

**TOWNSHIP OF SOUTH WHITEHALL
LEHIGH COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1085

(Duly Adopted March 6, 2024)

AN ORDINANCE OF THE TOWNSHIP OF SOUTH WHITEHALL, COUNTY OF LEHIGH, AND COMMONWEALTH OF PENNSYLVANIA, AMENDING PART I (“ADMINISTRATIVE LEGISLATION”), CHAPTER 58 (“PENSIONS”), ARTICLE II (“DEFERRED COMPENSATION PLAN”) OF THE CODIFIED ORDINANCES OF SOUTH WHITEHALL TOWNSHIP TO REESTABLISH AND RESTATE THE DEFERRED COMPENSATION PLAN AND AMEND THE PLAN DOCUMENT IN USE FOR SAID PLAN; AND PROVIDING FOR A REPEALER CLAUSE, SEVERABILITY CLAUSE AND EFFECTIVE DATE

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of South Whitehall Township, as follows:

SECTION I – AMENDMENT TO PART I (“ADMINISTRATIVE LEGISLATION”), CHAPTER 58 (“PENSIONS”), ARTICLE II (“DEFERRED COMPENSATION PLAN”) OF THE CODIFIED ORDINANCES OF SOUTH WHITEHALL TOWNSHIP

Part I (“Administrative Legislation”), Chapter 58 (“Pensions”), Article II (“Deferred Compensation Plan”) of the Codified Ordinances of South Whitehall Township (§ 58-14) is hereby amended (revised) in its entirety to read as follows:

§ 58-14. Reestablishment of plan.

A. The Board of Commissioners of the Township of South Whitehall hereby reestablishes the South Whitehall Township Deferred Compensation Plan ("plan"), by adopting the “South Whitehall Township Deferred Compensation Plan Amended and Restated, January 1, 2024” plan document (“plan”), which is attached hereto and incorporated herein as though more fully set forth at length as Exhibit “A”, for the voluntary participation of all eligible employees and elected officials of the Township of South Whitehall.

B. The Township Manager is hereby authorized to execute such agreements and contracts as are necessary or convenient to implement the plan through the program. It is implicitly understood that other than the incidental expenses of collecting and disbursing the participants' deferrals and other minor administrative matters, there is to be no cost to the Township for its implementation of the plan through the program.

C. The Township Manager is hereby authorized to execute, on behalf of the Township, individual participation agreements with each eligible person desiring to participate in the plan. The Township Manager is also authorized to act as the administrator of the Plan, representing the Township under the program.

SECTION II - REPEALER

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

SECTION III - SEVERABILITY

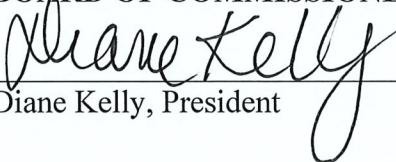
If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Commissioners that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION IV - EFFECTIVE DATE

This Ordinance shall become effective immediately following its adoption by the Board of Commissioners.

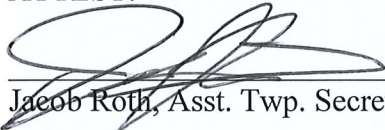
DULY ENACTED AND ORDAINED as an Ordinance this 6th day of March, 2024 by a majority of the Board of Commissioners of South Whitehall Township, Lehigh County, Pennsylvania, at a duly advertised meeting of the Board of Commissioners at which a quorum was present. As part of this Ordinance, the Board of Commissioners has directed that the President, or Vice-President in the absence of the President, execute this Ordinance on behalf of the Board.

**TOWNSHIP OF SOUTH WHITEHALL
BOARD OF COMMISSIONERS**



Diane Kelly, President

ATTEST:



Jacob Roth, Asst. Twp. Secretary

EXHIBIT “A”

**SOUTH WHITEHALL TOWNSHIP
457(b) DEFERRED COMPENSATION PLAN**

Amended and Restated, January 1, 2024

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PREAMBLE

WHEREAS, South Whitehall Township (“Employer” or “Township”), a political subdivision of the Commonwealth of Pennsylvania and that is an “eligible employer” described in paragraph (1) of subsection (e) of section 457 of the Internal Revenue Code , established a deferred compensation plan for the benefit of employees of the Township by Ordinance No. 553 of 1993.

WHEREAS, the South Whitehall Township 457(b) Deferred Compensation Plan (the “Plan”) is intended to be an eligible deferred compensation plan within the meaning of subsections (a) and (b) of section 457 of the Internal Revenue Code , and the regulations thereunder (regarding deferred compensation plans of state and local governments and tax-exempt organizations). The Plan shall be administered and construed in a manner consistent with the intent and purpose of the Plan to comply with the requirements of subsections (a) and (b) of section 457 of the Internal Revenue Code , and the laws of Pennsylvania to the extent that such laws are not preempted by the laws of the United States of America.

NOW, THEREFORE, the Township hereby amends and restates the Plan as follows, effective as of _____ 1, 2024.

ARTICLE 1

DEFINITIONS

- 1.1 **Account Balance** means the separate bookkeeping account maintained with respect to each Participant that reflects the entire interest of a Participant in the Fund, including the amounts contributed by the Employer on behalf of the Participant pursuant to the Deferral Contribution elections made by the Participant in accordance with Article 3 of the Plan, any transfers for the benefit of the Participant, any distributions made to the Participant or the Beneficiary of the Participant, any account established under Article 7 for rollover contributions and plan-to-plan transfers made for the Participant, and any account established for a Beneficiary, adjusted with any earnings or losses thereon; additionally, if a Participant has more than one Beneficiary at the time of the death of the Participant, then a separate account shall be maintained for each Beneficiary.
- 1.2 **Administrative Committee** or **Committee** shall mean the committee appointed by the Board of Commissioners to administer the Plan in accordance with Article 8. The Board shall identify the individuals who shall serve on the Committee.
- 1.3 **Affiliate** shall mean any entity related to the Employer under common control and that is required to treat its employees as employed by a single employer under Code Section 414(c).
- 1.4 **Application for Benefits** shall mean the application form authorized by the Third Party Administrator that provides the Participant the ability to elect a method of payment as provided in Section 6.4.
- 1.5 **Beneficiary** shall mean any person(s) or legal entity or entities designated by a Participant to receive a retirement, death or other benefit under the provisions of the Plan. In the event a Participant dies without an accepted Beneficiary Designation Form on file, the Participant shall be deemed to have designated his spouse, if living, as his Beneficiary. If the Participant does not have a surviving spouse, the Participant shall be deemed to have designated his children, per stirpes, as his Beneficiary. If the Participant had no children, then he shall be deemed to have designated his estate as Beneficiary.
- 1.6 **Beneficiary Designation Form** shall mean the form authorized by the Third Party Administrator and used by the Participant to elect a Beneficiary as provided in Section 6.14. A Participant may change his or her Beneficiary at any time by submitting a new Beneficiary Designation Form to the Third Party Administrator.
- 1.7 **Benefit** shall mean the benefit determined pursuant to Article 3, as of the date of reference, taking into consideration gains and losses and deductions for expenses authorized in Articles 5 and 8 of the Plan, respectively.
- 1.8 **Board of Commissioners** and **Board** shall mean the Board of Commissioners of the Employer.
- 1.9 **Code** shall mean the Internal Revenue Code of 1986, as amended (or any predecessor or

successor thereto).

