CITY AND COUNTY OF BROOMFIELD CAFETERIA PLAN

Effective 1/1/2011

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE	1 ESTABLISHMENT OF THE CAFETERIA PLAN	1
1.1	Establishment of the Cafeteria Plan	1
1.2	Purpose of the Cafeteria Plan	1
ARTICLE	2 DEFINITIONS	
ARTICLE	3 PARTICIPATION	3
3.1	Eligibility and Commencement of Participation	3
3.2	Termination of Participation	3
3.3	Participation Upon Regaining Eligibility	3
3.4	Eligibility While on Family and Medical Leave	3
3.5	Eligibility While on Military Leave	5
ARTICLE	4 BENEFIT CHOICES AND ELECTIONS	5
4.1	Optional Benefits	
4.2	Election of Benefits	6
4.3	Election Procedure for New Participants	6
4.4	Elections for Participants Regaining Eligibility	7
4.5	Annual Election Procedure for All Participants	7
4.6	One Month Carry-Over	7
4.7	Absence of New Annual Election For Participants with Existing Bene	efit
	Option Elections	7
4.8	Mid Year Election Changes	8
4.9	Minimum and Maximum Benefits.	14
ARTICLE	5 ADMINISTRATION	14
5.1	Plan Administrator	14
5.2	Information	15
5.3	No Discrimination	15
5.4	Adjustments to Prevent Discrimination	15
5.5	Expenses of Administration	15
5.6	Accounts and Records	16
5.7	Notification of Employees	16
5.8	Rights Against the Company	16
5.9	Rights to Employer's Assets	16
5.10	Financing	16
5.11	No Guarantee of Tax Consequences	16

ARTICLE 6	CLAIMS PROCEDURE	17
6.1	Debit Card	17
6.2	Direct Deposit Arrangement	17
6.3	Grace Period	18
ARTICLE 7	MISCELLANEOUS	18
7.1	State Law	18
7.2	Gender and Number	18
7.3	Nonalienation of Benefits	18
7.4	Employment Not Guaranteed	18
7.5	Additional Taxes or Penalties	18
7.6	Indemnification of Employer by Participants	19
7.7	Right of Recovery	19
7.8	Entire Plan	19
ARTICLE 8	TERMINATION AND AMENDMENT OF THE PLAN	19
8.1	Amendments	19
8.2	Termination	19

ARTICLE 1 ESTABLISHMENT OF THE CAFETERIA PLAN

- 1.1 <u>Establishment of the Cafeteria Plan</u> City and County of Broomfield ("Plan Sponsor") originally established this Cafeteria Plan effective 7/1/1993 and has since amended and restated this Cafeteria Plan. The Plan Sponsor hereby amends and restates this Cafeteria Plan for the exclusive benefit of its Eligible Employees effective 1/1/2011.
- 1.2 <u>Purpose of the Cafeteria Plan</u> The purpose of this Cafeteria Plan is to provide Eligible Employees of the Employer a choice between cash and the benefits offered under this Cafeteria Plan. The Employer intends this Cafeteria Plan to satisfy Code § 125, and the Employer will interpret this Cafeteria Plan in a manner consistent with that Code provision.

This Cafeteria Plan is intended to be a "governmental plan", as defined in Code § 414(d) and ERISA § 3(32).

ARTICLE 2 DEFINITIONS

- 2.1 *Cafeteria Plan* means the City and County of Broomfield Cafeteria Plan.
- 2.2 *Claims Administrator* means 24HourFlex, a division of Retirement Planning Services, Inc., or any successor thereto, including the individual, committee, or entity appointed by the Plan Sponsor to decide initial claims in accordance with Section 5.2 of the Health Care Flexible Spending Account or Section 4.2 of the Dependent Care Flexible Spending Account.
 - 2.3 *Code* means the Internal Revenue Code of 1986, as amended.
- 2.4 *Compensation* means wages within the meaning of Code § 3401(a) for purposes of Federal income tax withholding at the source. Compensation shall include amounts which are not includable in the gross income of a Participant under Code § 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).
- 2.5 *Dependent Care Flexible Spending Account* means a Participant's account under this Cafeteria Plan used for the purpose of reimbursement of Qualified Dependent Care Expenses.
 - 2.6 *Effective Date* means 1/1/2011.
- 2.7 *Eligible Employee* means an Employee who is a full-time employee hired to work in a continual, year-round position for a minimum of 2,080 hours in a calendar year (or proportionately less for an employee hired during the calendar year) and part-time employees who are paid at least 20 or more hours per week in any one position on

a regularly scheduled, year-round basis. Part-time employees paid less than 20 hours per week and temporary employees are not eligible for benefits under this Plan.

- 2.8 *Employer* means the Plan Sponsor.
- 2.9 *ERISA* means the Employee Retirement Income Security Act of 1974, as amended.
- 2.10 *Family and Medical Leave* means a leave of absence taken pursuant to the Family and Medical Leave Act of 1993.
- 2.11 *Health Care Flexible Spending Account* means the Participant's account under this Cafeteria Plan for the purpose of the reimbursement of Qualified Medical Expenses.
- 2.12 *Participant* means an Eligible Employee who has commenced participation in the Cafeteria Plan in accordance with Section 3.1.
- 2.13 *Plan Administrator* means the Plan Sponsor of the Cafeteria Plan unless the Plan Sponsor appoints a different plan administrator in accordance with Section 5.1.
- 2.14 *Plan Sponsor* means City and County of Broomfield, a Colorado municipal corporation and county.
 - 2.15 *Plan Year* means every January 1 through December 31.
- 2.16 Qualified Dependent means (a) for purposes of accident or health coverage (to the extent funded under the Pre-Tax Premium Conversion component of the Plan, and for purposes of the Health Care Flexible Spending Account component of the Plan), (1) a dependent as defined as in Code § 152, determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof, (2) any child (as defined in Code § 152(f)(1) of the Participant until the limiting age of 26, and (3) any child of the Participant to whom IRS Rev. Proc. 2008-48 applies (regarding certain children of divorced or separated parents who receive more than half of their support for the calendar year from one or both parents and are in the custody of one or both parents for more than half of the calendar year); and (b) for purposes of the Dependent Care Flexible Spending Account component of the Plan, a Qualifying Individual. Notwithstanding the foregoing, the Health Care Flexible Spending Account component will provide benefits in accordance with the applicable requirements of any Qualified Medical Child Support Order (QMCSO), even if the child does not meet the definition of "Qualified Dependent".
- 2.17 *Qualified Dependent Care Expenses* means the expenses defined in Section 3.2(b) of the Dependent Care Flexible Spending Account.
- 2.18 *Qualified Medical Expenses* means the expenses defined in Section 3.2(a) of the Health Care Flexible Spending Account.

- 2.19 *Similar Coverage* means coverage for the same category of benefits for the same individuals, whether such coverage is provided under a plan maintained by the Employer or under a plan maintained by another employer. A health flexible spending account is never Similar Coverage to a plan that is not a health flexible spending account.
- 2.20 *Spouse* means an individual who is legally married to a Participant as determined under applicable state law and who is treated as a spouse under the Code.
- 2.21 <u>USERRA</u> means the Uniformed Services Employment and Reemployment Rights Act of 1994.

ARTICLE 3 PARTICIPATION

- 3.1 <u>Eligibility and Commencement of Participation</u> Eligible Employees shall become eligible to participate on the date of hire.
- 3.2 <u>Termination of Participation</u> Except as provided in Section 3.4 of this Cafeteria Plan, Section 3.5 of this Cafeteria Plan, or the continuation coverage provisions of the plans listed in Section 4.1 of this Cafeteria Plan, a Participant shall cease to be a Participant in the Cafeteria Plan on the earliest of the following:
 - (a) the date a Participant's revocation of an election is effective, in accordance with Section 4.5, 4.6, or 4.7 of the Cafeteria Plan;
 - (b) in accordance with Section 4.7 of the Cafeteria Plan, if a Participant fails to remit the required premiums for the benefits he or she has elected, the end of the last pay period for which the required premiums have been paid by the Participant;
 - (c) the date the Participant ceases to be an Eligible Employee; or
 - (d) the date the Cafeteria Plan is terminated.
- 3.3 <u>Participation Upon Regaining Eligibility</u> Except as provided in Section 4.7, an Employee who was an Eligible Employee as of the date he or she lost eligibility shall become a Participant on the date he or she regains eligibility.
- 3.4 <u>Eligibility While on Family and Medical Leave</u> If the Family and Medical Leave Act of 1993 applies to the Employer, and if a Participant takes Family and Medical Leave, the Participant's group health, premium conversion, and Health Care Flexible Spending Account coverage will be continued under the same terms and conditions that would have applied had the Participant continued in active employment, unless the Participant elects otherwise. The Participant must continue to pay any contributions which he or she was required to pay on the day immediately prior to the Family and Medical Leave. If the Family and Medical Leave is an unpaid

leave, the Participant may elect to pay the contributions that will become due while the Participant is on Family and Medical Leave by submitting payments on an after-tax basis as the payments become due or by paying such contributions through the Cafeteria Plan before the Family and Medical Leave begins or by paying such contributions through the Cafeteria Plan upon return from the Family and Medical Leave. Notwithstanding the foregoing, a Participant shall not be allowed to prepay payments that will become due after the end of the Election Year during which the Family and Medical Leave begins.

If the Participant does not return to active employment with the Employer after the Family and Medical Leave has expired, or if the Participant gives the Employer notice of his or her intent not to return to active employment with the Employer before the end of the Family and Medical Leave, the Participant's coverage may be continued only under the continuation of coverage provisions of Section 2.3 of the Health Care Flexible Spending Account or in accordance with the continuation coverage provisions of the Employer's group health plan. The Participant's coverage during the Family and Medical Leave will not be counted toward the maximum number of months of coverage the Participant is permitted under Section 2.3 of the Health Care Flexible Spending Account or under the continuation coverage provisions of the Employer's group health plan.

The Employer's obligations to maintain coverage during the Family and Medical Leave shall cease if contributions for that coverage required to be made by the Participant are more than 30 days late. The Employer shall furnish the Participant with written notice stating that payment has not been received and advising the Participant that coverage will be terminated on a specified date at least 15 days after the date of the notice, unless payment is received no later than the specified date. If the Family and Medical Leave taken is unpaid leave, and if the Employer has established policies concerning other types of unpaid leave that permit the Employer to terminate coverage retroactively to the date the unpaid contribution was due, the Employer may terminate the Participant's coverage retroactively in accordance with that policy, provided that the 15-day notice is furnished to the Participant no later than 15 days prior to the end of the 30-day grace period.

If a Participant's coverage was terminated during Family and Medical Leave and the Participant (1) returns to active employment with the Employer immediately upon expiration of the Family and Medical Leave, (2) re-enrolls for coverage within 30 days of the return to active employment, and (3) makes the required contribution, then the Participant's coverage under the premium conversion option and Health Care Flexible Spending Account will be reinstated on the date the Participant returns to active employment with the Employer.

3.5 <u>Eligibility While on Military Leave</u> If a Participant is covered under his or her Employer's health plans or the Health Care Flexible Spending Account and becomes absent from employment with his or her Employer due to military service for a period of more than 31 days, the Participant will be deemed to be on an approved unpaid leave of absence while performing the military services. The Participant will be entitled to all of the rights and benefits under his or her Employer's health plans and the Health Care Flexible Spending Account that are available to a covered employee on an unpaid leave of absence. If the Participant's military service does not exceed 31 days, the Participant will continue to be covered by his or her Employer's health plans and the Health Care Flexible Spending Account as a regular, active employee.

