

**ORDINANCE NO.740  
FOR UPPER CHICHESTER TOWNSHIP**

**An Ordinance of Upper Chichester Township establishing an irrevocable Tax Exempt Trust to  
administer and provide retiree medical benefits.**

WHEREAS, the Township of Upper Chichester maintains a welfare plan one purpose of which is to provide retiree medical benefits for eligible employees and their departments and;

WHEREAS, the Township wishes to provide and administer said benefits through the use of an irrevocable trust which is tax-exempt pursuant to Section 115 of the Internal Revenue Code of 1986 as amended and;

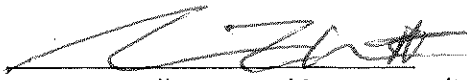
WHEREAS, the Township desires to establish a Trust to accomplish the aforesaid and;


NOW, therefore, this 16th day of December, 2020, the Township of Upper Chichester hereby establishes by Ordinance the Upper Chichester Township Retiree Medical Trust as well as the necessary rules and regulations necessary for the appropriate establishments and administration of the Upper Chichester Retiree Medical Trust.

**ENACTED and ORDAINED by the Board of Commissioners this 16<sup>th</sup> Day of December, 2020.**

ATTEST:

Township of Upper Chichester

  
George Needles, Township Manager/Secretary

By:   
Michael Gaudiuso, President

## UPPER CHICHESTER TOWNSHIP RETIREE MEDICAL TRUST

THIS TRUST AGREEMENT (the "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Upper Chichester Township, (the "Employer") and the individual named Trustees of the Upper Chichester Township Retiree Medical Trust identified below (the "Trustees").

### RECITALS

**WHEREAS**, the Employer maintains a welfare plan (the "Plan"), one purpose of which is to provide retiree medical benefits for eligible employees and their dependents; and

**WHEREAS**, the Employer wishes to provide retiree medical benefits through the use of an irrevocable trust that is tax-exempt under Section 115 of the Code; and

**WHEREAS**, the instrument is the trust, which shall be known as the Upper Chichester Township Retiree Medical Trust (the "Trust").

**NOW, THEREFORE, IT IS AGREED** by and between the Employer and the Trustees as follows:

### ARTICLE I DEFINITIONS

1.1 Administrator. The Employer or the corporations, individuals, or other entities, if any, appointed by the Employer to provide specified administrative services for the Plan.

1.2 Custodian. The Bank or financial institution designated by the Trustees to hold custody of the Fund or assets of the Trust.

1.3 Code. The Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

1.4 Fund or Trust Fund. All money and property, of every kind and character, including principal and income, held by the Trust.

1.5 Plan. The Upper Chichester Township retiree medical program as it is now in effect or as subsequently amended.

1.6 Trust. The trust established by this Agreement and as amended from time to time.

1.7 Trustees. Collectively, the individuals designated by the Employer as Trustees hereunder and who consent to serve as Trustees.

ARTICLE II  
CONTRIBUTIONS TO THE FUND

The Employer shall deliver to the Trust periodically the amounts of money and, if applicable, property other than money that determines necessary to be contributed by the Employer under the Plan to the Fund. The Trustees shall be accountable for all delivered contributions. The Trustees shall have no duty to determine that the amounts received by the Trust comply with the provisions of the Plan or that the Fund is adequate to provide the benefits stipulated in the Plan. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the Employer, but shall be responsible only for property received by the Trust under this Agreement.

ARTICLE III  
PAYMENTS FROM THE FUND

3.1 Administrator to Direct Payments. Payments shall be made from the Trust by the Custodian only pursuant to the direction of the Administrator, which shall include one or more of the persons authorized in writing by the Administrator to give the instructions on its behalf, or the Trustees. If the direction is made by telephone, the direction shall be confirmed by subsequent letter from the person providing such instructions. The Custodian shall be fully protected from any liability for making payments from the Trust in accordance with the direction of the Administrator or the Trustees. The Custodian shall have no responsibility to see to the application of the payments or to ascertain whether any direction it receives complies with the terms of the Plan. The Custodian shall have no liability for any failure to act in the absence of instructions from the Administrator or Trustees.