- 1.10 Compensation** for purposes of allocating Deferral Contributions means the employee's wages, salaries, fees for professional services, and other amounts received without regard to whether or not an amount is paid in cash for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amount would have been received and includible in gross income but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b)). Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of an eligible 457 Plan.
- 1.11 Deferred Compensation** shall mean the amount of Deferral Contributions or Nonelective Contributions credited to the Participant's Account in accordance with the terms of the Plan and Code Section 457(b).
- 1.12 Deferral Contribution** shall mean that portion of Compensation as to which a Participant has made an election to defer receipt of Compensation under the Plan.
- 1.13 Effective Date** shall mean January 1, 2024.
- 1.14 Election Form** shall mean such document(s) or form(s), which may be electronic, as prescribed and made available from time to time by the Third Party Administrator, whereby an Eligible Employee enrolls in the Plan as a Participant, elects to defer Compensation pursuant to Article 3 of this Plan, and/or makes an investment election pursuant to Article 5 of the Plan.
- 1.15 Eligible Deferred Compensation Plan** shall mean a deferred compensation plan established and administered in accordance with the requirements of Code Section 457(b).
- 1.16 Eligible Employee** shall mean an Employee of the Employer who is not a seasonal, temporary, casual or part-time Employee.
- 1.17 Employee** shall mean an individual who is employed by the Employer. An Employee shall cease to be such on his death, retirement, resignation, or discharge. An individual who is on a leave of absence from the Employer shall be considered an Employee during such leave only to the extent provided in the policies and practices established by the Employer.
- 1.18 Employer** shall mean the Township of South Whitehall, Lehigh County. The Township is an "eligible employer" as defined in IRC Section §457(e)(1)(A).
- 1.19 Former Participant** shall mean any individual who no longer is a Participant but continues to have a balance in his Account greater than zero.

- 1.20 Fund** means the assets of the Plan held in the Trust, including all contributions and the investments and reinvestments, earnings and profits thereon.
- 1.21 Includible Compensation** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. Includible Compensation shall be determined without regard to any community property laws. Notwithstanding the foregoing, Includible Compensation shall be interpreted in accordance with Code Section 415(c)(3) and the regulations thereunder.
- 1.22 Measurement Funds** means one or more mutual funds selected by the Administrative Committee which are provided as hypothetical investment options from which the Participant may choose to have his or her Account charged with the earnings, gains and losses resulting from such investments.
- 1.23 Nonelective Contribution** shall mean such portion of Compensation as to which an Employer has, in its discretion, determined to credit to the Account of a Participant.
- 1.24 Normal Retirement Age** means the age designated by the Participant unless the Employer designates in writing a Normal Retirement Age. The Normal Retirement Age designated by the Participant or Employer shall be no earlier than age 65 or the age at which Participants have the right to retire and receive, under the pension plan of the Employer, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age.
- 1.25 Participant** for a Plan Year shall mean an Eligible Employee who has entered into an agreement to make Deferral Contributions to the Plan or on whose behalf the Employer will or has made a Nonelective Contribution under the Plan. In the event of death or incompetency of the Participant, the term shall mean the Participant's personal representative, guardian, or Beneficiary.
- 1.26 Plan** shall mean South Whitehall Township 457(b) Deferred Compensation Plan, as provided herein.
- 1.27 Plan Year** shall mean the twelve consecutive month period beginning January 1 and ending December 31 of each year.
- 1.28 Qualified Domestic Relations Order** shall mean a domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the Benefit payable with respect to a Participant under the Plan.
- 1.29 Severance from Employment** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer as determined by the Third Party Administrator (and taking into account guidance issued under the Code).

- 1.30 Third Party Administrator** means such administrator as may be appointed by the Administrative Committee.
- 1.31 Trust** means the Trust described in section 5.2 of the Plan, which shall be treated as a tax-exempt trust pursuant to section 501(a) of the Code and shall be used for the purpose of holding assets and income of the Plan but shall not cause the amounts to be includable in the gross income of Participants and Beneficiaries merely because such amounts are held in the Trust.
- 1.32 Trust Agreement** means the written agreement made by and between the Employer and the Trustee pursuant to which the Trust Fund is maintained.
- 1.33 Trust Fund** means the trust fund created under and subject to the Trust Agreement.
- 1.34 Trustee** means the Township or the corporation or person or persons selected by the Township to serve as the Trustee for the Trust pursuant to subsection (e) of section 5.2 of the Plan.

ARTICLE 2

ELIGIBILITY AND PARTICIPATION

- 2.1 Eligibility.** Each Eligible Employee of the Township shall be eligible to participate in the Plan on the first day of the first month immediately following commencement of employment.
- 2.2 Enrollment.** An Eligible Employee may enroll in the Plan to become a Participant by completing and executing an Election Form to defer a portion of his or her Compensation (and have that amount contributed as an annual Deferral Contribution on his or her behalf) and delivering the same to the Third Party Administrator not less than fifteen (15) days (or such other period as the Committee may designate) prior to the Enrollment Date with respect to which Election Form is to be effective, which must be accepted and approved by the Third Party Administrator to be effective. The Committee may establish a minimum Deferral Contribution amount, and may change such minimum amount from time to time. The participation election may also require, pursuant to the terms and conditions of the Plan, the designation of investment funds and a designation of Beneficiary. The provisions of this section shall be subject to, and administered in accordance with, the following conditions:
- (a) Compensation deferred in accordance with the requirements of this section and the requirements of Article are excluded from the gross income of a Participant in the year deferred or contributed and are not includable in gross income until paid to the Participant in the case of the Plan;
 - (b) the Compensation may be deferred for any calendar month by a reduction in Compensation as soon as administratively feasible following execution of an agreement providing for the Deferral Contribution;
 - (c) if a Participant enters into an agreement providing for deferral by a reduction in Compensation under the Plan, the Election Form shall remain in effect until the Participant effectively revokes or alters the terms of the Election Form as provided under section 2.5 of the Plan.
- 2.3 Information Provided by the Participant.** Each Employee enrolling in the Plan is required to provide to the Third Party Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Third Party Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible Plan described in subsections (a) and (b) of section 457 of the Code.
- 2.4 Contributions.** Compensation deferred by a Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Account Balance of the Participant. For this purpose, deferred Compensation shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within fifteen (15) business days following the end of the month in which the amount would otherwise have been payable to the Participant.