If a Participant's coverage, or a Participant's dependent's coverage, under the Participant's Employer's health plans or the Health Care Flexible Spending Account terminates due to the expiration of his or her leave of absence coverage while he or she is still in the military, the Participant and his or her dependents will be entitled to continue coverage under those plans for a period not exceeding 24 months from the date on which the Participant's absence began. Such continuation coverage will cease earlier than the 24-month period if the Participant fails to return to employment at the end of his or her military service; in such an event, the coverage will terminate on the day after the date on which the Participant fails to return to employment, unless provided otherwise in the continuation of coverage provisions of Section 2.3 of the Health Care Flexible Spending Account or in accordance with the continuation of coverage provisions of the Employer's group health plan.

If the Participant returns as an active employee after his or her military service, the Participant's coverage and his or her dependent's coverage will be immediately reinstated if (1) the Participant and his or her dependents were covered under the Participant's Employer's health plans and the Health Care Flexible Spending Account on the day before the Participant's absence from employment due to military service began, and (2) the Participant's total military service while he or she was absent from employment did not exceed five years.

ARTICLE 4 BENEFIT CHOICES AND ELECTIONS

- 4.1 <u>Optional Benefits</u> The optional benefits that a Participant may elect under this Cafeteria Plan are as follows:
 - (a) <u>Pre-Tax Premium Conversion</u>. Each Participant may have his or her share of premiums for the following coverage paid on a pre-tax basis:
 - (1) <u>Medical Coverage</u>. The Participant's portion of the premium for coverage under a medical plan sponsored by the Employer, other than any plan that constitutes qualified long-term care coverage or

- insurance, as defined in Code § 7702B(b), or that provides qualified long-term care services, as defined in Code § 7702B(c);
- (2) <u>Dental Coverage</u>. The Participant's portion of the premium for coverage under a dental plan sponsored by the Employer; and
- (3) <u>Vision Coverage</u>. The Participant's portion of the premium for coverage under a vision plan sponsored by the Employer.
- (4) AFLAC Coverage. <u>The participant's portion of the premium for coverage under certain eligible AFLAC medical policies sponsored by the Employer.</u>
- (b) <u>Health Care Flexible Spending Account</u>. Reimbursement of Qualified Medical Expenses under the Health Care Flexible Spending Account.
- (c) <u>Dependent Care Flexible Spending Account</u>. Reimbursement of Qualified Dependent Care Expenses under the Dependent Care Flexible Spending Account.

The terms of, and benefits available under, the medical plan, the dental plan, the vision plan, the Health Care Flexible Spending Account, and the Dependent Care Flexible Spending Account are set forth in each of those plans. By this reference, the Employer incorporates those plans within this Cafeteria Plan.

- 4.2 <u>Election of Benefits</u> Except as provided in Section 4.7, in lieu of receiving cash Compensation, a Participant may elect one or more of the optional benefits described in Section 4.1 by entering into an agreement with the Employer specifying the amount of the reduction in Compensation for each optional benefit selected and authorizing the Employer to contribute the reduction amount to the Cafeteria Plan for the purpose of paying for the cost of the optional benefit(s). The amount of the reduction elected by the Participant for coverage under the Health Care Flexible Spending Account or the Dependent Care Flexible Spending Account shall be the coverage amount elected under the applicable plan, subject to the limitations of the applicable plan, and shall be credited to the applicable reimbursement account established in the Participant's name. The amount of the reduction elected by the Participant for premium expense conversion shall equal the Participant's share of the cost of the elected coverage.
- 4.3 <u>Election Procedure for New Participants</u> The Plan Administrator shall provide each new Eligible Employee with information regarding how to choose one or more optional benefits for the remainder of the Election Year. No later than the date the Participant enters the Cafeteria Plan in accordance with Section 3.1, he or she may elect one or more of the optional benefits described in Section 4.1. If a Participant does not elect any of the optional benefits by the date prescribed in the previous

sentence, he or she will be deemed to have elected to receive cash Compensation, and may not elect any optional benefits until the first day of any following Election Year, except as provided in Section 4.7. The election shall be effective as of the later of (1) the date the Participant enters the Cafeteria Plan or (2) the first of the month coincident with or following the date of hire.

- 4.4 **Elections for Participants Regaining Eligibility** If Participant ceases participation because he or she ceases to be an Eligible Employee, but regains Eligible Employee status, this Section 4.4 governs his or her initial election. If such a Participant regains eligibility within 30 days of losing eligibility, the Participant's original election will be reinstated as of the date he or she again becomes a Participant. If such a Participant regains eligibility more than 30 days after losing eligibility but within the same Election Year, the Participant may either resume his or her original election or make a new election for benefits under the Cafeteria Plan within 30 days of again becoming an Eligible Employee. Any new election will be effective as of the later of (1) the date the Participant reenters the Cafeteria Plan or (2) the first of the month following or coincident with the date the Participant regains eligibility. If such a Participant regains eligibility after the Election Year in which he or she lost eligibility, the Participant may make a new election for benefits as if he or she were a new Employee.
- 4.5 <u>Annual Election Procedure for All Participants</u> Prior to the beginning of each Election Year, the Plan Administrator shall provide each Participant with information regarding how to choose one or more optional benefits for the following Election Year. Except as provided in Section 4.6 or Section 4.7, in order to elect an optional benefit for the following Election Year, a Participant must follow the prescribed election procedure before the end of the annual enrollment period, as established by the Plan Administrator. Election changes made during the annual election period will be effective as of the first day of the following Election Year.
- 4.6 <u>One Month Carry-Over</u> Salary reduction amounts from the last month of one Plan Year may be applied to pay Employer sponsored insurance premiums during the first month of the immediately following Plan Year. This practice is applied on a uniform and consistent basis with respect to all participants, based on the usual payroll interval.
- 4.7 <u>Absence of New Annual Election For Participants with Existing Benefit</u>

 Option Elections With respect to a Participant who has an existing election to receive reimbursements under the Health Care Flexible Spending Account or the Dependent Care Flexible Spending Account, the Participant's failure to make a new election (provided in accordance with Section 4.5) for the next Election Year by the end of the annual enrollment period shall be deemed to be an election to receive in cash the

portion of his or her Compensation that was previously contributed to the Health Care Flexible Spending Account or the Dependent Care Flexible Spending Account. With respect to a Participant who has an existing election for any optional benefit(s) other than medical expense reimbursement or dependent care expense reimbursement, the Participant's failure to make a new election (provided in accordance with Section 4.5) for the next Election Year by the end of the annual enrollment period shall be deemed to be an election to participate on the same basis as the prior Election Year and an authorization to reduce the Participant's Compensation by an amount equal to the Participant's portion of the premium(s). If the benefit option in which the Participant was enrolled in the prior Election Year is no longer available to the Participant in the next Election Year, then the Participant's failure to complete the election procedure by the end of the annual enrollment period shall be deemed to be an election to participate in the default coverage listed in the Participant's enrollment materials for that benefit The Plan Administrator may declare, in the open enrollment materials distributed to employees, that the default rollover election rule does not apply. If the default rollover election rule does not apply, the Participant's failure to make a new election (provided in accordance with Section 4.5) for the next Election Year by the end of the annual enrollment period shall be deemed to be an election to receive his or her entire Compensation in cash.

- 4.8 <u>Mid Year Election Changes</u> An election once made by a Participant for an Election Year is irrevocable during the Election Year except as provided below. For purposes of the Dependent Care Flexible Spending Account, the term Dependent when used in this Section 4.7 means Dependent as defined in Section 3.2(a) of the Dependent Care Flexible Spending Account. For purposes of the Health Care Flexible Spending Account and the premium conversion benefits under this Cafeteria Plan, the term Dependent when used in this Section 4.7 means Qualified Dependent as defined in Section 3.2(b) of the Health Care Flexible Spending Account.
 - (a) Change in Election Due to Change in Status. An Eligible Employee may revoke an election for the balance of an Election Year and file a new election if both the revocation and the new election are on account of and correspond with a change in status that either affects eligibility for coverage under an employer's plan or, with respect to the Dependent Care Flexible Spending Account, affects the amount of Qualified Dependent Care Expenses the Eligible Employee will incur. The following events are changes in status:
 - (1) An event that changes an Employee's legal marital status, including marriage, death of Spouse, divorce, legal separation, or annulment.

- (2) An event that changes an Employee's number of Dependents, including death, birth, adoption, or placement for adoption.
- (3) One of the following events that changes the employment status of the Employee, Spouse, or Dependent: a termination or commencement of employment, a strike or lockout, a commencement or return from an unpaid leave of absence, or a change in worksite.
- (4) A change in the employment status of the Employee, Spouse, or Dependent that causes that person to become or cease to be eligible under the cafeteria plan or other benefit plan of that person's employer, such as a reduction or increase in hours of employment that causes the employee to become eligible or cease to be eligible for benefits.
- (5) An event that causes an Employee's Dependent to satisfy or cease to satisfy the requirements for Dependent coverage due to attainment of age, student status, or any similar circumstance as provided in an employer's plan.
- (6) A change in the place of residence of the Employee, Spouse, or Dependent.

A change in status that affects eligibility under an employer's plan includes a change in status that results in an increase or decrease in the number of an Employee's family members or Dependents who may benefit from coverage under the plan. If the change in status is the Employee's divorce, annulment, or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, an Employee's election to cancel coverage for any person other than the Spouse involved in the divorce, annulment, or legal separation, the deceased Spouse or Dependent, or the Dependent that ceased to satisfy the eligibility requirements for coverage does not correspond with the change in status.

Any such revocation and new election must be made within 30 days of the change in status and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such revocation and election.

(b) <u>Change in Election Due to Entitlement to Continuation Coverage</u>. If a Participant, Spouse, or Dependent becomes eligible for continuation coverage under a group health plan maintained by the Employer, as

provided in Code § 4980B ("COBRA") or any similar state law or the parallel provisions of the Public Health Service Act, the Participant may elect to increase payments under this Cafeteria Plan in order to pay for the continuation coverage. A Participant may also pay COBRA premiums under this Plan for a Dependent child who has become ineligible to remain on the Employer group health plan as a result of becoming overage. Any such election change must be made by the date COBRA is elected and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change.

- (c) Change in Election Due to a Judgment, Decree or Order. If an accident or health plan maintained by the Employer receives a judgment, decree, or order resulting from a divorce, legal separation, annulment, or change in custody (an "order") (including a medical child support order qualified under ERISA § 609) that requires an Eligible Employee to provide coverage for the Eligible Employee's child under that plan, the Plan Administrator may change the Eligible Employee's election under this Cafeteria Plan to add coverage of the child. In addition, if an order requires the non-Employee parent to provide coverage for a child who is currently covered under a group health plan maintained by the Employer, the Participant may change his or her election under this Cafeteria Plan to cancel coverage for that child if the coverage is, in fact, provided by the non-Employee parent. Any such election change must be made within 30 days of the Participant's receipt of the order and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change or, if later, the effective date specified in the order.
- (d) Change or Revocation of Election Due to Entitlement to Medicare or Medicaid. If an Eligible Employee, Spouse, or Dependent who is enrolled in a group health plan maintained by the Employer becomes entitled to coverage under Part A, Part B, or Part C of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), the Participant may change his or her election under this Cafeteria Plan to cancel or reduce coverage of that Eligible Employee, Spouse, or Dependent. Also, if an Eligible Employee, Spouse, or Dependent who was entitled to coverage under Part A, Part B, or Part C of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act

(Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), loses eligibility for such coverage, the Eligible Employee may change his or her election under this Cafeteria Plan to commence or increase coverage of that Eligible Employee, Spouse, or Dependent. Any such election change must be made within 30 days of the date of the entitlement or the date eligibility is lost and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change.

