TOWNSHIP OF SALISBURY
LEHIGH COUNTY, PENNSYLVANIA

Ordinance No. 11-2014-590

(Duly Adopted November 13, 2014)

AN ORDINANCE ADOPTING A CAFETERIA PLAN UNDER INTERNAL REVENUE CODE SECTION 125, EFFECTIVE JANUARY 1, 2015, IN ORDER TO PERMIT PARTICIPATING EMPLOYEES TO RECEIVE HEALTH BENEFITS WITHOUT BEING SUBJECT TO FEDERAL INCOME TAX EVEN IF THEY HAVE A RIGHT TO ELECT TO RECEIVE CASH IN LIEU OF BENEFITS, AND TO COMPLY WITH THE COLLECTIVE BARGAINING AGREEMENT WITH THE SALISBURY TOWNSHIP PUBLIC WORKS EMPLOYEES ASSOCIATION; EXTENDING BENEFITS UNDER THE CAFETERIA PLAN TO ALL FULL-TIME PUBLIC WORKS AND NON-UNION EMPLOYEES; AND INCLUDING PROVISIONS RELATING TO DEFINITIONS, PARTICIPATION, ELECTION OF OPTIONAL BENEFITS (INCLUDING THE ELECTION OF CASH BONUSES IN LIEU OF HEALTH COVERAGE AND CHANGES IN ELECTIONS), ADMINISTRATION, AMENDMENT AND TERMINATION, TAX IMPLICATIONS, AND MISCELLANEOUS ITEMS.

WHEREAS, the Township of Salisbury, Lehigh County ("**Township**") and the Salisbury Township Public Works Employees Association ("**Association**"), the collective bargaining representatives of the Township's non-managerial public works employees, have entered into a collective bargaining agreement ("**CBA**") effective from January 1, 2015 through December 31, 2018; and

WHEREAS, the CBA requires the adoption of a Cafeteria Plan in the form attached to this Ordinance, and the Board of Commissioners ("**Board**") of the Township desires to comply with the CBA; and

WHEREAS, the purpose of the Cafeteria Plan is to permit participating employees to receive health benefits without being subject to federal income tax even if they have a right to elect to receive cash in lieu of benefits (including cash payments for waiver of all

coverage, and reduced employee contributions to the health plans if the employee's spouse and dependents are not covered); and

WHEREAS, the Board desires to extend the benefits of the Cafeteria Plan to its full-time non-union employees;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Board of Commissioners of the Township of Salisbury, Lehigh County, Pennsylvania, that the Township hereby establishes a Cafeteria Plan in the form attached to this Ordinance, effective January 1, 2015.

DULY ORDAINED and **ENACTED** by the Board of Commissioners of the Township of Salisbury, Lehigh County, Pennsylvania this 13th day of November, 2014, in lawful session duly assembled.

BOARD OF COMMISSIONERS
TOWNSHIP OF SALISBURY

James A. Brown

James A. Brown, President

Attest:

Randy

Randy Soriano, Secretary

Salisbury Township Cafeteria Plan

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Article I — Title, Establishment, and General Definitions

§ 101 Short Title.

This plan document shall be known, and may be cited, as the "Salisbury Township Cafeteria Plan."

§ 102 Establishment.

The Township of Salisbury, Lehigh County, Pennsylvania hereby establishes a Cafeteria Plan in order to provide certain employees with a choice between cash compensation and coverages under the health plan maintained by the Township of Salisbury. The Plan is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code of 1986, as it may be amended from time to time.

§ 103 Definitions—In General.

For purposes of this plan document, the terms defined in the remaining Sections of this Article I shall have the meanings indicated therein, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

§ 104 Administrator.

The term "Administrator" shall mean the Plan Administrator described in Article IV.

§ 105 Code.

The term "Code" shall mean the Internal Revenue Code of 1986, as amended (Title 26, U.S. Code). Reference to a section of the Code shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements or supersedes that section.

§ 106 Effective Date.

The "Effective Date" of this Plan is January 1, 2015.

§ 107 Eligibility Date.

The term "Eligibility Date" means the date in which an employee commences employment with the Employer as a Qualified Employee. A person who was a Qualified Employee, then ceased to be a Qualified Employee, and who again becomes a Qualified Employee, shall have a new Eligibility Date for the new period of service as a Qualified Employee.

§ 108 Employer.

