

★★ IMPORTANT NOTICE TO PARTICIPANTS ★★

October 2013

To All Employees and Dependents:

This Notice is to inform you of several changes to the Plan that were recently approved by the Trustees.

Definition of “Spouse”

The Plan will revise its definition of “spouse” effective October 1, 2013, as follows:

Spouse means an individual who is the legally recognized spouse of an employee under the laws of the state in which the marriage or civil union was established. For this purpose, a legal civil union is considered a legal marriage. A certified copy of your marriage certificate or other documentation substantiating status as a spouse may be required to be on file at the Fund Office before claims for your spouse will be processed.

Subrogation and Reimbursement

Per advice of legal counsel, the Plan has revised its subrogation and reimbursement provisions to read as follows:

The Plan has a first priority subrogation and reimbursement right if it provides benefits resulting from or related to an Injury, occurrence, or condition for which the Eligible Person has a right of redress against any third-party.

This means that if the Plan pays benefits which are, in anyway, compensated by a third-party, such as an insurance company, the Eligible Person agrees that when a recovery is made from that third-party, the Plan is fully reimbursed out of that recovery for the benefits the Plan previously paid. If the Eligible Person does not agree to the Plan's subrogation and reimbursement rules, benefits shall not be paid. For example, the subrogation and reimbursement right may apply if an Eligible Person is injured at work, in an automobile accident, at a home or business, in an assault, or in any other way for which a third-party has or may have responsibility. If a recovery is obtained from a third-party, such as an insurance company, the Plan shall be paid first and to the full extent of the benefits it paid. The Eligible Person receives payment only after the Plan is fully reimbursed.

The following are the Plan Document rules that apply to the Plan's right of subrogation and reimbursement:

- (a) Subrogation and Reimbursement Rights in Return for Benefits: In return for the receipt of benefits from the Plan, the Eligible Person agrees that the Plan has the subrogation and reimbursement rights as described in this Subrogation and Reimbursement*

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section. Further, the Eligible Person shall sign a form acknowledging the Plan's subrogation and reimbursement rights prior to payment, or further payment, of benefits. Benefits may not be paid if an acknowledgment form is not on file for the Eligible Person. Benefits may not be paid if the Eligible Person refuses to sign the acknowledgment. The Plan's subrogation and reimbursement rights to benefits paid prior to Plan notice of a subrogation and reimbursement right are not impacted if the Eligible Person refuses to sign the acknowledgment. The Plan has the sole discretion to determine, calculate, and/or itemize which benefits paid by the Plan are subject to the Plan's subrogation and reimbursement rights.

- (b) Constructive Trust or Equitable Lien: The Plan's subrogation and reimbursement rights grant the Plan an equitable lien on the proceeds of any recovery obtained by the Eligible Person from a third-party, whether by settlement, judgment, or otherwise. The Plan's recovery operates on every dollar received by the Eligible Person from a third-party. When a recovery is obtained, the recovery proceeds are held in trust for the Plan. The Plan then imposes a constructive trust or equitable lien on the recovery proceeds and is paid to the full extent of its equitable subrogation and reimbursement rights. If the Eligible Person fails to hold the recovery proceeds in trust or in any other way prejudices or adversely impacts the Plan's subrogation and reimbursement rights, the Plan reserves the right to, among other things, pursue all available equitable action and offset any future benefits payable to the Employee, Dependent, or Beneficiary under the Plan. If the Plan initiates an equitable action for reimbursement, the Plan is seeking to enforce an equitable lien by agreement.
- (c) Plan Paid First: Amounts recovered or recoverable by or on the Employee's, Dependent's, or Participant's behalf are paid to the Plan first, to the full extent of its subrogation and reimbursement rights, and the remaining balance, if any, to the Eligible Person. The Plan's subrogation and reimbursement right comes first even if the Eligible Person is not paid for all of their claims for damages. If the Plan's subrogation and reimbursement rights are not fully satisfied directly by a third-party, the Plan's right to reimbursement may be enforced to the full extent of any recovery that the Eligible Person may have received or may be entitled to receive from the third-party.
- (d) Right to Take Action: The Plan's right of subrogation and reimbursement is an equitable one and applies to all categories of benefits paid by the Plan. The Plan and any other Plan member can bring an action (including in the Eligible Person's name) for specific performance, injunction, to enforce an equitable lien by agreement, or any other equitable action necessary to protect its rights in the cause of action, right of recovery, or recovery by an Eligible Person. The Plan shall commence any action it deems appropriate against an Eligible Person, an attorney, or any third-party to protect its subrogation and reimbursement rights. The subrogation and reimbursement right applies to claims of Eligible Dependents covered by the Plan regardless of whether such Dependent is legally obligated for expenses of treatment.