(e) Change in Election Due to Special Enrollment. An Eligible Employee may revoke an election and make a new election with respect to a group health plan maintained by the Employer that corresponds with the special enrollment rights provided in Code § 9801(f) or the parallel provisions of the Public Health Service Act, provided that the new election is consistent with the terms of that plan. Any such election change must be made within the time period allowed under the group health plan for exercising special enrollment rights and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change. However, retroactive premiums may be deducted from the Participant's paycheck to the extent retroactive coverage is required under Code § 9801(f) or the parallel provisions of the Public Health Service Act.

(f) Change in Election Due to Significant Cost Changes.

- (1) If the cost of coverage charged to a Participant under a plan described in Section 4.1(a) significantly increases during an Election Year, a Participant who has elected such coverage shall be permitted, within the period of time established by the Plan Administrator, to (i) make a corresponding change in his or her election to cover the increased cost, (ii) revoke his or her existing coverage election and prospectively elect Similar Coverage, or (iii) revoke his or her existing coverage election and elect no substitute coverage, but only if no other Similar Coverage is available.
- (2) If the cost of coverage under a plan described in Section 4.1(a) significantly decreases during an Election Year, a Participant shall be permitted, within the period of time established by the Plan Administrator, to either (i) make a corresponding change in his or her election to reflect the decreased cost or (ii) commence participation in the plan with a decrease in cost.

(3) If a Participant's Qualified Dependent Care Expenses significantly increase or decrease during an Election Year due to a cost increase or decrease by a provider who is not related to the Employee, that Participant will be allowed to increase or decrease his or her contributions to a Dependent Care Expense Reimbursement Account accordingly. Any such election change must be made within 30 days of the cost increase or decrease and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change.

(g) Change in Election Due to Significant Coverage Changes.

- (1) If the coverage under a plan described in Section 4.1(a) or 4.1(c) is significantly curtailed during an Election Year, as determined by the Plan Administrator, a Participant who has elected such coverage shall be permitted to revoke his or her existing coverage election if, within the period of time established by the Plan Administrator, he or she prospectively elects Similar Coverage.
- (2) If the coverage under a plan described in Section 4.1(a) or 4.1(c) ceases during an Election Year, as determined by the Plan Administrator, a Participant who has elected such coverage shall be permitted, within the period of time established by the Plan Administrator, to revoke his or her existing coverage election and either (i) prospectively elect Similar Coverage or (ii) elect no substitute coverage, but only if no other Similar Coverage is available.
- (3) If, during an Election Year, (i) a new benefit is added to the Cafeteria Plan under Section 4.1, other than a health flexible spending account, or (ii) a new coverage option is added to a plan described in Section 4.1, other than a health flexible spending account, or (iii) coverage under a plan described in Section 4.1 (or a coverage option of such a plan) is significantly improved, as determined by the Plan Administrator, then a Participant may, within the period of time established by the Plan Administrator, revoke his or her existing coverage election (including an election of no coverage) and elect coverage under the new or improved plan or coverage option.
- (4) If the Employee's Spouse or Dependent changes his or her coverage under his or her employer's plan either in a manner permitted under Code § 125 or during an open enrollment period that does

not correspond with this Cafeteria Plan's election period or the open enrollment period of a plan described in Section 4.1(a) or 4.1(c) then the Employee may prospectively change his or her coverage election under this Cafeteria Plan with respect to plans described in Section 4.1(a) or 4.1(c) if the change is on account of and consistent with the change made by the Employee's Spouse or Dependent. Any such election change must be made within 30 days of the date the Spouse or Dependent's coverage change is effective and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change.

- If the Employee, the Employee's Spouse, or the Employee's (5) Dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, the Employee may elect coverage under this Cafeteria Plan with respect to plans described in Section4.1(a) or 4.1(c). sponsored by a governmental or educational institution include (i) a State's children's health insurance program ("SCHIP") under Title XXI of the Social Security Act, (ii) a medical care program of an Indian Tribal Government (as defined in Code § 7701(a)(40)), the Indian Health Service, or a tribal organization, (iii) a State health benefits risk pool, or (iv) a foreign government group health plan. Any such election change must be made within 30 days of the loss of coverage (or within 60 days of losing eligibility for Medicaid or State children's health insurance program coverage), and shall be effective as of the first pay date as soon as administratively practicable after receipt by the Plan Administrator of such election change.
- (h) <u>Automatic Election Change for Premium Increase or Decrease</u>. If the premium cost for coverage under a plan described in Section 4.1(a) increases or decreases during the Election Year, all Participants' salary reduction elections automatically shall be adjusted accordingly, except as provided in Section 4.7(f) or 4.7(g).
- (i) <u>Cessation of Required Contributions</u>. If a Participant fails to make the required contribution for a benefit he or she has elected, that benefit will cease to be provided to that Participant, and he or she will not be eligible to again elect that benefit until a subsequent Election Year. If a Participant fails to make required contributions for all benefits he or she has elected, his or her active participation in this Cafeteria Plan shall cease, and he or

- she will not be eligible to again become an active Participant until a subsequent Election Year.
- (j) <u>Family and Medical Leave</u>. A Participant taking a Family and Medical Leave may, with respect to group health plan coverage, revoke an existing election and make a new election for the remaining portion of the Election Year, as provided in the Family and Medical Leave Act of 1993.
- 4.9 <u>Minimum and Maximum Benefits</u> The maximum benefits under this Cafeteria Plan with respect to the Health Care Flexible Spending Account are the maximum benefits specified in the Health Care Flexible Spending Account. The maximum benefits under this Cafeteria Plan with respect to the Dependent Care Flexible Spending Account are the maximum benefits specified in the Dependent Care Flexible Spending Account. The minimum and maximum benefit under this Cafeteria Plan with respect to any other benefit program is the amount of the Participant's cost with respect to the benefit.

ARTICLE 5 ADMINISTRATION

- 5.1 Plan Administrator

 The Plan Sponsor shall be the Plan Administrator

 unless the Plan Sponsor appoints a different Plan Administrator. If the Plan Sponsor
 appoints a committee to serve as the Plan Administrator, the committee shall consist of
 not less than three members. Any member of the committee may resign at any time by
 giving notice to the Plan Sponsor. Any resignation shall take effect at the date of receipt
 of such notice or at any later date specified in the notice. No member of the committee
 shall receive any compensation for his or her services as a member of the committee. A
 majority of the members of the committee shall constitute a quorum for the transaction
 of business. All resolutions or other actions taken by the committee shall require the
 written approval or affirmative vote of a majority of the members of the committee.
 The Plan Administrator shall have all powers necessary or convenient to administer the
 Cafeteria Plan. For this purpose, the Plan Administrator, in addition to such other
 powers as the law may provide, shall have:
 - (a) the power to establish rules and procedures for the purpose of administration of this Cafeteria Plan;
 - (b) the discretionary authority and the exclusive right to interpret the Cafeteria Plan and to decide any matters arising in connection with the administration and operation of the Cafeteria Plan; and
 - (c) the power to appoint such agents, attorneys, accountants, and consultants and any other person required for proper administration of the Cafeteria Plan.

The Plan Administrator and its delegates shall have full discretionary authority in all matters related to the discharge of its responsibilities and the exercise of authority under the Cafeteria Plan, including, without limitation, the construction of the terms of the Cafeteria Plan, and the determination of eligibility for coverage and benefits. The Plan Administrator's rules, interpretations, and decisions shall be conclusive and binding upon all persons having or claiming to have any right or interest in or under the Cafeteria Plan, and no such rule, interpretation, or decision shall be modified under judicial review unless such decision is proven to be arbitrary or capricious.

The Plan Administrator may delegate some or all of its authority under the Cafeteria Plan to any person or persons provided that any such delegation is in writing. The Plan Sponsor, acting as the Plan Administrator, has delegated authority for day to day administrative functions and certain reporting requirements to the Claims Administrator.

If the Plan Sponsor has appointed a Plan Administrator other than itself, the Plan Sponsor may remove any such individual or entity at any time by written notice to the individual or entity, effective at the time specified in the notice. If the Plan Sponsor has appointed a committee to serve as the Administrator, the Plan Sponsor may remove any committee member at any time by written notice to the committee member, effective at the time specified in the notice. If a committee member is an employee of the Employer, he or she will be deemed to have been removed from the committee as of the date his or her employment is terminated.

- 5.2 <u>Information</u> The Plan Administrator or Claims Administrator may require that each Participant supply any information and execute any documents necessary under this Cafeteria Plan.
- 5.3 **No Discrimination** Contributions and benefits under this Cafeteria Plan shall not discriminate in a manner which violates the Code.
- 5.4 Adjustments to Prevent Discrimination The Plan Administrator may limit the election of officers, shareholders, highly compensated employees, or "key employees" (within the meaning of Code § 416(i)(l)) or any other Employee so that contributions credited to any benefit are reduced or eliminated to the extent necessary, in the opinion of the Plan Administrator, to comply with any requirement of the Code or any other applicable law or court order or to prevent benefits other than cash paid under this Cafeteria Plan from becoming taxable.
- 5.5 <u>Expenses of Administration</u> Any expense incurred by the Employer or the Plan Administrator relative to the administration of the Cafeteria Plan shall be paid by the Employer. Any expense incurred by an independent, third party Claims Administrator relative to the administration of the Cafeteria Plan shall be paid by the

Employer only if so provided in a separate enforceable written agreement between the parties.

- 5.6 <u>Accounts and Records</u> The Claims Administrator shall establish and maintain a bookkeeping account in the name of each Participant for each benefit selected by the Participant at the time the Participant first becomes a Participant in the Cafeteria Plan. The Claims Administrator shall itemize and separately identify the benefits distributed from the Cafeteria Plan.
- 5.7 <u>Notification of Employees</u> The Plan Administrator shall provide a summary of the terms and conditions of the Cafeteria Plan to all Eligible Employees.
- 5.8 <u>Rights Against the Company</u> Neither the establishment of the Cafeteria Plan, nor any modification of the Cafeteria Plan, nor any distributions from the Cafeteria Plan shall be construed as giving to any Participant, former Participant, or beneficiary under the Cafeteria Plan any legal or equitable rights against any Employer, its shareholders, directors, or officers, as such, or as giving any person the right to be retained in the employ of an Employer.
- 5.9 <u>Rights to Employer's Assets</u> No Participant or beneficiary has any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under this Cafeteria Plan, and then only to the extent of the benefits payable under the Cafeteria Plan to such Participant or beneficiary. All payments of benefits provided under this Cafeteria Plan will be made solely from the assets of the Employer, and neither the Plan Administrator, nor the Claims Administrator are liable for payment of benefits in any manner.
- 5.10 **Financing** All payments from the Cafeteria Plan shall be made from the Employer's general assets. Cafeteria Plan assets shall not be held in trust. Notwithstanding the foregoing, the Employer may establish a separate account to hold money to pay Cafeteria Plan benefits, including Participant deferrals, and such account shall be considered to be the general assets of the Employer.
- 5.11 No Guarantee of Tax Consequences Neither the Employer, nor the Plan Administrator, nor the Claims Administrator makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or beneficiary or any amounts withheld from the Participant's Compensation under this Cafeteria Plan will be excludable from the gross income of the Participant or beneficiary for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or beneficiary. It shall be the obligation of each Participant or beneficiary to determine whether any payment under this Cafeteria Plan or any amount withheld from the Participant's Compensation is excludable from the gross income of the Participant or beneficiary for federal and state income tax purposes, and to take appropriate action if the Participant or beneficiary has reason to believe that any

payment or amount withheld is not excludable. Neither the Employer, nor the Plan Administrator, nor the Claims Administrator is liable for any taxes or penalties owed by the Participant or beneficiary with respect to such amounts.

ARTICLE 6 CLAIMS PROCEDURE

Claims for benefits under the Health Care Flexible Spending Account are governed by ARTICLE 6 of the Health Care Flexible Spending Account. Claims for benefits under the Dependent Care Flexible Spending Account are governed by ARTICLE 5 of the Dependent Care Flexible Spending Account. Premiums payable for a Participant's portion of the cost of coverage shall be automatically paid, and no claim for benefits is required.