The term "Employer" shall mean the Sponsor, and all Related Employers which have adopted this Plan and executed a copy of this plan document.

§ 109 Health Plan.

The term "Health Plan" shall mean the health/prescription/dental/vision coverage plans made available to Qualified Employees from time to time by the Township of Salisbury. As of January 1, 2015, the Health Plan consists of the Capital Blue Cross PPO 0 Plan for the Pennsylvania Municipal Health Insurance Cooperative—Lehigh Valley Cooperative, including prescription drug coverage (copays = $5 generic retail; $10 preferred brand retail; $25 non-preferred brand retail; $10 generic mail order; $20 preferred brand mail order; $50 non-preferred brand mail order, with a three-month supply for mail order); United Corcordia Companies, Inc. dental plan for Pennsylvania Municipal Health Insurance Cooperative—Basic Option; and Davis Vision vision plan for Pennsylvania Municipal Health Insurance Cooperative—Option A, as such plans may be amended or renamed from time to time, but the specific plan(s) and/or the coverages available under the plan(s) may change from time to time.

§ 110 Key Employee.

The term "Key Employee" shall mean, for any Plan Year, any person who at any time during the Plan Year is a key employee, as defined in Code § 416(i)(1) and the regulations thereunder, with respect to the Employer. In general, and subject to the more specific definition provided in the Code and the regulations, the term "Key Employee" means certain officers having an annual compensation greater than $130,000 (or such higher amount as shall be established by the Internal Revenue Service to adjust for changes in the cost of living) and certain persons having an ownership interest in any Employer. However, the term "Key Employee" does not include any officer or employee of an entity referred to in Code § 414(d) (relating to definition of governmental plan), including the Township of Salisbury.

§ 111 [RESERVED]

§ 112 Participant.

The term "Participant" shall mean any person who participates in this Plan in accordance with Article II.

§ 113 Plan.

The term "Plan" shall mean the **Salisbury Township Cafeteria Plan**, as set forth in this plan document, and as it may be amended from time to time.

§ 114 Plan Year.

The term "Plan Year" shall mean any 12 consecutive month period beginning on January 1 and ending on the following December 31.

§ 115 Qualified Employee.

The term "Qualified Employee" shall mean, as of any given date, any person who is receiving remuneration for personal services rendered to the Employer as an employee (within the meaning of Code § 125 and the regulations thereunder) and not as an independent contractor, and whose customary employment is at least thirty-five (35) hours per week, *provided* such person is neither—

(a) a nonresident alien who receives no remuneration from the Employer which constitutes income from sources within the United States (within the meaning of the Code); nor

(b) a person who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not expressly provide for his/her inclusion as a person eligible for participation in this Plan.

§ 116 Related Employee.

The term "Related Employer" shall mean any—

(a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;

(b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;

(c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; and

(d) any other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder.

§ 117 Sponsor.

The term "Sponsor" shall mean the **Township of Salisbury**, Lehigh County, Pennsylvania, a Pennsylvania home rule municipality and municipal corporation, and its predecessors and successors.

Article II — Participation

§ 201 Commencement of Participation.

Every Qualified Employee who is employed by the Employer on January 1, 2015 shall become a Participant in the Plan on the Effective Date, January 1, 2015. All other Qualified Employees shall become a Participant in the Plan on their Eligibility Date.

§ 202 Cessation of Participation.

A Participant will cease to be a Participant as of the *earlier* of—

(a) the date on which the Plan terminates; or

(b) the date on which he ceases to be a Qualified Employee.

§ 203 Reinstatement of Former Participant.

If the former Participant becomes a Qualified Employee again, he will become a Participant again on the date he becomes a Qualified Employee again.

Article III — Election of Optional Benefits

§ 301 Coverage Options.

Each Participant may choose under this Plan to receive his/her full compensation for any Plan Year in cash or to have a portion of it applied by the Employer towards the cost of coverage available to the Participant under one or more of the following plans, to the extent not otherwise paid for or provided by the Employer:

(a) The Health Plan. If the Health Plan is selected, the Participant must also elect whether the coverage will be for the Participant only, or the coverage will be for the Participant and one or more additional persons specifically identified (by name and date of birth) by the Participant from among the Participant's spouse and his/her eligible children.

§ 302 Description of Optional Benefits Provided in Underlying Plans.

