

## UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

HMP Services Holding Sub III, LLC, et al. Claims Processing Center

c/o Epiq Bankruptcy Solutions, LLC

FDR Station, P.O. Box 5082

New York, NY 10150-5082

## PROOF OF CLAIM

Filed: USBC - District of Delaware

HMP Services Holding, Et Al.

10-13618 (BLS)

0000000128

Name of Debtor Against Which Claim is Held

Case No. of Debtor

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name and address of Creditor: (and name and address where notices should be sent if different from Creditor)

HMP (CREDITOR.DBF,CREDNUM)CREDNUM # 1000000145\*\*\*\*\*  
EICHNER, JOSEPH  
203 LINCOLN AVENUE  
HILLSDALE, NJ 07642

Telephone number:

Email Address:

Name and address where payment should be sent (if different from above)

Telephone number:

Email Address:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim

Number: \_\_\_\_\_

(If known)

Filed on: \_\_\_\_\_

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 75,000  
If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete Item 5.

If all or part of your claim qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9), complete Item 6.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.

2. Basis for Claim: Supplemental Executive Retirement Plan  
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 0168

3a. Debtor may have scheduled account as: \_\_\_\_\_  
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)  
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other

Describe: \_\_\_\_\_

Value of Property: \$ \_\_\_\_\_ Annual Interest Rate \_\_\_\_\_%

Amount of arrearage and other charges as of time case filed included in secured claim, if any:

\$ \_\_\_\_\_ -Basis for-perfection: \_\_\_\_\_

Amount of Secured Claim: \$ \_\_\_\_\_ Amount Unsecured: \$ 75,000

6. Amount of Claim that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9): \$ \_\_\_\_\_  
(See instruction #6 on reverse side.)

7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 8 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

2/6/11

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Joseph Eichner Joseph Eichner

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries or commissions (up to \$11,725), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

☐ Up to \$2,600 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

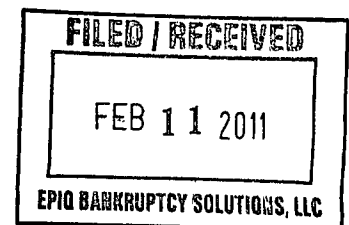
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_).

Amount entitled to priority:

\$ \_\_\_\_\_

FOR COURT USE ONLY



Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**Benefit @ \$20,000/yr for 10 years**  
**Change of Control**

**Target Cash Balance @ Retirement      200,000**

**Discount Factor      6%**

<b><u>AGE</u></b>	<b><u>Contribution</u></b>	<b><u>Payment</u></b>	<b><u>Balance</u></b>
36			-
37			-
38			-
39			-
40		-	-
41		-	-
42	70,069	-	70,069
43		-	74,273
44		-	78,729
45		-	83,453
46		-	88,460
47		-	93,768
48		-	99,394
49		-	105,358
50		-	111,679
51		-	118,380
52		-	125,482
53		-	133,011
54		-	140,992
55		-	149,452
56		-	158,419
57		-	167,924
58		-	177,999
59		-	188,679
60		200,000	-

Joseph Eichwer - Participant

Original Agreement - on file with Pitman

Participant Agreement - on file with Pitman

**HAROLD M. PITMAN COMPANY**

**EXECUTIVE RETIREMENT AND VOLUNTARY DEFERRAL PLAN**

**HAROLD M. PITMAN COMPANY  
EXECUTIVE RETIREMENT AND VOLUNTARY DEFERRAL PLAN**

Harold M. Pitman Company, a New Jersey Corporation, or its successor (the "Employer"), hereby adopts the Pitman Executive Retirement and Voluntary Deferral Plan (the "Plan") for the benefit of a select group of management or highly compensated employees. This Plan is an unfunded arrangement and is intended to be exempt from the participation, vesting, funding, and fiduciary requirements set forth in Title I of the Employee Retirement Income Security Act of 1974, as amended. This Plan is effective April 1, 2003.

This updated Plan shall supersede and cancel all other prior individual executive and director retirement plans memorialized in the current Retirement Plan Agreement (the "RPA"). The benefit(s) derived from participation in this Plan shall replace those benefits resulting from RPA participation. The Employer's intended purpose of this Plan, is to provide certain selected management or highly compensated employees with a contractual arrangement supporting the likelihood and ability of certain selected Employee's and certain director(s) of the Employer, to benefit from an enhanced retirement benefit program. In addition to an enhanced retirement benefit, this Plan shall include, for the benefit of Participant's, as that term is currently defined herein below, chosen beneficiaries an augmented death benefit. Moreover, the Employer has provided through the implementation of this Plan, the ability of Participant(s) to defer a portion of their Compensation and Bonus, as those terms are currently defined herein below, to further their future financial objectives. The aforementioned objectives of this Plan shall be accomplished through the implementation of this Plan and Account, as defined herein below, crediting by the Employer. Such Employer crediting shall occur annually, at a predetermined value, and represent a portion of the Employer's general assets.

**ARTICLE 1  
Definitions**

- 1.1 **Account.** The bookkeeping account established for each Participant as provided in Section 5.1 hereof.
- 1.2 **Administrator.** *Administrator* or *Plan Administrator* means the Board of Directors of the Employer or other individual or committee appointed by the Board to administer the Plan pursuant to Section 10.1.
- 1.3 **Beneficiary.** The person, persons, trust or other entity a Participant designates by written revocable designation filed with the Administrator to receive payments in event of his or her death.
- 1.4 **Board.** The Board of Directors of the Employer.
- 1.5 **Bonus.** Bonus shall mean one or more cash bonuses designated from time to time by the Administrator as eligible for deferral under this Plan.