- 2.5 Amendment of Elections Made Under the Plan.** Subject to other provisions of the Plan, a Participant may at any time revise his or her elections made under the Plan, including elections to defer Compensation, elections made with respect to any investment direction permitted under the Plan, and elections with respect to the designation of a Beneficiary. Unless an election specifies a later effective date an election made on an Election Form to terminate or revoke a prior effective Election Form or to change the amount of deferred Compensation shall take effect as soon as administratively practicable. A change in the investment direction shall take effect as of the date provided by the Third Party Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted and approved by the Third Party Administrator.
- 2.6 Leave of Absence.** Unless written notice of a complete termination of the election to defer Compensation under the Plan has been received and approved by the Third Party Administrator in accordance with section 2.5 of the Plan, if a Participant is absent from work by reason of a leave of absence, an election to defer Compensation under the Plan shall continue to remain in effect as provided under and in accordance with the provisions of section 3.5 of the Plan.
- 2.7 Termination of Participation.** The Eligible Employee shall cease to be eligible to participate in the Plan when the Eligible Employee (i) no longer is an employee of the Employer; or (ii) Benefits have been distributed in full in accordance with the terms of the Plan.

ARTICLE 3

DEFERRED COMPENSATION

3.1 Deferral Contributions. Elections to defer Compensation under the Plan shall be made in writing by completing an Election Form pursuant to the requirements of Article 3 of the Plan. An Election Form of a Participant and the various elections and selections made thereon shall not become effective unless accepted and approved by the Third Party Administrator in its sole discretion. The amounts contributed by the Township under the Plan, including Deferral Contribution amounts contributed on behalf of a Participant at the election of the Participant, shall be credited to an account maintained by the Employer for the Participant for the payment of benefits to the Participant or Beneficiary, and shall be held in Trust and invested under the Trust as provided in Article 5 of the Plan and in the Trust Agreement, as required in section 457(g) of the Code. The sole source of benefits payable pursuant to the terms of the Plan shall be the funds held in the Trust and credited to the account of the Participant or Beneficiary.

3.2 Plan Limit.

- (a) The maximum amount that may be credited as Deferred Compensation under the Plan (the “Plan Limit”) for each Plan Year shall not exceed the lesser of (1) the Applicable Dollar Limit, or (2) one hundred percent (100%) of the Participant’s Includible Compensation for the taxable year. The Applicable Dollar Limit shall be the amount determined in accordance with Code Section 457(e)(15)(A) as adjusted pursuant to Code Section 457(e)(15)(B). If, during a Plan Year, the aggregate amount of Deferred Compensation exceeds the Plan Limit, excess Deferred Compensation will be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Third Party Administrator determines that the amount is an excess Deferral Contribution, but no later than April 15th following the close of the Plan Year in which the excess arose.
- (b) The age 50 catch-up annual Deferral contribution shall be determined in accordance with this subsection (c). A Participant who will have attained age 50 or more by the end of a calendar year shall be permitted to elect an additional amount of deferred Compensation for the year, up to the maximum age 50 catch-up annual Deferral for the year. The maximum dollar amount of the age 50 catch-up annual Deferral amount for a year is \$7,500 for the 2023 calendar year adjusted for increases in the cost-of-living as and to the extent provided under the Code.
- (c) The special catch-up limitation of section 457 of the Code shall be determined in accordance with this subsection (c). If, with respect to a Participant, the applicable year is one of the last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this subsection exceeds the amount determined under subsections (a) and (b) of this section, then the maximum annual Deferral amount shall be, as provided in section 457(b)(3) of the Code and this subsection, an amount not in excess of the lesser of:
 - (i) An amount equal to twice the “applicable dollar amount” in effect under section 457(b)(2)(A) of the Code and subsection (a) of this section as provided in section 457(b)(3)(A) of the Code, or the sum of: (A) an amount equal to: (I) the

aggregate deferred amount limitation established under subsection (b) of this section for the current calendar year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (II) the aggregate amount of Compensation that the Participant deferred under the Plan during such years; and (B) an amount equal to the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to subsections (b) and (c) of this section 4.1), minus

- (ii) the aggregate contributions to pre-2002 coordination plans for such years.
 - (iii) For purposes of determining the amounts in this subsection (d), a year shall be taken into account only if: (A) the Participant was eligible to participate in the Plan during all or a portion of the year, and (B) Compensation deferred, if any, under the Plan during the year was subject to the basic annual Deferral amount limitation of subsection (b) of this section 4.1 or any other plan ceiling required by section 457 (b) of the Code. In addition, the term contributions to pre-2002 coordination plans means any employer contribution, salary reduction or elective contribution under any other eligible plan described in section 457(b), or a salary reduction or elective contribution under any plan described in section 401(k) of the Code, a simplified employee pension described in section 402(h)(1)(B) of the Code, an annuity contract described in section 403(b) of the Code, a simple retirement account described in section 408(p) of the Code, or any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Township or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of part II of subparagraph (B) of paragraph (ii) of this subsection (d) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.
- (d) For purposes of subsections (a), (b), and (c), an individual is treated as not having Deferred Compensation under a plan for a prior taxable year to the extent excess Deferral Contribution amounts under the plan are distributed, as described in section 4.4 of the Plan. To the extent that the combined deferred amounts for pre-2002 years exceeded the maximum deferred amount limitations, the amount is treated as an excess deferred amount for those prior years.

3.3 Participation in More than One Eligible Deferred Compensation Plan. If a Participant participates in more than one Eligible Deferred Compensation Plan, the maximum amount that the Participant may have credited as Deferred Compensation under the Plan and any other Eligible Deferred Compensation Plan shall not exceed the amount provided for in Article 3.2.

3.4 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service as determined pursuant to section 414(u) of the Code or who is on a leave of absence for qualified military service pursuant to section 414(u) of the Code may elect to make additional Deferral amounts upon resumption of employment with the Township equal to the maximum Deferral Contribution amounts that the

Employee could have elected under the Code and the Plan during that period if the employment of the Employee with the Township had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferral Contribution amounts, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

3.5 Leaves of Absences. Unless written notice of a complete termination of the election to defer Compensation under the Plan has been received and approved by the Committee in accordance with section 2.2 of the Plan, the Election Form of the Participant shall remain in effect during the approved leave of absence with Compensation. A leave of absence of more than six (6) months without Compensation will result in the automatic termination or cancellation of the Election Form of the Participant. If a Participant returns to employment after such leave of absence and desires to again enroll in the Plan, the Participant will be required to complete an Election Form and deliver the completed and executed Election Form to the Committee by the next available Enrollment Date or any other Enrollment Date in accordance with section 2.2 of the Plan.

3.6 Participant Accounts. The Employer shall maintain a separate Account for each Participant for the purpose of accounting and to facilitate orderly administration of the Plan. A Participant's Account shall show the Participant's name with all applicable debit and credit balances. Each Account shall reflect all Deferred Compensation credited to each Account and all interest, expense deductions, statement gain or loss, whether realized or unrealized, applicable to such Account and credited or debited thereto.

Each Participant shall be furnished a report of the status of his Account at least annually. The Employer and Administrative Committee shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said Accounts nor shall the Employer be required to replace any loss whatsoever which may result from said investments.

ARTICLE 4

VESTING

4.1 Vesting A Participant shall be fully vested in his Account at all times under the Plan.

ARTICLE 5

INVESTMENT AND ADJUSTMENT OF ACCOUNTS

5.1 Investment of Funds. A Trust has been established to which contributions pursuant to the Plan are made and held for the exclusive benefit of the Participants and their Beneficiaries and are invested in accordance with the Trust Agreement and the provisions of this section 5.1 and Article 5.

