

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN ADMINISTRATION AGREEMENT
AND AMENDED ADOPTION AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND GENESIS EMPLOYEE BENEFITS, INC.
d/b/a AMERICA'S VEBA SOLUTION**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain Agreements (the "Agreements"), between the Village of Downers Grove ("Adopting Employer & Plan Administrator") and Genesis Employee Benefits, Inc. d/b/a America's Veba Solution ("Plan Supervisor"), for an employee VEBA program, as set forth in the form of the agreements submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreements, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreements.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

ADMINISTRATION AGREEMENT
effective January 1, 2008

between

**Genesis Employee Benefits, Inc. d/b/a America's VEBA Solution ("Plan
Supervisor")**
and
The Village of Downers Grove ("Adopting Employer" & "Plan Administrator")

WHEREAS, The Village of Downers Grove ("Adopting Employer") has heretofore adopted the Village of Downers Grove VEBA Health Savings Plan (the "Plan") and the Village of Downers Grove Health Savings Trust (the "Trust"); and

WHEREAS, the Plan names Adopting Employer as Plan Administrator and appoints Plan Administrator to act on behalf of the Plan; and

WHEREAS, Adopting Employer is a governmental entity and, therefore, the Plan is not an employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA"); and

WHEREAS, the Plan is a "covered entity" subject to the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

WHEREAS, the Plan Administrator is the entity capable of acting on behalf the Plan for purposes of HIPAA; and

WHEREAS, the Plan Supervisor performs services (directly and indirectly) with respect to operating, administering, and providing recordkeeping for programs of the type of the Plan and the Trust; and

WHEREAS, the Plan Administrator desires that the Plan Supervisor furnish certain services described in this Agreement in the operation and administration of the Plan and the Trust;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the exhibits and addenda, if any, attached hereto, effective January 1, 2008, the Plan Administrator and the Plan Supervisor hereby agree as follows:

I. Definitions

The following Definitions shall apply to this Agreement:

- A. Administrative Services - means those services relating to the establishment, maintenance, and administration of the Plan to be performed by the Plan Supervisor as set forth in this Agreement.
- B. Adopting Employer – means The Village of Downers Grove.
- C. Adoption Agreement – means the America’s VEBA Solution Basic Plan Document Adoption Agreements for The Village of Downers Grove.
- D. Agreement - means this Administration Agreement and any exhibits and addenda attached hereto and any outside agreements specifically incorporated by reference.
- E. COBRA - means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Public Health Services Act) and regulations thereunder, as amended from time to time.
- F. Code - means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.
- G. Effective Date - means the date upon which this Agreement, once fully executed by all parties, is first effective, January 1, 2008.
- H. ERISA - means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- I. HIPAA - means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- J. Participant – means an individual who is participating in the Plan, including those on continuation coverage required under COBRA.
- K. Plan - means the Village of Downers Grove VEBA Health Savings Plan, consisting of the Plan Document and the Adoption Agreement.
- L. Plan Administrator – means the entity as defined in the Plan.
- M. Plan Document – means the document known as the America’s VEBA Solution Basic Plan Document.
- N. Plan Supervisor – means Genesis Employee Benefits, Inc. d/b/a America’s VEBA Solution, an independent contractor designated to perform certain

administrative services pursuant to this Agreement with respect to the Plan and Trust.

- O. PHI – means Protected Health Information for purposes of HIPAA.
- P. Summary Description – means the written document distributed directly or indirectly to Participants explaining the Plan.
- Q. Trust – means the Village of Downers Grove VEBA Health Savings Trust.
- R. Trust Document – means the document through which the Trust is established.

II. Plan Establishment & Maintenance

- A. Generally. Adopting Employer shall establish the Plan and the Trust. The Plan Administrator shall be responsible for the operation and administration of the Plan and the Trust. In accordance with this Agreement, the Plan Supervisor shall provide administrative services to Adopting Employer and Plan Administrator in connection with the establishment of, the operation of, the administration of, and the recordkeeping for the Plan and the Trust.
- B. Documents. Adopting Employer and Plan Administrator shall have ultimate responsibility for all aspects of the Plan documentation, including, but not limited to, the Plan Document, Trust Document, Summary Description, Plan and Trust amendments, Summary Description updates, and the application for tax-exempt status (IRS Form 1024). The Plan Supervisor shall provide the Adopting Employer with services related to the initial preparation and periodic revision of the Plan Document, Trust Document, Summary Description, IRS Form 1024, and related documentation. Adopting Employer and Plan Administrator shall approve all such materials within thirty (30) days following delivery by the Plan Supervisor, unless such deadline is extended by mutual agreement of all parties. Adopting Employer's and Plan Administrator's failure to object within such time period (including any agreed upon extension period) shall constitute approval. Unless Adopting Employer, Plan Administrator and the Plan Supervisor mutually agree otherwise, the Plan Administrator shall deliver to all Participants all appropriate and necessary documents and materials, including, but not limited to, the Plan Document, Trust Document, Plan and Trust amendments, Summary Descriptions, enrollment forms, and application and notice forms, as may be necessary for the operation of the Plan or to satisfy the requirements of state or federal laws and regulations. Upon termination of this Agreement, Adopting Employer agrees to cease using the Plan Document, Trust Document, Summary Description, and other Participant communication materials, and further

agrees that neither it nor its agents shall copy any portion of the Plan Document or Trust Document in the course of preparing replacement documents.

- C. Plan Amendment & Termination. The Plan Document and/or Trust Document may be amended or terminated in accordance with the provisions of the Plan and Trust, respectively. If the Adopting Employer amends the Plan Document or the Trust Document, the Adopting Employer agrees to notify the Plan Supervisor (1) before the later of the effective date of the amendment or the date of adoption of the amendment, or (2) as soon as administratively feasible. The Plan Supervisor is responsible for providing services pursuant to such amended Plan Document or Trust Document only upon its consent which shall be evidenced by an amendment to this Agreement. Such consent shall not be unreasonably withheld but may be conditioned upon Adopting Employer's agreement to pay increased administrative fees.

III. Plan Supervisor Responsibilities

- A. Status of the Plan Supervisor. Adopting Employer shall not (1) name the Plan Supervisor as the Plan Administrator in any documents applicable to the Plan, nor (2) hold out to other parties or third parties that the Plan Supervisor serves in the foregoing capacity. In addition, the Plan Supervisor does not intend to assume any of the administrative duties or responsibilities commensurate with such designations.
- B. Capacity of Plan Supervisor. In fulfilling its duties and obligations under this Agreement, the Plan Supervisor: (i) shall act as the administrative agent of the Plan; (ii) does not intend to be an Adopting Employer or Plan Administrator (as such terms are defined under the Plan) of the Plan or with respect to the Plan assets; and (iii) does not have any discretionary authority, control, or responsibility with respect to administration of the Plan or the Trust or with respect to conformity of the Plan or the Trust with any applicable federal or state law. In addition, the Plan Supervisor shall not be required to participate in or act in a manner that aids or assists a breach of a fiduciary's duty.
- C. Processing of Claims. Subject to Article IV and Section VI.C., the Plan Supervisor shall process, adjust and settle claims of Participants received by the Plan Supervisor for benefits under the Plan in accordance with the terms and conditions of the Plan. The Plan Supervisor shall deliver to all Participants the claim forms necessary for submitting claims. Where the terms and conditions of the Plan are not clear, the Plan Supervisor reserves the right to request direction from the Plan Administrator. When a claim is approved, the Plan Supervisor or its designee shall provide

instructions to the trustee or its designee, in accordance with any contract or agreement between the trustee and the Plan Administrator, directing the trustee to pay benefits from the Trust.