- 1.6 **Code.** The Internal Revenue Code of 1986, as amended.
- 1.7 **Compensation.** Compensation shall include the Participant's earned income, including salary, commissions, fees, and other remuneration from the Employer as reported on IRS Form W-2. For purposes of this Plan, Compensation shall also include Employer director fees. Compensation will not include Employer provided Bonus.
- 1.8 **Deferrals.** The portion of Compensation that a Participant elects to defer in accordance with Section 3.2 hereof.
- 1.9 **Deferral Election.** *Deferral Election* or *Enrollment Form* means the separate written agreement, submitted to the Administrator, by which an Eligible Employee agrees to participate in the Plan and make Deferrals thereto. The Deferral Election will specify the amount or percentage of Compensation that a Participant chooses to defer.
- 1.10 **Disability.** Separation from service for any condition that qualifies as a disability under the Harold M. Pitman long term disability plan. In the event the Employer no longer maintains the Harold M. Pittman long term disability plan, Disability shall have the meaning as set forth by the Administrator in their sole and absolute discretion.
- 1.11 **Discretionary Contribution.** An Employer contribution as described in Section 3.3 hereof.
- 1.12 **Effective Date.** April 1, 2003.
- 1.13 **Eligible Employee.** Each Employee designated by the Administrator pursuant to Section 2.1 as eligible to participate in the Plan.
- 1.14 **Employee.** Any person employed by the Employer.
- 1.15 **Employer.** Harold M. Pitman Company, and its affiliates or successors.
- 1.16 **Employer Supplemental Contribution.** An Employer contribution as described in Section 3.1 hereof.
- 1.17 **Enrollment Period**
- A. For individuals who are Eligible Employees prior to the commencement of a given Plan Year, *Enrollment Period* means the period set by the Administrator which ends prior to the first day of a Plan Year.

- B. With respect to an Eligible Employee designated as such by the Employer effective as of any day after the first day of a Plan Year, *Enrollment Period* means the period beginning with the date of his/her designation as an Eligible Employee, and ending prior to the first day such Eligible Employee's participation in the Plan commences.
- 1.18 **Investment Fund or Funds.** Each investment(s) which serves as a means to measure value, increases or decreases with respect to a Participant's Accounts.
- 1.19 **Participant.** An Eligible Employee who is a Participant as provided in Article 2.
- 1.20 **Plan.** The Pitman Executive Retirement and Voluntary Deferral Plan.
- 1.21 **Plan Year.** For the initial Plan Year, April 1, 2003 through March 31, 2004. For each year thereafter, April 1 through March 31.
- 1.22 **Retirement.** Retirement means the voluntary termination of the Participant's employment with the Employer for any reason other than death or Disability at any time after Participants attainment of age of sixty-five (65).
- 1.23 **Trust.** In the event of Trust usage, Trust shall mean the agreement between the Employer and the Trustee under which the assets of the Plan are held, administered and managed, which shall conform to the terms of Rev. Proc. 92-64.
- 1.24 **Trustee.** Trustee shall mean an Employer chosen Trust department. Such initially chosen Trust department may be changed by the Employer to allow any other successor Trust department to become trustee pursuant to the terms of the Plan.
- 1.25 **Years of Participation.** A Participant's "Years of Participation" shall mean the total number of full twelve (12) month periods that an individual has been a Participant.

## **ARTICLE 2**

### **Participation**

- 2.1 **Designation as Eligible Employee.** The Administrator shall from time to time specify one or more persons from a select group of management or highly compensated employees as Eligible Employees provided, however, the Employer shall not discriminate against any Employee becoming eligible under this provision on any basis prohibited by law. The aforementioned select group of management or highly compensated employees shall consist of management level employee(s) with an aggregation of Compensation and Bonus in excess of \$100,000 and director(s) of the Employer. Such specification shall be in writing, with a copy delivered to the Employer and the person designated as eligible, and shall set the date as of when the person becomes eligible. Those Employee(s) and/or director(s) currently participating in the Employer's RPA(s) shall be considered an Eligible Employee for Plan purposes.

An individual's designation as an Eligible Employee may be revoked at any time upon written notice of the Administrator to such individual.

**2.2 Commencement of Participation.** Each Eligible Employee shall become a Participant at the earlier of the first day of the Plan Year or the date on which his or her Deferral Election first becomes effective.

**2.3 Loss of Eligible Employee Status.**

- (a) A Participant who is no longer an Eligible Employee shall not be permitted to submit a Deferral Election and all Deferrals for such Participant shall cease as of the end of the Plan Year in which such Participant is determined to no longer be an Eligible Employee.
- (b) Amounts credited to the Account of a Participant described in subsection (a) shall continue to be held pursuant to the terms of the Plan and shall be distributed as provided in Article 6.
- (c) A Participant who is no longer an Eligible Employee shall continue to receive quarterly statements, and shall retain the right to make changes in investment selection according to Section 5.2.