- (e) Applies to All Rights of Recovery or Causes of Action: The Plan's subrogation and reimbursement rights apply to any and all rights of recovery or causes of action the Eligible Person has or may have against any third-party.
- (f) No Assignment: The Eligible Person cannot assign any rights or causes of action they may have against a third-party to recover medical expenses without the express written consent of the Plan.
- (g) Full Cooperation: The Eligible Person shall cooperate fully with the Plan and do nothing to prejudice or adversely affect the Plan's subrogation and reimbursement rights. The Eligible Person, whether personally or through an attorney, must periodically update the Plan on the status of any action against a third-party. The time period between updates must not exceed 45 days. The Eligible Person must notify the Plan before executing any settlement agreement with a third-party, regardless of whether the settlement agreement purports to include or exclude the Plan's subrogation or reimbursement interest. Benefits may be denied if the Eligible Person does not cooperate with the Plan.
- (h) Notification to the Plan: The Eligible Person must promptly advise the Plan Administrator, in writing, of any claim being made against any person or entity to pay the Eligible Person for their Injuries, Illness, or death. Further, the Eligible Person must periodically update the Plan regarding the claim and notify the Plan of a settlement prior to reaching a compromise of their claims.
- (i) Third-Party: Third-party includes, but is not limited to, all individuals, entities, federal, state or local governments, and insurers (including, but not limited to, liability, medical expense, wage loss, worker's compensation, premises liability, no fault, uninsured or underinsured motorist insurers), who reimburse, compensate, or pay for an Eligible Person's losses, damages, Injuries, or claims relating in any way to the Injury, occurrence, conditions, or circumstances leading to the Plan's payment of benefits. This right of subrogation and reimbursement exists regardless of whether the policy of insurance is owned by the Eligible Person.
- (j) Apportionment, Comparative Fault, Contributory Negligence. Equitable Defenses Do Not Apply: The Plan's subrogation and reimbursement rights include all portions of the Eligible Person's claims regardless of any allocation or apportionment that purports to dispose of any portion of the claims not otherwise subject to subrogation, including, but not limited to, any apportionment for pain and suffering, wage loss, partial or total disability, or to a spouse for loss of consortium. The Plan's subrogation and reimbursement rights are not affected, reduced, or eliminated by comparative fault, contributory negligence, the double-recovery rule, the make-whole or common-fund doctrines, or any other equitable defenses.
- (k) Attorney's Fees: The Plan shall not be responsible for any attorney's fees or costs incurred by the Eligible Person in any legal proceeding or claim for recovery, under the common-fund doctrine or any other legal theory, unless prior to incurring

such fees or costs, the Trustees agree in writing to pay all or some portion of attorney's fees or costs.

- (l) *Course and Scope of Employment:* *If the Plan has paid benefits for any Injury which arises out of and in the course and scope of employment, the Plan's right of subrogation and reimbursement shall apply to all awards or settlements received by the Eligible Person regardless of how the award or settlement is characterized and regardless of whether the Plan has intervened in the action. If attorney's fees are awarded to the Eligible Person's attorney from the Plan's recovery, the Eligible Person shall reimburse the Plan for the attorney's fees.*

Please keep this Notice with your Summary Plan Description (SPD) booklet for future reference. If you have any questions, please feel free to contact the Fund Office.

Yours very truly,

THE BOARD OF TRUSTEES

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