- Card which will allow payment of qualified medical and dependent care expenses directly to the provider at time of service, eliminating the need to complete and submit a claim form. The cards shall only be accepted by such merchants and service providers as have been approved by the Claims Administrator. However, Participants will be required to keep all receipts, which may be periodically requested from the Claims Administrator to substantiate expenses. Receipts will be requested for all expenses unless they: 1) match a City and County of Broomfield copay, 2) are a previously approved repetitive expense, or 3) are automatically approved through the IIAS (IRS approved software) system. If the requested receipts are not received by the Claims Administrator within 60 to 90 days of the request, the individual Participant's Debit Card will be temporarily deactivated. In addition, future claims may be offset until the amount is repaid.
- 6.2 <u>Direct Deposit Arrangement (DDA)</u> A Participant may enroll for the Direct Deposit Arrangement to authorize the Claims Administrator to deposit reimbursement for Health Care Expenses directly into the Participant's designated bank account. The enrollment process will require the Participant to complete an appropriate enrollment form, provide necessary banking and bank account information, and abide by the DDA conditions and rules. It is the Participant's sole responsibility to check his/her bank account to make sure that the expected reimbursement payment has been deposited into the bank account prior to attempting to withdraw or debit such reimbursement amount. Prior to the completion of the DDA set-up and testing for the Participant and during any period that the DDA is not in effect (or is cancelled or suspended), reimbursement will be made by a check issuance method. Regardless of the reimbursement method (whether through the DDA or check issuance), the Participant will be provided with an Explanation of Benefits (EOB) for each reimbursement and for each benefit denial.

6.3 <u>Grace Period</u> Amounts remaining in a Participant's Health Care Flexible Spending Account or Dependent Care Flexible Spending Account at the end of a Plan Year can be used to reimburse the Participant for eligible Health Care Expenses or Dependent Care Expenses that are incurred during the period that begins immediately following the close of the Plan Year and ends on the day that is two months plus 15 days following the close of that Plan Year. A Participant must be covered by the Plan on the last day of the Plan Year for this provision to apply, and claims must be submitted within 120 days after the end of the Plan Year. For example, claims incurred between January 1, 2011 and March 15, 2012 which are being applied toward 2011 benefit elections must be submitted for reimbursement by April 30, 2012.

ARTICLE 7 MISCELLANEOUS

- 7.1 <u>State Law</u> The laws of the state of Colorado will determine all questions arising with respect to the provisions of this Cafeteria Plan except to the extent superseded by federal law.
- 7.2 <u>Gender and Number</u> Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Cafeteria Plan dictates, the plural includes the singular and the singular includes the plural.
- 7.3 Nonalienation of Benefits Benefits payable under this Cafeteria Plan are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, unless pursuant to court order, prior to actual receipt by the person entitled to the benefit under the terms of the Cafeteria Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable under this Cafeteria Plan is void. The Employer is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits under this Cafeteria Plan.
- 7.4 <u>Employment Not Guaranteed</u> The Employer may terminate the employment of any Employee as freely and with the same effect as if this Cafeteria Plan were not in existence. Participation in this Cafeteria Plan by an Employee shall not constitute an express or implied contract of employment between the Employer and the Employee.
- 7.5 <u>Additional Taxes or Penalties</u> If there are any taxes or penalties payable by the Employer on behalf of any Employee, such taxes or penalties shall be payable by the Employee to the Employer to the extent such taxes would have been originally payable by the Employee had this Cafeteria Plan not been in existence.

- 7.6 <u>Indemnification of Employer by Participants</u> If an Employee receives one or more reimbursements under the Cafeteria Plan that are not for Qualified Dependent Care Expenses or Qualified Medical Expenses, the Employee shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal, state, or local income tax from the reimbursements.
- 7.7 <u>Right of Recovery</u> If the Claims Administrator makes any payment that according to the terms of the Cafeteria Plan should not have been made, it may recover that incorrect payment, whether or not it was made due to the Employer's or the Claims Administrator's own error, from the person to whom it was made or from any other appropriate party. If any such incorrect payment is made directly to an Employee, the Employer or its designee may deduct it when making future payments directly to that Employee or may withhold the amount from the Employee's Compensation.
- 7.8 <u>Entire Plan</u> The Cafeteria Plan document and any document incorporated by reference in Section 4.1 shall constitute the only legally governing documents for the Plan. No statements made by the Employer, the Plan Administrator, or the Claims Administrator shall void or reduce coverage under the Cafeteria Plan or be used in defense to a claim unless in writing signed by the Employer, the Plan Administrator, or the Claims Administrator.

ARTICLE 8 TERMINATION AND AMENDMENT OF THE PLAN

- 8.1 <u>Amendments</u> The Plan Sponsor may amend the Cafeteria Plan at any time. Such action to amend the Cafeteria Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. In addition, any amendment of the Cafeteria Plan which will not result in significant cost to the Plan Sponsor nor have a material effect on the benefits provided hereunder, and which either (a) will effect a technical or administrative change to the Cafeteria Plan, or (b) is recommended by counsel as necessary or desirable to comply with applicable law, may be made by the Plan Administrator (for the Plan Sponsor).
- 8.2 <u>Termination</u> The continuance of the Cafeteria Plan and the payment of benefits for any year are not assumed as contractual obligations. The Plan Sponsor reserves the right, by action of the Plan Sponsor, to terminate the Cafeteria Plan. Such action to terminate all or any portion of the Cafeteria Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. No termination of the Cafeteria Plan or amendment of the Cafeteria Plan shall deprive a Participant of any right to reimbursement existing as of the date of termination or amendment, unless required by applicable federal, state, or local law. Upon termination of the Cafeteria Plan, the Employer will refund to each Participant the

amount remaining in the Participant's Medical Expense Reimbursement Account or in the Participant's Dependent Care Expense Reimbursement Account.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Cafeteria Plan to be executed on the date shown below.

City and County of Broomfield

By: Daniel Smile

Title: <u>Director of Human Resources</u>

Date: 12/31/2010

CITY AND COUNTY OF BROOMFIELD HEALTH CARE FLEXIBLE SPENDING ACCOUNT

Effective 1/1/2011

TABLE OF CONTENTS

ו מצכ	Р	a	g	ϵ
-------	---	---	---	------------

ARTIC	CLE 1	ESTABLISHMENT OF THE MEDICAL EXPENSE REIMBURSEMEN'	Τ
	PLAN	V	1
	1.1	Establishment of the Health Care Flexible Spending Account	1
	1.2	Purpose of the Health Care Flexible Spending Account	1
ARTIC	CLE 2	PARTICIPATION	1
	2.1	Participation	
	2.2	Termination of Participation	
	2.3	Continuation of Coverage	
ARTIC	CLE 3	MEDICAL EXPENSE REIMBURSEMENT	2
	3.1	Reimbursement	
	3.2	Definitions	3
	3.3	Maximum Amount of Reimbursement	3
	3.4	Special Rules With Respect to Family and Medical Leave	3
	3.5	Withholding — Accounting	
	3.6	Year End Accounting — Forfeitures	4
ARTIC	CLE 4	PROTECTION OF MEDICAL PRIVACY	4
	4.1	Definitions	4
	4.2	Permitted and Required Uses and Disclosures of Protected Hea	alth
		Information	5
	4.3	Minimum Necessary Standard	6
	4.4	Employer Certification Required	6
	4.5	Separation of the Health Care Flexible Spending Account and	the
		Employer	8
ARTIC	CLE 5	ADMINISTRATION	8
	5.1	Plan Administrator	8
	5.2	Claims Administrator	9
	5.3	Information	. 10
	5.4	No Discrimination	. 10
	5.5	Expenses of Administration	. 10
	5.6	Accounts and Records	. 10
	5.7	Notification of Employees	
	5.8	Rights Against the Company	
	5.9	Rights to Employer's Assets	
	5.10	Financing	. 11

į	5.11	No Guarantee of Tax Consequences	11
ARTIC	CLE 6 (CLAIMS PROCEDURE	11
6	6.1	Claim for Benefits	11
(6.2	Documentation for Claims	12
(6.3	Payment of Claims for Reimbursement	12
ARTIC	CLE 7	MISCELLANEOUS	12
7	7.1	State Law	12
7	7.2	Gender and Number	12
7	7.3	Nonalienation of Benefits	13
7	7.4	Employment Not Guaranteed	13
7	7.5	Additional Taxes or Penalties	13
5	7.6	Indemnification of Employer by Participants	13
7	7.7	Right of Recovery	13
7	7.8	Entire Plan	14
ARTIC	CLE 8	FERMINATION AND AMENDMENT OF THE PLAN	14
8	8.1	Amendments	14
8	8.2	Termination	14

ARTICLE 1 ESTABLISHMENT OF THE MEDICAL EXPENSE REIMBURSEMENT PLAN

- 1.1 <u>Establishment of the Health Care Flexible Spending Account</u> City and County of Broomfield ("Plan Sponsor") originally established this Health Care Flexible Spending Account effective 7/1/1993 and has since amended and restated this Health Care Flexible Spending Account. The Plan Sponsor hereby amends and restates the Health Care Flexible Spending Account for the exclusive benefit of its Eligible Employees and the Eligible Employees of the Participating Employers effective 1/1/2011. This Health Care Flexible Spending Account is a part of the City and County of Broomfield Cafeteria Plan. Any term used in the Cafeteria Plan has the same meaning in the Health Care Flexible Spending Account, unless inconsistent with the provisions of this Health Care Flexible Spending Account.
- 1.2 Purpose of the Health Care Flexible Spending Account The Employer has designed the Health Care Flexible Spending Account to enable Participants in the Health Care Flexible Spending Account to elect to receive reimbursements for their Qualified Medical Expenses incurred during the portion of an Election Year that the Employee is a Participant in the Health Care Flexible Spending Account. The Employer intends this Health Care Flexible Spending Account to qualify under Code § 105(h) so that the Employer's reimbursements under the Health Care Flexible Spending Account are excludable from the Participant's gross income, and the Employer will interpret this Health Care Flexible Spending Account in a manner consistent with that Code provision.

This Health Care Flexible Spending Account is intended to be a "governmental plan", as defined in Code § 414(d) and ERISA § 3(32).

ARTICLE 2 PARTICIPATION

- 2.1 <u>Participation</u> Every Eligible Employee is eligible to participate in the Health Care Flexible Spending Account. An Eligible Employee shall become a Participant in the Health Care Flexible Spending Account as of the date of hire, if the Eligible Employee elects to receive coverage under this Health Care Flexible Spending Account during an election period under ARTICLE 4 of the Cafeteria Plan.
- 2.2 <u>Termination of Participation</u> Except as provided in Section 2.3 of this Health Care Flexible Spending Account, Section 3.4 of the Cafeteria Plan, or Section 3.5 of the Cafeteria Plan, a Participant shall cease to be a Participant in the Health Care Flexible Spending Account on the earliest of:

- (a) the date a Participant's revocation of an election is effective in accordance with Section 4.5, 4.6, or 4.7 of the Cafeteria Plan;
- (b) in accordance with Section 4.7 of the Cafeteria Plan, if a Participant fails to remit the required premium for his or her coverage under the Health Care Flexible Spending Account, the end of the pay period for which the required premiums have been paid by the Participant;
- (c) the date the Participant ceases to be an Eligible Employee;
- (d) the date this Health Care Flexible Spending Account terminates; or
- (e) the date the Cafeteria Plan terminates.
- 2.3 **Continuation of Coverage** If and to the extent required by law, in the event a Participant's employment terminates or the Participant's hours are reduced so that he or she is no longer an Eligible Employee and coverage under the Health Care Flexible Spending Account would otherwise cease or the terms of the Participant's coverage under the Health Care Flexible Spending Account would change, and if the Participant elects to pay the Compensation reduction amount with respect to the Health Care Flexible Spending Account to the Employer from his or her final paycheck on a pre-tax basis or on a monthly basis on an after-tax basis (or within such other time limit as may be provided for by law) following the loss of eligibility, coverage under the Health Care Flexible Spending Account shall continue for the period contributions are paid, but not beyond the end of the period for which the coverage is required by law. In addition, the former Participant shall be treated as a Participant under the Health Care Flexible Spending Account to such extent as is required by law, and shall be entitled to reimbursement for Qualified Medical Expenses incurred during such period of continued coverage. Notwithstanding anything in this Section 2.3 to the contrary, the Health Care Flexible Spending Account shall not make continuation coverage available for an Election Year if, as of the date of the qualifying event, the maximum benefit available to the qualified beneficiary under the Health Care Flexible Spending Account for the remainder of the Election Year is less than or equal to the maximum amount that the Health Care Flexible Spending Account could require as payment for premiums under such continuation coverage for the remainder of the Election Year.