- (a) Amounts held in the Trust Fund, or in a custodial account or annuity contract described in section 401(f) of the Code, shall be invested in accordance with the provisions of such Trust Agreement, custodial account or annuity contract, and any investment funds available under such Trust, custodial account or annuity contract. The Trust and the funds available under such Trust may be governed by state law, and in that event, state law shall govern the investment of such amounts.
- (b) Subject to applicable state law, at the direction of the Committee, the Trust Fund may be divided into two (2) or more subfunds, which may serve as vehicles for the investment of the accounts of the Participants. The Committee shall determine the general investment characteristics and objectives of each subfund and, with respect to each subfund, shall designate one or more selected pooled investment vehicles (such as collective funds, group trusts, mutual funds and separate accounts under insurance contracts) to constitute such subfund. The Committee shall have complete investment discretion over such subfund, subject to applicable state law and to the general investment characteristics and objectives established for the particular subfund.
- (c) In accordance with the rules established by the Committee and subject to applicable state law, the Committee shall determine the circumstances under which a particular subfund may be elected, or shall be automatically utilized, the minimum or maximum amount or percentage of an account which may be invested in a particular subfund, the procedures for making or changing investment elections, the extent (if any) to which Beneficiaries of Participants may make investment elections and the effect of a failure of a Participant or Beneficiary to make an effective election with respect to all or any portion of an account. Any amounts deferred (including amounts previously deferred) under the Plan will not be considered made available to the Participant solely because the Participant is permitted to choose among various investment modes under the Plan for the investment of such amounts whether before or after payments have commenced under the Plan in accordance with the Code and applicable regulations.
- (d) Subject to applicable state law, the Committee shall have the power, from time to time, to dissolve subfunds, to direct that additional subfunds be established and, under rules established by the Committee, to withdraw or limit participation in a particular subfund.

5.2 Trust Requirements. All assets and income of the Plan shall be held in Trust for the exclusive benefit of Participants and their Beneficiaries as required under section 457(g) of the Code.

- (a) Notwithstanding any contrary provision of the Plan but subject to the provisions in this section 5.2, in accordance with and as required by subsections (b) and (g) of section 457 of the Code, all amounts of Compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust and invested in the Trust Fund in accordance with the Plan and the Trust Agreement. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of Pennsylvania. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and Beneficiaries under the Plan. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund.
- (b) All amounts of Compensation deferred under the Plan shall be transferred to the Trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of the Participants. To comply with this requirement, all amounts of Compensation deferred under the Plan shall be transferred to the Trust established under the Plan not later than fifteen (15) business days after the end of the month in which the Compensation would otherwise have been payable to the Employee.
- (c) For purposes of the trust requirements of section 457(g)(1) of the Code and this Plan, custodial accounts and annuity contracts described in section 401(f) of the Code will be treated as trusts under rules similar to the rules under section 401(f) of the Code. Section 1.401(f)-1(b) of the Treasury Regulations contains requirements that a custodial account or an annuity contract must satisfy to be treated as a trust. For purposes of applying the rules of section 401(f) of the Code under section 457(g) of the Code, the requirements under section 1.401(f)-1(d) of the Treasury Regulations generally will be used to determine whether a custodial account or an annuity contract satisfies the requirements of section 457(g)(3) of the Code.
- (d) The use of a custodial account or an annuity contract as part of the Plan does not preclude the use of a trust or another custodial account or annuity contract as part of the same Plan, provided that all such vehicles satisfy the requirements of paragraphs (1) and (3) of subsection (g) of section 457 of the Code and all assets and income of the Plan are held in such vehicles.
- (e) The Township reserves the right to select the Trustee, remove a Trustee, and amend the Trust agreement from time to time and at any time as provided under the Trust Agreement. Such rights and obligations of the Trustee shall be determined solely under the terms of the Trust Agreement.
- (f) It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of such Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of the

Participants and their Beneficiaries. No part of the amounts contributed by the Township under the Plan shall be available to the Township for any purpose except for providing benefits under the Plan to Participants and Beneficiaries until all such liabilities have been satisfied in full.

5.3 Valuation and Adjustment of Accounts. Subject to applicable state law and the rules governing plans and investment vehicles authorized and created pursuant to such state law, each subfund shall be valued from time to time (but not less frequently than each Annual Valuation Date), which valuation shall reflect, as nearly as possible, the then fair market value of the assets comprising such subfund (including income accumulations therein). Subject to applicable state law and the rules governing plans and investment vehicles authorized and created pursuant to such state law, the Township shall cause the value of each account or portion of an account invested in a particular subfund (including undistributed accounts) to be increased (or decreased) from time to time for distributions, contributions, investment gains (or losses) and expenses charged to the account.

5.4 Investment Direction By Participants.

- (a) Rights of Participants. To the extent that the Committee has established investment categories for Participant investment direction, each Participant shall have the right to designate the investment category or categories in which the Plan is to invest amounts allocated to such Participant's Account from contributions made by the Employer.
- (b) Changes in Investment Directions. Any designation of investment categories by a Participant shall be made in the manner prescribed by the Third Party Administrator and shall be made at such reasonable times as shall be determined by the Third Party Administrator.
- (c) Available Investment Categories. There shall be offered such investment categories as shall be determined in accordance with uniform nondiscriminatory rules prescribed by the Committee from time to time.
- (d) Limitations on Division of Investments. Any Participant may elect as to the allocation among investment categories for the investment of future contributions in such percentages and at such time as shall be determined in accordance with uniform nondiscriminatory rules prescribed by the Committee.
- (e) Failure to Elect Investment Categories. In the absence of any written designation of investment category preference, the Committee shall invest all funds received on account of any Participant in the investment category selected by the Committee. Any designation of investment category by any Participant shall, on its effective date, cancel any prior designation by that Participant with respect to investment of future contributions.
- (f) Annuity Contract or Trust. Notwithstanding any instruction from any Participant, the terms of the applicable Contract or trust agreement shall control investment of Plan assets.

5.5 Participant Indemnification. A Participant, as a condition of participation hereunder, agrees to indemnify and hold harmless the Committee, the Employer, and their agents and representatives from losses or damages of any kind related to the Participant's investment elections.