### **ARTICLE 3 Contributions**

**3.1 Employer Supplemental Contribution.** The Employer shall make an annual Employer Supplemental Contribution to the Accounts of some or all Employer designated Participants. The amount of the Employer Supplemental Contribution shall be determined by the Employer annually and communicated to the Participant(s) as soon as administratively feasible. Such Employer Supplemental Contribution shall be credited to the Employer Contribution sub-account maintained within the Participant's Account in accordance with Section 5.1. The initial notification to those Participant(s) designated as Employer Supplemental Contribution recipients, shall be through an Employer Plan transition letter. Such Employer Plan transition letter shall be received by the aforementioned designated Participant within one (1) month of this Plan's effective date. Notwithstanding anything to the contrary contained herein, in the event a designated Participant does not receive an annual notification regarding the Employer Supplemental Contribution, the designated Participant's Account shall be credited with an Employer Supplemental Contribution equal to that amount provided for in the designated Participant's most recent Employer Supplemental Contribution notification.

### 3.2 **Deferrals.**

- (a) **Deferral Election.** On an annual basis, each Participant may authorize the Employer to reduce his/her future Compensation and/or any applicable Bonus by an amount or percentage not to exceed an amount allowed for the Plan Year as established by the Employer, and to have a corresponding amount credited to his/her Accounts, in accordance with Article 5, by filing a Deferral Agreement with the Administrator during his/her initial Enrollment Period or any subsequent Enrollment Period preceding the Plan Year during which such Compensation and/or applicable Bonus will be earned. Such Deferrals will only be permitted in those Plan Years the Administrator elects to allow these types of Participant Deferrals. Such an election shall be communicated to the Participant in the Plan Year immediately preceding the Plan Year in which Deferrals will be allowed.
- (b) Each Eligible Employee shall deliver an annual Deferral Election to the Employer before any Deferrals can become effective. The aforementioned Deferral Election shall be void with respect to any Deferral unless submitted before the beginning of the Plan Year during which the amount to be deferred will be earned; provided, however, that in the year in which the Plan is first adopted or an Employee is first eligible to participate, such Deferral Agreement shall be filed within thirty (30) days of the date on which the Plan is adopted or the date on which an Employee is first eligible to participate, respectively, with respect to Compensation earned during the remainder of the calendar year and/or applicable Bonus. The Deferral Election shall designate the amount or percentage of Compensation and/or applicable Bonus to be deferred by each Participant, the Beneficiary of the Participant and such other items as the Administrator may prescribe. Deferral Elections shall remain effective for the Plan Year.
- (c) The aggregate minimum amount of Compensation and Bonus that may be deferred each Plan Year is two thousand dollars (\$2,000).
- (d) The maximum amount of Compensation that may be deferred each Plan Year is fifty percent (50%) of the Participant's Compensation.
- (e) The maximum amount of Bonus that may be deferred each Plan Year is one hundred percent (100%) of Participant's Bonus.

### 3.3 **Discretionary Contribution.** At its sole and absolute discretion, the Employer may elect to make a Discretionary Contribution to the Account of some or all of the Participants. Nothing in this Plan, however, shall obligate the Employer to make Discretionary Contributions for the benefit of Plan Participants in any Plan Year, nor to make identical Discretionary Contributions for the benefit of Plan Participants in any Plan Year. The Employer expressly reserves the right to make Discretionary



Contributions to such Plan Participants in such amount or such proportions as it deems warranted or appropriate; provided, however, the Employer shall not discriminate against any Plan Participant in making Contributions under this provision on any basis prohibited by law. Discretionary Contributions shall be allocated to the Participant's Accounts at such Participant's election made in accordance with Section 5.1. Nothing in this Plan or any other agreement or document shall represent or be construed to represent an obligation or promise of the Employer to make Discretionary Contributions on behalf of a Participant at any time.

**3.4 Time of Contributions.**

- (a) Employer Supplemental Contribution(s) shall be appropriately credited to the Accounts of the Participants or transferred to the Trust, in the event of Trust usage, at such time as the Employer shall determine, but no more frequently than annually. The Employer shall also transmit at that time any necessary instructions regarding the allocation of such amounts among the Accounts of Participants.
- (b) Deferral Contributions shall be appropriately credited to the Accounts of the Participants or transferred to the Trust, in the event of Trust usage, as soon as administratively feasible following each payroll period. The Employer shall also transmit at that time any necessary instructions regarding the allocation of such amounts among the Accounts of Participants.
- (c) Discretionary Contributions shall be appropriately credited to the Accounts of the Participants or transferred to the Trust, in the event of Trust usage, at such time as the Employer shall determine, but no more frequently than annually. The Employer shall also transmit at that time any necessary instructions regarding the allocation of such amounts among the Accounts of Participants.

**3.5 Form of Contributions.** All Deferrals, Employer Supplemental Contributions and Discretionary Contributions to the Trust shall be made in the form of cash or cash equivalents of US currency.

**ARTICLE 4**  
**Vesting**

**4.1 Vesting of Deferrals, Employer Supplemental and Discretionary Contributions.**

- (a) Deferrals: To the extent Deferrals are permitted by the Administrator, a Participant shall have a vested right to the portion of his or her Account attributable to Deferrals and any earnings or losses on the investment of such Deferrals.

(b) Employer Supplemental Contributions: A Participant shall have a vested right to the portion of his or her Account attributable to Employer Supplemental Contribution(s) and any earnings or losses on the investment of such Employer Supplemental Contribution(s) based on the following schedule:

<u>Years of Plan Participation</u>	<u>Vested Percentage</u>
1	0%
2	0%
3	20%
4	30%
5	40%
6	50%
7	60%
8	70%
9	80%
10	90%
11	100%

(c) Discretionary Contributions: A Participant shall have a vested right to the portion of his or her Account attributable to Discretionary Contribution(s) and any earnings or losses on the investment of such Discretionary Contribution(s) based on the following schedule:

<u>Years of Plan Participation</u>	<u>Vested Percentage</u>
1	0%
2	0%
3	20%
4	30%
5	40%
6	50%
7	60%
8	70%
9	80%
10	90%
11	100%

(d) Notwithstanding the aforementioned standard vesting schedules, at the time any Employer Supplemental and/or Discretionary Contributions may be determined by the Employer, the Employer may also determine a separate vesting schedule regarding such amounts.

