

VantageCare RHS Employer Investment Program

DECLARATION OF TRUST OF THE

City of Franklin, Tennessee

INTEGRAL PART TRUST



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Declaration of Trust made as of the _____ day of _____, 2016, by the City of Franklin, Tennessee (hereinafter alternatively referred to as the “Employer” or the “Trustee”).

RECITALS

WHEREAS, the Employer is a governmental entity exempt from federal income tax under the Internal Revenue Code of 1986; and

WHEREAS, the Employer seeks to provide for the security and welfare of its Employees, their Spouses, Dependents and Beneficiaries by funding one or more post-retirement welfare benefit plans, programs or arrangements to provide for life, sickness, medical, disability, severance and other similar benefits through insurance and self-funded reimbursement plans (collectively a “Plan”); and

WHEREAS, it is an essential function and integral part of the exempt activities of the Employer to assist Employees, their Spouses, Dependents and Beneficiaries by making contributions to and accumulating assets in the trust, a segregated fund, for post-retirement welfare benefits under such a Plan; and

WHEREAS, the authority to provide for the investment and general administration of assets to be used to fund such a Plan is vested in the Employer or its designee, who has the authority and shall be subject to the duties with respect to the trust specified in this Declaration of Trust; and

WHEREAS, the Employer wishes to establish this trust to hold assets and income to be used for the exclusive purpose of funding post-retirement welfare benefits under a Plan for its Employees, their Spouses, Dependents and Beneficiaries.

NOW, THEREFORE, the Employer does hereby establish this trust, to be known as the Declaration of Trust of the City of Franklin, Tennessee Integral Part Trust (hereinafter referred to as the “Trust”), and agree that

the following constitute the Declaration of Trust (hereinafter referred to as the “Declaration”):

ARTICLE I DEFINITIONS

1.1 Definitions. For the purposes of this Declaration, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

- (a) “Account” means the investment recordkeeping account established to fund post-retirement welfare benefits on behalf of Employer’s Employees, their Spouses, Dependents and Beneficiaries.
- (b) “Administrator” means the Employer. The Employer may contract for such administrative services as are necessary to implement a Plan.
- (c) “Beneficiary” means the Spouse and Dependents or the person or persons designated by a Participant pursuant to the terms of a Plan, who will receive any benefits payable under a Plan in the event of the Employee’s death. In the case where there is no designated Beneficiary, any amount of contributions, plus accrued earnings thereon, remaining in a Participant Account must, under the terms of a Plan, be returned to the Trust.
- (d) “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- (e) “Dependent” means an individual who is a person described in Code Section 152(a).
- (f) “Employee” means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and receive benefits under a Plan.

- (g) "Investment Fund" means any separate investment option or vehicle selected by the Employer in which all or a portion of the Trust assets may be invested as herein provided. The Trustee shall not be required to select any Investment Fund.
- (h) "Nonforfeitable Interest" means the interest of a Participant or the Participant's Spouse, Dependent or Beneficiary (whichever is applicable) in the percentage of Employer Contributions that has vested pursuant to the vesting schedule in a Plan sponsored by the Employer. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in the Participant's own contributions, if Participant contributions are permitted pursuant to the terms of the Plan.
- (i) "Participant" means an Employee of the Employer who satisfies the requirements for participation in a Plan sponsored by the Employer.
- (j) "Participant Account" means an individual recordkeeping account maintained under a Plan to record the interest of a Participant in the Plan in accordance with Section 7.4.
- (k) "Spouse" means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.
- (l) "Trust" means the trust established by this Declaration.
- (m) "Trustee" means the Employer or its designee.

ARTICLE II ESTABLISHMENT OF TRUST

- 2.1 The Trust is hereby established as of the date set forth above for the exclusive purpose of providing a funding mechanism for post-retirement welfare benefits for the Employer's Employees, their Spouses, Dependents and Beneficiaries.

ARTICLE III CONSTRUCTION

- 3.1 This Trust and its validity, construction and effect shall be governed by the laws of the State of Tennessee.
- 3.2 Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.
- 3.3 If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

ARTICLE IV BENEFITS

- 4.1 Benefits. This Trust may be used to fund benefits on behalf of a Participant, the Participant's Spouse and Dependents pursuant to the terms of a Plan.
- 4.2 Form of Benefits. Assets held in this Trust may be used to reimburse a Participant, his Spouse or Dependents for insurance premiums or other payments expended for permissible benefits described under a Plan. This Trust may reimburse the Employer, or the Administrator for insurance premiums or other payments pursuant to the Plan.