ARTICLE 6

DISTRIBUTIONS OF BENEFITS

- 6.1 Distribution Requirements.** A Participant may not receive a distribution of any amounts deferred under the Plan prior to the occurrence of a distributable event set forth in this section 6.1 of the Plan. Amounts credited to the Account Balance of a Participant shall become distributable in accordance with this Article 6 of the Plan upon the earliest to occur of any of the following events:
- (a) when the Participant has a Severance from Employment with the Township;
 - (b) the calendar year in which the Participant attains age 70½; or
 - (c) when the Participant is faced with an “unforeseeable emergency,” as described in section 6.11
- 6.2 Benefit Distributions at Retirement or Other Severance From Employment.** On retirement or other Severance from Employment (other than due to death), a Participant shall be entitled to receive a distribution of his or her Account Balance in any form of distribution permitted under the Plan commencing at the date elected under section 6.3. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in monthly installments of the minimum annual payments described in subsection (b) of section _____.
- 6.3 Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed with the Third Party Administrator. Benefits will commence as soon as practicable after receipt by the Third Party Administrator of the Participant’s notice. However, in no event may the distribution of benefits commence later than the latest date described in section 6.9 of the Plan.
- 6.4 Forms of Distribution.** In an election to commence benefits under section 6.3, a Participant entitled to a distribution of benefits under this Article 6 may elect to receive payment in any of the forms of distribution provided below; provided, however, that no distribution option may be selected by a Participant or a Beneficiary unless it satisfies the requirements of sections 401(a)(9) and 457(d)(2) of the Code, and the applicable requirements of sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Income Tax Regulations; specifically, section 1.401(a)(9)-5 of the Income Tax Regulations:
- (a) a lump sum payment of the total amount allocated to the Account Balance of the Participant;
 - (b) a partial lump sum payment;
 - (c) installment; or
 - (d) an annuity.
- 6.5 Death Benefit Distributions.** Commencing in the calendar year following the calendar year of the death of the Participant, the Account Balance of the Participant shall be paid to the

Beneficiary in a lump sum payment. Alternatively, if the Beneficiary with respect to the Account Balance of the Participant is a natural person, at the election of the Beneficiary, distribution can be made in annual installments consistent with section 6.9.

6.6 Amount of Account Balance. Except as provided in section 6.4, the amount of any payment under this Article 6 shall be based on the amount of the Account Balance on the preceding Valuation Date.

6.7 Revocation of Prior Election. Any election made under this Article 6 may be revoked at any time.

6.8 Minimum Distribution Rules

(a) Required Commencement. With respect to a Participant who attains age 70½ while actively employed by the Employer, distribution must commence as follows:

- (1) For a Participant who is a “5-percent owner” (as defined in Section 416(i)(1)(B)(i) of the Code), not later than April 1 of the calendar year following the calendar year in which the 5-percent owner attains age 70½, regardless of whether or not the Participant has retired.
- (2) For a Participant who is not a 5-percent owner or for a terminated Participant, not later than April 1 of the calendar year following the calendar year in which the later of retirement or attainment of age 70½ occurs.

(b) Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under this subsection will be determined in good faith in accordance with Treasury Regulations under Section 401(a)(9) of the Code.

(d) Required Beginning Date. The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s required beginning date.

(e) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant’s surviving Spouse is the Participant’s sole designated Beneficiary, then, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (2) If the Participant’s surviving Spouse is not the Participant’s sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by

December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this subsection (f), other than subsection (f)(1), will apply as if the surviving Spouse were the Participant.

For purposes of this subsection (f) and for purposes of required minimum distributions made after a Participant's death (subsections (j) and (k) below), unless subsection (f)(4) applies, distributions are considered to begin on the Participant's required beginning date. If subsection (f)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under subsection (f)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under section subsection (f)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (f) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (h), (i), (j) and (k) of this Section 9.5. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) and Treasury Regulations thereunder.
- (g) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (1) The quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

- (h) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under subsections (h) and (i) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (i) Death On or After Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
- (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (B) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
- (C) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (D) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (j) Death Before Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (j).
 - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under section (f)(1), this subsection (k) will apply as if the surviving Spouse were the Participant.
- (k) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.
- (l) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (f). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (m) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (n) Participant's Account Balance. The Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation

calendar year after the Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

- (o) Required Beginning Date. The date specified in subsection (a) of this Section 9.5.
- (p) Revisions to Comply with the SECURE Act, CARES Act and SECURE 2.0. Notwithstanding anything in the Plan to the contrary, the following provisions will apply as of the dates indicated below. For those Participants who turn age 70 ½ after December 31, 2019, this Section will be applied by substituting the “applicable age”. The Applicable Age is 72 for Participants born on or after July 1, 1949, age 73 for Participants who have not attained age 72 by December 31, 2022. In addition, the Plan will be administered in good faith to comply with Div. O, Section 401 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Sections 2203(a)-(c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the SECURE 2.0 Act of 2022.
- (q) CARES Act. Notwithstanding the above, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (2020 RMDs), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (Extended 2020 RMDs):
 - (1) a Participant or Beneficiary for whom distributions were required under this section for distribution years preceding the 2020 calendar year will receive the 2020 RMD or Extended 2020 RMD unless the Participant or Beneficiary chooses not to receive the distribution; and
 - (2) a Participant or Beneficiary for whom distributions were not required for distribution years preceding the 2020 calendar year and for whom such distribution would otherwise be required but for this subsection shall not receive a distribution unless the Participant or Beneficiary requests such distribution.

In addition, solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs shall be treated as eligible rollover distributions.

- (r) SECURE Act. For Participants who die after December 31, 2019, (or any applicable later effective date that may apply under a collective bargaining agreement) prior to distribution of the Participant’s entire interest, the following rules shall apply:
 - (1) The rules of Code section 401(a)(9)(H) shall take precedent over any

inconsistent provisions of the Plan or this Section 9.5. All distributions of an employee's undistributed interest shall be made according to the Administrator's good-faith interpretation of Code section 401(a)(9)(H).

- (2) Distributions after death of the Participant must be made to a designated Beneficiary by the end of the tenth calendar year following the year of death; provided, however, payments can, subject to subsection (s)(3) of this Section, be made over the Beneficiary's life expectancy in accordance with the rules similar to subsections (j) and (k) if the designated Beneficiary is an "eligible designated beneficiary" within the meaning of Code section 401(a)(9)(E)(ii), which is expressly incorporated by reference.
- (3) Notwithstanding anything in this Section to the contrary, if a Beneficiary who is an eligible designated beneficiary dies (or in the case of a child, attains his or her majority) prior to distribution of the Beneficiary's entire interest, the remaining interest will be distributed within 10 years of the death or attainment of majority of such Beneficiary.
- (4) Any designated Beneficiary of a Participant who died on or before December 31, 2019 shall be treated as an eligible designated beneficiary when applying the rules of this subsection (s).

6.9 In-Service Distributions from Rollover Account. If a Participant has a separate account attributable to rollover contributions to the Plan, a Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

6.10 Unforeseeable Emergency Distribution. A distribution may be made to a Participant or Beneficiary faced with an unforeseeable emergency as provided in this section 6.11.