(e) All non vested Employer Supplemental and/or Discretionary Contributions shall become one hundred percent (100%) vested upon the Change of Control of the Employer, Participant's death, Participant's Disability or Retirement of the Participant.

- 4.2 **Amounts Not Vested.** Notwithstanding anything to the contrary, any amounts credited to a Participant's Account that are not vested at the time of his or her termination of employment with the Employer shall be forfeited.
- 4.3 **Change in Control.** "Change in Control" of the Employer shall mean: the purchase or other acquisition by any person, entity or group of persons, within the meaning 13(d) or 14(d) of the Securities Exchange Act of 1934 ("Act"), or any comparable successor provisions, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of fifty percent (50%) or more of either the outstanding shares of common stock or the combined voting power of the Employer's then outstanding voting securities entitled to vote generally, or approval by the stockholders of the Employer of a reorganization, merger, or consolidation, in each case, with respect to which persons who were stockholders of the Employer immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than fifty percent (50%) of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated Employer's then outstanding securities, or a liquidation of the Employer or of the sale of all or substantially all of the Employer's assets.

## **ARTICLE 5**

### **Accounts**

- 5.1 **Accounts.** The Administrator shall establish and maintain a bookkeeping account in the name of each Participant. The Administrator shall also establish subaccounts, as provided in subsection (a), (b), and/or (c), below, as elected by the Participant pursuant to Article 3.
- (a) A Retirement Account shall be established for each Participant. His or her Retirement Account shall be credited with Deferral(s) (as specified in the Participant's Deferral Election), Employer Supplemental Contribution(s) and any Discretionary Contribution(s) allocable thereto, and the Participant's allocable share of any earnings or losses on the foregoing. Each Participant's Account shall be reduced by any distributions made plus any federal, state and/or local tax withholding and any social security withholding tax as may be required by law.
- (b) A Participant may elect to establish up to four (4) Education Accounts by designating a year in which the Education Account is to commence payments at the time the account is initially established. The minimum deferral period for a Participant's Education Account subaccounts shall be two (2) years. Each Participant's Education Account shall be credited with Deferral(s) (as specified in the Participant's Deferral Election), and any Discretionary Contribution(s) allocable thereto and the Participant's allocable share of any earnings or losses on the foregoing. Each Participant's Account shall be reduced by any distributions made plus any federal, state and/or local tax

withholding and any social security withholding tax as may be required by law.

- (c) A Participant may elect to establish up to two (2) Milestone Accounts by designating a year of payout at the time the account is initially established. The minimum initial deferral period for Milestone subaccounts shall be two (2) years. Each Participant's Milestone Account shall be credited with Deferral(s) (as specified in the Participant's Deferral Election), and any Discretionary Contribution(s) allocable thereto and the Participant's allocable share of any earnings or losses on the foregoing. Each Participant's Account shall be reduced by any distributions made plus any federal, state and/or local tax withholding and any social security withholding tax as may be required by law.
- (d) The maximum combined number of Education and/or Milestone subaccounts that a Participant may have at one time will be six (6).

## **5.2 Investments, Gains and Losses.**

- (a) Trust assets shall be invested by the Trustee in accordance with written directions from the Employer. Such directions shall provide Trustee with the investment discretion to invest the above-referenced amounts within broad guidelines established by Trustee and Employer as set forth therein.
- (b) The Administrator shall adjust the amounts credited to each Participant's Account to reflect Deferral(s), Employer Supplemental Contribution(s), Discretionary Contribution(s), investment experience, distributions and any other appropriate adjustments. Such adjustments shall be made as frequently as is administratively feasible.
- (c) A Participant may direct that his or her Retirement Account, Education Account and or Milestone Account established pursuant to Section 5.1 may be valued as if they were invested in one or more Investment Funds in multiples of one percent (1%) of the balance in an Account. A Participant may change his or her selection of Investment Funds no more than six (6) times each Plan Year. An election shall be effective as soon as administratively feasible following the date of the change as indicated in writing by the Participant to the Administrator and communicated to the Trustee.

## **5.3 Forfeitures.** Any forfeiture(s) from a Participant's Account shall continue to be held in the Trust, and shall be used at the Employer's discretion to reduce the Employer's future Employer Supplemental Contribution(s) and any Discretionary Contribution(s) and/or administrative expenses under the Plan. If no such further contributions will be made, then such forfeitures shall be returned to the Employer.

- 5.4 **Non-Compete.** All participating Employees agree that following the termination of employment with the Employer, he or she will not engage or participate in any business activity in competition with the Employer. This shall not be deemed to prevent the terminated Employee from making investments or other transactions in securities listed on any recognized stock exchange. It shall also not be deemed to prevent terminated Employee from being employed by a company in a clearly non-competitive endeavor simply because the company may have other divisions or product lines that are in competition with the Employer.