- D. Account Servicing. The Plan Supervisor shall provide account management services. The Plan Supervisor shall make available to the Adopting Employer a client service representative to respond to questions regarding general administrative issues and plan design.
- E. Employee Communication. The Plan Supervisor shall provide standard communication materials to Participants as agreed upon by the parties. The Plan Supervisor shall provide general administrative services to assist persons with general information about the Plan and answer routine questions from persons concerning coverage status, claims status, complaint administration, and other inquiries related to the Plan. Notwithstanding the preceding, the Plan Supervisor shall: (i) be under no obligation to meet with individual plan participants regarding their claims; and (ii) not offer any investment or securities advice to any Participant.
- F. Recordkeeping. The Plan Supervisor shall perform the recordkeeping services described herein in conformity with data provided by the Adopting Employer.
1. The Plan Supervisor will maintain records of the allocations of the Plan's account by Participant and contribution type for each investment fund selected by the Participant or the Adopting Employer, as applicable.
 2. The Plan Supervisor will perform calculations of allocations of Adopting Employer contributions and earnings according to the direction and information requested from and provided by the Adopting Employer.
 3. If applicable, the Plan Supervisor will perform allocation of existing account balances into investment funds according to directions from Participants provided in accordance the procedures established by the Plan Supervisor. Such transactions will be processed each business day as requested by Participants and in accordance with the Plan Supervisor's procedures. Confirmations of investment transfers directed by Participants will be sent to Participants.
- G. Accountings. At such regular periodic intervals as Adopting Employer and the Plan Supervisor agree upon and specify in Exhibit A, the Plan Supervisor shall provide the Adopting Employer with reporting regarding the Plan and the Trust.

- H. Participant Access to Information. The Plan Supervisor shall provide Participants with "24 hour" access to the recordkeeping system through a voice response system ("VRS") and website connection, but does not guarantee immediate or uninterrupted access at any time. The Plan Supervisor will use reasonable efforts to keep the VRS and the website properly maintained, but cannot be held responsible for circumstances beyond its reasonable control such as, but not limited to, telephone lines going down, natural disasters, damage resulting from unauthorized use of a Participants personal identification number, or failure of the system for any other reason outside of the Plan Supervisor's control. The Plan Supervisor shall also provide Participants with account statements at least annually. Such statements shall be provided directly to the Plan Administrator for distribution to the Participants.
- I. Assistance in Reporting and Compliance. The Plan Supervisor shall, based on information it may possess, use its best efforts to prepare IRS Form 990, subject to review by the Plan Administrator as provided in Section IV.M. of this Agreement. The Plan Supervisor shall not have any responsibility related to the preparation of any other tax return, report or other document required by any local, State or Federal government or agency thereof with respect to the Plan. The responsibility for filing and/or distributing IRS Form 990, and all other tax returns, reports, or other documents shall be that of the Adopting Employer or Plan Administrator. The Plan Supervisor may assist Plan Administrator with other reporting requirements, if this option is chosen by Plan Administrator as an optional service as listed in Exhibit B.
- J. Nondiscrimination Testing. If chosen by the Plan Administrator as an optional service as listed in Exhibit B, the Plan Supervisor shall perform all nondiscrimination tests that may be required under the Code, including, but not limited to, tests regarding coverage and benefits, and shall verify the classes of highly compensated employees and non-highly compensated employees with the Adopting Employer if this option is chosen by Plan Administrator as an optional service as listed on the Fee Schedule incorporated as part of this Agreement. The Adopting Employer shall provide all information necessary to complete such testing. Should the Plan fail any applicable nondiscrimination tests, the Plan Supervisor may provide suggestions (consistent with the Plan language) regarding how to correct the situation. The responsibility for making a decision regarding how to correct the situation shall be that of the Adopting Employer or Plan Administrator.
- K. Compliance with Applicable Law. The Plan Supervisor shall comply with applicable federal and state laws and regulations applicable to the Plan Supervisor's responsibilities under this Agreement.

- L. Insurance. The Plan Supervisor shall maintain professional liability and errors and omissions insurance in the amount of \$2,000,000.00.
- M. Subcontractors. The Plan Supervisor may hire subcontractors to perform any of the services required of it under this Agreement and to act as its designee for purposes of this Agreement.
- N. Investments. The Plan Supervisor shall not be responsible for, and shall not take part in, selecting or recommending investments available to Participants.
- O. Shareholder Communications. Plan Supervisor will cause all proxies and accompanying materials solicited by an entity, and all prospectuses issued by a company whose securities are held in the Trust ("shareholder communications") to be mailed to the Plan Administrator within a reasonable period of time after the receipt of such shareholder communications by Plan Supervisor. In the event a Participant makes a request to the Plan Supervisor for a copy of any shareholder communication, the Plan Supervisor shall forward such request, within a reasonable time period, to the Plan Administrator who shall be responsible for responding to such request. Plan Supervisor has no responsibility to disseminate copies of shareholder communications to Participants who have invested their accounts in the securities for which such shareholder communications have been received or to any other person. If the shareholder communications include a requirement, request, or opportunity for action (such as a proxy, consent, election, instruction, direction, approval, or similar action) (the "Proxies"), the Plan Administrator will solely be responsible for soliciting and forwarding proxy votes in accordance with the Plan Document and the requirements of the law. In no case will Plan Supervisor be under any duty to determine how, or if, Proxies are voted or to take any other action in connection with any shareholder communication. Plan Supervisor will be under no obligation to forward or return any other corporate material received on behalf of the Trust unless required by law or this paragraph.

IV. Duties of Adopting Employer and Plan Administrator

- A. FMLA Determinations. The Adopting Employer shall make determinations regarding FMLA, including, but not limited to, whether FMLA applies. The Plan Supervisor shall not make determinations regarding FMLA. Furthermore, the Plan Supervisor shall be entitled to rely upon the information provided by the Adopting Employer and is under no obligation to independently verify such information.
- B. Eligibility Determination & Information. The Adopting Employer shall provide the Plan Supervisor with a listing of all persons eligible for coverage under the Plan, with a list of all eligible participants who are "claim active" (i.e., are entitled to have claims reimbursed), a list of all eligible participants who are not claim active, written notice of any addition or deletion of such persons, and any further information necessary for the Plan Supervisor to provide its services hereunder. The Adopting Employer is responsible for reviewing and approving the documentation of such information. The Adopting Employer may provide such information in any written method mutually acceptable to the Adopting Employer and the Plan Supervisor, including, but not limited to, electronic transmissions. The Plan Supervisor may rely on the most current information in its possession regarding eligibility of a Participant in paying claims and providing other services under this Agreement.
- C. Contributions. The Adopting Employer shall remit contributions to the Trust as provided in the Plan. As contributions are made, the Adopting Employer shall, in a mutually agreed format, provide the Plan Supervisor with such Participant contribution information as is reasonably required by the Plan Supervisor in order to perform its duties hereunder, including, but not limited to, the amount of the contribution to be allocated to each participant. The Adopting Employer is responsible for the accuracy and completeness of the data it submits to the Plan Supervisor and is solely responsible for any adverse consequences that may result from errors or inaccuracies in such data. The Plan Supervisor is not responsible for requiring that any contributions be made, or for determining that the contributions that are received by the Trust comply with the terms of the Plan.
- D. Medical Child Support Order Compliance. Adopting Employer shall be responsible for all aspects of compliance with state law and the Child Support Performance and Incentive Act of 1998 regarding medical child support orders. Adopting Employer shall provide notice to the Plan Supervisor of any Participants who become covered under the Plan by virtue of a medical child support order and of any Participants who cease to be covered under the Plan by virtue of the expiration of a medical child

support order. The Plan Supervisor shall be entitled to rely upon the information provided by the Adopting Employer pertaining to such medical child support order.