- (a) If a Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Committee to be permitted to be distributed under this Section 6.11.
- (b) An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the spouse of the Participant, or a dependent of the Participant (as defined in section 152(a) of the Code); loss of the property of the Participant due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the spouse or dependent of the Participant (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure or eviction from the primary residence of the Participant may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this section 6.11, neither the purchase of a home nor the payment of college tuition shall constitute an unforeseeable emergency.
- (c) A distribution on account of an unforeseeable emergency may not be made to the extent that such an emergency is or may be relieved through reimbursement or

compensation from insurance or otherwise, by liquidation of the assets of the Participant, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

- (d) Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include an amount necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

6.11 Rollover Distributions. Rollovers to various types of plans are permitted as provided in this section 6.13.

- (a) A Participant or the surviving spouse of a Participant (or a former spouse of the Participant who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Committee, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.
- (b) For purposes of this section 6.13, an eligible rollover distribution means any distribution of all or any portion of the Account Balance of the Participant, except that an eligible rollover distribution shall not include: (i) any installment payment under section 6.4 for a period of ten (10) years or more, (ii) any distribution made under section 6.11 as a result of an unforeseeable emergency, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or section 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

6.12 Designation of Beneficiaries. As provided in this section 6.14, a Participant may designate one or more Beneficiaries to receive all or a portion of any benefits payable with respect to the Participant under the Plan in the event of the death of the Participant.

- (a) **Right to Designate.** Each Participant may designate, upon forms to be furnished by and filed with the Third Party Administrator, one or more primary Beneficiaries or alternative Beneficiaries to receive all or a specified portion of any benefits which may be payable with respect to the Participant under the Plan in the event of such Participant's death. The Participant may change or revoke any such designation from time to time without notice to or consent from any Beneficiary. No such designation, change or revocation shall be effective unless executed by the Participant and received and accepted by the Third Party Administrator during the Participant's lifetime.
- (b) **Disclaimers by Beneficiaries.** A Beneficiary entitled to a distribution of all or a portion of the benefits which may be payable with respect to the Participant under the Plan may disclaim an interest therein subject to the following requirements. To be

eligible to disclaim, a Beneficiary must be a natural person, must not have received a distribution of all or any portion of the benefits which may be payable with respect to the Participant under the Plan at the time such disclaimer is executed and delivered, and must have attained at least age twenty-one (21) years as of the date of the Participant's death. Any disclaimer must be in writing and must be executed personally by the Beneficiary before a notary public. A disclaimer shall state that the Beneficiary's entire interest in the undistributed benefits payable with respect to the Participant under the Plan is disclaimed or shall specify what portion thereof is disclaimed. To be effective, duplicate original executed copies of the disclaimer must be both executed and actually delivered to the Third Party Administrator after the date of the Participant's death but not later than one hundred eighty (180) days after the date of the Participant's death. A disclaimer shall be irrevocable when delivered to the Third Party Administrator. A disclaimer shall be considered to be delivered to the Third Party Administrator only when actually received and acknowledged by the Third Party Administrator. The Third Party Administrator shall be the sole judge of the content, interpretation and validity of a purported disclaimer. Upon the filing of a valid disclaimer, the Beneficiary shall be considered not to have survived the Participant as to the interest disclaimed. A disclaimer by a Beneficiary shall not be considered to be a transfer of an interest in violation of the provisions of the Plan and shall not be considered to be an assignment or alienation of benefits in violation of federal law prohibiting the assignment or alienation of benefits under this Plan. No other form of attempted disclaimer shall be recognized by the Third Party Administrator.

- (c) **Definitions.** When used herein and, unless the Participant has otherwise specified in the Participant's Beneficiary designation, when used in a Beneficiary designation, "issue" means all persons who are lineal descendants of the person whose issue are referred to, including legally adopted descendants and their descendants but not including illegitimate descendants and their descendants; "child" means an issue of the first generation; "per stirpes" means in equal shares among living children of the person whose issue are referred to and the issue (taken collectively) of each deceased child of such person, with such issue taking by right of representation of such deceased child; and "survive" and "surviving" mean living after the death of the Participant.
- (d) **Special Rules.** Unless the Participant has otherwise specified in the Participant's Beneficiary designation, the following rules shall apply:
 - (i) If there is not sufficient evidence that a Beneficiary was living at the time of the death of the Participant, it shall be deemed that the Beneficiary was not living at the time of the death of the Participant.
 - (ii) The automatic Beneficiaries specified in Section 1.5 and the Beneficiaries designated by the Participant shall become fixed at the time of the Participant's death so that, if a Beneficiary survives the Participant but dies before the receipt of all payments due such Beneficiary hereunder, such remaining payments shall be payable to the representative of such Beneficiary's estate.
 - (iii) If the Participant designates as a Beneficiary the person who is the

Participant's spouse on the date of the designation, either by name or by relationship, or both, the dissolution, annulment or other legal termination of the marriage between the Participant and such person shall automatically revoke such designation. (The foregoing shall not prevent the Participant from designating a former spouse as a Beneficiary on a form executed by the Participant and received by the Third Party Administrator after the date of the legal termination of the marriage between the Participant and such former spouse, and during the Participant's lifetime.)

- (iv) Any designation of a nonspouse Beneficiary by name that is accompanied by a description of relationship to the Participant shall be given effect without regard to whether the relationship to the Participant exists either then or at the Participant's death.
 - (v) Any designation of a Beneficiary only by statement of relationship to the Participant shall be effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.
- (e) **Validity of Designation.** A Beneficiary designation is permanently void if it either is executed or is filed by a Participant who, at the time of such execution or filing, is then a minor under the law of the state of the Participant's legal residence. The Committee shall be the sole judge of the content, interpretation and validity of a purported Beneficiary designation.
- (f) **No Spousal Rights.** Prior to the death of the Participant, no spouse or surviving spouse of a Participant and no person designated to be a Beneficiary shall have any rights or interest in the benefits credited under this Plan including, but not limited to, the right to be the sole Beneficiary or to consent to the designation of Beneficiaries (or the changing of designated Beneficiaries) by the Participant.

6.13 In-Service Distributions. A Participant who is an active Employee may request a withdrawal of all or a portion of his Account if

- (a) the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11) of the Code, if greater)
- (b) No amount has been deferred under the Plan by or for the Participant during the two year period ending on the date of distribution; and
- (c) The Participant has not previously received an in service distribution of any portion of his Account from the Plan.

6.14 No Loans Under the Plan. As of the Effective Date, no Participant loans shall be available except to the extent provided under the terms of any subfund contract. Any loan shall comply with the requirements of Code Section 72(p)(2) and regulations thereunder.

ARTICLE 7

ROLLOVERS

7.1 Eligible Rollover Contributions to the Plan. Rollover amounts may be contributed to an account for a Participant under the Plan as provided in this section 7.1.

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Third Party Administrator may require such documentation from the distributing Plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.
- (b) For purposes of subsection (a) of section 7.1, an eligible rollover distribution means any distribution of all or any portion of a benefit of a Participant under another eligible retirement plan, except that an eligible rollover distribution does not include:
 - (i) any installment payment for a period of ten (10) years or more,
 - (ii) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Employee, or
 - (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or section 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
 - (iv) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan, described in subsections (a) and (b) of section 457 of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan described in subsections (a) and (b) of section 457 of the Code.