ARTICLE 3 MEDICAL EXPENSE REIMBURSEMENT

3.1 <u>Reimbursement</u> The Claims Administrator will reimburse a Participant for Qualified Medical Expenses incurred during the portion of an Election Year that the Employee is a Participant in this Health Care Flexible Spending Account, subject to the other limitations of this Health Care Flexible Spending Account.

- 3.2 **<u>Definitions</u>** For purposes of this Health Care Flexible Spending Account, the following definition applies:
 - (a) Qualified Medical Expense means an expense incurred by a Participant, or by the Spouse or Qualified Dependent of a Participant, for medical care as defined in Code § 213(d). The term includes, without limitation, amounts paid for hospital bills, doctor and dental bills, or medicines and drugs, but does not include premium payments for any health coverage, premium payments for qualified long-term care coverage or insurance (as defined in Code § 7702B(b)), or amounts paid for qualified long-term care services (as defined in Code § 7702B(c)). The Claims Administrator will not make any reimbursement to a Participant if the Participant receives reimbursement for the expense through insurance or under any other means. The Claims Administrator will only reimburse Qualified Medical Expenses incurred during the portion of an Election Year that the Employee is a Participant in the Health Care Flexible Spending Account.

Expenses for medicines or drugs other than insulin will not qualify as eligible Health Care Expenses unless the medicine or drug has been prescribed.

- Participant may elect to defer and have contributed to a Medical Expense Reimbursement Account in any Election Year, and the maximum amount that a Participant may be reimbursed for medical expenses for any Election Year, is \$5000. The maximum amount of reimbursement available at any time during the portion of an Election Year that the Employee is a Participant in the Health Care Flexible Spending Account is the total of the Participant's Compensation reduction agreement amount for that Election Year (or portion thereof), less the amount of any reimbursements the Participant has already received for that Election Year (or portion thereof), regardless of the amount in the Participant's Medical Expense Reimbursement Account as of the date a claim is filed. A Participant may not carry over an unused amount to a succeeding year.
- 3.4 Special Rules With Respect to Family and Medical Leave If a Participant ceases making contributions to his or her Medical Expense Reimbursement Account while on an unpaid Family and Medical Leave, the Participant shall not be entitled to reimbursement of Qualified Medical Expenses incurred during the period the Participant was not making contributions to the Medical Expense Reimbursement Account. Upon return from the Family and Medical Leave during the same Election Year, the Participant may elect to reinstate coverage under the Medical Expense Reimbursement Account. The Participant further may elect to either (1) resume

coverage at the level in effect before the Family and Medical Leave, less any reimbursements made from the account prior to the reinstatement of coverage, and make up the unpaid contributions out of the Participant's next paycheck or on another basis mutually agreed to by the Employer and the Participant, or (2) resume coverage on a level that is reduced on a pro rata basis for the period during which the required contributions were not made, less any reimbursements made from the account prior to the reinstatement of coverage, and resume contributions at the level in effect before the Family and Medical Leave.

- 3.5 <u>Withholding — Accounting</u> separate bookkeeping Α Medical Expense Reimbursement Account will be established and maintained for each Participant under this Health Care Flexible Spending Account for each Election Year. A Participant's account will be increased by the amount of the Participant's Compensation reduction amount designated for medical expense reimbursement for each Election Year (or portion thereof that the Employee is a Participant in the Health Care Flexible Spending Account). A Participant's account will be decreased for the amount of any reimbursements made to the Participant. A Participant's account shall never exceed the dollar amount specified in Section 3.3. The amounts withheld from a Participant's Compensation will be held as part of the Employer's general assets, or may be held in a separate account which will be treated as part of the Employer's general assets.
- 3.6 <u>Year End Accounting Forfeitures</u> A Participant's Medical Expense Reimbursement Account for any Election Year will be used to reimburse the Participant for Qualified Medical Expenses. A Participant will forfeit any amounts remaining in the Participant's Medical Expense Reimbursement Account at the end of the period described in Section 6.1. Forfeited amounts in Participants' Medical Expense Reimbursement Accounts will be used first to pay the administrative expenses of the Health Care Flexible Spending Account and then shall remain as part of the Employer's general assets.

ARTICLE 4 PROTECTION OF MEDICAL PRIVACY

- 4.1 **<u>Definitions</u>** When used in this ARTICLE 4, the following terms shall have the following meanings:
 - (a) <u>Covered Entity</u> means (1) a health care provider (as defined in 45 C.F.R. § 160.103) who transmits any health information in electronic form in connection with a transaction covered by the regulations issued under the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (45 C.F.R. Subtitle A, Subchapter C), (2) a health plan (as defined in 45 C.F.R. § 160.103), or (3) a health care clearinghouse (as defined in 45 C.F.R. § 160.103).

- (b) Designated Record Set means a group of records maintained by or for a Covered Entity that is (1) the medical records and billing records about individuals maintained by or for a health care provider that is a Covered Entity, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan that is a Covered Entity, or (3) used, in whole or in part, by or for a Covered Entity to make decisions about individuals. The term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.
- (c) <u>Protected Health Information</u> means information that is a subset of health information, including demographic information collected from an individual, that
 - (1) is created or received by a Covered Entity or by an employer;
 - (2) relates to
 - (i) the past, present, or future physical or mental health or condition of an individual,
 - (ii) the provision of health care to an individual, or
 - (iii) the past, present, or future payment for the provision of health care to an individual;
 - (3) either
 - (i) identifies the individual or
 - (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and
 - (4) is transmitted or maintained by a Covered Entity.

Protected Health Information does not include individually identifiable information in (1) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, (2) records described at 20 U.S.C. § 1232(a)(4)(B)(iv), or (3) employment records held by a Covered Entity in its role as an employer.

4.2 <u>Permitted and Required Uses and Disclosures of Protected Health</u>

Information Permitted Uses and Disclosures. The Health Care Flexible Spending

Account may disclose Protected Health Information to the Employer, and
may authorize other Covered Entities or business associates associated
with the Health Care Flexible Spending Account (such as insurance companies or third party administrators) to disclose Protected Health

- Information to the Employer, for the purposes of plan administration functions performed by the Employer on behalf of the Health Care Flexible Spending Account.
- (b) <u>Required Uses and Disclosures</u>. The Employer must use or disclose Protected Health Information as required under the privacy requirements of HIPAA and the regulations issued thereunder.
- 4.3 <u>Minimum Necessary Standard</u> When using or disclosing Protected Health Information in accordance with this ARTICLE 4, or when requesting Protected Health Information from a Business Associate or Covered Entity associated with the Health Care Flexible Spending Account, the Employer must make reasonable efforts to limit Protected Health Information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. However, this requirement does not apply to:
 - (a) disclosures to or requests by a health care provider for treatment (as defined at 45 C.F.R. § 164.501);
 - (b) uses or disclosures made to the individual who is the subject of the Protected Health Information, or to any personal representative of such individual as provided in 45 C.F.R. § 164.502(g);
 - (c) uses or disclosures made pursuant to an authorization under 45 C.F.R. § 164.508;
 - (d) disclosures made to the Secretary of Health and Human Services in accordance with 45 C.F.R. Subtitle A, Subchapter C, Part 160, Subpart C (Compliance and Enforcement);
 - (e) uses or disclosures that are required by law; as described in 45 C.F.R. § 164.512(a); and
 - (f) uses or disclosures that are required for compliance with 45 C.F.R. Subtitle A, Subchapter C.
- 4.4 <u>Employer Certification Required</u> The Health Care Flexible Spending Account shall disclose Protected Health Information to the Employer, or shall provide for or permit another Covered Entity or business associate with respect to the Health Care Flexible Spending Account to disclose Protected Health Information to the Employer, only upon receipt of a certification by the Employer that the plan documents have been amended as required in 45 C.F.R. § 164.504 and that the Employer agrees to:
 - (a) <u>Limits on Use and Further Disclosure</u>. Employer agrees to not use or further disclose Protected Health Information other than as permitted by this ARTICLE 4, or as may be otherwise required by law;

- (b) <u>Subcontractors and Agents</u>. Employer agrees to ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from the Health Care Flexible Spending Account agree to the same restrictions and conditions that apply to the Employer with respect to such Protected Health Information;
- (c) <u>Additional Limits on Use and Disclosure</u>. Employer agrees to not use or disclose the Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
- (d) <u>Reports of Improper Use or Disclosure</u>. Employer agrees to report to the Health Care Flexible Spending Account any use or disclosure of the information that is inconsistent with the permitted uses or disclosures of which it becomes aware;
- (e) <u>Individual Right of Access</u>. Employer will cooperate with the Health Care Flexible Spending Account in making Protected Health Information available to individuals in accordance with 45 C.F.R. § 164.524;
- (f) <u>Individual Right to Amend</u>. Employer agrees to cooperate with the Health Care Flexible Spending Account in making Protected Health Information available to individuals for amendment and to incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;
- (g) <u>Individual Right to an Accounting</u>. Employer agrees to cooperate with the Health Care Flexible Spending Account in making available to individuals the information required to provide an accounting of disclosures of Protected Health Information, in accordance with 45 C.F.R. § 164.528;
- (h) Access to Practices, Books, and Records. Employer agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Health Care Flexible Spending Account available to the Secretary of Health and Human Services for purposes of determining compliance by the Health Care Flexible Spending Account with 45 C.F.R. Subtitle A, Subchapter C, Part 164, Subpart E (privacy of individually identifiable health information);
- (i) <u>Return or Destruction of Protected Health Information</u>. Employer agrees, if feasible, to return or destroy all Protected Health Information received from the Health Care Flexible Spending Account that the Employer still maintains in any form and retain no copies of such information when no

longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures of the information to the purposes that make the return or destruction of the information infeasible; and

- (j) <u>Firewall</u>. Employer agrees to ensure that a separation of the Health Care Flexible Spending Account and the Employer adequate to safeguard against the unauthorized use and disclosure of Protected Health Information, as required by 45 C.F.R. § 164.504(f)(2)(iii) and Section 4.6, is established.
- Employer Except as may be otherwise authorized or required by law, only the following employees of the Employer, classes of employees of the Employer, or other persons under the control of the Employer will be given access to Protected Health Information disclosed to the Employer by the Health Care Flexible Spending Account or another Covered Entity:

Employees who are designated by the Employer as eligible to have access to Protected Health Information.

The use of Protected Health Information by the individuals described in this Section 4.5 shall be limited to the uses set forth in this ARTICLE 4, except as may be otherwise authorized by law. An individual may report any incidents of violations of this ARTICLE 4 to the Privacy Officer, who will take appropriate action.

