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Article XVIII — Fiduciaries

§ 18-1801 Prohibition Against Certain Persons Holding Positions under this Plan.

No person may serve under this Plan and Trust as a Fiduciary if he has been convicted of any of the crimes enumerated in ERISA § 411 **until** after the expiration of 13 years from the later of conviction or release from imprisonment (or such earlier period as allowed under ERISA § 411).

[Ord. 415 10-29-2003]

§ 18-1802 Bonding.

Every Fiduciary and every other person who handles funds or other property under this Plan (except properly capitalized corporate fiduciaries organized, doing business, and authorized to exercise trust powers under the laws of the Commonwealth of Pennsylvania or the United States, and their directors, officers, and employees) shall be bonded in the same manner as if this Plan and Trust were subject to ERISA § 412 (which generally requires a bond not less than 10% of the amount of funds handled, though not less than \$1000 nor more than \$500,000).

[Ord. 415 10-29-2003]

§ 18-1803 Duty of Care.

To the extent of their powers, the Fiduciaries shall discharge their duties with respect to the Plan and Trust—

(a) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character;

(b) by diversifying the investments of the Plan and Trust so as to minimize the risk of large losses **unless** under the circumstances it is clearly prudent not to do so; **and**

(c) in accordance with the documents and instruments governing the Plan and Trust **to the extent** they are consistent with the applicable provisions of ERISA, the Code, and other laws.

[Ord. 415 10-29-2003]

§ 18-1804 Duty of Loyalty.

(a) **Self-Dealing.** Fiduciaries shall not deal with the income or assets of the Plan in their own interests or for their own accounts, nor shall they receive any consideration for their own personal accounts from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

(b) Adverse Interests. A Fiduciary shall not act in any transaction involving the Plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the Plan or the interests of the Participants, Alternate Payees, or Beneficiaries, whether in his individual capacity or any other.

[Ord. 415 10-29-2003]

§ 18-1805 Prohibited Transactions.

(a) General Rule. Fiduciaries shall not engage on behalf of the Plan, either directly or indirectly, in any of the following transactions with Disqualified Persons (*except* transactions exempt under ERISA §§ 407 or 408 and Code § 4975, and regulations promulgated thereunder) or in any other transactions which would be prohibited under ERISA § 406 or Code § 4975 if those provisions were applicable to this Plan, **unless** federal regulations would permit such transactions or Borough Council explicitly permits a particular transaction or group of transactions by Ordinance:

- (1) sale, exchange, or lease of property;
- (2) lending of money or other extension of credit;
- (3) furnishing of goods, services, or facilities;
- (4) transfer, or allowance of actual or beneficial use, of Plan income or assets;
- (5) act by a Disqualified Person who is a Fiduciary whereby he deals with Plan income or assets in his own interest or for his own account; **or**
- (6) receipt of any consideration for his own personal account by any Disqualified Person who is a Fiduciary from any party dealing with the Plan in connection with a transaction involving Plan income or assets.

(b) Disqualified Persons. For purposes of this Section, “Disqualified Persons” shall mean—

- (1) the Employer or any Related Employer;
- (2) those rendering services to the Plan;
- (3) unions whose members are Plan Participants, and officers and agents of those unions;
- (4) Plan Fiduciaries;
- (5) 50% owners of the Employer or any Related Employer;
- (6) officers, directors, 10% shareholders and highly compensated employees (earning 10% or more of the yearly wages of an employer) of the Employer or any Related Employer.
- (7) members of the family of an individual described in paragraphs (1), (2), (4), and (5);
- (8) a corporation, partnership, trust, or estate 50% controlled by a person described in paragraphs (1) through (5);

(9) a 10% partner or joint venturer of a person described in paragraphs (1), (3), (5), or (8); **and**

(10) any other person who is a “disqualified person” within the meaning of Code § 4975 or a “party in interest” within the meaning of ERISA § 3(14).

(c) **Definitions.** The terms used in subsections (a) and (b) of this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 4975, and Title I, Part 4 and Section 3(14) of ERISA.

(d) **Code § 503 Rule.** Fiduciaries shall not engage on behalf of the Plan or Trust, either directly or indirectly, in any Section 503 Prohibited Transaction or in any other transaction which is prohibited under Code § 503.

(e) **Section 503 Prohibited Transactions.** For purposes of this Section, the term “Section 503 Prohibited Transaction” means any transaction in which the Plan or Trust:

(1) lends any part of its income or corpus, without receipt of adequate security and a reasonable rate of interest, to a Section 503 Disqualified Person;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to a Section 503 Disqualified Person;

(3) makes any part of its services available on a preferential basis to a Section 503 Disqualified Person;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money’s worth, from a Section 503 Disqualified Person;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money’s worth, to a Section 503 Disqualified Person; **or**

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to a Section 503 Disqualified Person.

(f) **Section 503 Disqualified Persons.** For purposes of this Section, the term “Disqualified Persons” shall mean—

(1) the Employer;

(2) a person who has made a substantial contribution to the Plan or Trust;

(3) a member of the family (as defined in Code § 267(c)(4)) of an individual described in paragraph (2); **and**

(4) a corporation controlled by a person described in paragraphs (1) or (2) through the ownership, directly or indirectly, of 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation.

(g) **Definitions.** The terms used in subsections (e) and (f) of this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 503.

§ 18-1806 Indemnification.

The Employer hereby agrees to indemnify any officer, director, elected official, or employee of the Employer for any expenses, penalties, damages, or other pecuniary losses which such person may suffer as a result of his responsibilities, obligations, or duties in connection with the Plan or fiduciary activities actually performed in connection with the Plan, **but only** to the extent that—

- (a) fiduciary liability insurance is not available to cover the payment of such item; **and**
- (b) the person is not being relieved of his fiduciary responsibilities and liabilities to the Plan for breaches of fiduciary obligations.

[Ord. 415 10-29-2003]