7.2 Plan-to-Plan Transfers to the Plan. At the direction of the Township, the Third Party Administrator may permit a class of Participants who are participants in another eligible governmental plan described in subsections (a) and (b) of section 457 of the

Code to transfer assets to the Plan as provided in this section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of the interest of each Participant therein to the Plan. The Third Party Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Third Party Administrator. The Third Party Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible government plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Account Balance of the Participant and shall be held, accounted for, administered and otherwise treated in the same manner as an annual deferral by the Participant under the Plan, except that the transferred amount shall not be considered an annual deferred amount under the Plan in determining the maximum deferred amount under the Plan.

7.3 Plan-to-Plan Transfers from the Plan. As provided in this section 7.3, direct transfers of assets are permitted.

- (a) At the direction of the Township, the Third Party Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of subsections (a) and (b) of section 457 of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this subsection (a) of section 7.3 for a Participant only if the Participant has had a Severance from Employment with the Township and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this subsection (a) of section 7.3 only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other Plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this section 7.3, the liability of the Plan to pay benefits to the Participant or Beneficiary under the Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Third Party Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this section 7.3 (for example, to confirm that the receiving plan is an eligible governmental plan under subsection (a) of this section 7.3, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

ARTICLE 8
ADMINISTRATION

- 8.1 Committee.** The administration of the Plan and the manner in which the authority for the administration of the Plan shall be determined as provided in this section 8.1.
- (a) The administrator of the Plan shall be the Township. Except as hereinafter provided, the Township shall appoint a Committee to act for and on behalf of the Township with respect to the administration of the Plan. The Committee may delegate authority with respect to the administration of the Plan as herein provided to the Third Party Administrator or others as it deems necessary or appropriate for the administration and operation of the Plan. Notwithstanding the forgoing, the Board of Commissioners of the Township shall have the exclusive authority, which may not be delegated, to act for the Township to amend the Plan and to terminate the Plan. The Board of Commissioners of the Township shall also have the exclusive authority, which may not be delegated, to appoint and remove the members of the Committee as provided below.
 - (b) The members of the Committee shall serve at the pleasure of the Board of Commissioners of the Township and shall, unless the Board of Commissioners of the Township determines otherwise, consist of those persons designated by the Board of Commissioners of the Township. Members of the Committee shall serve without compensation.
 - (c) If any individual no longer satisfies the requirements established by the Board of Commissioners of the Township for serving on the Committee, then such individual shall be automatically removed as a member of the Committee at the earliest time such individual ceases to satisfy such requirements. This removal shall occur automatically and without any requirement for action by the Board of Commissioners of the Township or any notice to the individual so removed.
 - (d) The Committee shall be authorized to act for and on behalf of the Township with respect to the administration and operation of the Plan. The Committee shall have sole discretionary responsibility for the operation, interpretation and administration of the Plan and for determining eligibility for Plan benefits. Any action taken on any matter within the discretion of the Committee shall be final, conclusive and binding on all parties. In order to discharge its duties hereunder, the Committee shall have the power and authority to adopt, interpret, alter, amend or revoke rules and regulations necessary to administer the Plan, to decide or resolve any and all questions, including interpretations of the Plan, as may arise in such administration, and to delegate ministerial duties and to employ such outside professionals as may be required for the prudent administration of the Plan. Any benefits payable under the Plan shall be paid only if the Committee decides in its discretion that the applicant or individual is eligible or entitled to such benefits.

8.2 Conflicts of Interest. If any Employee of the Township to whom authority has been delegated or redelegated hereunder shall also be a Participant in the Plan, such Participant shall have no authority as such Employee or member with respect to any matter specially affecting such individual interest of the Participant hereunder or the interest of a person superior to him or her in the organization (as distinguished from the interests of all Participants and Beneficiaries or a broad class of Participants and Beneficiaries), all such authority being reserved exclusively to the other Employees or members as the case may be, to the exclusion of such Participant, and such Participant shall act only in the individual capacity of the Participant in connection with any such matter.

8.3 Spendthrift Provisions. The benefits under the Plan shall be subject to the anti-alienation provisions of this section 7.3.

- (a) Except as otherwise provided in this section, no Participant or Beneficiary shall have any interest in any Account Balance which can be transferred nor shall any Participant or Beneficiary have any power to anticipate, alienate, dispose of, pledge or encumber any amounts credited to any Account Balance under the Plan, nor shall the Township recognize any assignment thereof, either in whole or in part, nor shall any amounts credited to any Account Balance under the Plan be subject to attachment, garnishment, execution following judgment or other legal process
- (b) The power to designate Beneficiaries to receive the amounts credited to the Account Balance of a Participant in the event of the death of the Participant shall not permit or be construed to permit such power or right to be exercised by the Participant so as thereby to anticipate, pledge, mortgage or encumber the Account Balance of the Participant or any part thereof, and any attempt of a Participant so to exercise said power in violation of this provision shall be of no force or effect and shall be disregarded by the Township.
- (c) Section 7.3 shall not prevent the Township from exercising, in its discretion, any of the applicable powers and options granted to it upon the occurrence of a distributable event described in section 6.1, as such powers may be conferred upon it by any applicable provision hereof.
- (d) Notwithstanding the foregoing, the Plan shall comply with a domestic relations order that is determined to be a “qualified domestic relations order” by the Committee in accordance with section 7.4 of the Plan and requirements similar to the requirements of section 414(p) of the Code.

8.4 Domestic Relations Order. The administration of domestic relations orders shall be determined in accordance with this section 7.4 and the requirements of section 457 of the Code.

- (a) Subject to and in accordance with section 1.457-10(c) of the Income Tax Regulations, the requirements of section 7.3 of the Plan shall not apply to a domestic relations order that is determined to be a “qualified domestic relations order” by the Committee

in accordance with section 7.4 and requirements similar to the requirements of section 414(p) of the Code. A “qualified domestic relations order” shall mean any judgment, decree, or order (including approval of a property settlement agreement) which creates or recognizes the existence of the right of an alternate payee to receive all or a portion of the benefits payable with respect to a Participant under the Plan, pursuant to the domestic relations law of the state relating to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of the Participant; provided, however, that such order specifically provides:

- (i) the name and last known mailing address of the Participant, and of each alternate payee covered by such order;
 - (ii) the amount or percentage of the benefits of the Participant to be paid by the Plan to each alternate payee, or the manner in which such amount or percentage is to be determined and that the manner and time of the distribution of the benefits satisfy the distribution requirements of section 457(d) and 401(a)(9) of the Code;
 - (iii) the number of payments or the period to which such order applies;
 - (iv) the distribution to an alternate payee of the benefits of a Participant shall occur only with respect to a Participant in pay status (currently eligible to receive distributions) under section 457(d)(1)(A) of the Code to the alternate payee named in the order to meet the obligations of the Participant with respect to alimony, support, or the division of marital property rights;
 - (v) the rights of an alternate payee shall not be greater than those of the Participant;
 - (vi) the alternate payee may not receive a distribution under section 457(d) of an amount because of an unforeseeable emergency or receive a distribution under section 457(e)(9) of the Code of an amount that does not exceed the dollar limit under section 411(a)(11)(A) of the Code; and
 - (vii) the name of the Plan.
- (b) The Committee shall adopt reasonable written procedures to determine the qualified status of domestic relations orders in accordance with requirements similar to the requirements of section 414(p) of the Code and the provisions of this section 7.4, and to administer distributions made thereunder in a manner consistent with sections 457(b)(5) and 457(d) of the Code.
- (c) The Committee shall administer domestic relations orders in a manner consistent with the following requirements:

