NOTE: This Subrogation and Reimbursement Policy replaces any and all prior versions of the Plan provisions pertaining to subrogation and/or reimbursement.

Subrogation and Reimbursement Policy

The Fund’s Subrogation and Reimbursement Policy applies to and is enforceable against each Fund participant and his or her beneficiaries as well as against the parent(s), spouse, dependent(s), agent(s), representative(s), guardian(s), trustee(s), heirs and executors of the participant and of his or her beneficiaries, or any person or entity acting on his, her or their behalf (hereinafter, collectively with the Fund participant and his or her beneficiaries, “Covered Person”).

Rights of the Fund

The Fund has the right of complete subrogation and full reimbursement for 100% of all claims paid and costs incurred by the Fund on a participant’s or beneficiary’s behalf, where the claims paid and costs incurred in connection with, related to or on account of a participant’s or beneficiary’s injury, illness or condition, or the worsening of any of the foregoing, arise from or are related in any manner to an event(s) for which another person, firm, organization, corporation or entity may bear the fault, may be responsible or may have payment obligations with respect thereto (hereinafter, collectively, “Responsible Party”). The Fund’s rights of subrogation and reimbursement extend to any and all recoveries from or pursuant to Workers’ Compensation, Social Security, unemployment compensation, an insurance policy or coverage (including without limitation, no-fault, uninsured motorist, underinsured motorist or homeowner’s coverage), another benefit plan (including without limitation, a self-funded plan), a Responsible Party, or any other party (hereinafter collectively “Recovery”). In these cases, Covered Person must reimburse the Fund, out of any Recovery, for 100% of all claims paid and costs incurred, or which may be paid or incurred in the future, by the Fund on behalf of the participant or beneficiary in connection with, related to or on account of the injury, illness or condition, or the worsening of any of the foregoing. The Fund’s rights of subrogation and reimbursement from any Recovery include, but are not limited to, any court judgment or verdict, settlement, award, insurance payment, benefit claim or any other payment that in any way arises from or relates to the event or circumstance that caused the Fund to pay claims and incur costs on the participant’s or beneficiary’s behalf. Further, in these cases, the Fund has an equitable lien on the Recovery, whether or not held by Covered Person or by an attorney or other person or entity acting on Covered Person’s behalf (hereinafter “Covered Person’s attorney”), and regardless of the description, allocation or designation of the Recovery, including, without limitation, the description, allocation or designation as payment for medical expenses, pain and suffering, loss of earnings, loss of consortium or otherwise. This equitable lien shall remain in effect until the Fund is reimbursed in full.

The Fund’s subrogation and reimbursement rights shall apply on a priority first-dollar basis to any Recovery whether obtained by judgment, verdict, settlement, award, insurance payment,
benefit claim or otherwise, without regard to whether the Covered Person is made whole, without regard to the Covered Person’s claim for pain and suffering and without regard to any attorneys’ fees and costs incurred by the Covered Person. Covered Person shall be solely responsible for paying all legal fees and costs incurred in connection with any Recovery that Covered Person may obtain for the underlying illness, injury or condition, or the worsening of any of the foregoing. The Fund’s subrogation and reimbursement rights shall not be reduced by such legal fees or costs, nor shall the legal fees or costs be deducted from any Recovery, unless the Board of Trustees, in its sole discretion, agrees in writing to discount the Fund’s equitable lien by an agreed-upon amount of such fees or costs.

The Fund specifically disavows any claims that Covered Person may make under any federal or state common law defense including, but not limited to, the make-whole doctrine, double-recovery doctrine and the common fund doctrine.

Covered Person’s Obligation to Notify the Fund of An Event and of Any Action to Obtain Any Recovery

Covered Person is obligated to notify the Fund of any of the following:

- The occurrence of any event where a Responsible Party may be liable for a participant’s or beneficiary’s illness, injury or condition, or the worsening of any of the foregoing;
- When Covered Person seeks any Recovery for a participant’s or beneficiary’s injury, illness or condition, or the worsening of any of the foregoing, whether by making a demand for payment, filing a lawsuit, demand for arbitration, settlement, insurance claim, benefit claim, or any other manner by which Covered Person may obtain any Recovery;
- The name, address and telephone number of Covered Person’s attorney and any claims adjuster, analyst or other representative handling or involved with Covered Person’s claim for any Recovery;
- The date of any trial, hearing, or other proceeding or settlement conference(s) related to such claim;
- The receipt of the proceeds of any Recovery arising out of or related to such claim.

Covered Person is obligated further to notify each Responsible Party (including, without limitation, the Workers’ Compensation insurance carrier, Social Security Administration, other insurance company (commercial or otherwise), other benefit plan or any other party) related to Covered Person’s claim for any Recovery that the Fund has rights of subrogation and reimbursement and an equitable lien against any Recovery. Covered Person or Covered Person’s attorney must notify the Fund immediately in the event of any compromise or settlement of any claim or action for any Recovery in connection with or related to a participant’s or beneficiary’s injury, illness or condition, or the worsening of any of the foregoing, for which the Fund has paid any claims or incurred any costs, or for which it will pay claims or incur costs in the future.
Covered Person’s Obligation to Hold 100% of Any Recovery in Trust for the Fund’s Benefit