While the election of one or more of the optional coverages described in § 301 may be made under this Plan, the coverages and benefits thereunder will be provided not by this Plan but by the particular plan(s) selected. The types and amounts of benefits available under each option described in § 301, the requirements for participating in such option, and the other terms and conditions of coverage and benefits under such option are as set forth from time to time in the Health Plan, and in any insurance or other contracts that constitute or are incorporated by reference in certain of those plans. The benefit descriptions in such plans and contracts, as in effect from time to time, are hereby incorporated by reference into this Plan.

§ 303 Election of Optional Coverages or Cash Bonuses in Lieu of Coverage.

A Participant may elect under this Plan to receive one or more of the optional coverages described in § 301, to the extent available to the Participant under the applicable plans, in accordance with the following procedures:

(a) Health Plan.

(1) In General. If a Participant elects coverage for a Plan Year under the Health Plan, the Participant's regular cash compensation for the Plan Year will be reduced in an amount equal to the sum of the amounts which the Participant is required to contribute for Health Plan coverage with respect to the paydays during the Plan Year. The amount of the required employee contribution for any given payday is determined under the current collective bargaining agreement for public works employees and under applicable ordinances and resolutions for non-union employees. The balance of the cost of such coverage shall be paid by the Employer with nonelective Employer contributions.

(2) Compensation Reductions Per Payday. The amount of compensation to be reduced from any given paycheck for the Health Plan shall be equal to the amount which the Participant must contribute for that payday under the current collective bargaining agreement for public works employees and under applicable ordinances and resolutions for non-union employees.

(3) Payment of Additional Cash in Lieu of Coverage. If a Participant is eligible under the current collective bargaining agreement for public works employees, or under applicable ordinances and resolutions for non-union employees, to waive coverage under the Health Plan and receive cash payments in the amount set forth therein, and the Participant so

elects to waive coverage and receive the cash payments for a Plan Year, the Employer will make cash payments each month to the Participant in the amount so set forth via contributions made through this Plan and credited to the Participant. One-half of the payment for any given month will be included in the first paycheck issued to the Participant in that month, less any applicable taxes and other deductions, and the remaining one-half will be included in the second paycheck issued to the Participant in that month. The Participant will not receive any coverage under the Health Plan (for himself, his spouse, and/or dependents) for any such month.

§ 304 Election Procedure.

(a) In General. Approximately 30 days prior to the commencement of each Plan Year, the Administrator shall provide one or more written election forms and compensation reduction agreements to each Participant and to each other individual who is expected to become a Participant at the beginning of the Plan Year. The election forms shall be effective as of the first day of the Plan Year. Each Participant who desires one or more optional benefit coverages described in § 301 for the Plan Year shall so specify on the appropriate election form(s) and shall agree to a reduction in his/her compensation as provided in § 303. Each election form must be completed and returned to the Administrator on or before such date as the Administrator shall specify, which date shall be no later than the beginning of the Plan Year.

(b) New Participants. Before an individual becomes a Participant under § 201 or § 203, the Administrator shall provide written election forms and compensation reduction agreements described in subsection (a) to the individual. Each Participant who desires one or more optional benefit coverages described in § 301 for the balance of the Plan Year (beginning on the first date permitted under the benefit plan(s) elected) shall so specify on the appropriate election form(s) and shall agree to a reduction in his/her compensation as provided in § 303. Each election form must be completed and returned to the Administrator on or before the date the person becomes a Participant. The election forms shall be effective as of the date the person becomes a Participant.

(c) Failure to Return Proper Election Forms.

(1) In General. Except as provided in paragraph (2), a Participant's failure to return a completed election form under this § 304 to the Administrator on or before the specified due date shall constitute an election to receive his/her full compensation in cash.

(2) Health Plan Coverage. A Participant's failure to return a completed election form to the Administrator relating to coverage under the Health Plan (or submission of an election form that selects an option or waiver that the Participant is not permitted to make) on or before the due date for any Plan Year shall constitute a re-election of the same coverage or coverages, if any, as was in effect just prior to the end of the preceding Plan Year (to the extent such coverage(s) remain available to the Participant under the Health Plan, the current collective bargaining agreement for public workes employees, applicable ordinances and resolutions for non-union employees, and this Cafeteria Plan), and a re-election of any election to waive Health Plan coverage and receive cash in lieu of coverage which was in effect just prior to the end of the Preceding Plan Year. If the Participant had coverage under the Health Plan just prior to the end of the preceding Plan Year but the coverage option is no longer available to the Participant, then there shall be a deemed election of coverage for only the Participant under the Health Plan.