ARTICLE 5 ADMINISTRATION

5.1 Plan Administrator The Plan Sponsor shall be the administrator of the Health Care Flexible Spending Account unless the Plan Sponsor appoints a different Plan Administrator. If the Plan Sponsor appoints a committee to serve as the Plan Administrator, the committee shall consist of not less than three members. Any member of the committee may resign at any time by giving notice to the Plan Sponsor. Any resignation shall take effect at the date of receipt of such notice or at any later date specified in the notice. No member of the committee shall receive any compensation for his or her services as a member of the committee. A majority of the members of the committee shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the committee shall require the written approval or affirmative vote of a majority of the members of the committee. The Plan Administrator shall have all powers necessary or convenient to administer the Health Care Flexible Spending Account. For this purpose, the Plan Administrator, in addition to such other powers as the law may provide, shall have:

- (a) the power to establish rules and procedures for the purpose of administration of this Health Care Flexible Spending Account;
- (b) the discretionary authority and exclusive right to interpret the Health Care Flexible Spending Account and to decide any matters arising in connection with the administration and operation of the Health Care Flexible Spending Account; and
- (c) the power to appoint such agents, attorneys, accountants, and consultants and any other person required for proper administration of the Health Care Flexible Spending Account.

The Plan Administrator and its delegates shall have full discretionary authority in all matters related to the discharge of its responsibilities and the exercise of authority under the Health Care Flexible Spending Account, including, without limitation, the construction of the terms of the Health Care Flexible Spending Account, and the determination of eligibility for coverage and benefits. The Plan Administrator's rules, interpretations, and decisions shall be conclusive and binding upon all persons having or claiming to have any right or interest in or under the Health Care Flexible Spending Account, and no such rule, interpretation, or decision shall be modified under judicial review unless such decision is proven to be arbitrary or capricious.

The Plan Administrator may delegate some or all of its authority under the Health Care Flexible Spending Account to any person or persons provided that any such delegation is in writing. The Plan Sponsor, acting as the Plan Administrator, has delegated authority for day to day administrative functions and certain reporting requirements to the Claims Administrator.

If the Plan Sponsor has appointed a Plan Administrator other than itself, the Plan Sponsor may remove such individual or entity at any time by written notice to the individual or entity, effective at the time specified in the notice. If the Plan Sponsor has appointed a committee to serve as the Administrator, the Plan Sponsor may remove any committee member at any time by written notice to the committee member, effective at the time specified in the notice. If a committee member is an employee of the Employer, he or she will be deemed to have been removed from the committee as of the date his or her employment is terminated.

5.2 <u>Claims Administrator</u> The Claims Administrator shall make the initial determination of claims submitted under the Health Care Flexible Spending Account. The Claims Administrator shall be the entity identified in Section 2.2 of the Cafeteria Plan, unless the Plan Sponsor appoints a different Claims Administrator. If the Plan Sponsor appoints a committee to serve as the Claims Administrator, the committee shall consist of not fewer than three members. Any member of the committee may resign at any time by giving written notice to the Plan Sponsor. Any

resignation shall take effect at the date of receipt of such notice or at any later date specified in the notice. No member of the committee shall receive any compensation for his or her services as a member of the committee. A majority of the members of the committee shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the committee shall require the written approval or affirmative vote of a majority of the members of the committee. The Plan Sponsor may appoint an entity to serve as Claims Administrator, and the entity may receive compensation for its services as Claims Administrator. The Claims Administrator shall have all powers necessary to make the initial claims determination under the Health Care Flexible Spending Account. If the Plan Sponsor has appointed a Claims Administrator other than itself, the Plan Sponsor may remove such individual or entity at any time by written notice to the individual or entity, effective at the time specified in the notice. If a committee member is an employee of the Employer, he or she will be deemed to have been removed from the committee as of the date his or her employment is terminated.

- 5.3 <u>Information</u> The Plan Administrator or Claims Administrator may require that each Participant supply any information and execute any documents necessary under this Health Care Flexible Spending Account.
- 5.4 **No Discrimination** Contributions and benefits under this Health Care Flexible Spending Account shall not discriminate in a manner which violates the Code.
- 5.5 <u>Expenses of Administration</u> Any expense incurred by the Employer or the Plan Administrator relative to the administration of the Health Care Flexible Spending Account shall be paid by the Employer. Any expense incurred by an independent, third party Claims Administrator relative to the administration of the Health Care Flexible Spending Account shall be paid by the Employer only if so provided in a separate enforceable written agreement between the parties.
- 5.6 <u>Accounts and Records</u> The Claims Administrator shall establish and maintain a bookkeeping Medical Expense Reimbursement Account in the name of each Participant at the time the Participant first becomes a Participant in the Health Care Flexible Spending Account.
- 5.7 <u>Notification of Employees</u> The Plan Administrator shall communicate in writing to all Eligible Employees a summary of the terms and conditions of the Health Care Flexible Spending Account.
- 5.8 <u>Rights Against the Company</u> Neither the establishment of the Health Care Flexible Spending Account, nor any modification of the Health Care Flexible Spending Account, nor any distributions from the Health Care Flexible Spending Account shall be construed as giving to any Participant, former Participant, or beneficiary under the Health Care Flexible Spending Account any legal or equitable

rights against any Employer, its shareholders, directors, or officers, as such, or as giving any person the right to be retained in the employ of an Employer.

- 5.9 <u>Rights to Employer's Assets</u> No Participant or beneficiary has any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under this Health Care Flexible Spending Account, and then only to the extent of the benefits payable under the Health Care Flexible Spending Account to such Participant or beneficiary. All payments of benefits provided under this Health Care Flexible Spending Account will be made solely from the assets of the Employer, and neither the Plan Administrator, nor the Claims Administrator are liable for payment of benefits in any manner.
- 5.10 **Financing** All payments from the Health Care Flexible Spending Account shall be made from the Employer's general assets. Health Care Flexible Spending Account assets shall not be held in trust. Notwithstanding the foregoing, the Employer may establish a separate account to hold money to pay Health Care Flexible Spending Account benefits, including Participant deferrals, and such account shall be considered to be the general assets of the Employer.
- No Guarantee of Tax Consequences Neither the Employer, nor the Plan Administrator, nor the Claims Administrator makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or beneficiary or any amounts withheld from the Participant's Compensation under this Health Care Flexible Spending Account will be excludable from the gross income of the Participant or beneficiary for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or beneficiary. It shall be the obligation of each Participant or beneficiary to determine whether any payment under this Health Care Flexible Spending Account or any amount withheld from the Participant's Compensation is excludable from the gross income of the Participant or beneficiary for federal and state income tax purposes, and to take appropriate action if the Participant or beneficiary has reason to believe that any payment or amount withheld is not excludable. Neither the Employer, nor the Plan Administrator, nor the Claims Administrator is liable for any taxes or penalties owed by the Participant or beneficiary with respect to such amounts.

ARTICLE 6 CLAIMS PROCEDURE

6.1 <u>Claim for Benefits</u> A Participant must file a claim for benefits with the Claims Administrator on forms provided by (or using the process required by) the Plan Administrator or Claims Administrator. The claim must specify that it is a claim for benefits under the Participant's Medical Expense Reimbursement Account. The claim

must include any documentation reasonably required by the Claims Administrator under Section 6.2.

Claims for benefits may only be filed with respect to expenses incurred during the portion of an Election Year that the Employee is a Participant in the Health Care Flexible Spending Account and may only be filed against the Participant's Medical Expense Reimbursement Account for the Election Year. The claimant must submit an application for reimbursement no later than 120 days after the end of the Election Year.

The Employer or Plan Administrator may establish a minimum reimbursement amount for claims. If a claim is submitted with respect to a Participant's Medical Expense Reimbursement Account that is less than the minimum reimbursement amount, the Claims Administrator will hold such claim until more claims are submitted equal to a total claim of at least the minimum reimbursement amount (unless such claim is the Participant's final claim for an Election Year, in which case a minimum reimbursement amount shall not apply).

- 6.2 **Documentation for Claims** The claimant must submit copies of statements or bills for services rendered or other evidence satisfactory to the Claim Administrator that the Participant incurred the expense and a statement from the Participant or the Participant's insurance carrier that the expenses are not reimbursable from any other source. The Claims Administrator shall require that the claimant file all appropriate claims and requests for payment from any other plan or plans from which reimbursement may be made prior to making any payments under this Health Care Flexible Spending Account. Prior to making any payment of benefits, the Claims Administrator may require the claimant to provide such information and to complete appropriate documents or forms necessary for the proper administration of this Health Care Flexible Spending Account. The Plan Administrator and the Claims Administrator may rely upon all such information provided by the claimant, including the claimant's current mailing address.
- 6.3 <u>Payment of Claims for Reimbursement</u> Payment of claims will be made directly to the Participant, and not directly to the provider of any of the services.

ARTICLE 7 MISCELLANEOUS

- 7.1 <u>State Law</u> The laws of the state of Colorado will determine all questions arising with respect to the provisions of this Health Care Flexible Spending Account except to the extent superseded by federal law.
- 7.2 <u>Gender and Number</u> Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Health Care Flexible

Spending Account dictates, the plural includes the singular and the singular includes the plural.

- 7.3 Nonalienation of Benefits Benefits payable under this Health Care Flexible Spending Account are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, unless pursuant to court order, prior to actual receipt by the person entitled to the benefit under the terms of the Health Care Flexible Spending Account. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable under this Health Care Flexible Spending Account is void. The Employer is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits under this Health Care Flexible Spending Account.
- 7.4 <u>Employment Not Guaranteed</u> The Employer may terminate the employment of any Employee as freely and with the same effect as if this Health Care Flexible Spending Account were not in existence. Participation in this Health Care Flexible Spending Account by an Employee shall not constitute an express or implied contract of employment between the Employer and the Employee.
- 7.5 <u>Additional Taxes or Penalties</u> If there are any taxes or penalties payable by the Employer on behalf of any Employee, such taxes or penalties shall be payable by the Employee to the Employer to the extent such taxes would have been originally payable by the Employee had this Health Care Flexible Spending Account not been in existence.
- 7.6 <u>Indemnification of Employer by Participants</u> If an Employee receives one or more reimbursements under the Health Care Flexible Spending Account that are not for Qualified Medical Expenses, the Employee shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal, state, or local income tax from the reimbursements.
- 7.7 Right of Recovery If the Claims Administrator makes any payment that according to the terms of the Health Care Flexible Spending Account should not have been made, it may recover that incorrect payment, whether or not it was made due to the Employer's or the Claims Administrator's own error, from the person to whom it was made or from any other appropriate party. If any such incorrect payment is made directly to an Employee, the Employer or its designee may deduct it when making future payments directly to that Employee, or may withhold the amount from the Employee's Compensation.

7.8 Entire Plan The Cafeteria Plan document and the Health Care Flexible Spending Account document shall constitute the only legally governing documents for the Plan. No statements made by the Employer, the Plan Administrator or the Claims Administrator shall void or reduce coverage under the Health Care Flexible Spending Account or be used in defense to a claim unless in writing signed by the Employer, the Plan Administrator or the Claims Administrator.

ARTICLE 8 TERMINATION AND AMENDMENT OF THE PLAN

- 8.1 <u>Amendments</u> The Plan Sponsor may amend the Health Care Flexible Spending Account at any time. Such action to amend the Health Care Flexible Spending Account shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. In addition, any amendment of the Health Care Flexible Spending Account which will not result in significant cost to the Plan Sponsor nor have a material effect on the benefits provided hereunder, and which either (a) will effect a technical or administrative change to the Health Care Flexible Spending Account, or (b) is recommended by counsel as necessary or desirable to comply with applicable law, may be made by the Plan Administrator (for the Plan Sponsor).
- 8.2 <u>Termination</u> The Plan Sponsor reserves the right, by action of the Plan Sponsor, to terminate the Health Care Flexible Spending Account. Such action to terminate all or any portion of the Health Care Flexible Spending Account shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. No termination of the Health Care Flexible Spending Account or amendment of the Health Care Flexible Spending Account shall deprive a Participant of any right to reimbursement existing as of the date of termination or amendment, unless required by applicable federal, state, or local law. Upon termination of the Health Care Flexible Spending Account, the Employer will refund to each Participant the amount remaining in the Participant's Health Care Flexible Spending Account.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Health Care Flexible Spending Account to be executed on the date shown below.

