representative acting on behalf of the Covered Individual) has the responsibility to inform the Plan of a divorce, legal separation, or a child losing dependent status under the Plan (the "qualifying event") within sixty (60) days of the latest of: (i) the date of the qualifying event; (ii) the date coverage would be lost because of the qualifying event; or (iii) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. The notification must be provided in writing and be mailed to the Plan. Oral notification, including notification by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notifications are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:

- (1) state the name of the Plan;
- (2) state the name and address of the employee or former employee who is or was covered under the Plan;
- (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the qualifying event;
- (4) include a detailed description of the event;
- (5) identify the effective date of the event; and
- (6) be accompanied by any documentation providing proof of the event (i.e., the divorce decree).

If no notification is received within the required time period, no continuation coverage will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no continuation coverage will be provided.

(b) **Notice of second qualifying event.** A Covered Individual (or a representative acting on behalf of the Covered Individual) must notify the Plan of the death of the employee, divorce or separation from the employee, or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan, if that event occurs within the eighteen (18) month continuation period (or an extension of that period for disability or for pre-termination Medicare entitlement). The notification must be provided within sixty (60) days after such a second qualifying event occurs in order to be entitled to an extension of the continuation period. The notification must be provided in writing and be mailed to

the Plan. Oral notification, including notice by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notifications are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:

- (1) state the name of the Plan;
- (2) state the name and address of the employee or former employee who is or was covered under the Plan;
- (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the initial qualifying event and who are receiving COBRA coverage at the time of the notice;
- (4) identify the nature and date of the initial qualifying event that entitled the Covered Individuals to COBRA coverage;
- (5) include a detailed description of the event;
- (6) identify the effective date of the event; and
- (7) be accompanied by any documentation providing proof of the event (i.e., the divorce decree).

If no notification is received within the required time period, no extension of the continuation period will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no extension of the continuation period will be provided.

- (c) **Notice of disability.** A Covered Individual (or a representative acting on behalf of the Covered Individual) must notify the Plan when a Covered Individual has been determined to be disabled under the Social Security Act within sixty (60) days of the latest of: (i) the date of the disability determination; (ii) the date of the qualifying event; (iii) the date coverage would be lost because of the qualifying event; or (iv) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. Notwithstanding the foregoing, notification must be provided before the end of the first eighteen (18) months of continuation coverage. The notification must be provided in writing and be mailed to the Plan. Oral notification, including notice by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notices are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:

- (1) state the name of the Plan;
- (2) state the name and address of the employee or former employee who is or was covered under the Plan;
- (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the initial qualifying event and who are receiving COBRA coverage at the time of the notice;
- (4) identify the nature and date of the initial qualifying event that entitled the qualified beneficiaries to COBRA coverage;
- (5) state the name of the disabled Covered Individual;
- (6) identify the date upon which the disabled Covered Individual became disabled;

- (7) identify the date upon which the Social Security Administration made its determination of disability; and
- (8) include a copy of the determination of the Social Security Administration.

If no notification is received within the required time period, no extension of the continuation period will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no extension of the continuation period will be provided.

If such person has been determined under the Social Security Act to no longer be disabled, the person must notify the Plan of that determination within thirty (30) days of the later of: (i) the date of such determination; or (ii) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. The notification must be in writing and be mailed to the Plan. Regardless of when the notification is provided, continuation coverage will terminate retroactively on the first day of the month that begins thirty (30) days after the date of the determination, or the end of the initial coverage period, if later. If the notification is not provided within the required time, the Plan reserve the right to seek reimbursement of any benefits provided by the Plan between the date coverage terminates and the date the notification is provided.

- (d) **Notice of Coverage Under Another Group Health Plan or Medicare.** A Covered Individual must notify the Plan immediately if any Covered Individuals receiving continuation coverage actually become covered by another group health plan or Medicare. Regardless of when such notification is provided, coverage will terminate retroactively to the date of the coverage under the other group health plan or Medicare. If, for whatever reason, a Covered Individual on continuation coverage receives any benefits under the Plan after coverage is to cease under the foregoing rule, the Plan reserve the right to seek reimbursement from such Covered Individual.

15.3 Alternative in Lieu of COBRA Continuation. Following termination of employment, a Covered Individual (and the Covered Individual's Spouse and Dependents) will be allowed to spend down the balance of their HC Account if they choose to continue to access their HC Account in lieu of COBRA continuation coverage. If the Covered Individual chooses to spend down their HC Account, the Covered Individual (and their Spouse and Dependents) may generally continue to submit claims for Health Care Expenses until the earlier of (i) the fifth (5th) anniversary of the date of the Participant's termination of employment, or (ii) the account balance reaches zero.

Upon the death of a Covered Individual, the Covered Individual's surviving Spouse and Dependents will be allowed to spend down the balance of the Covered Individual's HC Account if they choose to continue to access the Covered Individual's HC Account in lieu of COBRA continuation coverage. If they choose to spend down the Covered Individual's HC Account, the Covered Individual's surviving Spouse and Dependents may generally continue to submit claims for Health Care Expenses until the account balance reaches zero.

The Plan Administrator also reserves the right to offer other alternatives to COBRA to the extent not precluded by applicable law.

(Signatures on following page)

Adopted and effective this 12th day of February, 2013

City of Glendale,
an Arizona municipal corporation



By: Horatio Skeete
Its: Acting City Manager

APPROVED AS TO FORM:



Craig Tindall, City Attorney

ATTEST:



City Clerk (SEAL)