§ 305 Revocation or Change of Election by the Participant During the Plan Year.

(a) In General.

(1) Elections Are Ordinarily Irrevocable. Any election made under the Plan (including an election through inaction under § 304(c)) for a given Plan Year shall be *irrevocable* by the Participant during the Plan Year, except as otherwise provided in this § 305.

(2) [RESERVED]

(b) Change in Status.

(1) In General. A Participant may revoke an election in writing for the balance of the Plan Year, and, if desired, file a new election in writing if, under the facts and circumstances—

(A) a "change in status" occurs within the meaning of paragraph (2);

(B) the requested revocation and new election are "consistent" with the change in status, in accordance with the rules of paragraph (3); *and*

(C) the change is consistent with the terms of the plan(s) in question.

(2) Change in Status. For purposes of paragraph (1), a change in status includes the following events:

(A) Legal Marital Status. An event that changes a Participant's legal marital status, including marriage, death of spouse, divorce, legal separation, or annulment.

(B) Number of Dependents. An event that changes a Participant's number of dependents, including birth, death, adoption, or placement for adoption.

(C) Employment Status. An event that changes the employment status of the Participant or the Participant's spouse or dependent, including termination or commencement of employment, a strike or lockout, a commencement or return from an unpaid leave of absence, and a change in worksite, as well as any other change in the individual's employment status that results in the individual becoming (or ceasing to be) eligible under a benefit plan of his/her employer.

(D) Requirements for Dependents. An event that causes a dependent to satisfy or cease to satisfy the requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(E) Residence. A change in the place of residence of the Participant, his/her spouse or dependent.

(F) Other. Such other events as the Administrator determines will permit the revocation of an election (and, if applicable, the filing of a new election) during a Plan Year under regulations and rulings of the Internal Revenue Service.

(3) Consistency Requirements. A Participant's requested revocation and new election under this subsection (b) will be consistent with a change in status if the election change is on account of and corresponds with a change in status that affects the eligibility for coverage under a plan of the Employer or under a plan maintained by the employer of the Participant's spouse or dependent. A change in status that affects the eligibility under an employer's plan shall include a change in status that results in an increase or decrease in the number of a Participant's family members or dependents who may benefit from coverage under the plan. For further rules regarding the application of this consistency requirement, *see* Treas. Regs. § 1.125-4(c)(3), which is incorporated herein by reference.

(c) Special Enrollment Rights. Since none of the plans under this Plan are subject to Code § 9801(f) (relating to HIPAA special enrollment rights), since those provisions do not apply to a governmental plan (Code § 9831(a)), a Participant may not revoke an election and file a new election under Treas. Regs. § 1.125-4(b) with respect to special enrollment rights.

(d) Certain Domestic Relations Orders. In the case of a judgment, decree, or order resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order) that requires accident or health coverage for a Participant's child or for a foster child who is a dependent of the Participant, a Participant may change his/her election—

(1) in order to provide coverage for the child under the Health Plan if the order so requires; or

(2) in order to cancel coverage under the Health Plan for the Participant's child if such order requires the Participant's spouse or former spouse or another individual to provide coverage for the child and that coverage is, in fact, provided.

(e) Medicare or Medicaid Entitlement. In the case of coverage under the Health Plan, a Participant may revoke an election for the balance of the Plan Year and file a new election in order to cancel or reduce such coverage for the Participant or any covered dependent of the Participant to the extent that the Participant or dependent becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). In addition, if the Participant or any eligible dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may file a new election for the balance of the Plan Year to commence or increase coverage under the Health Plan.

(f) Change in Costs of Health Plan Coverage. In the case of coverage under the Health Plan, if—

(1) the Participants' share of the cost of such coverage significantly increases during the Plan Year, Participants electing such coverage for the Plan Year may revoke their election and either elect a similar coverage under another group health plan of the Employer included within this Cafeteria Plan for the balance of the Plan Year or drop such coverage if there is no similar coverage available;

(2) the Participants' share of the cost of such coverage significantly decreases, Participants may elect to commence participation in the Health Plan, and may make corresponding election changes regarding similar coverage, for the balance of the Plan Year.