- (i) the Committee shall promptly notify the Participant and any named alternate payee of receipt of a domestic relations order and the Plan procedures used for determining whether such order is a qualified domestic relations order;
 - (ii) the Committee shall, within a reasonable period following receipt of such order, determine whether such order is a qualified domestic relations order and notify the Participant and each alternate payee of such determination;
 - (iii) during the period beginning when the order is received and ending with the earlier of the date of determination of the qualified status of the order or the expiration of eighteen (18) months, the Committee shall separately account for the amounts which would have been payable to the alternate payee during such period if the domestic relations order had been determined to be a qualified domestic relations order;
 - (iv) if, within eighteen (18) months of receipt of such order, the order is determined to be a qualified domestic relations order, the Committee shall separately account for the amounts which will be payable to the alternate payee pursuant to such order and shall pay such amounts in accordance with the requirements of sections 457 (b)(5) and 457(d) of the Code and section 8.4 of the Plan; provided, however, that no distribution shall be made in accordance with section 457(e)(9) or subsection (c) of section 8.4 of the Plan with respect to an alternate payee;
 - (v) if, within eighteen (18) months of receipt of such order, the order is determined not to be qualified or the status of the order is unresolved, the Committee shall pay the amounts described in paragraph (iii) of subsection (c) of this section 8.4 to the person or persons who would have been entitled to such amounts if no domestic relations order had been received;
 - (vi) a determination that a domestic relations order is qualified which is made later than eighteen (18) months after the receipt of such order shall operate prospectively only.
- (d) If an order is determined by the Committee to be a qualified domestic relations order with respect to all or any portion of the benefit of a Participant payable under the Plan, then, subject to the requirements of section 457 of the Code and this section 7.4, the alternate payee shall be considered for purposes of the provisions of the Plan and the Trust to be a Beneficiary under the Plan and the Trust.
- (e) Amounts of compensation deferred in accordance with the Plan, including any earnings attributable to the deferred compensation, to which the alternate payee under a qualified domestic relations order has derived the right to receive pursuant to such qualified domestic relations order, will be subject to tax in accordance with section 414(p) of the Code.
- (f) Distributions made pursuant to section 7.4 shall complete discharge the Plan of its obligations with respect to the Participant and each alternate payee to the extent of any such distributions.

8.5 Mistaken Contributions. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the

contribution, and upon receipt in good order of a proper request approved by the Committee, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Committee, to the Township.

8.6 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits under the Plan is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Committee, benefits will be paid to such person as the Committee may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

8.7 Lost Payees. The Committee shall make all reasonable attempts to determine the identity and address of a Participant or a Beneficiary entitled to benefits under the Plan. If the Committee is unable to locate such a person entitled to benefits under the Plan, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person. For this purpose, a reasonable attempt means:

- (a) the mailing by certified mail of a notice to the last known address shown on the records of the Township or the records of the Committee;
- (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and
- (c) the payee has not responded within six (6) months.

8.8 Claims Procedures. Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan (“Claimant”), shall first seek a resolution of such claim under the procedure hereinafter set forth.

- (a) Any Claimant shall file a notice of the claim with the Committee which shall fully describe the nature of the claim. The Committee shall review the claim and make an initial determination approving or denying the claim.
- (b) If the claim is denied in whole or in part, the Committee shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, provide a notice of denial to the Claimant. Such ninety (90) day period may be extended by the third party administrator if special circumstances so require for up to ninety (90) additional days by delivering notice of such extension to the Claimant.
- (c) Upon receipt of notice denying the claim, the Claimant shall have the right to request a review by the Committee of the initial determination. Such request for review must

be made in writing within sixty (60) days of receipt of such notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to submit any issues or comments in writing. The Committee shall within one hundred and twenty (120) days of receipt of such notice, submit its decision in writing to Claimant. The decision shall be final, conclusive and binding on all parties.

- (d) A notice of a claim following a denial of benefits must be submitted within ninety (90) days of such denial. A notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which is subject to adjustment.
- (e) A Claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under applicable law. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure has been exhausted.

ARTICLE 9

AMENDMENT AND TERMINATION

- 9.1 Amendment.** The Township shall have the right to amend the Plan, at any time and from time to time, in whole or in part in the same manner as any other action which may be taken by the Township. The Township shall notify the Participants of any Plan amendment.
- 9.2 Plan Termination.** Although the Township has established the Plan with the intention and expectation to maintain the Plan indefinitely, the Township may terminate or discontinue the Plan in whole or in part at any time without any liability for such termination or discontinuance. Upon Plan termination, all deferrals shall cease. Each Account Balance under the Plan shall remain in the Trust fund until distribution of benefits commences pursuant to Article 6.

ARTICLE 10

MISCELLANEOUS

- 10.1 No Contract of Employment.** Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Participant or Employee, or any person whomsoever, the right to be retained in the service of the Employer, and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.
- 10.2 Severability of Provisions.** If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.
- 10.3 Heirs, Assigns and Personal Representatives.** This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant and beneficiary, present and future, and all persons for whose benefit there exists any qualified domestic relations order with respect to any Participant (except that no successor to the Employer shall be considered a Plan sponsor unless that successor adopts this Plan).
- 10.4 Headings and Captions.** The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.
- 10.5 Gender and Number.** Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa.
- 10.6 Controlling Law.** This Plan shall be construed and enforced according to the laws of the Commonwealth of Pennsylvania to the extent not preempted by Federal law, which shall otherwise control.
- 10.7 Title to Assets.** No Participant or Beneficiary shall have any right to, or interest in, any assets of the Plan, or its underlying Contract or trust, upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Participant or out of the assets of the Plan. All payments of benefits as provided for in this Plan shall be made from the assets of the Plan, and neither the Employer nor any other person shall be liable therefor in any manner.
- 10.8 Reliance on Data and Consents.** The Employer, the Committee, all fiduciaries with respect to the Plan, and all other persons or entities associated with the operation of the Plan, the management of its assets, and the provision of benefits thereunder, may reasonably rely on the truth, accuracy and completeness of all data provided by the Participant and his/her Beneficiaries, including, without limitation, data with respect to age, health and marital

status. Furthermore, the Employer, the Committee and all fiduciaries with respect to the Plan may reasonably rely on all consents, elections and designations filed with the Plan or those associated with the operation of the Plan and its corresponding Contract or trust by any Participant, the spouse of any Participant, any Beneficiary of any Participant, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation. None of the aforementioned persons or entities associated with the operation of the Plan, its assets and the benefits provided under the Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference, it being the duty of the Participants, spouses of Participants and Beneficiaries to advise the appropriate parties of any change in such data.

IN WITNESS WHEREOF, South Whitehall Township has caused the Plan to be executed this _____ day of _____ 2023.

By: _____ *(Signature)*
[NAME], President of the Board of Commissioners