In the event the Employer believes the terminated Employee is violating the aforesaid non-competition agreement, it shall promptly notify the terminated Employee in writing whereupon the terminated Employee shall explain in writing why he or she believes his or her position does not violate the agreement and/or shall report his or her intended corrective action in writing. If parties are not mutually satisfied with the terminated Employee's proposed conduct within thirty (30) days of the original notice, the matter shall be submitted to arbitration. Such arbitration shall be conducted pursuant to the rules of the American Arbitration Association. Should a material violation be found to have occurred or to be occurring by the arbitrator, a forfeiture of all benefits due hereunder shall be ordered for a period equal to the duration of violation if the violation ends within thirty (30) days of arbitrator's award. If the violation is not ended within said thirty (30) day period, all future benefits under this Plan shall be forfeited pursuant to Section 5.3 herein above

The terminated Employee(s) agrees that the non-competition provisions of this Plan shall continue for three (3) years from the effective date of Employee's termination. This non-competition shall be enforceable by the Employer or its successor by means of a claim for a refund of the full sum previously distributed. All participating Employee(s) agree to sign a separate non-competition agreement with the Employer, or its successor, if requested by the Employer or successor thereto.

## **ARTICLE 6**

### **Distributions**

- 6.1 **Distribution Election.** Each Participant shall designate on his or her Deferral Election the timing of his or her distribution by indicating the type of account as described under Section 5.1. A Participant may not modify, alter, amend or revoke such designation for a Plan Year after such Plan year begins. Further, amounts in one (1) Account shall not be transferred to another Account. Each Participant shall also designate the manner in which Retirement Account payments shall be made from the choices available under Section 6.2 (a) hereof.

6.2 **Payment Options.**

- (a) Retirement Account payments shall commence as soon as administratively feasible immediately after the Participant's Retirement. The form of payment

of benefits hereunder for the first three (3) years, inclusive, shall be through substantially equal annual installments over a period not to exceed ten (10) years. Retirement Account distributions shall occur on a quarterly schedule, beginning as soon as administratively feasible following a Participant's Retirement.

The amount of the substantially equal payments described above shall be determined by multiplying the Participant's Retirement Account by a fraction, the denominator of which in the first year of payment equals the number of years over which benefits are to be paid, and the numerator of which is one (1).

The amounts of the payments for each succeeding year shall be determined by multiplying the Participant's Retirement Account as of the applicable anniversary of the Participant's Retirement Date by a fraction, the denominator of which equals the number of remaining years over which benefits are to be paid, and the numerator of which is one (1).

The Participant may elect, upon the submission of their initial Deferral Election, to receive their remaining Retirement Account distribution in years four (4) through ten (10) in one (1) of the following forms:

- (i) a continuation of substantially equal payments through years four (4) through ten (10), inclusive; or
  - (ii) through a lump sum distribution of the remaining Retirement Account balance as soon as administratively possible following the fourth Plan Year succeeding the Participant's Retirement.
- (b) Education Account payouts shall be paid in four annual installments commencing January 1 (or as soon as administratively feasible) of the calendar year selected by the Participant and the three (3) anniversaries thereof in the following amounts:

Year 1	25% of the account balance
Year 2	33% of the account balance
Year 3	50% of the account balance
Year 4	100% of the account balance

- (c) Milestone Account payouts shall be paid in one (1) lump sum payment on January 1 (or as soon as administratively feasible) of the calendar year selected by the Participant on his or her Deferral Election.
  - (d) If a Participant's employment is terminated for any reason other than Retirement and such Participant has a balance in his/her Milestone Account

and/or Education Account, such balance shall be transferred to his/her Retirement Account and distributed as soon as administratively feasible in one (1) lump-sum payment.

**6.3 Minimum Distribution.**

- (a) Notwithstanding any provision to the contrary, if the vested balance of a Participant's Account at the time of a termination due to Retirement is less than \$10,000, then the Participant shall be paid his or her benefits as a single lump sum as soon as administratively feasible following termination.
- (b) Notwithstanding any provision to the contrary, if the balance of a Participant's Education Account at the time benefit payments are to commence is less than \$4,000, then the Participant shall be paid such Education Account benefits as a single lump sum as soon as administratively feasible following commencement date.

**6.4 Early Distribution and Penalty.** A Participant may elect to receive a distribution of up to one hundred percent (100%) of the vested amounts in his or her Account on a date prior to that established under the Plan. If such an early distribution is requested, the Plan Administrator shall deduct from the Participant's account an additional ten percent (10%) of the vested amount withdrawn. This additional amount withdrawn by the Plan Administrator shall be considered an early distribution penalty, and shall be treated as forfeited by the Participant. A Participant receiving a distribution pursuant to this Section 6.4, shall be prohibited from participating in the Plan for the remaining Plan Year, in which the distribution election had occurred, and for one (1) completed Plan Year thereafter. The affected Participant may continue to have their Account administered within the Plan but may not submit a Deferral Election during this suspension period.

**6.5 Distribution in the Event of an Unforeseeable Emergency.** Notwithstanding Section 6.4 Early Distribution and Penalty herein above, the Administrator may permit an early distribution of part or all of any deferred amounts; provided, however, that such distribution shall be made only if the Administrator, in its sole discretion, determines that the Participant has experienced an unforeseeable emergency. An unforeseeable emergency is defined as a severe financial hardship of a Participant or a Participant's Beneficiary resulting from (i) an illness or accident, (ii) loss of property due to casualty, or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. Whether an unforeseeable emergency exists is to be based on the relevant facts and circumstances of each case. However, even if an unforeseeable emergency is determined to exist, a distribution may not be made to the extent that such emergency is or may be relieved: (i) through reimbursement or compensation from insurance or otherwise, (ii) by liquidation of the participant's assets, to the extent that the liquidation would not itself

cause severe financial hardship, or (iii) by cessation of deferrals under the plan. Distributions may only be made to the extent needed to satisfy the emergency need.