(g) Significant Curtailment of Health Plan Coverage. In the case of coverage under the Health Plan, if the Participant or his/her spouse or dependent experiences a significant curtailment in coverage during the Plan Year, the Participant may make a corresponding change in election under the Plan for the balance of the Plan Year as follows:

(1) for a significant curtailment that is not a loss of coverage, the Participant electing such coverage for the Plan Year may revoke his/her election and elect a similar coverage under another group health plan of the Employer including within this Cafeteria Plan, but only if any such similar coverage exists;

(2) for a significant curtailment that is (or is deemed by the Administrator to be) a loss of coverage, the Participant electing such coverage for the Plan Year may revoke his/her election and either elect a similar coverage under another group health plan of the Employer included within this Cafeteria Plan for the balance of the Plan Year, or drop such coverage if there is no similar coverage available.

(h) New or Improved Benefits Available. If, during the Plan Year, a new benefit option becomes available under this Plan or an existing benefit option is significantly improved, Participants may elect the new or significantly improved coverage, and may make corresponding election changes regarding similar coverage, for the balance of the Plan Year.

(i) Elections by Spouse or Dependent Under Plan of Their Employer. In the event that a Participant's spouse or dependent makes an election change under a plan maintained by his/her employer, the Administrator may permit the Participant to revoke an election under this Plan and make a new election for the balance of the Plan Year that is on account of and corresponds with the election change made by the Participant's spouse or dependent, if—

(1) the election change made by the Participant's spouse or dependent under his/her employer's plan satisfies the regulations and rulings under Code § 125; *or*

(2) the period of coverage under the plan maintained by the Participant's spouse or dependent does not correspond with the Plan Year of this Plan.

(j) Loss of Group Health Coverage Sponsored by Governmental or Educational Institution. In the event that a Participant or his/her spouse or dependent loses group health coverage sponsored by a governmental or educational institution (*see* Treas. Regs. § 1.125-4(f)(5)), the Participant may elect coverage under the Health Plan for the balance of the Plan Year for the Participant, his/her spouse or dependents.

(k) Time for Change. Unless otherwise required by law, any application for a revocation and new election under this § 305 must be made within the time specified by the Administrator following the date of the actual event.

(l) Effective Date of Change. Unless otherwise required by law, any revocation and new election under this § 305 shall be effective—

(1) on the first day of the month following the month the new election is filed, with respect to coverage under the Health Plan.

(m) Dependent. For purposes of this § 305, the term "dependent" means a person who is either—

(1) a "dependent" of the Participant as defined in Code § 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), except that any child to whom Code § 152(e) applies is treated as a dependent of both parents; or

(2) a child (as defined in Code § 152(f)(1)) of the Participant who as of the end of the Plan Year has not attained age 27.

§ 306 Changes by Administrator to Avoid a Violation of Nondiscrimination Requirements or Benefit Limitations for Key Employees or Other Special Classes of Employees.

(a) In General. If the Administrator determines, before or during any Plan Year, that this Plan, and/or the Health Plan may fail to satisfy for such Plan Year any nondiscrimination requirement imposed by the Code or any limitation on benefits for Key Employees or other categories of employees established by the Code, the Administrator shall take such action as the Administrator deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation (including a margin of safety). Such action may include, without limitation, a modification of elections by highly compensated employees, Key Employees, or other classes of employees, as defined by the Code for purposes of the nondiscrimination requirement or benefit limitation in question, *without* the consent of such employees.

(b) Limitation on Benefits to Key Employees. The Administrator shall use its best efforts to insure that the total statutory nontaxable benefits provided in any Plan Year to Key Employees in benefit plans provided under this Cafeteria Plan does not exceed twenty-five percent (25%) of the aggregate of such benefits provided for all employees under this Plan for such Plan Year, as required under Code § 125(b)(2) to preserve favorable tax treatment of contributions by and benefits to Key Employees.

§ 307 Adjustment of Compensation Reductions.

If the cost to a Participant of coverage provided by the Health Plan increases or decreases during a Plan Year, then a corresponding change shall be made *automatically* in the compensation reduction of the Participant in an amount reflecting such increase or decrease.

§ 308 Automatic Termination and Reinstatement of Election.