- E. Nondiscrimination Testing. Unless otherwise provided in Exhibit B, the Adopting Employer and the Plan Administrator are responsible for performing any nondiscrimination tests that may be required under the Code, including, but not limited to, tests regarding coverage and benefits. Should the Plan fail any applicable nondiscrimination tests, the Plan Supervisor may provide suggestions (consistent with the Plan language) regarding how to correct the situation. The responsibility for making a decision regarding how to correct the situation shall be that of the Adopting Employer or Plan Administrator.
- F. Payment of Administrative Services Fees. In consideration of Plan Supervisor's performance of the services described in this Agreement, Adopting Employer shall pay the Plan Supervisor's administrative fees as described in Exhibit B and shall comply with the Local Governments Prompt Payment Act, 50 ILCS 505/1 et. seq. Per participant per month fees may be paid directly from the accounts of Participants that are claim active (i.e., able to submit claims and obtain reimbursements) only if such Participants will not be receiving any future contributions.
1. Payment by Participants. Subject to the foregoing, if the Plan provides that administrative fees for employees shall be paid from the Trust (including from a Participant's account), the Plan Supervisor shall bill the Trust and/or the Participants' accounts directly as the fees become due. Notwithstanding the foregoing, if the Plan provides that the administrative fees for a Participant who has terminated employment with the Adopting Employer shall be paid from the Participant's account, the Plan Supervisor shall bill the Participant's account every six (6) months (in January and July) on a prospective basis (i.e., the January billing shall cover January through June). If the Participant terminates employment after the regularly scheduled billing dates (i.e., in January and July), the first billing for that Participant shall occur on the date following the date of termination and shall cover the months between that date and the date of the next regularly scheduled billing.
 2. Minimum Fees. A minimum monthly fee of \$175.00 shall apply if the sum of the recordkeeping fees and standard claims processing fees (excluding such fees that are charged with respect to Participants not currently employed by the Adopting Employer and that are deducted from their health care reimbursement accounts) does not exceed \$175.00. If the minimum fee applies, any

recordkeeping fees and standard claims processing fees deducted from the health care reimbursement accounts of Participants not employed by the Adopting Employer will be charged and collected in addition to the minimum monthly fee.

3. Failure to Pay. If Adopting Employer fails to pay any such fees in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et. seq., the Plan Supervisor, at its option, may: (1) impose a 1% penalty per month on all outstanding and uncontested fees, or (2) suspend performance of its services under this Agreement until such time as the outstanding and uncontested fees are paid.
4. Increases. The administrative fees identified in Exhibit B may increase upon reasonable written notice in the event of and in direct proportion to any rate increases implemented by the United States Postal Service. Such increases shall be effective January 1 on or next following the effective date of the postage rate increase. The Plan Supervisor also reserves the right to charge additional fees for repeating, or expanding the scope of, its services due to inaccurate, incomplete, or unusable data supplied by the Adopting Employer. However, written notice must be provide to the Adopting Employer detailing the reasons for the increase.
5. Fees for Additional Services. In the event additional adjustments that are not part of the normal plan administrative services contemplated by this Agreement, or chosen by Plan Administrator on Exhibit B, are required, Plan Supervisor may charge the Adopting Employer an additional fee commensurate with the additional services provided. Plan Supervisor will inform the Adopting Employer of the amount of the additional fee in advance of conducting the additional administrative services. Examples of additional administrative services not contemplated by this Agreement include (but are not limited to): calculating income on late participant contributions; calculating income on participant contributions that are delayed by Adopting Employer actions; and any other administration services requested by Adopting Employer that are not part of the on-going administrative services contemplated by this Agreement.
6. Fees of Distributors. In the event an Adopting Employer or Plan is responsible for authorized distributor fees related to the Plan, Plan Supervisor reserves the right to bill to and collect from the Trust any distributor fees, which shall be in addition to the administrative fees described in Exhibit B.

- G. Fees Payable By Mutual Funds. The Plan Supervisor and its agents receive compensation from certain mutual funds or their affiliates to cover expenses relating to services that the Plan Supervisor and its agents provide to the funds, including, but not limited to, the purchase and redemption of shares and participant-level fund recordkeeping. This compensation is paid directly to the Plan Supervisor and its agents by the funds pursuant to a services agreement between the Plan Supervisor and its agents and each fund or its affiliate, and the Adopting Employer is not responsible for a direct payment of this compensation. The compensation paid to the Plan Supervisor and its agents by the funds is based either on a percentage of the average daily net asset value of shares invested in the fund, or on a set fee per each fund in which a participant invests. The Adopting Employer may contact the Plan Supervisor to receive more detailed information concerning such compensation, including which funds pay compensation to the Plan Supervisor and its agents and an estimate of how much compensation the Plan Supervisor and its agent may receive or have received during a particular time period.
- H. HIPAA Portability. Unless mutually agreed otherwise, Plan Supervisor shall not provide any services related to HIPAA Portability, including, but not limited to providing certificates of creditable coverage to Participants upon termination of coverage under this Plan or upon request by a Participant within two (2) years of termination of coverage.
- I. Regulatory Compliance. Adopting Employer and Plan Administrator shall be responsible for compliance with applicable laws and regulations pertaining to the Plan. Adopting Employer and Plan Administrator shall be responsible for any governmental or regulatory charges resulting from the Adopting Employer's establishment and operation of the Plan. This provision does not relieve the Plan Supervisor from any statutory or agency requirements placed directly on it as a result of performing services under this Agreement.
- J. Plan Design. Adopting Employer possesses and exercises ultimate authority and responsibility for the design of the Plan. The Adopting Employer has consulted its legal and/or accounting advisors concerning the tax advantages and consequences of sponsoring the Plan and the Trust and shall not rely on the Plan Supervisor for such guidance.
- K. Plan Interpretation. Plan Administrator possesses and exercises ultimate authority and responsibility for determining benefits under the Plan, making decisions regarding eligibility for participation, termination of participation, and payment of benefits. This includes, but is not limited to, review of claim denials.

- L. Other Information. Adopting Employer or Plan Administrator (including a designee) shall comply with all requests for information made by the Plan Supervisor reasonably necessary for the Plan Supervisor to fulfill its duties under this Agreement. Any documentation received by the Adopting Employer or Plan Administrator (including a designee) that should have been provided to the Plan Supervisor shall be promptly forwarded to the Plan Supervisor. Such documentation includes, but is not limited to, claims forms.
- M. Review of Reports and Forms. The Adopting Employer shall be responsible to review all accounting reports, compliance testing, government returns (i.e., Form 990), and any other reports prepared by or on behalf of the Plan Supervisor (collectively the "Reports") and to notify the Plan Supervisor of any errors or omissions in the Reports within thirty (30) days of receipt of them. If no errors or omissions are asserted within thirty (30) days, the Adopting Employer shall be deemed to have approved the accuracy of the Reports and the Plan Supervisor shall be released and relieved of all liability and indemnified by the Adopting Employer for any actions taken pursuant to this Agreement based upon the Reports.
- N. Review of Communication Materials. The Adopting Employer shall review all communication products and materials prepared by the Plan Supervisor to ensure consistency of the materials with the terms of the Plan.
- O. Authorized Representatives. Until otherwise advised in writing by the Adopting Employer, the Plan Supervisor may accept the authority and rely upon the instructions of, or documents signed by, any representatives of the Adopting Employer listed in Exhibit C. Additional documentation, specifying persons authorized for various purposes, may also be executed by the parties from time to time, and the Plan Supervisor shall be entitled to rely upon such documentation without question, unless it has actual knowledge that such person's authority has been revoked.
- P. Legal Obligations. Adopting Employer or Plan Administrator (including a designee), shall possess ultimate responsibility and authority for the operation of the Plan and for its compliance with all applicable laws and regulations pursuant to the provisions of the Plan.
- Q. Investments. The Plan Administrator shall be responsible for determining how and with whom to invest the assets of the Trust, including, but not limited to, selecting the investments or menu of investment options, as the case may be. The Plan Administrator shall adopt an investment policy governing the investment of the assets of the Trust. The Plan Administrator shall be responsible for mailing or otherwise distributing

fund prospectuses or other similar information regarding the investments in which the assets of the Trust are invested to the extent such information is not distributed by the funds or investment providers. The Plan Supervisor shall have no responsibility with respect to the investment of the assets of the Trust.