ARTICLE V GENERAL DUTIES

- 5.1 It shall be the duty of the Trustee to hold title to assets held in respect of the Account and Plan or Plans in the Trustee's name, as directed by the Employer or its designees in writing. The Trustee shall not be under any duty to compute the amount of contributions to be paid by the Employer or to take any steps to collect such amounts as may be due to be held in trust under the terms of a Plan. The Trustee shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust, to the extent such functions are performed by the Employer or the Administrator, or both.

- 5.2 It shall be the duty of the Employer, subject to the provisions of a Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions, and to keep accurate books and records, or cause its designee to keep accurate books and records with respect to the Account and a Plan.

ARTICLE VI INVESTMENTS

- 6.1 The Employer may appoint one or more investment managers to manage and control all or part of the assets of the Trust and the Employer shall notify the Trustee in writing of any such appointment.
- 6.2 The Trustee shall not have any discretion or authority with regard to the investment of the Trust and shall act solely as a directed Trustee of the assets of which it holds title. To the extent directed by the Employer (or Participants, their Spouses, Dependents or Beneficiaries, to the extent provided herein), the Trustee is authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a nondiscretionary manner:
- (a) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;
 - (b) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties and to pay such agents and legal counsel a reasonable fee. The Trustee shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;
 - (c) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and
 - (d) At the direction of the Employer (or Participants, their Spouses, Dependents or Beneficiaries or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated, including but not limited to, time deposits (including time deposits in the Trustee or its affiliates, or any successor thereto, if the deposits bear a reasonable rate of interest), shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds (including funds for which the Trustee or its affiliates serve as investment advisor, custodian or in a similar or related capacity), or in units of any other common, collective or commingled trust fund.
- 6.3 Notwithstanding anything to the contrary herein, the assets of the Account shall be held by the Trustee as title holder only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustee. The Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustee be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustee's negligence or intentional misconduct. The Trustee may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustee, in its sole and absolute discretion, deems such direction illegal.
- 6.4 The Employer hereby indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustee in accordance with the directions of the Employer or its agents and subagents hereunder, or (ii) any disbursements of any part of the Trust made by the Trustee in accordance with the directions of the Employer, or (iii) any action taken by or omitted in good faith by the Trustee with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustee under the foregoing indemnification if the Trustee fails negligently, intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.

- 6.5 Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustee harmless against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.
- 6.6 The Trustee shall and hereby does indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustee's failure to follow the directions of the Employer, the Administrator, the investment manager, or agents thereof, except as permitted by the last sentence of Section 6.3 above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager or agents thereof; and (c) the Trustee's negligence, willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

ARTICLE VII CONTRIBUTIONS

- 7.1 ***Employer Contributions.*** The Employer shall contribute to the Trust such amounts as specified in a Plan or by resolution.
- 7.2 ***Participant Contributions.*** If specified in a Plan, each Participant may make voluntary after-tax contributions. Under no circumstances shall Participant Contributions exceed an insubstantial amount. These contributions shall be collected by the Employer and remitted to the Trust for deposit at such time or times as required under the terms of the Plan.
- 7.3 ***Accrued Leave.*** Contributions up to an amount equal to the value of accrued sick leave, vacation leave, or other type of accrued leave, as permitted under a Plan. The Employer's Plan must provide a formula for determining the value of the Participant's contribution of accrued leave. The Employer's Plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.
- 7.4 ***Accounts.*** Employer contributions, and if provided under the terms of a Plan, Participant contributions and contributions of accrued leave, and all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into one or more Accounts in the name of the Employer for the exclusive purpose of funding benefits on behalf of Participants, their Spouses, Dependents and Beneficiaries under a Plan. The assets in each Account may be invested in Investment Funds as directed by the Employer from among the Investment Funds selected by the Employer.

To the extent provided for under a Plan, amounts deposited in the Account(s) may be allocated to individual Participant Accounts for the exclusive benefit of each Participant, his Spouse, Dependents and Beneficiaries. If permitted under the terms of the Plan, the assets in each Participant Account may be invested in Investment Funds as directed by the Participant (or after the death of the Participant, his Spouse, Dependents and Beneficiaries) from among the Investment Funds selected by the Employer.