City and County of Broomfield

Deannet

Title: Director of Human Resources

Date: 12/31/2010

CITY AND COUNTY OF BROOMFIELD DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

Effective 1/1/2011

TABLE OF CONTENTS

		Page
ARTICLE 1	1 ESTABLISHMENT OF DEPENDENT CARE FLEXIBLE SPENDING	
ACC	COUNT	
1.1	Establishment of the Dependent Care Flexible Spending Account	
1.2	Purpose of the Dependent Care Flexible Spending Account	1
ARTICLE 2	2 ELIGIBILITY	1
2.1	Participation	1
2.2	Termination of Participation	
ARTICLE 3	3 DEPENDENT CARE REIMBURSEMENT	2
3.1	Reimbursement	
3.2	Definitions	
3.3	Maximum Amount	3
3.4	Withholding — Accounting	3
3.5	Year End Accounting — Forfeitures	
3.6	Annual Statement of Benefits	
ARTICLE 4	4 ADMINISTRATION	4
4.1	Plan Administrator	
4.2	Claims Administrator	5
4.3	Information	6
4.4	No Discrimination	6
4.5	Limit on Benefits to Principal Shareholders	6
4.6	Expenses of Administration	
4.7	Accounts and Records	6
4.8	Notification of Employees	6
4.9	Rights Against the Company	6
4.10	Rights to Employer's Assets	7
4.11	Financing	7
4.12	No Guarantee of Tax Consequences	7
ARTICLE 5	5 CLAIMS PROCEDURE	7
5.1	Claim for Benefits	7
5.2	Documentation for Claims	8
5.3	Payment of Claims for Reimbursement	8
ARTICLE (6 MISCELLANEOUS	8
6.1	State Law	
6.2	Gender and Number	8

6.3	Nonalienation of Benefits	8
6.4	Employment Not Guaranteed	g
6.5	Additional Taxes or Penalties	9
6.6	Indemnification of Employer by Participants	9
6.7	Right of Recovery	
6.8	Entire Plan	
ARTICLE 7	TERMINATION AND AMENDMENT OF THE PLAN	10
7.1	Amendments	10
7.2	Termination	10

ARTICLE 1

ESTABLISHMENT OF DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

1.1 <u>Establishment of the Dependent Care Flexible Spending Account</u> City and County of Broomfield ("Plan Sponsor") originally established this Dependent Care Flexible Spending Account effective 7/1/1993 and has since amended and restated this Dependent Care Flexible Spending Account. The Plan Sponsor amends and restates the Dependent Care Flexible Spending Account for the exclusive benefit of its Eligible Employees and the Eligible Employees of the Participating Employers effective 1/1/2011. This Dependent Care Flexible Spending Account is a part of the City and County of Broomfield Cafeteria Plan. Any term used in the Cafeteria Plan has the same meaning in the Dependent Care Flexible Spending Account, unless inconsistent with the terms of this Dependent Care Flexible Spending Account.

1.2 Purpose of the Dependent Care Flexible Spending Account The

Employer has designed this Dependent Care Flexible Spending Account to enable Participants in the Dependent Care Flexible Spending Account to elect to receive reimbursements for their Qualified Dependent Care Expenses during the portion of an Election Year that the Employee is a Participant in the Dependent Care Flexible Spending Account. The Employer intends that this Dependent Care Flexible Spending Account qualify under Code § 129 so that the Employer's reimbursements under the Dependent Care Flexible Spending Account are excludable from the Participant's gross income, and the Employer will interpret this Dependent Care Flexible Spending Account in a manner consistent with that Code provision.

This Dependent Care Flexible Spending Account is intended to be a "governmental plan", as defined in Code § 414(d) and ERISA § 3(32).

ARTICLE 2 ELIGIBILITY

- 2.1 <u>Participation</u> Every Eligible Employee is eligible to participate in the Dependent Care Flexible Spending Account. An Eligible Employee shall become a Participant in the Dependent Care Flexible Spending Account as of the date of hire, if the Eligible Employee elects to receive coverage under this Dependent Care Flexible Spending Account during an election period under ARTICLE 4 of the Cafeteria Plan.
- 2.2 <u>Termination of Participation</u> A Participant shall cease to be a Participant as of the earliest of:
 - (a) the date a Participant's revocation of an election is effective, in accordance with Section 4.5, 4.6, or 4.7 of the Cafeteria Plan;
 - (b) in accordance with Section 4.7 of the Cafeteria Plan, if a Participant fails to remit the required premium for his or her coverage under the Dependent

- (a) Care Flexible Spending Account, the end of the pay period for which the required premiums have been paid by the Participant;
- (b) the date the Participant ceases to be an Eligible Employee;
- (c) the date the Dependent Care Flexible Spending Account terminates; or
- (d) the date the Cafeteria Plan terminates.

ARTICLE 3 DEPENDENT CARE REIMBURSEMENT

- 3.1 <u>Reimbursement</u> The Claims Administrator will reimburse a Participant for Qualified Dependent Care Expenses incurred during the portion of an Election Year that the Employee is a Participant in this Dependent Care Flexible Spending Account, subject to the other limitations of the Dependent Care Flexible Spending Account. However, employment related Dependent Care expenses incurred after the date a Participant ceases to be enrolled in the Plan through the remainder of the Plan Year in which termination occurs may be reimbursed, based on the Participant's Dependent Care Flexible Spending Account as of date of termination.
- 3.2 <u>Definitions</u> For purposes of this Dependent Care Flexible Spending Account, the following definitions apply:
 - (a) **Dependent** means a "qualifying individual" as defined in Code § 21(b)(1) with respect to the Participant, and in the case of divorced parents, a qualifying individual who is a child shall, as provided in Code § 21(e)(5), be treated as a qualifying individual of the custodial parent (within the meaning of Code § 152(e)(1)) and shall not be treated as a qualifying individual with respect to the noncustodial parent.
 - (b) *Qualifying Individual* means an individual defined as a tax dependent under Code § 152 who meets the following:
 - (1) a Participant's Dependent who is under the age of 13 (and meets other conditions imposed by the Code's definition of Dependent, such as a requirement that he or she have the same principal place of abode as the Participant for more than one half of the year);
 - (2) a Participant's Dependent who is physically or mentally incapable of self-care, has the same principal place of abode as the Participant for more than half of the year, and meets other conditions imposed by the Code's definition of Dependent; and
 - (3) a Participant's Spouse who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the year.

- Qualified Dependent Care Expenses are amounts paid by the Participant (c) for the care of a Dependent, including related household services, which enable the Participant and, if applicable, the Participant's Spouse, to be Qualified Dependent Care Expenses shall not gainfully employed. include expenses incurred for services performed outside the Participant's household unless the expenses are (1) for a Dependent described in Section 3.2(a)(1), or (2) for a Dependent described in 3.2(a)(2) who regularly spends at least 8 hours each day in the Participant's household. Qualified Dependent Care Expenses do not include amounts paid to an individual for whom the Participant or the Participant's Spouse is entitled to an exemption under Code § 151(c), to a child of the Participant who is under age 19 as of the last day of the Participant's taxable year, or to a facility unless the facility meets the requirements of a Dependent Care Center.
- (d) **Dependent Care Center** means a facility for care of more than six persons other than persons who reside there and which facility receives a fee, payment, or grant for providing services for any of the six individuals regardless of whether the facility operates at a profit, and which facility complies with local and state laws for dependent care centers.
- 3.3 **Maximum Amount** The maximum amount of Compensation that a Participant may elect to have contributed to a Dependent Care Expense Reimbursement Account and the maximum amount that a Participant may be reimbursed for Qualified Dependent Care Expenses during a calendar year is the lesser of (a) \$5,000 (\$2,500 if a married person filing a separate return), or (b) the Participant's earned income limit. The earned income limit for an unmarried Participant is the Participant's earned income. The earned income limit for a married Participant is the lesser of the earned income of the Participant or the Participant's Spouse. Earned income shall be determined pursuant to Code § 32(c)(2) and shall include wages, salaries, tips, and other employee compensation, but only if such amounts are includable in gross income for the taxable year, plus earnings from self-employment. The earned income of a Spouse who is a student or incapable of self care shall be deemed to be \$250 each month if the Participant has one Dependent and shall be deemed to be \$500 each month if the Participant has two or more Dependents. In no event shall the Claims Administrator reimburse more than the balance held in the Participant's Dependent Care Expense Reimbursement Account on the date the reimbursement is made.
- 3.4 <u>Withholding Accounting</u> A separate bookkeeping Dependent Care Expense Reimbursement Account will be established and maintained for each Participant under this Dependent Care Flexible Spending Account. A Participant's Dependent Care Expense Reimbursement Account will be increased by the amount of the Participant's Compensation reduction amount designated for Qualified Dependent Care Expenses for such pay period. A Participant's account will be decreased for the

amount of the reimbursements made to the Participant. The amounts withheld from Participants' Compensation shall be held as part of the Employer's general assets, or may be held in a separate account which will be treated as part of the Employer's general assets.

- 3.5 <u>Year End Accounting Forfeitures</u> A Participant's Dependent Care Expense Reimbursement Account for any Election Year will be used to reimburse the Participant for Qualified Dependent Care Expenses. A Participant will forfeit any amounts remaining in the Participant's Dependent Care Expense Reimbursement Account at the end of the period described in Section 5.1. Forfeited amounts in Participants' Dependent Care Expense Reimbursement Accounts will be used first to pay the administrative expenses of the Dependent Care Flexible Spending Account and then shall remain as part of the Employer's general assets.
- 3.6 <u>Annual Statement of Benefits</u> On or before January 31 of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under the Dependent Care Flexible Spending Account during the prior calendar year confirmation on the Wage and Tax Statement (W-2) of all such benefits paid to or on behalf of such Participant for the prior calendar year.

ARTICLE 4 ADMINISTRATION

- 4.1 <u>Plan Administrator</u> The Plan Sponsor shall be the Plan Administrator unless the Plan Sponsor appoints a different Plan Administrator. If the Plan Sponsor appoints a committee to serve as the Plan Administrator, the committee shall consist of not less than three members. Any member of the committee may resign at any time by giving notice to the Plan Sponsor. Any resignation shall take effect at the date of receipt of such notice or at any later date specified in the notice. No member of the committee shall receive any compensation for his or her services as a member of the committee. A majority of the members of the committee shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the committee shall require the written approval or affirmative vote of a majority of the members of the committee. The Plan Administrator shall have all powers necessary or convenient to administer the Dependent Care Flexible Spending Account. For this purpose, the Plan Administrator, in addition to such other powers as the law may provide, shall have:
 - (a) the power to establish rules and procedures for the purpose of administration of this Dependent Care Flexible Spending Account;
 - (b) the discretionary authority and exclusive right to interpret the Dependent Care Flexible Spending Account and to decide any matters arising in connection with the administration and operation of the Dependent Care Flexible Spending Account; and

(c) the power to appoint such agents, attorneys, accountants and consultants and any other person required for proper administration of the Dependent Care Flexible Spending Account.

The Plan Administrator and its delegates shall have full discretionary authority in all matters related to the discharge of its responsibilities and the exercise of authority under the Dependent Care Flexible Spending Account, including, without limitation, the construction of the terms of the Dependent Care Flexible Spending Account, and the determination of eligibility for coverage and benefits. The Plan Administrator's rules, interpretations, and decisions shall be conclusive and binding upon all persons having or claiming to have any right or interest in or under the Dependent Care Flexible Spending Account, and no such rule, interpretation, or decision shall be modified under judicial review unless such decision is proven to be arbitrary or capricious.