V. Records & Information

- A. Maintenance and Access. Plan Supervisor and Plan Administrator shall maintain adequate records relating to the terms and operation of the Plan for at least the plan year to which the records relate and for an eight (8) year period thereafter. Each party shall have access to the records relating to the Plan and the Trust maintained by the other party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The parties shall maintain the confidentiality of any information relating to Participants, the Plan, and the Trust in accordance with applicable laws and regulations.
- B. Record Use. The Plan Supervisor, Adopting Employer and Plan Administrator agree that the medical records, names, addresses, telephone numbers, Social Security numbers and other personal information relating to Participants, which the Plan Supervisor may obtain as a result of performing administrative services may be collected, maintained and used by the Plan Supervisor and the Plan Administrator as necessary to administer the Plan and the Trust. The Plan Supervisor and the Plan Administrator may use patient specific and individually identifiable information, as necessary to properly administer the Plan and the Trust, to defend any claim related to the Plan or to the provision of services under this Agreement, or as otherwise may be permitted by state or federal law. All parties agree that such information shall be considered confidential and protected as required under applicable law.
- C. Confidential Business Information. The Plan Supervisor, Adopting Employer and Plan Administrator shall each take all necessary steps to protect the other party's confidential business information. Such information shall not be disclosed to third parties without the express written consent of the other party unless required by law or court order.
- D. Transfer of Records. When this Agreement ends, the Plan Supervisor may transfer to Adopting Employer, Plan Administrator and/or any successor administrator those records the Plan Supervisor determines are reasonably necessary to effectuate a smooth transition of administration of the Plan. The Plan Supervisor intends that this transfer of records will satisfy its obligation to maintain such records as described above. The Plan Supervisor shall provide the Plan Administrator an opportunity to review

the records and obtain copies of any such records in addition to the records the Plan Supervisor has identified as necessary for a smooth transition or otherwise transferred. The details of such transfer, including but not limited to the means, method and timing, shall be agreed to by the parties. All costs associated with such a record review and transfer will be paid by the Adopting Employer.

- E. HIPAA Business Associate. The Plan Supervisor acknowledges its role as a business associate for purposes of the privacy and security standards under HIPAA. Exhibit D reflects the business associate contractual requirements.

VI. Indemnification and Limitation of Liability

- A. Funding. The Plan Supervisor shall have no responsibility, risk, liability, or obligation for the funding of Plan benefits. The responsibility and obligation for funding Plan benefits shall be solely and completely the responsibility of the Adopting Employer.
- B. Claim Processing Errors. The Plan Supervisor shall be liable for the recovery of claim processing errors arising from the Plan Supervisor's performance pursuant to the terms of this Agreement. Notwithstanding the preceding, however, the Plan Supervisor shall not be liable for any such error that is reasonable, made in good faith, and within acceptable industry standards. The Plan Supervisor shall use diligent efforts toward the recovery of such losses. The Plan Supervisor's liability, if any, shall be limited to the amount in excess of the claim amount(s) payable under the terms of the Plan.
- C. Indemnification by the Plan Administrator for Claims Decisions. If the Plan Administrator reverses a claim payment decision made by the Plan Supervisor, the Plan Administrator shall notify the Plan Supervisor in writing of such decision and shall indemnify, hold harmless, and defend the Plan Supervisor from and against any and all liabilities, losses, damages, claims, lawsuits, causes of action, costs, and expenses the Plan Supervisor may incur because of any such reversal.
- D. No Guarantee of Benefits. The Plan Supervisor does not assume any responsibility, risk, liability or obligation for the general policy direction of the Plan, the adequacy of funding thereof, or any act or omission or breach of duty by parties other than Plan Supervisor. The Plan Supervisor is not and shall not be deemed a guarantor with respect to any benefits payable under the Plan.
- E. Indemnification for Plan Design/Interpretation. The Plan Supervisor is not engaged in the practice of law. The resolution of any legal issues

concerning the Plan, its coverage, or its interpretation is the responsibility of the Plan Administrator and/or the Adopting Employer and their legal counsel. Except in situations involving the Plan Supervisor's negligence, gross negligence, recklessness, willful misconduct, fraud, criminal conduct, or breach of this Agreement, the Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor from and against any and all liabilities, losses, damages, claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), arising, directly or indirectly, out of the design and/or interpretation of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any state, federal or local law or regulation.

- F. General Indemnification. Except in situations involving the Plan Supervisor's negligence, gross negligence, recklessness, willful misconduct, fraud, criminal conduct, or breach of this Agreement, the Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), which arise, directly or indirectly, from the Plan Administrator's or Adopting Employer's act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any law.
- G. Indemnification for Prior Administration. If a party other than the Plan Supervisor previously provided administration or recordkeeping services to the Plan or the Trust, except in situations involving the Plan Supervisor's negligence, gross negligence, recklessness, willful misconduct, fraud, criminal conduct, or breach of this Agreement, the Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), which arise, directly or indirectly, from such prior administration or recordkeeping, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and

any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any law.

- H. Plan Supervisor's Duty to Indemnify. Except in situations involving the Plan Administrator's or Adopting Employer's negligence, gross negligence, recklessness, willful misconduct, fraud, criminal conduct, or breach of this Agreement, the Plan Supervisor shall indemnify, hold harmless, and defend the Plan Administrator and Adopting Employer and their directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Administrator and Adopting Employer may incur or be asked to pay), which arise, directly or indirectly, from the Plan Supervisor's act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Administrator and Adopting Employer may incur or be asked to pay) arising under any law.
- I. SEC Rule 22c-2 Indemnification. Except in situations involving Plan Supervisor's negligence, gross negligence, recklessness, willful misconduct, fraud, criminal conduct, or breach of this Agreement, the Adopting Employer agrees to hold the Plan Supervisor and the Plan Supervisor's subcontractors harmless from, and indemnify the Plan Supervisor and the Plan Supervisor's subcontractors against, any and all claims, losses, and expenses, including attorney's fees and taxes (except taxes on the Plan Supervisor's income), incurred by the Plan Supervisor and the Plan Supervisor's subcontractors, arising out of Plan Supervisor's compliance with SEC Rule 22c-2.
- J. Limitation of Liability. The Plan Supervisor shall exercise, in the performance of its duties, reasonable care and shall be liable for loss only when caused by the Plan Supervisor's (or the Plan Supervisor's subcontractors') negligence, gross negligence, recklessness, fraud, willful misconduct, criminal conduct or a material breach of this Agreement. The Plan Supervisor shall be responsible for direct damages caused by its failure to satisfy its duties hereunder; provided, however, that the Plan Supervisor shall not be liable for any incidental or consequential damages caused by its failure to satisfy its duties hereunder. The Plan Supervisor shall not be liable for the processing of Plan or Trust activity that is delayed due to circumstances beyond its reasonable control, including, but not limited to, national, state, or city disaster, acts of God, severe weather, or any other circumstances that would effect the Plan Supervisor

or its trading platforms, software, voice response systems, or Internet systems.

- K. Reliance on Data & Direction. Notwithstanding any provision of this Agreement to the contrary, the Plan Supervisor is not responsible or liable for any acts or omissions made pursuant to any direction, consent or other request reasonably believed by the Plan Supervisor to be genuine and from an authorized representative of Adopting Employer and Plan Administrator. The Plan Supervisor is not responsible or liable for acts or omissions made in reliance on erroneous data provided by Adopting Employer or Plan Administrator to the extent the Plan Supervisor's acts or omissions are attributable to the erroneous data, or for the failure of Adopting Employer or Plan Administrator to perform their obligations under this Agreement.