**6.6 Death Benefit Distribution.**

- (a) Pre-Retirement Death Benefit. Upon the death of the Participant while under the employ of the Employer, Participant's Beneficiary shall be entitled to the portions of the Participant's Account attributed to the Participant's Deferral(s) and any Discretionary Contribution(s) credited to the Account by the Employer. Such Pre-Retirement Death Benefit shall be made in a single lump sum, as soon as administratively feasible, to the Beneficiary representing the Participant's Account balance at the time of Participant's death.

In lieu of those amounts credited to the Account of a deceased Participant in the form of Employer Supplemental Contribution(s), a Beneficiary of the pre-retired deceased Participant shall receive those amounts of death benefits related to the Employer's endorsement split dollar insurance program. Such pre-retirement death benefit is contingent on the Employer's ability to procure insurance on Plan Participant.

Participating Employees agree, and consent to, the Employer's ability to purchase and maintain life insurance and/or other insurance coverage on the life and/or health of the Participant. Participant agrees to cooperate in completing medical questionnaires and applications and signing such insurance company forms and participating in such medical examinations, etc., as may be required for such coverage. It is understood that any benefits payable from such insurance will be assets of the Employer and no Beneficiary of the Participant shall have any claim thereon, other than those claims arising out of the Employer's endorsement split dollar insurance program. This shall apply to all Employer owned insurance policies either pre-existing or acquired hereafter except pre-existing disability insurance which shall continue to be payable to Participant.

- (b) Post Retirement Death Benefit. In the event of Participant's death during the Participant's distribution phase of this Plan, such Participant's Beneficiary shall continue to receive the Participant's Account distribution in the manner set forth in Participant's most recently submitted Deferral Election. Such continuance of distribution, subsequent to Participant's post retirement death, shall terminate upon the exhaustion of Participant's Account balance as calculated at the time of Participant's death.

**6.7 Disability Benefit Distribution.** In the event Participant terminates, or is terminated, from their employment with the Employer pursuant to Participant's Disability, such Participant shall receive their Account balance, as calculated on the effective date of termination, in a single lump sum as soon as administratively feasible.



- 6.8 **Change of Control Distribution.** Upon a Change of Control, as provided for herein, a Participant shall be entitled to a lump sum distribution, as soon as administratively feasible, equal to the present value of their Account as calculated on the effective date of Employer's Change of Control. The aforementioned present value calculation shall be determined utilizing a discount rate of six percent (6%) and a discount period equal to sixty (60) minus the Participant's age at the effective date of the Employer's Change of Control.

## **ARTICLE 7**

### **Beneficiaries**

- 7.1 **Beneficiaries.** Each Participant may from time to time designate one or more persons (who may be any one or more members of such person's family or other persons, administrators, trusts, foundations or other entities) as his or her Beneficiary under the Plan. Such designation shall be made on a form prescribed by the Administrator. Each Participant may at any time and from time to time, change any previous Beneficiary designation, without notice to or consent of any previously designated Beneficiary, by amending his or her previous designation on a form prescribed by the Administrator. If no person shall be designated by the Participant as a Beneficiary, or if the designated Beneficiary shall not survive the Participant, payment of his/her interest shall be made to the Participant's estate. If more than one person is the Beneficiary of a deceased Participant, each such person shall receive a pro rata share of any death benefit payable unless otherwise designated on the applicable form.
- 7.2 **Lost Beneficiary.**
- (a) All Participants and Beneficiaries shall have the obligation to keep the Administrator informed of their current address(es) until such time as all benefits due have been paid.
  - (b) If a Participant or Beneficiary cannot be located by the Administrator exercising due diligence, then, in its sole discretion, the Administrator may presume that the Participant or Beneficiary is deceased for purposes of the Plan and all unpaid amounts (net of due diligence expenses, including but not limited to the retention of a locator / search firm) owed to the Participant or Beneficiary shall be paid accordingly or, if a Beneficiary cannot be so located, then such amounts may be forfeited. Any such presumption of death shall be final, conclusive and binding on all parties. Notwithstanding the foregoing, if any such Beneficiary is located within five (5) years from the date of any such forfeiture, such Beneficiary shall be entitled to receive the amount previously forfeited.