- 7.5 ***Receipt of Contributions.*** The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.
- 7.6 No amount in any Account or Participant Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustee, any Participant, his Spouse, Dependent, or Beneficiaries.
- 7.7 Upon the satisfaction of all liabilities under a Plan to provide benefits to Employees, their Spouses, Dependents or Beneficiaries, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts or Participant Accounts shall be returned to the Employer.

**ARTICLE VIII
MULTIPLE PLANS**

- 8.1 If the Employer hereafter adopts one or more other Plans and designates the Trust hereby created as part of such other Plan, the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer shall, subject to the terms of this Declaration, accept and hold hereunder contributions to such other Plans. In that event (a) the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, may commingle for investment purposes the contributions received under such Plan or Plans with the contributions previously received by the Trust, but the books and records of the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, shall at all times show the portion of the Trust Fund allocable to each Plan; (b) the term "Plan" as used herein shall be deemed to refer separately to each other Plan; and (c) the term "Employer" as used herein shall be deemed to refer to the person or group of persons which have been designated by the terms of such other Plans as having the authority to control and manage the operation and administration of such other Plan.

**ARTICLE IX
DISBURSEMENTS AND EXPENSES**

- 9.1 The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of a Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan (subject to Section 7.7), which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive purpose of funding post-retirement welfare benefits for Employees, their Spouses, Dependents and Beneficiaries pursuant to the provisions of a Plan.
- 9.2 All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts or Participant Accounts of Participants to whom or to whose Spouse, Dependents, or Beneficiaries such payments are to be made, and no person shall be entitled to look to any other source for such payments.
- 9.3 The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including, without limitation, reasonable fees of accountants and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

**ARTICLE X
ACCOUNTING**

- 10.1 The Trustee shall not be required to keep accounts of the investments, receipts, disbursements, and other transactions of the Trust, except as necessary to perform its title-holding function hereunder. All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.
- 10.2 As promptly as possible following the close of each year, the Trustee shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustee by the Employer or its designee.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

- 11.1 Neither the Trustee nor any affiliate thereof shall be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.
- 11.2 No person transferring title or receiving a transfer of title from the Trustee shall be obligated to look to the propriety of the acts of the Trustee in connection therewith.
- 11.3 The Employer may engage a Trustee as its agent in the performance of any duties required of the Employer under a Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustee under this Declaration.
- 11.4 The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustee relating to this Declaration and the Trustees' performance hereunder.

**ARTICLE XII
AMENDMENT AND TERMINATION**

- 12.1 The Employer reserves the right to alter, amend, or (subject to Section 9.1) terminate this Declaration at any time for any reason without the consent of the Trustee or any other person, provided that no amendment affecting the rights, duties, or responsibilities of the Trustee shall be adopted without the execution of the Trustee to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustee's execution, or on delivery of the amendment to the Trustee, if the Trustee's execution is not required.
- 12.2 Upon termination of this Declaration and upon the satisfaction of all liabilities under a Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts shall be returned to the Employer.

**ARTICLE XIII
SUCCESSOR TRUSTEES**

- 13.1 The Employer reserves the right to discharge the Trustee for any or no reason, at any time by giving ninety (90) days' advance written notice.
- 13.2 The Trustee reserves the right to resign at any time by giving ninety (90) days' advance written notice to the Employer.
- 13.3 In the event of discharge or resignation of the Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration, and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

**ARTICLE XIV
LIMITED EFFECT OF TRUST**

- 14.1 Neither the establishment of the Trust or any modification thereof, the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person any legal or equitable right against the Trustee, the Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in a Plan or in this Declaration.

**ARTICLE XV
PROTECTIVE CLAUSE**

- 15.1 Neither the Administrator, the Employer, nor the Trustee shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with a Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

IN WITNESS WHEREOF, the Employer/Trustee has executed this Declaration by its duly authorized officers, as of the date first hereof above mentioned.

CITY OF FRANKLIN, TENNESSEE/TRUSTEE

By: _____
Dr. Ken Moore
Mayor

Attest:

By: _____
Eric S. Stuckey
City Administrator



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