VII. Term and Termination

- A. Term. This Agreement is effective as of the date first written hereinabove and shall continue for a twelve (12) consecutive month period thereafter until the termination of this Agreement pursuant to this Section VII of the Agreement. This Agreement may be extended no more than twice for subsequent annual periods (i.e., two (2) annual extensions) by mutual agreement of the parties, provided such agreement to extend the Agreement complies with the Adopting Employer's purchasing policies and the availability of funds.
- B. Termination. This Agreement may be terminated by either party at any time by written notice of intention to terminate given to the other party to be effective as of a specified date not less than ninety (90) days from the date such notice is received.
- C. Termination For Cause. Either party shall have the right to immediately terminate the Agreement upon:
1. The material breach of the terms of this Agreement, by either the Plan Supervisor or the Adopting Employer, including failure to remit service fees due the Plan Supervisor, if such material breach is not corrected within ten (10) days of receipt of written notice specifying the nature of the breach to the satisfaction of the non-breaching party;
 2. The bankruptcy or insolvency of Adopting Employer or the Plan Supervisor; or
 3. The enactment of any law, promulgation of any regulation or action of any State or Federal agency or authority which makes or

declares illegal the continuance of this Agreement or the performance of any of the services of the Plan Supervisor hereunder.

- D. Liability for Benefits After Termination of Agreement. Upon termination of this Agreement, the Plan Supervisor shall cease to act on behalf of Adopting Employer and Plan Administrator. Adopting Employer and Plan Administrator shall be liable for the processing and payment of all eligible benefit claims payable on or after the date of termination pursuant to the terms of this Plan. The Plan Supervisor reserves the right to notify any Participants that the Plan Supervisor no longer acts on behalf of Adopting Employer and Plan Administrator.
- E. Post-Termination Obligations. Plan Supervisor may, as mutually agreed upon by Adopting Employer, Plan Administrator and Plan Supervisor, provide certain administrative services following the termination of this Agreement.

VIII. Miscellaneous

- A. Agreement Amendment. This Agreement may be amended only by mutual agreement in writing executed by all parties, except that the Plan Supervisor may amend this Agreement to the extent necessary to comply with applicable federal, state or local laws or regulations.
- B. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and delivered personally, or sent by registered or certified mail or nationally recognized overnight carrier, postage prepaid, electronic transmission, or by facsimile transmission, to the address set forth below, or to such other address set forth in a notice given in the manner herein provided. All such notices, requests, information or other communications shall be deemed to have been given (i) when delivered if personally delivered, (ii) three business days after having been placed in the mail, if delivered by registered or certified mail, (iii) the business day after having been placed with a nationally recognized overnight carrier, if delivered by nationally recognized overnight carrier, and (iv) the business day after transmittal by facsimile if transmitted with electronic confirmation of receipt.

If to Adopting Employer and Plan Administrator:

The Village of Downers Grove
Attn: Human Resources Director
Civil Center
801 Burlington
Downers Grove, IL 60515
Telephone: 630-434-5536
Fax: 630-434-5484

If to the Plan Supervisor:

America's VEBA Solutions
A division of Genesis Employee Benefits, Inc.
Crosstown Woods Corporate Centre
10125 Crosstown Circle, Suite 170
Minneapolis, MN 55344-3327
Telephone: 952-653-4400
Fax: 866-527-8317

Upon the occurrence of a change in any of the above address information, each party shall notify the other party(ies) of such change within five (5) business days of the effective date of the change.

- C. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of any provision will not affect any other provision of this Agreement.
- D. Survival. The rights and obligations described in Sections V., VI, and VII shall survive termination of this Agreement.
- E. No Waiver of Rights. Nothing in this Agreement shall be deemed to limit or abrogate any right or remedy available under law. The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy.
- F. Copyrighted Works. The Adopting Employer acknowledges that the Plan Supervisor and its agents are the sole copyright owners of all plan documentation, administrative guides and forms, content of the web site, and all other materials provided under the terms of this Agreement and that such materials are proprietary to the Plan Supervisor. The Plan Supervisor grants the Adopting Employer a nonexclusive, nontransferable right to copy such materials provided such copies are needed for the sole

purpose of collecting and reporting information regarding Participants or notifying Participants of information regarding the Plan. Other materials provided by the Plan Supervisor shall not be copied or reproduced by the Adopting Employer without the Plan Supervisor's prior written consent.

- G. Non-Assumption of Liabilities. Unless specifically provided in this Agreement, the parties do not assume the existing or future obligations, liabilities or debts of the other party.
- H. Entire Agreement. This Agreement shall supersede and replace any and all other agreements between the parties relating to the same subject matter. This Agreement, along with the Adoption Agreements, Plan Document, and Trust Document, contains the entire agreement and understanding of the parties relating to the subject matter hereof, except as otherwise provided in this Agreement.
- I. Governing Law. The Agreement shall be governed by and interpreted in accordance with applicable federal law. To the extent the federal law does not govern, this Agreement shall be governed by the laws of the State of Illinois and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto and arising hereunder.
- J. Independent Contractors. The Plan Supervisor shall be construed to be acting as an independent contractor and not as an employee of Adopting Employer or Plan Administrator. The Plan Supervisor, Adopting Employer and the Plan Administrator shall not have the power or authority to act for or on behalf of, or to bind the other party, except as set forth in this Agreement.
- K. Third Party Beneficiaries. The obligations of each party to this Agreement shall inure solely to the benefit of the other signatory party(ies). Except as expressly provided in this Agreement, no person or entity is intended to be or shall be construed or deemed to be a third party beneficiary of this Agreement.
- L. Successors and Assigns. This Agreement shall be binding on any successors, assigns and subcontractors of the parties authorized under this Agreement.
- M. Audit Rights. The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.

- N. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- O. Force Majeure. Neither party shall be liable for any delay or failure to perform its obligations under this Agreement arising out of a cause beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, floods, and natural disasters.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the effective date indicated above.

ADOPTING EMPLOYER & PLAN
ADMINISTRATOR

By: _____

PLAN SUPERVISOR

By: _____
Authorized Representative of
Genesis Employee Benefits, Inc. d/b/a
America's VEBA Solution
Its: _____

LIST OF EXHIBITS

- A Reports
- B Administrative Fees
- C Authorized Representatives
- D Business Associate Agreement

EXHIBIT A **Reports**

Quarterly

- VEBA Reconciliation – reconciles VEBA account to the plan report totals, by fund and in the total.

Annually

- Participant Statements – plan year account statements for participants (for distribution to participants) of the funded portion of the HRA.

Web Site:

Plan Sponsor On-Demand reports

- Health FSA and HRA Administration Report – includes all participant's claims and payment activity and balances.
- Age Demographics - reports plan participants by configurable age group, years of service and average account balance.
- Claim Distributions Report - reports participant census data, claim amounts paid and withdrawal dates within a selected date range.
- Employee Census - reports participant data, including name and address, dates and participant's age.
- Investment Demographics - reports each investment's CUSIP, units, cost, market value and how many participants are investing in that fund on any given date. Also provides the average number of investments per participant and each fund's percentage of total asset value.
- Termination Report - reports terminated participants' census data, and balance within a selected date range.
- Web Usage Statistics – reports by a number of categories, the number of web requests made by participants within a selected date range.

EXHIBIT B
Administrative Fees

The following describes the standard and optional VEBA/HRA claims administration and recordkeeping services and fees, and the party which will be responsible for paying the fees:

STANDARD SERVICES

Description of Standard Service	Fee
Initial set-up	N/C
Standard communication materials (some materials will reflect actual plan provisions, but no custom fonts, wording, logos, etc.; customization is available – see reverse for optional services and fees)	N/C
Voice Response System for investment and recordkeeping participants	N/C
Participant and Plan Sponsor websites	N/C
Annual participant statements mailed to employer for distribution	N/C
Recordkeeping fee (non-claim active participants only)	\$1.50 PPPM
Standard claim processing (claim active participants only; claim processing occurs no more frequently than twice per month)	\$5.70 PPPM
Amendments requested by adopting employer subsequent to effective date of Agreement	\$250 each

Party responsible for administrative fees described above (initial the appropriate box to indicate the party that will be responsible for paying the fee for the following individuals):

	Employer/Plan Sponsor Paid ¹	Participant Paid
<u>Active Participants</u> ²		
PPPM Fees	_____	_____ ³
<u>Terminated Participants</u> ⁴		
PPPM Fees	_____	_____
<u>Retired Participants</u>		
PPPM Fees	_____	_____

¹ Fees may be paid with forfeitures to the extent available and if provided so in the Plan.