## **ARTICLE 8**

### **Funding**

- 8.1 Prohibition Against Funding.** Should any investment be acquired in connection with the liabilities assumed under this Plan, it is expressly understood and agreed that the Participants and Beneficiaries shall not have any right with respect to, or claim against, such assets nor shall any such purchase be construed to create a trust of any kind or a fiduciary relationship between the Employer and the Participants, their Beneficiaries or any other person. Any such assets shall be and remain a part of the general, unpledged, unrestricted assets of the Employer, subject to the claims of its general creditors. It is the express intention of the parties hereto that this arrangement shall be unfunded for tax purposes and for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended. Each Participant and Beneficiary shall be required to look to the provisions of this Plan and to the Employer itself for enforcement of any and all benefits due under this Plan, and to the extent any such person acquires a right to receive payment under this Plan, such right shall be no greater than the right of any unsecured general creditor of the Employer. The Employer or the Trust shall be designated the owner and Beneficiary of any investment acquired in connection with its obligation under this Plan.
- 8.2 Deposits in Trust.** Notwithstanding paragraph 8.1, or any other provision of this Plan to the contrary, the Employer may deposit into the Trust any amounts it deems appropriate to pay the benefits under this Plan. The amounts so deposited may include all contributions made pursuant to a Deferral Election by a Participant along with any Employer Supplemental Contributions and/or Discretionary Contributions.
- 8.3 Indemnification of Trustee.**
- (a) The Trustee shall not be liable for the making, retention, or sale of any investment or reinvestment made by it, as herein provided, nor for any loss to, or diminution of, the Trust assets, unless due to its own negligence, willful misconduct or lack of good faith.
  - (b) Such Trustee shall be indemnified and saved harmless by the Employer from and against all personal liability to which it may be subject by reason of any act done or omitted to be done in its official capacity as Trustee in good faith in the administration of the Plan and Trust, including all expenses reasonably incurred in its defense in the event the Employer fails to provide such defense upon the request of the Trustee. The Trustee is relieved of all responsibility in connection with its duties hereunder to the fullest extent permitted by law, short of breach of duty to the Beneficiaries.
- 8.4 Withholding of Employee Contributions.** The Administrator is authorized to make any and all necessary arrangements with the Employer in order to withhold the Participant's Deferrals under Section 3.1 hereof from his or her Compensation and/or

Bonus. The Administrator shall determine the amount and timing of such withholding.

## **ARTICLE 9**

### **Claims Administration**

- 9.1 **General.** If a Participant, Beneficiary or his/her representative is denied all or a portion of an expected Plan benefit for any reason and the Participant, Beneficiary or his/her representative desires to dispute the decision of the Administrator, he/she must file a written notification of his/her claim with the Administrator.
- 9.2 **Claim Review.** Upon receipt of any written claim for benefits, the Administrator shall be notified and shall give due consideration to the claim presented. If the claim is denied to any extent by the Administrator, the Administrator shall furnish the claimant with a written notice setting forth:
- (a) the specific reason or reasons for denial of the claim;
  - (b) a specific reference to the Plan provisions on which the denial is based;
  - (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
  - (d) an explanation of the provisions of this Article.
- 9.3 **Right of Appeal.** A claimant who has a claim denied under Section 9.2 may appeal to the Administrator for reconsideration of that claim. A request for reconsideration under this section must be filed by written notice within sixty (60) days after receipt by the claimant of the notice of denial under Section 9.2.
- 9.4 **Review of Appeal.** Upon receipt of an appeal the Administrator shall promptly take action to give due consideration to the appeal. Such consideration may include a hearing of the parties involved, if the Administrator feels such a hearing is necessary. In preparing for this appeal the claimant shall be given the right to review pertinent documents and the right to submit in writing a statement of issues and comments. After consideration of the merits of the appeal the Administrator shall issue a written decision which shall be binding on all parties subject to Section 9.6 below. The decision shall specifically state its reasons and pertinent Plan provisions on which it relies. The Administrator's decision shall be issued within sixty (60) days after the appeal is filed, except that if a hearing is held the decision may be issued within one hundred twenty (120) days after the appeal is filed.
- 9.5 **Designation.** The Administrator may designate any other person of its choosing to make any determination otherwise required under this Article.

- 9.6 **Arbitration.** A claimant whose appeal has been denied under Section 9.4 shall have the right to submit said claim to final and binding arbitration in the State of New Jersey pursuant to the rules of the American Arbitration Association. Any such requests for arbitration must be filed by written demand to the American Arbitration Association within sixty (60) days after receipt of the decision regarding the appeal. The costs and expenses of arbitration, including the fees of the arbitrators, shall be borne by the losing party. The prevailing party shall recover as expenses all reasonable attorney's fees incurred by it in connection with the arbitration proceeding or any appeals therefrom.

## **ARTICLE 10**

### **General Provisions**

#### **10.1 Administrator.**

- (a) *Appointment of Administrator.* The Board may appoint an individual or a committee to serve as Administrator of the Plan. The Administrator may be removed by the Board at any time, and any individual may resign as Administrator at any time by submitting his/her resignation in writing to the Board. A new Administrator shall be appointed by the Board as soon as practicable in the event of a removal or resignation. Any person so appointed shall signify his/her acceptance by filing a written acceptance with the Board.
- (b) The Administrator is expressly empowered to limit the amount of compensation that may be deferred; to deposit amounts into a Trust, in the event of Trust usage in accordance with Section 8.2 hereof; to interpret the Plan, and to determine all questions arising in the administration, interpretation and application of the Plan; to employ actuaries, accountants, counsel, and other persons it deems necessary in connection with the administration of the Plan; to request any information from the Employer it deems necessary to determine whether the Employer would be considered insolvent or subject to a proceeding in bankruptcy; and to take all other necessary and proper actions to fulfill its duties as Administrator.
- (c) The Administrator shall not be liable for any actions by it hereunder, unless due to its own negligence, willful misconduct or lack of good faith.
- (d) The Administrator shall be indemnified and saved harmless by the Employer from and against all personal liability to which it may be subject by reason of any act done or omitted to be done in its official capacity as Administrator in good faith in the administration of the Plan and Trust, in the event of Trust usage, including all expenses reasonably incurred in its defense in the event the Employer fails to provide such defense upon the request of the Administrator. The Administrator is relieved of all responsibility in

connection with its duties hereunder to the fullest extent permitted by law, short of breach of duty to the beneficiaries.