Covered Person or Covered Person’s attorney must hold in a constructive trust for the Fund’s benefit any and all proceeds from any Recovery until arrangements have been made to reimburse the Fund in full. All of the proceeds (100%) of any Recovery must be held for the benefit of the Fund in an interest bearing trust account, jointly accessible by Covered Person and Covered Person’s attorney, until reimbursement to the Fund is made in full. Covered Person must reimburse the Fund from any Recovery within thirty (30) days of receipt of any proceeds by Covered Person or Covered Person’s attorney. If the Covered Person fails to reimburse the Fund from the Recovery, in full (or to the extent of the proceeds of the Recovery), within thirty (30) days of receipt of the proceeds, interest shall accrue at the rate of one percent (1%) per month, compounded monthly, commencing with the date of the receipt of the proceeds of the Recovery by the Covered Person or the Covered Person’s attorney until the date on which the Fund is reimbursed in full from the proceeds of any Recovery.

None of the proceeds of any Recovery may be distributed or disbursed by Covered Person or Covered Person’s attorney for any reason whatsoever without prior written agreement from the Fund, unless the Fund’s lien has been satisfied in full. Should Covered Person or Covered Person’s attorney fail to abide by any provision of the Fund’s Subrogation and Reimbursement Policy, and the Fund is forced to engage in legal proceedings or to take any other action to preserve or enforce the Fund’s subrogation and reimbursement rights, Covered Person or Covered Person’s attorney shall be required to reimburse the Fund all reasonable attorneys’ fees and costs incurred by the Fund to preserve or enforce its rights.

Covered Person’s Obligation to Notify Covered Person’s Attorney of the Fund’s Rights

In the event Covered Person chooses to pursue any claim or action in connection with or related to a participant’s or beneficiary’s illness, injury or condition, or the worsening of any of the foregoing, for which the Fund has paid any claims or incurred any costs on the participant’s or beneficiary’s behalf, Covered Person is obligated to notify Covered Person’s attorney regarding the Fund’s Subrogation and Reimbursement Policy; to provide a copy of the Fund’s Subrogation and Reimbursement Policy to the attorney; and to direct the attorney to abide by all of the terms and procedures set forth in the Fund’s Subrogation and Reimbursement Policy, including, but not limited to, holding 100% of the proceeds of any Recovery in a constructive trust for the benefit of the Fund pursuant to its equitable lien, and paying over the proceeds of such Recovery to the Fund pursuant to the Fund’s equitable lien against the proceeds of such Recovery.

Covered Person’s Obligation to Cooperate with the Fund

Covered Person is obligated to cooperate with the Fund and to protect the Fund’s subrogation and reimbursement rights. Such cooperation by Covered Person shall be a condition to the
provision of benefits for the participant and his or her beneficiaries under the Fund. The participant and his or her beneficiaries must execute (without omission, revision or alteration) the Acknowledgement of Subrogation and Reimbursement Rights and Equitable Lien and the Assignment Agreement. In addition, the Covered Person must, among other things:

- Assist the Fund to collect under the Assignment Agreement;
- Honor the Acknowledgement of Subrogation and Reimbursement Rights and Equitable Lien;
- Provide to the Fund all documents and information requested;
- Abide by the notification requirements set forth in the Fund’s Subrogation and Reimbursement Policy;
- Hold in constructive trust for the benefit of the Fund, in an interest bearing trust account jointly accessible by Covered Person and Covered Person’s attorney, 100% of the proceeds of any Recovery until reimbursement is made; and
- Make payment to the Fund within thirty (30) days of receipt of any proceeds of any Recovery.

Neither Covered Person nor Covered Person’s attorney may take any action or fail to take any action that would impair or prejudice the Fund’s subrogation and reimbursement rights. If Covered Person fails to abide by the provisions of the Fund’s Subrogation and Reimbursement Policy or fails to cooperate with the Fund in the enforcement of its subrogation and reimbursement rights, the Fund may pursue any and all available avenues of equitable and legal redress to protect the Fund’s subrogation and reimbursement rights, including, but not limited to, obtaining 100% reimbursement from the proceeds of any Recovery, whether by an action, suit or otherwise against Covered Person, Covered Person’s attorney or any other party.

Further, such redress for Covered Person’s failure to abide by the provisions of the Fund’s Subrogation and Reimbursement Policy or to cooperate with the Fund in the enforcement of the Fund’s subrogation and reimbursement rights may include the denial of future benefits to the participant and his or her beneficiaries until such time that the Fund is provided with all of the information requested, receives an executed (without omission, revision or alteration) Acknowledgement of Subrogation and Reimbursement Rights and Equitable Lien, receives an executed (without omission, revision or alteration) Assignment Agreement or is reimbursed in full from the proceeds of any Recovery, as applicable. Should the Fund be forced to engage in legal proceedings or to take any other actions to preserve and enforce the Fund’s subrogation and reimbursement rights, Covered Person and, where appropriate, Covered Person’s attorney shall be liable for all reasonable attorneys’ fees and costs incurred by the Fund in any action, suit or otherwise to preserve and enforce the Fund’s rights, including against Covered Person, Covered Person’s attorney or any other party.

All disputes concerning the Fund’s subrogation and reimbursement rights and equitable lien and Covered Person’s obligations to the Fund must be submitted to the Fund for review pursuant to and in accordance with the claims review and appeals procedures set forth in the Summary Plan Description.