² The term "Active Participants" refers to Participants currently employed by the Adopting Employer.

³ This option is not available for Active Participants if contributions may be used to reimburse eligible expenses as soon as they are deposited into the Participant's HC Account (i.e., Active Participants who are claim active).

⁴ The term "Terminated Participants" refers to Participants not currently employed by the Adopting Employer, but not "retired" as that term is defined in the Adoption Agreement.

OPTIONAL SERVICES

Initial to Authorize Optional Service	Description of Optional Service	Fee
_____	Mailing of annual statements to participants' homes (fee per participant per statement; includes postage)	.55¢
_____	Additional participant statements mailed to employer or participants' homes (fee per participant per statement; includes postage)	\$1.00
_____	Annual asset based omnibus account recordkeeping (fee charged quarterly)	0.20%
_____	Discrimination testing	\$150/hour
_____	Consulting to correct failed discrimination tests	\$150/hour
_____	Employee meetings (per meeting, plus travel expenses)	\$275
_____	Multi-site billing and accounting (per site)	\$25
_____	Wire transfer fee (ACH deposits, no additional fee)	\$20
_____	Customized communication materials (<i>e.g.</i> , custom fonts, wording, logos, etc.)	\$150/hr + production costs + .25¢ PPM

EXHIBIT C

Authorized Representatives

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

EXHIBIT D
Business Associate Agreement

I. Purpose

This Exhibit D – Business Associate Agreement is intended to satisfy the “business associate” agreement between the Plan, as a Covered Entity (defined below), and the Plan Supervisor, as a Business Associate (defined below), as required under the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

II. Special Definitions

The following definitions are used by this Exhibit D – Business Associate Agreement:

- A. Business Associate – means Genesis Employee Benefits, Inc. d/b/a America’s VEBA Solution.
- B. Covered Electronic Transactions – shall have the meaning given to the term “transaction” in 45 C.F.R. Section 160.103.
- C. Covered Entity – means the Plan.
- D. Participant – means a person who is eligible for payment of certain services or supplies rendered or sold to the person or the person’s eligible dependents under the terms, conditions, limitations, and exclusions of a health benefit program of the Plan.
- E. Data – means formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by people or automatic means.
- F. Data Aggregation – means, with respect to Protected Health Information created or received by Business Associate in its capacity as a business associate (as that term is defined in 45 C.F.R. Section 160.103) of the Plan, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity (as those terms are defined in 45 C.F.R. Section 160.103), to permit data analyses that relate to the health care operations of the respective covered entities.

- G. Data Transmission – means automated transfer or exchange of Data, pursuant to the terms and conditions of this Agreement, between the Plan and Business Associate by means of their respective Operating Systems.
- H. Designated Record Set – means a group of records maintained by or for the Covered Entity that is (1) the medical records and billing records about Individuals maintained by or for the Covered Entity, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity, or (3) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. As used herein, 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 the Covered Entity.
- I. Electronic Data Interchange (EDI) – means the automated exchange of business documents from application to application.
- J. Electronic Protected Health Information (ePHI) – means Protected Health Information maintained or transmitted in electronic media, including, but not limited to, electronic storage media (i.e., hard drives, digital memory medium) and transmission media used to exchange information in electronic storage media (i.e., internet, extranet, and other networks). Protected Health Information transmitted via facsimile and telephone is not considered to be Electronic Protected Health Information.
- K. Envelope – means the control structure in a format mutually agreeable to the Plan and Business Associate for the electronic interchange of one or more encoded Data Transmissions between the Plan and Business Associate.
- L. HHS – means the United States Department of Health and Human Services.
- M. Individual – shall have the same meaning as the term “individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- N. Operating System – means the equipment, software, and trained personnel necessary for a successful Data Transmission.
- O. Plan – means the Village of Downers Grove VEBA Health Savings Plan.
- P. Privacy Rule – means the Standards and Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

- Q. Protected Health Information – shall have the same meaning as the term “protected health information” in 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- R. Provider – means a hospital or professional practitioner duly certified or licensed to provide health care services to Participants.
- S. Required By Law – shall have the same meaning as the term “required by law” in 45 C.F.R. 164.501.
- T. Secretary – means the Secretary of the Department of Health and Human Services or his/her designee.
- U. Security Access Codes – means alphanumeric codes that the Plan assigns to Business Partner to allow Business Partner access to the Plan’s Operating System for the purpose of executing Data Transmissions or otherwise carrying out this Agreement.
- V. Security Incident – shall have the same meaning as the term “security incident” in 45 C.F.R. Section 164.304.
- W. Security Rule – means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C.
- X. Source Documents – means documents containing Data that are or may be required as part of a Data Transmission concerning a claim for payment of charges for medical services that a Provider furnishes.
- Y. Standards for Electronic Transactions Rule - means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Part 160 and Part 162.
- Z. Trade Data Log – means the complete, written summary of Data and Data Transmissions exchanged between the Covered Entity and Business Associate over the period of time this Agreement is in effect and includes, without limitation, sender and receiver information, transmission date and time, and general nature.

III. Privacy Provisions

- A. Introduction. Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the use and disclosure of Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Parts 160 and 164 ("Privacy Regulations"). This Section III is intended to meet the requirements of the "business associate" provisions of Privacy Rule and will govern the terms and conditions under which the Business Associate may use or disclose Protected Health Information.
- B. Permitted Uses and Disclosures.
1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the Business Associate and as permitted or required by this Agreement or the Privacy Rule.
 2. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of its business or to carry out its legal responsibilities.
 3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of its business, if
 - i. the disclosures are required by law, or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will be held confidentially and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to such person, and the person will notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
 4. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. Section 164.504(e)(2)(i)(B).

5. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. Section 164.502(j)(1).
- C. Limitations on Uses and Disclosures. With respect to Protected Health Information that Business Associate creates or receives on behalf of Covered Entity, Business Associate will not use or further disclose the Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- D. Additional Obligations of Business Associate. Except as otherwise specified herein, the provisions of this Paragraph III.D. apply only to Protected Health Information that Business Associate creates or receives on behalf of Covered Entity.
1. Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
 2. Reporting and Mitigation. Business Associate will report to Covered Entity any use or disclosure of Protected Health Information by Business Associate not provided for by this Agreement within ten (10) business days of its discovery by Business Associate. Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure in violation of this Agreement.
 3. Agents and Subcontractors. Business Associate will ensure that any agent or subcontractor to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply by and through this Agreement to Business Associate with respect to such information.
 4. Access to Designated Record Set. Within fifteen (15) days of a request by the Covered Entity for access to Protected Health Information about an Individual, Business Associate shall make available to the Covered Entity or, as directed by the Covered Entity, an Individual such Protected Health Information contained in a Designated Record Set. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within five (5) days forward such request to the Covered Entity. Any denials of access to the Protected Health Information requested shall be the responsibility of the Covered Entity.

5. Amendment of Protected Health Information. Within fifteen (15) days of receipt of a request from the Covered Entity or an Individual for the amendment of Protected Health Information or a record regarding an Individual contained in a Designated Record Set, Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. Section 164.526. It shall be the Covered Entity's responsibility to promptly notify Business Associate of the request for an amendment. Any denials, in whole or in part, of requested amendments shall be done in accordance with 45 C.F.R. Section 164.526 and shall be the responsibility of the Covered Entity.