Any election made under this Plan (including an election made through inaction under § 304(c)) shall automatically terminate on the payday for the pay period in which the Participant ceases to be a Participant in this Plan (or, if the payday occurs after the end of the Plan Year, on the last day of the Plan Year), although coverage or benefits under any underlying plan may continue if and to the extent provided by such plan. In the event such a former Participant shall again become a Participant before the end of the same Plan Year, the elections previously in effect for the Participant shall automatically be reinstated for the balance of the Plan Year except as the Participant may elect otherwise under § 305.

§ 309 Cessation of Coverage or Benefits Upon Failure to Make Required Payments.

Nothing in this Plan shall prevent the cessation of coverage or benefits under any benefit plan elected under this Cafeteria Plan, in accordance with the terms of such benefit plan, on account of a Participant's failure to pay the Participant's share of the cost of such coverage or benefits, through compensation reduction, after-tax payroll deduction, or otherwise.

§ 310 Maximum Elective Contributions.

The maximum amount of elective contributions (*i.e.*, salary reductions) under the Plan for any Participant for any Plan Year shall be the Participant's share of the cost of the most expensive coverage(s) available to the Participant under the Health Plan for the Plan Year, plus the maximum amount of cash payments available to the Participant if the Participant were to waive coverage under the Health Plan.

§ 311 Coordination with Family and Medical Leave Act.

To the extent that the Family and Medical Leave Act of 1993 applies to any employees of the Employer, then notwithstanding anything to the contrary in this plan document, if the Administrator deems it necessary to or appropriate to assure the Plan's compliance with that Act and any regulations pertaining thereto, the Administrator may—

(a) permit a Participant to revoke (and subsequently reinstate) his/her election of one or more benefit options under this Plan;

(b) adjust a Participant's compensation reduction as a result of such a revocation or reinstatement; and

(c) permit payment of the Participant's share of the cost of a benefit coverage under the Health Plan during an unpaid leave to be made with after-tax dollars.

Article IV — Administration

§ 401 In General.

The Plan Administrator of this Plan shall be the Township Manager of the Township of Salisbury.

§ 402 Powers and Duties.

(a) **In General.** The Administrator shall administer the Plan in accordance with its terms, and shall have all powers necessary to carry out the provisions of the Plan. The Administrator shall have absolute and exclusive discretion to decide all issues arising in the administration, interpretation, and application of the Plan. The Administrator may from time to time set forth rules of interpretation and administration, subject to modification as appropriate in the light of experience. Decisions and rules established by the Administrator shall be conclusive and binding on all persons. The Administrator shall act without discrimination among persons similarly situated at any given time, although it may change its policies from time to time, and shall always act in the exclusive interest of Plan Participants and their beneficiaries. However, notwithstanding the foregoing, any claim which arises under the Health Plan shall not be subject to review under this Plan, and the Administrator's authority under this Article IV shall not extend to any matter as to which an administrator under such other plan is empowered to make determinations under such plan.

(b) **Delegation.** The Administrator may delegate to any person or group of persons its authority to perform any act under this Plan, including those matters involving the exercise of discretion, *provided* that such delegation shall be in writing and subject to revocation at any time at the Administrator's discretion.

(c) **Employment of Professionals and Others.** The Administrator may appoint such accountants, counsel, specialists, consultants, and other persons as it may deem necessary or desirable in connection with the administration of this Plan, including persons who may also be engaged by the Employer. The Administrator shall be entitled to rely exclusively upon, and shall be fully protected in any action taken in good faith by it in relying upon, any opinions or reports which shall be furnished to it by any such accountant, counsel, specialist, or other consultant, or by any such person employed or engaged by the administrator of the Health Plan. The Administrator shall also be entitled to rely exclusively upon, and shall be fully protected in any action taken in good faith by it in relying upon, any instruction or report furnished by the administrator of any such plan.

(d) Records. The Administrator shall keep a record of all its proceedings and acts, and shall keep all such books of account, records, and other data as may be necessary for the proper administration of the Plan in accordance with applicable law.

(e) Reports, Documents, and Communications. The Administrator shall prepare and file all reports and documents required to be filed with a governmental agency, shall prepare and provide or make available all reports and documents required to be provided or made available to Participants or persons with an interest under the Plan, and shall communicate with employees and other persons with respect to all matters relating to the Plan, including rights and benefits under this Plan.

§ 403 Indemnification.