3.2 No Diversion of Trust Fund Assets. No portion of the principal or income of the Trust Fund may be used for or diverted to purposes other than providing benefits to the participants under the Plan, provided that payment of any taxes as may be imposed on the Trust and payment of the Trust's administrative expenses may be made from the Trust and Fund as provided herein. The Employer shall have no beneficial interest in the Trust and Fund or any part thereof.

3.3 Irrevocable Trust. Notwithstanding any provision of this Agreement to the contrary, this Trust shall be an irrevocable Trust exempt from federal income taxation under section 115 of the Code. All assets held by the Trust and all earnings hereon are to be used exclusively for the exercise of the essential governmental function of the Employer in providing benefits to its employees as participants in the Plan.

ARTICLE IV  
INVESTMENT OF THE FUND

4.1 Prohibition Against Diversion. The assets of the Fund shall be held for the exclusive purposes of providing Plan benefits to eligible employees and their dependents, paying taxes and defraying reasonable expenses of the Plan administration as provided for in this Trust.

4.2 Investment Authority. Subject to the requirements of applicable Pennsylvania Law and other applicable law, the Fund may be invested and reinvested without distinction between principal income. Subject to Section 5.1 herein and consistent with any funding method for the Plan communicated by the Employer to the Trustees:

(a) Property Investment. Pursuant to the specific direction of the Trustees the Custodian is authorized to retain or sell property contributed to the Fund and to invest and maintain investment of part or all of the Fund in any common or preferred stocks, bonds (including United States retirement plan bonds), common or pooled stock funds or mutual funds whether managed by the Custodians or others, insurance contracts, notes, debentures, mortgages or any other property, whether real, personal or mixed and regardless of where located, in the same manner that a prudent person would do under similar circumstances with due regard for the purposes of the Plan;

(b) Cash Holdings. The Trustees may hold a reasonable portion of the Fund in cash pending investment or payment of expenses or benefits; and

(c) Cash Investments. The Trustee shall keep cash, other than cash held under subsection (b) above, earning a reasonable interest rate in accounts in any banking similar financial institution that is supervised by the United States or a State or in demand notes and interests in demand notes, Treasury Bills or short-term negotiable commercial paper.

#### ARTICLE V POWERS OF TRUSTEES

5.1 Powers. The Trustees, in addition to all powers and authorities granted to trustees under common law, statutory authority and other provisions of this Agreement, and subject to the provisions of the applicable Pennsylvania state law, shall have the following powers and authorities, to be exercised in the Trustees' sole discretion:

(a) Acquire and Hold Property. To purchase, or subscribe for, any securities or other property and to retain the same in trust;

(b) Dispose of Property. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction. Any sale or other disposition may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition by the Trustees;

(c) Exercise Rights Under Securities. To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options and to make any incidental payments; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any related assessments or charges; and generally to exercise any of the powers of an owner of the stock, bonds, securities, or other property held as part of the Trust Fund;

(d) Hold Cash. To keep any portion of the Trust Fund in cash or cash balances that the Trustees may, at various time, deem to be in the best interests of this Trust, without liability for interest on the cash;

(e) Hold Certain Property Temporarily. To accept and retain, for a period of time that the Trustees deem advisable, any securities or other property received or acquired by it as Trustees, whether or not the securities of other property would normally be purchases as investments under this Trust;

(f) Execute Instruments. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this Trust;

(g) Settle Claims. To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suites or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;

(h) Employ Agents. To employ suitable agents, attorneys, accountants, Trustees and financial counsel, and other persons that are reasonably necessary for the proper administration of the Fund, and to pay their reasonable expenses and compensation, including, but not limited to, payment of reasonable costs of custodial services provided to the Trust by the Custodian;

(i) Acquire Foreclosed Real Estate. To acquire real estate by purchase, exchange, or as the result of any foreclosure, liquidation, or other salvage of any investment previously made under this Trust ("foreclosed real estate"); to hold the foreclosed real estate in the manner and upon the terms that the Trustees deem advisable; and to manage, operate, repair, develop, improve, partition, mortgage, or lease for any term or terms of years the foreclosed real estate or any other real estate constituting a part of the Trust Fund, upon the terms and conditions that the Trustees deem proper, using the other trust assets for any of the purposes if deemed advisable;