6. Disclosure Accounting. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528. Within fifteen (15) days of receipt of notice from the Covered Entity that it has received a request for an accounting of disclosures of Protected Health Information regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to the Covered Entity such information as is in Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. Section 164.528. At a minimum, Business Associate shall provide the Covered Entity with the following information: (1) the date of the disclosure; (2) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (3) a brief description of the Protected Health Information disclosed; and, (4) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. It shall be the Covered Entity's responsibility to promptly notify Business Associate of the request for an accounting, and to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this section.

7. Access to Business Associate's Internal Records. Business Associate will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity or the

Secretary, for the purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule.

8. Return of Protected Health Information. Business Associate shall at the termination of this Agreement with Covered Entity, if feasible, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity that Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protection of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
9. Electronic Transactions. In the event the Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any agents and subcontractors that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.

E. Obligations of Covered Entity.

1. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice.
2. Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rules if done by Covered Entity. This includes, but is not limited to, requests for disclosure of Protected Health Information to the sponsoring employer as other than the entity acting on behalf of the Plan as the Covered Entity. To the extent a dispute or difference of opinion exists between the Business Associate and the sponsoring employer as the entity acting on behalf of the Plan as the Covered Entity, Business Associate may disclose under objection pursuant to the specific, written direction of the Covered Entity. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of the Agreement.

3. Changes in Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
4. Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

IV. Trading Partner Provisions

- A. Introduction. This Section IV applies only if and to the extent that Business Associate and Covered Entity conduct electronic transactions that are subject to Standards for Electronic Transactions Rule. The Business Associate may be considered a "trading partner" of the Covered Entity under the Standards for Electronic Transactions Rule. This Section IV will govern the terms and conditions under which Covered Electronic Transactions are conducted.
- B. Mutual Obligations. The mutual obligations of the Covered Entity and Business Associate include the following:
 1. EDI Data Transmission Accuracy. The parties will take reasonable care to ensure that Data Transmissions are timely, complete, accurate and secure.
 2. Retransmission of Lost or Indecipherable Transmissions. A party will retransmit the original transmission within two (2) business day(s) of its discovery that a Data Transmission is a Lost or Indecipherable Transmission.
 3. Equipment Cost. Each party will obtain and maintain, at its own expense, its own Operating System necessary for timely, complete, accurate and secure Data Transmission pursuant to this Agreement.
 4. Transmission Format. All standard transactions, as defined by Social Security § 1173(a) and the Standards for Electronic Transactions Rule, conducted between the Covered Entity and Business Associate, will only use code sets, data elements and formats specified by the Standards for Electronic Transactions Rule.

5. Backup Files. Each party will maintain adequate backup files, electronic tapes or other sufficient means to recreate a Data Transmission for at least six (6) years from the Data Transmission's creation date.
6. Testing. Prior to the initial Data Transmission, each party will test and cooperate with the other party in testing each party's Operating System to ensure the accuracy, timeliness, completeness and confidentiality of each Data Transmission.
7. Data and Data Transmission Security. The Covered Entity and Business Associate will employ security measures necessary to protect Data and Data Transmissions between them in compliance with Social Security Act § 1173(d) and any HHS implementing regulations or guidelines.
8. Security Access Codes. The Security Access Codes that the Covered Entity issues to Business Associate will, when affixed to Data Transmissions, be legally sufficient to verify the identity of the transmitter and to authenticate the Data Transmission, thereby establishing the Data Transmission's validity.

C. Business Associate Obligations. Business Associate will:

1. Use Data only according to the terms of this Agreement.
2. Protect and maintain the confidentiality of Security Access Codes issued to Business Associate by the Covered Entity.
3. Limit disclosure of Security Access Codes to authorized personnel on a need-to-know basis.

D. The Covered Entity's Obligations. The Covered Entity will:

1. Make available to Business Associate, via electronic means, Data and Data Transmissions for which this Agreement grants Business Associate access or authorization, or as provided by law;
2. Provide Business Associate with Security Access Codes that will allow Business Associate access to the Plan's Operating System. The Covered Entity reserves the right to change Security Access Codes at any time and in such a manner as the Covered Entity, in its sole discretion, deems necessary.

E. Confidentiality and Security.

1. Data Security. Business Associate will maintain adequate security procedures to prevent unauthorized access to Data, Data Transmissions, Security Access Codes, Envelope, backup files, Source Documents or the Covered Entity's Operating System. Business Associate will promptly notify the Covered Entity of any unauthorized attempt to obtain access to or otherwise tamper with Data, Data Transmissions, Security Access Codes, Envelope, backup files, Source Documents or the Covered Entity's Operating System.
2. Operating Systems Security. Each party will develop, implement and maintain measures necessary to ensure the security of each party's own Operating System and each party's records relating to it Operating System and in compliance with applicable law.

F. Records Retention and Audit.

1. Records Retention. Business Associate will maintain complete, accurate and unaltered copies of all Source Documents from all Data Transmissions it receives from the Covered Entity for not less than six (6) years from the date that Business Associate receives them. All retained records will be subject to the same security measures as Data and Data Transmissions.
2. Trade Data Log. The Covered Entity and Business Associate will each establish and maintain a Trade Data Log to record all Data Transmissions between the parties during the term of this Agreement. Each party will take necessary and reasonable steps to ensure that its Trade Data Log constitutes a complete, accurate, and unaltered record of each Data Transmission between the parties. Each party will retain Data Transmission records for not less than six (6) month(s) following the date of a Data Transmission. Each party will maintain its Trade Data Log on electronic media or other suitable means that permit timely retrieval and presentation in readable form.

V. Electronic Security Provisions

- A. Introduction. This Section V is intended to meet the requirements of the "business associate" provisions of Security Rule and will govern the terms and conditions under which the Business Associate may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of

the Covered Entity. The effective date of this Section V shall be April 20, 2006.

B. Obligations of Business Associate. In accordance with the Security Rule, Business Associate agrees to:

1. Implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, maintains, receives, or transmits on behalf of the Covered Entity;
2. Ensure that any agent or subcontractor to whom Business Associate provides Electronic Protected Health Information agrees to the same restrictions and conditions that apply under this Section V to Business Associate, including, but not limited to, implementing reasonable and appropriate safeguards to protect such information; and
3. Report to Covered Entity any Security Incident of which Business Associate becomes aware within ten (10) business days of its discovery by the Business Associate.
4. Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to Business Associate.

VI. Term and Termination

- A. Term. The Term of this Agreement will begin and become effective on the compliance date applicable to Covered Entity under the Privacy Rule, and shall terminate when all of the Protected Health Information created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Paragraph VI.A.
- B. Termination. In the event that Covered Entity discovers and determines that Business Associate materially breached or violated any of its obligations under this Agreement, Covered Entity will notify Business Associate of such breach in writing. Covered Entity may terminate the Agreement, may provide Business Associate with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable, within a mutually agreed upon period of time, and/or may report the violation to the Secretary. If Covered Entity's attempts to cure the breach or end the violation are unsuccessful within that period, without limiting the rights of the parties under the Agreement, Covered Entity may terminate the Agreement.
- C. Effect of Termination.
1. Except as provided in paragraphs (2) and/or (3) of this sub-section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information created or received by it on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its subcontractors or agents. Business Associate will not retain any copies of Protected Health Information.
 2. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate will notify Covered Entity of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

3. Should the Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law including, but not limited to, the Employee Retirement Income Security Act of 1974 ("ERISA"), includes the Protected Health Information, Business Associate shall return or provide to Covered Entity such information, including Protected Health Information.

VII. General Provisions

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- C. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Rule.
- D. Survival. The respective rights and obligations of Business Associate and the Covered Entity shall under this Agreement survive the termination of this Agreement and any related services agreement.
- E. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except as otherwise provided herein.
- F. Indemnity. Business Associate will indemnify and hold harmless Covered Entity and Covered Entity's affiliates, officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.
- G. Conformance with Law. Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information,

Electronic Protected Health Information or Covered Electronic Transactions, this Agreement will automatically amend such that the obligations they impose on the Business Associate remain in compliance with these regulations.