- 10.2 **No Assignment.** No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge encumbrance or charge, and any such action shall be void for all purposes of the Plan. No benefit shall in any manner be subject to the debts, contracts, liabilities, engagements or torts of any person, nor shall it be subject to attachments or other legal process for or against any person, except to such extent as may be required by law.
- 10.3 **No Employment Rights.** Participation in this Plan shall not be construed to confer upon any Participant the legal right to be retained in the employ of the Employer, or give a Participant or Beneficiary, or any other person, any right to any payment whatsoever, except to the extent of the benefits provided for hereunder. Each Participant shall remain subject to discharge to the same extent as if this Plan had never been adopted.
- 10.4 **Incompetence.** If the Administrator determines that any person to whom a benefit is payable under this Plan is incompetent by reason of physical or mental disability, the Administrator shall have the power to cause the payments becoming due to such person to be made to another individual for the Participant's benefit without responsibility of the Administrator or the Employer to see to the application of such payments. Any payment made pursuant to such power shall, as to such payment, operate as a complete discharge of the Employer, the Administrator and the Trustee, in the event of Trust usage.
- 10.5 **Identity.** If, at any time, any doubt exists as to the identity of any person entitled to any payment hereunder or the amount or time of such payment, the Administrator shall be entitled to hold such sum until such identity or amount or time is determined or until an order of a court of competent jurisdiction is obtained. The Administrator shall also be entitled to pay such sum into court in accordance with the appropriate rules of law. Any expenses incurred by the Employer, Administrator, and Trust, in the event of Trust usage, incident to such proceeding or litigation shall be charged against the Account of the affected Participant.
- 10.6 **Other Benefits.** The benefits of each Participant or Beneficiary hereunder shall be in addition to any benefits paid or payable to or on account of the Participant or Beneficiary under any other pension, disability, annuity or retirement plan or policy whatsoever.
- 10.7 **No Liability.** No liability shall attach to or be incurred by any manager of the Employer, Trustee, in the event of Trust usage, or any Administrator under or by reason of the terms, conditions and provisions contained in this Plan, or for the acts or decisions taken or made thereunder or in connection therewith; and as a condition precedent to the establishment of this Plan or the receipt of benefits thereunder, or

both, such liability, if any, is expressly waived and released by each Participant and by any and all persons claiming under or through any Participant or any other person. Such waiver and release shall be conclusively evidenced by any act or participation in or the acceptance of benefits or the making of any election under this Plan.

- 10.8 **Expenses.** All expenses incurred in the administration of the Plan, whether incurred by the Employer or the Plan, shall be paid by the Employer.
- 10.9 **Insolvency.** Should the Employer be considered insolvent (as defined by the Trust in the event of Trust usage), the Employer, through its Board and chief executive officer, shall give immediate written notice of such to the Administrator of the Plan and the Trustee, in the event of Trust usage. Upon receipt of such notice, the Administrator or Trustee, in the event of Trust usage, shall cease to make any payments to Participants or their Beneficiary and shall hold any and all assets attributable to the Employer for the benefit of the general creditors of the Employer.
- 10.10 **Amendment and Termination.**
- (a) Except as otherwise provided in this section, the Employer shall have the sole authority to modify, amend or terminate this Plan; provided, however, that any modification or termination of this Plan shall not reduce, without the written consent of a Participant, a Participant's right to any amounts already credited to his or her Account, or lengthen the time period for a payout from an established Account, on the day before the effective date of such modification or termination. Following such termination, payment of such credited amounts may be made in a single sum payment if the Employer so designates. Any such decision to pay in a single sum shall apply to all Participants.
  - (b) A Participant shall have a vested right to his or her Account in the event of the termination of the Plan pursuant to section (a), above.
  - (c) Any funds remaining in the Plan or Trust, in the event of Trust usage, after termination of the Plan and satisfaction of all liabilities to Participants and others, shall be returned to the Employer.
- 10.11 **Employer Determinations.** Any determinations, actions or decisions of the Employer (including but not limited to, Plan amendments and Plan termination) shall be made by the Board in accordance with its established procedures or by such other individuals, groups or organizations that have been properly delegated by the Board to make such determination or decision.
- 10.12 **Construction.** All questions of interpretation, construction or application arising under or concerning the terms of this Plan shall be decided by the Administrator, in its sole and final discretion, whose decision shall be final, binding and conclusive upon all persons.

- 10.13 **Governing Law.** This Plan shall be governed by, construed and administered in accordance with the applicable laws of the State of New Jersey.
- 10.14 **Severability.** Should any provision of the Plan or any regulations adopted thereunder be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the other provisions or regulations unless such invalidity shall render impossible or impractical the functioning of the Plan and, in such case, the appropriate parties shall immediately adopt a new provision or regulation to take the place of the one held illegal or invalid.
- 10.15 **Headings.** The Article headings contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Plan nor in any way shall they affect this Plan or the construction of any provision thereof.
- 10.16 **Terms.** Capitalized terms shall have meanings as defined herein. Singular nouns shall be read as plural, masculine pronouns shall be read as feminine, and vice versa, as appropriate.

IN WITNESS WHEREOF, Harold M. Pitman Company has caused this instrument to be executed by its duly authorized officer, effective as of this \_\_\_\_\_

**Harold M. Pitman Company**

*By:* \_\_\_\_\_

*Title:* \_\_\_\_\_

**Attest:**

*By:* \_\_\_\_\_

*Title:* \_\_\_\_\_

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