The Plan Administrator may delegate some or all of its authority under the Dependent Care Flexible Spending Account to any person or persons provided that any such delegation is in writing. The Plan Sponsor, acting as the Plan Administrator, has delegated authority for day to day administrative functions and certain reporting requirements to the Claims Administrator.

If the Plan Sponsor has appointed a Plan Administrator other than itself, the Plan Sponsor may remove such individual or entity at any time by written notice to the individual or entity, effective at the time specified in the notice. If the Plan Sponsor has appointed a committee to serve as the Administrator, the Plan Sponsor may remove any committee member at any time by written notice to the committee member, effective at the time specified in the notice. If a committee member is an employee of the Employer, he or she will be deemed to have been removed from the committee as of the date his or her employment is terminated.

4.2 **Claims Administrator** The Claims Administrator shall make the initial determination of claims submitted under the Dependent Care Flexible Spending Account. The Claims Administrator shall be the entity identified in Section 2.2 of the Cafeteria Plan, unless the Plan Sponsor appoints a different Claims Administrator. If the Plan Sponsor appoints a committee to serve as the Claims Administrator, the committee shall consist of not fewer than three members. Any member of the committee may resign at any time by giving written notice to the Plan sponsor. Any resignation shall take effect at the date of receipt of such notice or at any later date specified in the notice. No member of the committee shall receive any compensation for his or her services as a member of the committee. A majority of the members of the committee shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the committee shall require the written approval or affirmative vote of a majority of the members of the committee. The Plan Sponsor may appoint an entity to serve as Claims Administrator, and the entity may receive compensation for its services as Claims Administrator. The Claims Administrator shall have all powers

necessary to make the initial claims determination under the Dependent Care Flexible Spending Account. If the Plan Sponsor has appointed a Claims Administrator other than itself, the Plan Sponsor may remove such individual or entity at any time by written notice to the individual or entity, effective at the time specified in the notice. If the Plan Sponsor has appointed a committee to serve as the Claims Administrator, the Plan Sponsor may remove any committee member at any time by written notice to the committee member, effective at the time specified in the notice. If a committee member is an employee of the Employer, he or she will be deemed to have been removed from the committee as of the date his or her employment is terminated.

- 4.3 <u>Information</u> The Plan Administrator or Claims Administrator may require that each Participant supply any information and execute any documents necessary under this Dependent Care Flexible Spending Account.
- 4.4 <u>No Discrimination</u> Contributions and benefits under this Dependent Care Flexible Spending Account shall not discriminate in a manner which violates the Code.
- 4.5 <u>Limit on Benefits to Principal Shareholders</u> Not more than 25% of the amounts paid or incurred by the Employer for benefits under the Dependent Care Flexible Spending Account may be provided to Participants who are shareholders or owners, or their spouses or dependents, who own more than 5% of the stock or of the capital or profits interest in the Employer.
- 4.6 <u>Expenses of Administration</u> Any expense incurred by the Employer or the Plan Administrator relative to the administration of the Dependent Care Flexible Spending Account shall be paid by the Employer. Any expense incurred by an independent, third party Claims Administrator relative to the administration of the Dependent Care Flexible Spending Account shall be paid by the Employer only if so provided in a separate enforceable written agreement between the parties.
- 4.7 <u>Accounts and Records</u> The Claims Administrator shall establish and maintain a bookkeeping Dependent Care Expense Reimbursement Account in the name of each Participant at the time the Participant first becomes a Participant in the Dependent Care Flexible Spending Account.
- 4.8 <u>Notification of Employees</u> The Plan Administrator shall provide a summary of the terms and conditions of the Dependent Care Flexible Spending Account to all Eligible Employees.
- 4.9 <u>Rights Against the Company</u> Neither the establishment of the Dependent Care Flexible Spending Account, nor any modification of the Dependent Care Flexible Spending Account, nor any distributions from the Dependent Care Flexible Spending Account shall be construed as giving to any Participant, former Participant, or beneficiary under the Dependent Care Flexible Spending Account any

legal or equitable rights against any Employer, its shareholders, directors, or officers, as such, or as giving any person the right to be retained in the employ of an Employer.

- 4.10 <u>Rights to Employer's Assets</u> No Participant or beneficiary has any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under this Dependent Care Flexible Spending Account, and then only to the extent of the benefits payable under the Dependent Care Flexible Spending Account to such Participant or beneficiary. All payments of benefits provided under this Dependent Care Flexible Spending Account will be made solely from the assets of the Employer, and neither the Plan Administrator, nor the Claims Administrator are liable for payment of benefits in any manner.
- 4.11 <u>Financing</u> All payments from the Dependent Care Flexible Spending Account shall be made from the Employer's general assets. Dependent Care Flexible Spending Account assets shall not be held in trust. Notwithstanding the foregoing, the Employer may establish a separate account to hold money to pay Dependent Care Flexible Spending Account benefits, including Participant deferrals, and such account shall be considered to be the general assets of the Employer.
- No Guarantee of Tax Consequences Neither the Employer, nor the Plan Administrator, nor the Claims Administrator makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or beneficiary or any amounts withheld from the Participant's Compensation under this Dependent Care Flexible Spending Account will be excludable from the gross income of the Participant or beneficiary for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or beneficiary. It shall be the obligation of each Participant or beneficiary to determine whether any payment under this Dependent Care Flexible Spending Account or any amount withheld from the Participant's Compensation is excludable from the gross income of the Participant or beneficiary for federal and state income tax purposes, and to take appropriate action if the Participant or beneficiary has reason to believe that any payment or amount withheld is not excludable. Neither the Employer, nor the Plan Administrator, nor the Claims Administrator is liable for any taxes or penalties owed by the Participant or beneficiary with respect to such amounts.

ARTICLE 5 CLAIMS PROCEDURE

5.1 <u>Claim for Benefits</u> A Participant must file a claim for benefits with the Claims Administrator on forms provided by (or using the process required by) the Plan Administrator or Claims Administrator. The claim must specify that it is a claim for benefits under the Participant's Dependent Care Expense Reimbursement Account. The claim must include any documentation reasonably required by the Claims Administrator under Section 5.2.

Claims for benefits may only be filed with respect to expenses incurred during the portion of an Election Year that the Employee is a Participant in the Dependent Care Flexible Spending Account and may only be filed against the Participant's Dependent Care Expense Reimbursement Account for the Election Year. The claimant must submit an application for reimbursement no later than 120 days after the end of the Election Year.

The Employer or Plan Administrator may establish a minimum reimbursement amount for claims. If a Participant submits a claim that is less than the minimum reimbursement amount, the Claims Administrator will hold such claim until the Participant submits more claims equal to a total claim of at least the minimum reimbursement amount (unless such claim is the Participant's final claim for an Election Year, in which case a minimum reimbursement amount shall not apply).

- 5.2 <u>Documentation for Claims</u> The Participant must submit copies of statements or bills for services rendered or other evidence satisfactory to the Claim Administrator that the Participant incurred the expense and a statement from the Participant or the Participant's insurance carrier that the expenses are not reimbursable from any other source. The Claims Administrator shall require that the Participant file all appropriate claims and requests for payment from any other plan or plans from which reimbursement may be made prior to making any payments under this Dependent Care Flexible Spending Account. Prior to making any payment of benefits, the Claims Administrator may require the Participant to provide such information and to complete appropriate documents or forms necessary for the proper administration of this Dependent Care Flexible Spending Account. The Plan Administrator and the Claims Administrator may rely upon all such information provided by the Participant, including the Participant's current mailing address.
- 5.3 <u>Payment of Claims for Reimbursement</u> Payment of claims will be made directly to the Participant, and not directly to the provider of any of the services.

ARTICLE 6 MISCELLANEOUS

- 6.1 <u>State Law</u> The laws of the state of Colorado will determine all questions arising with respect to the provisions of this Dependent Care Flexible Spending Account except to the extent superseded by federal law.
- 6.2 <u>Gender and Number</u> Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Dependent Care Flexible Spending Account dictates, the plural includes the singular and the singular includes the plural.
- 6.3 <u>Nonalienation of Benefits</u> Benefits payable under this Dependent Care Flexible Spending Account are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or

levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, unless pursuant to court order, prior to actual receipt by the person entitled to the benefit under the terms of the Dependent Care Flexible Spending Account. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable under this Dependent Care Flexible Spending Account is void. The Employer is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits under this Dependent Care Flexible Spending Account.

- 6.4 <u>Employment Not Guaranteed</u> The Employer may terminate the employment of any Employee as freely and with the same effect as if this Dependent Care Flexible Spending Account were not in existence. Participation in this Dependent Care Flexible Spending Account by an Employee shall not constitute an express or implied contract of employment between the Employer and the Employee.
- 6.5 <u>Additional Taxes or Penalties</u> If there are any taxes or penalties payable by the Employer on behalf of any Employee, such taxes or penalties shall be payable by the Employee to the Employer to the extent such taxes would have been originally payable by the Employee had this Dependent Care Flexible Spending Account not been in existence.
- 6.6 <u>Indemnification of Employer by Participants</u> If an Employee receives one or more reimbursements under the Dependent Care Flexible Spending Account that are not for Qualified Dependent Care Expenses, the Employee shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal, state, or local income tax from the reimbursements.
- 6.7 <u>Right of Recovery</u> If the Claims Administrator makes any payment that according to the terms of the Dependent Care Flexible Spending Account should not have been made, it may recover that incorrect payment, whether or not it was made due to the Employer's or the Claims Administrator's own error, from the person to whom it was made or from any other appropriate party. If any such incorrect payment is made directly to an Employee, the Employer or its designee may deduct it when making future payments directly to that Employee, or may withhold the amount from the Employee's Compensation.
- 6.8 <u>Entire Plan</u> The Cafeteria Plan document and the Dependent Care Flexible Spending Account document shall constitute the only legally governing documents for the Plan. No statements made by the Employer, the Plan Administrator, or the Claims Administrator shall void or reduce coverage under the Dependent Care Flexible Spending Account or be used in defense to a claim unless in writing signed by the Employer, the Plan Administrator, or the Claims Administrator.

ARTICLE 7 TERMINATION AND AMENDMENT OF THE PLAN

- 7.1 Amendments The Plan Sponsor may amend the Dependent Care Flexible Spending Account at any time. Any action to amend the Dependent Care Flexible Spending Account shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. In addition, any amendment of the Dependent Care Flexible Spending Account which will not result in significant cost to the Plan Sponsor nor have a material effect on the benefits provided hereunder, and which either (a) will effect a technical or administrative change to the Dependent Care Flexible Spending Account, or (b) is recommended by counsel as necessary or desirable to comply with applicable law, may be made by the Plan Administrator (for the Plan Sponsor).
- 7.2 <u>Termination</u> The Plan Sponsor reserves the right, by action of the Plan Sponsor, to terminate the Dependent Care Flexible Spending Account. Such action to terminate all or any portion of the Dependent Care Flexible Spending Account shall be made in writing and shall state the date to which it is either retroactively or prospectively effective. No termination of the Dependent Care Flexible Spending Account or amendment of the Dependent Care Flexible Spending Account shall deprive a Participant of any right to reimbursement existing as of the date of termination or amendment, unless required by applicable federal, state, or local law. Upon termination of the Dependent Care Flexible Spending Account, the Employer will refund to each Participant the amount remaining in the Participant's Dependent Care Expense Reimbursement Account.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Dependent Care Flexible Spending Account to be executed on the date shown below.

City and County of Broomfield

Title: Director of Human Resources

Date: 12/31/2010