**AMERICA'S VEBA SOLUTION
BASIC PLAN
SECOND AMENDED ADOPTION AGREEMENT
FOR
THE VILLAGE OF DOWNERS GROVE**

This Amended Adoption Agreement plus the America's VEBA Solution Basic Plan Document (No. IL 8.0.0.0.0) constitutes the Plan for the Adopting Employer.

GENERAL INFORMATION

The following information is applicable to both the Basic Trust Document and the Basic Plan Document:

ADOPTING EMPLOYER INFORMATION:

Employer Name: **The Village of Downer's Grove**
Address: **Civic Center, 801 Burlington**
City, State Zip: **Downer's Grove, IL 60515**
Phone/Fax Number: **(630) 434-5500**
Contact Person: Name: **Wesley Morgan**
Title: Director of Human Resources
Address: Civic Center, 801 Burlington
City, State Zip: Downer's Grove, IL 60515
Phone/Fax No.: (630) 434-5536/(630) 434-5484

EMPLOYEES AND/OR PARTICIPANTS:

There were more than fifty (50) Employees in the last twelve months? Yes No
There were more than twenty (20) Employees in the last calendar year? Yes No

Check the one that applies (*check only one box*):

- The Plan benefits active Employees only.
 The Plan benefits terminated Employees only.
 The Plan benefits both active Employees and terminated Employees.

MISCELLANEOUS

Name of Plan: **The Village of Downers Grove VEBA Health Savings Plan**
Name of Trust: **The Village of Downers Grove VEBA Health Savings Trust**
Addendum(s) Attached: Yes No
Joint Powers Agreement Attached: Yes No

BASIC PLAN DOCUMENT ADOPTION AGREEMENT

This is the Adoption Agreement referred to in the America's VEBA Solution Basic Plan Document ("Basic Plan Document"). The portion of this Adoption Agreement regarding Plan plus the Basic Plan Document constitute the Plan with respect to that Adopting Employer.

ARTICLE I: INTRODUCTION

Effective Date means: _____
(month, day, year)

Original Effective Date: 1/1/05
(month, day, year)

Restatement Date (date Adoption Agreement is effective): 1/1/08
(month, day, year)

ARTICLE II: DEFINITIONS

2.8 Dependent means:

- "Dependent" for purposes of Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.
- Other (Describe): _____

Note: Dependent cannot be defined more broadly than "dependent" for purposes of Section 105 of the Code.

2.12 Entry Date means:

- Date Employee becomes eligible to participate.
- Other (Describe): _____

2.14 Health Care Expense means:

- Maximum permitted by law.
- An expense which but for the deductible under a specified group medical coverage sponsored by the Adopting Employer, would have been paid by that group medical coverage.
- Specified group medical coverage: _____
- Other (Describe): _____

Note: Health Care Expense cannot be defined more broadly than the description in IRS Revenue Ruling 2002-41 and IRS Notice 2002-45.

If the definition is different for Participants once they terminate employment, complete again:

- N/A – definition does not change.
- Maximum permitted by law.
- An expense which but for the deductible under a specified group medical coverage sponsored by the Adopting Employer, would have been paid by that group medical coverage.
- Specified group medical coverage: _____
- Other (Describe): _____

2.24 Plan Year is: 1/1 – 12/31
(month, day, year)

2.24 The initial "short" Plan Year is: N/A
(month, day, year)

2.27 Spouse means:
 An individual who is legally married to a Participant and who is treated as a "spouse" under the Code.
 Other (*Describe*): _____

Note: Must be more restrictive than Code.

2.28 Type of Trust:
 § 501(c)(9) trust – VEBA
 § 115 trust (*requires additional adoption forms*)
 Other (*Describe*): _____

ARTICLE IV: ELIGIBILITY AND PARTICIPATION OF EMPLOYEES

4.1 Eligibility requirements are as follows (check and complete only those that apply):
 Age (*Describe*): _____
 Length of Service (*Describe*): _____
 Employment Classification (e.g., union, part-time, full-time) (*Describe*): _____
 Coverage under a specified group medical (*Describe*): _____
 Coverage sponsored by the Adopting Employer (*Describe*): _____
High deductible (\$1500) plan
 Other (*Describe*): _____

ARTICLE V: BENEFITS UNDER THE PLAN

5.2 Claims time period: 365 days

5.4 Timing of Reimbursement:
 As provided in the Basic Plan Document
 Other (*Describe*): _____

5.6 Post-death Access by Spouse & Dependents:
 As provided in the Basic Plan Document
 Other (*Describe*): _____

5.6 Post-death Access by Designated Beneficiary:
 As provided in the Basic Plan Document
 Other (*Describe*): _____

5.8 Use of forfeitures:

- Pay administrative costs which would otherwise be paid from the Trust (i.e., Participants' HC Account balances)
- Contributed to the HC Accounts of all Participants on a per capita basis.
- Other (*Describe*): _____

Note: Under no circumstances will the amounts revert to the Adopting Employer.

5.11 Which plan pays first:

- This Plan
- Flex plan sponsored by Adopting Employer
- Other (*Describe*): _____

Note: The choice of which plan pays first cannot be left to the Participant.

5.12(d) Other Limitations, if any: _____

ARTICLE VI: CONTRIBUTIONS

6.1 Employer Contribution amount, timing, restrictions (*check all that apply*):

Initial Contribution:

Fixed dollar amount \$ _____

Fixed formula (*Describe*): _____

Restrictions, if any (*Describe*): _____

Contributed on (*Identify Date*): _____

Subsequent Contribution:

Fixed dollar amount \$41.66 single / \$83.33 family

Per pay period

Per month

Per quarter

Per year

Other (*Describe*): _____

Restrictions, if any (*Describe*): Amount of contribution may change as determined by Adopting Employer from time to time.

Fixed formula (*Describe*): _____

- Per pay period
 - Per month
 - Per quarter
 - Per year
 - Other (*Describe*): _____
- _____
- Restrictions, if any (*Describe*): _____
- _____

Annual Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave (*Describe*):

Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave Upon Termination of Employment (*Describe*): _____

Availability for reimbursement of HC Account balance:

- As soon as deposited
 - Upon termination of employment
 - Other (*Describe*): _____
- _____

ARTICLE XI: GENERAL PROVISIONS

11.6 Reasonable fees of Claims Administrator shall be paid as follows with respect to Participants employed by Adopting Employer:

- Charged to the Plan and paid from the Trust, with the Trust being the sole source of such payment.
 - Charged to the Plan and paid from the general assets of the Adopting Employer.
 - Other (*Describe*): _____
- _____

Bill to: GCG Financial, Inc.

Attention: Catherine Loney

Billing Address: 3000 Lakeside Drive, Suite 200 South
Bannockburn, IL 60015

Phone Number: (847) 457-3000

Fax Number: (847) 457-3146

Reasonable fees of Claims Administrator shall be paid as follows with respect to Participants who are former employees of Adopting Employer:

- Charged to the Plan and paid from the Trust, with the Trust being the sole source of such payment.
 - Charged to the Plan and paid from the general assets of the Adopting Employer.
 - Charged to the Participant and paid from the Participant's HC Account.
 - Other (*Describe*): _____
- _____

11.7 Governing law – State of Illinois
(only list one state)

ACKNOWLEDGEMENTS

- 1. Pursuant to Section 2.8(a), any collectively bargained Employees participating in this Plan participate because the collective bargaining agreement provides for coverage under this Plan.
- 2. This Plan has been duly adopted or authorized to be adopted by the Adopting Employer's Managing Body.
- 3. This Plan is a "covered entity" for purposes of the Privacy Rules under the Health Insurance Portability and Accountability Act (HIPAA).

ADOPTING EMPLOYER: THE VILLAGE OF DOWNERS GROVE

Date: _____

By: _____

Its: _____