(j) Invest in Savings Accounts. To invest funds of the Trust Fund in night deposits or savings accounts, including such accounts at the Custodian, bearing a reasonable rate of interest;

(k) Invest in Government Obligations. To invest in Treasury Bills and other forms of United States government obligations;

(l) Exercise Conversion and Subscription Rights. If any bonds, notes, stocks, or other securities held by the Trustees shall entitle the holder to an option or privilege is given to the holder to subscribe for additional or other bonds, notes, stocks, or other securities, the Trustees are authorized to exercise the options, rights and privileges from time to time and to make the conversions and subscriptions, to make the required payment, and to hold the acquired securities as investments of the funds;

(m) Invest in Certificates of Deposit. To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations, including such accounts at the Custodian;

(n) Necessary and Implied Powers. To do all acts, take all actions, and exercise all rights and privileges, although not specifically mentioned in this section, that the Trustees deem necessary to administer the Trust Fund, and to carry out the purposes of this Trust.

5.2 Compensation Expenses of the Trustees. The Trustees shall be entitled to reimbursement of all reasonable and necessary expenses (including reasonable fees for agents, attorneys, accountants and other persons rendering services to the Trustee) incurred in connection with the discharge of their responsibilities under this Trust. No Trustee shall be entitled to any further compensation (as distinguished from reimbursement of expenses) for his or her services as a Trustee. Any reimbursement of expenses incurred by a Trustee shall be agreed upon in writing at the appropriate time by the Trustee and the Employer, and unless paid by the Employer, shall be paid from the Fund by the Custodian as directed by the Trustees.

5.3 Taxes Paid From Trust Fund. All taxes of any and all kinds may be levied or assessed under any applicable State or Federal laws upon the Fund or its income (excluding taxes, if any, upon benefits paid to employees or their heirs, executors, administrators or assigns) shall be paid from the Fund by the Custodian upon the specific direction of the Trustees.

5.4 More than One Trustee. Trustees shall act by a majority of their number, but may authorize any one or more of them to sign papers and instruments on their behalf.

5.5 Term of Service. Trustees shall serve 2-year terms.

5.6 Voting. All decisions by the Trustees must be made during a meeting of a quorum of the Trustees by majority vote. A quorum shall constitute a majority of the Trustees.

## ARTICLE VI DUTIES OF TRUSTEES

6.1 Accounts and Records.

(a) Maintenance of Accounts and Records. The Trustees shall maintain accurate and detailed records and accounts of all properties of the Fund and all investments, receipts, disbursements, and other transactions under this Trust.

(b) Inspection and Audit. All the accounts, books and records of the Trust shall be open to inspection and audit by any persons designated by the Employer. The Trustee shall, at the written and verbal direction of the Employer, submit the accounts, books and records of the Trust to auditors of the Employer or any other party denominated as such by the Employer.

(c) Standard of Care. The Trustees shall discharge their duties under this Trust and under the Plan solely in the interest of those individuals entitled to benefits under the Plan and for the exclusive purpose of providing benefits to eligible employees and other persons entitled to benefits under the Plan; and defraying reasonable expenses of administering the Plan and the Trust, and shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

6.2 Limitation on Liability. In no event shall any such successor Trustee be liable on account of any act or failure to act of any predecessor Trustee or have any duty to make any inquiry or investigation as to any act or omission occurring prior to the appointment of the successor Trustee. Each successor Trustee shall demonstrate acceptance of this Trust by executing this Trust or an addendum to this Trust.

#### ARTICLE VII APPOINTMENT, REMOVAL, RESIGNATION AND SUCCESSOR TRUSTEES

7.1 Appointment. Trustees shall be appointed by the Employer at its discretion. The Trustees shall exercise their powers and obligations under the terms of this Agreement independent of the Employer and in the best interest of the beneficiaries of the Trust.

7.2 Removal. The Employer may remove a Trustee by giving fourteen (14) days written notice of the intended action to the Trustee(s).

7.3 Resignation. A Trustee may resign by giving fourteen (14) days written notice of the intended action to the Employer.