The Employer hereby agrees to indemnify any officer, director, or employee of the Employer for any expenses, penalties, damages, or other pecuniary losses (including attorneys' fees and amounts paid in settlement of any claims approved by the Employer) which such person may suffer as a result of the good faith exercise of his responsibilities, obligations, or duties in connection with the Plan or fiduciary activities actually performed in connection with the Plan, *but only* to the extent permitted by law and fiduciary liability insurance or bond is not available to cover the payment of such item.

§ 404 Benefits Solely From General Assets.

Except as may otherwise be required by law—

(a) any amount by which a Participant's compensation is reduced under this Plan will remain part of the general assets of the Employer;

(b) nothing herein will be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant; and

(c) no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account, or asset of the Employer for which any payment under the Plan may be made.

Article V — Amendment and Termination

§ 501 Right to Amend or Terminate.

Although the Employer expects to continue this Plan indefinitely, the Employer reserves the right to amend or terminate this Plan at any time by ordinance of the Sponsor, consistent with applicable collective bargaining agreements.

§ 502 Salary Reduction Amounts Not Yet Contributed.

If this Plan is terminated, any salary reductions which have been made by the Employer and which have not yet been used to provide coverage under the Health Plan shall be contributed and/or used for such purposes. From and after the date of termination, no further salary reductions shall be made from the pay of employees who signed salary reduction agreements.

Article VI — Tax Implications

§ 601 No Guarantee of Tax Consequences.

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts contributed to this Plan or paid to or for the benefit of a Participant under the Health Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether contributions under this Plan and benefits under the Health Plan are excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such contributions or benefits are not so excludable.

§ 602 Indemnification of Employer by Participants.

If any Participant makes contributions under this Plan that are not excludable from federal, state, or local income or Social Security taxes, and such taxes were not withheld with respect to such contributions, the Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold such taxes.

Article VII — Miscellaneous

§ 701 Acquittance.

This Plan is purely voluntary on the part of the Employer, except to the extent required under an applicable collective bargaining agreement. Except as provided in this Plan document or an applicable collective bargaining agreement, neither the establishment of the Plan, any modification thereof, nor the payment of any benefits under the Health Plan shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, any officer or Employee of the Employer, or the Administrator.

§ 702 Limitation of Liability.

Each person who becomes a Participant under this Plan expressly agrees and understands that neither the Employer, the Administrator, nor any of their officers and agents shall be subject in any way to any suit or litigation, or to any personal liability for any reason whatsoever in connection with this Plan or its operation, *except* for their willful neglect or fraud.

§ 703 Employment Rights.

Nothing contained in this Plan shall be construed or interpreted as giving any employee of the Employer the right to be retained in the service of any Employer or shall affect or impair any terms of employment with any Employer, the right of any Employer to control its employees, and the right of any Employer to terminate the service of any employee at any time, subject to applicable provisions of law and applicable collective bargaining agreements.

§ 704 Information to be Furnished.

Participants shall provide the Employer and the Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administering the Plan.

§ 705 Delegation of Authority by Employer.

Whenever any Employer is permitted or required to do or perform any act, matter, or thing under this Plan, it shall be done or performed by any officer duly authorized to perform same by the Employer.

§ 706 Interpretation.

This Plan is designed to satisfy the requirements of Code § 125 for a cafeteria plan. Unless a contrary intent shall appear herein, all terms used in this Plan shall be interpreted in the same manner as corresponding terms are used in Code § 125 and the regulations thereunder.

§ 707 Construction.

This Plan shall be construed and administered according to the laws of the United States of America and the Commonwealth of Pennsylvania. Further, this Plan shall be construed and administered so as to conform to the requirements for qualification under Code § 125 and shall be deemed amended automatically to conform to such legal requirements as in effect from time to time to the extent necessary.

§ 708 Gender and Number.

Whenever any words are used in this Plan in the masculine gender, they shall be construed as though they were also used in the feminine gender in all appropriate cases. Whenever any words are used in either the singular or plural form, they shall be construed as though they were also used in the other form in all appropriate cases.

§ 709 Headings.

Article, section, subsection, paragraph, subparagraph, clause, subclause, and other headings are included in this Chapter for convenience only and shall not be taken into account in construing the provisions of this plan document.

§ 710 Severability.

Any provision of this plan document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions of this plan document, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Employer hereby waives any provision of law which renders any provision of this plan document prohibited or unenforceable in any respect.