#### ARTICLE IX AMENDMENT AND TERMINATION

9.1 Amendment. This Trust may be amended from time to time, in whole or in part, without notice to any party. No amendment of this Trust shall be permissible if such amendment or termination would cause the Trust to become subject to Federal state or local taxation. In addition, no such amendment, may affect the irrevocability of the Trust with respect to the Trust's assets immediately prior to the adoption of the amendment, with respect to which the Trust must remain irrevocable and which are to be used exclusively for the intended purposes of the Trust.

9.2 Termination. The Employer may terminate this Trust at any time by giving written notice of the termination to the Trustees. The termination shall be effective on the date the notice is mailed, or as of such other later date as may be specified in such notice. Notwithstanding any provision to the contrary herein, the Trust shall be terminated upon the termination of the Plan.

9.3 Payment of Funds on Liquidation. Upon the termination of the Trust, the affairs of the Trust shall be wound up as soon as may be reasonably practicable and the Fund, or the liquidation proceeds of the Fund, shall be paid out and distributed by the Trustees in the following order unless judgment or decree of a court of competent jurisdiction or any applicable law shall mandate a contrary application:

(a) Administration Expenses. First, to the payment of all reasonable and necessary expenses of managing and administering the Fund to the extent that the expenses are not paid by the Employer; and

(b) Benefit Payments. Second, to the payment of benefits to eligible participants and their eligible dependents that are payable from the Trust as the Administrator shall direct the Trustees in writing.

9.4 Undistributed Assets. Any assets remaining in the Trust following the completion of all steps set forth in Section 9.3 may be used for any lawful purpose, provided, however, that such assets may not be distributed to any private entity or person.

9.5 Liquidation Powers. From and after the date of the termination of the Trust and until the final distribution of the Fund has been completed, the Trustees shall, continue to have all of the powers provided under this Trust that may be necessary or expedient for the orderly liquidation and distribution of the Fund.

## ARTICLE X OTHER PROVISIONS

10.1 Nonalienation. except as otherwise permitted or required by the terms of the Plan or applicable law, the benefits payable from this Trust under the Plan are intended for the payment of benefits for the persons entitled to them under the Plan. Except for obligations of persons entitled to benefits to the Fund, the benefits shall not be subject in any manner to attachment, lien or other process to secure payment of the debts and obligations of the persons to whom they are or may become payable, including but not limited to any debts or obligations having their origin in matters relating to marital relationships, alimony or child support.

10.2 Governing Law. The validity and effect of the Trust and the rights and obligations of the Employer, eligible employees and all other persons affected by this trust shall be construed and determined in accordance with the laws and statutes of the Commonwealth of Pennsylvania.

10.3 Severability. If any provision of this Trust is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Trust, but this instrument shall be construed and enforced as if the illegal and invalid provisions had never been inserted in this Trust.

10.4 Gender and Number. Whenever in this Trust the masculine gender is used, it shall be deemed to include the feminine and neuter genders as well, and singular usage shall include plural usage, and vice versa, as the context shall require.

10.5 Headings. Headings and numbers in this Trust are included for convenience of reference only, and if there shall be any conflict between any of the numbers headings and the text of this Trust, the text shall control.

10.6 Binding Effect. This Trust shall be binding upon all employees or former employees having or claiming to have any interest under the Plan or this Trust, their heirs, executors, administrators, conservators and assigns, and upon the Employer, the Trustees and their respective successors assigns.

10.7 Administration. The Administrator shall have the authority to control and manage the operation and administration of the Plan and shall apply all rules of the procedure and regulations adopted by the Employer in a uniform and nondiscriminatory manner so that all



persons entitled to benefits under the Plan are treated similarly. The Employer and the Administrator shall have the authority that is necessary to discharge its responsibility under the Plan and may delegate any and all of its responsibilities of control and management of the operation and administration of the Plan.

IN WITNESS WHEREOF, this Agreement has been executed on December 16, 2020 effective as of the date first written above.

By: Upper Chichester Township

Michael Gaubuso  
Michael Gaubuso

Attest: [Signature]  
George L. Needles III

TRUSTEES ACCEPTED:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

BY: \_\_\_\_\_

Approved as to Form and Legality

\_\_\_\_\_  
Michael P. Pierce, Esquire  
Township Solicitor

\_\_\_\_\_