



**MARCHESE FORD OF MECHANICVILLE,  
INC.**

**SECTION 125 PREMIUM ONLY PLAN  
EFFECTIVE PLAN YEAR JANUARY 01,  
2021**

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**WHEREAS**, Marchese Ford of Mechanicville, Inc. (the "Employer") sponsors one or more benefit plans that provide "qualified benefits" within the mean of Section 125 of the Internal Revenue Code of 1986; and

**WHEREAS**, effective January 01, 2021 the Employer desires to adopt a cafeteria plan to allow its employees to pay for "qualified benefits" on a pre-tax basis.

**NOW, THEREFORE**, effective January 01, 2021 the Employer hereby adopts the Client Section 125 Premium Only Plan (the "Plan") to read as follows:

## **Article 1. Introduction.**

- 1.1 **Purpose of Plan** The Employer adopts the Plan. The purpose of this Plan is to provide Participants with a choice between cash compensation and Optional Benefit Coverages.
- 1.2 **Cafeteria Plan Status** This Plan is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with the requirements of Section 125. The Administrator is authorized to take any and all actions which it deems to be appropriate to maintain the Plan in compliance with the provisions of Section 125 of the Code as a "cafeteria plan" including modification or revocation of elections hereunder.

## **Article 2. Definitions.**

- 2.1 **Administrator** means the Employer or such other person or committee as may be appointed from time to time by the Employer to supervise the administration of the Plan. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the plan. In the event an Administrator has not been appointed, or resigns from an appointment, the Employer shall be deemed to be the Administrator.
- 2.2 **Affiliated Employer** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o). A list of affiliated employers can be found in the Adoption Agreement.
- 2.3 **Benefit Coverage Period** means the period during which a Participant is eligible under any Optional Benefit Coverage.
- 2.4 **Code** means Section 125 of the Internal Revenue Code of 1986, as amended or replaced from time to time. Reference to any section or subsection of the Code includes reference to any regulations there under and any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or

subsection.

- 2.5 **Coverage Period** means the Plan Year.
- 2.6 **Dependent** means any individual who is so defined under an Insurance Contract or who is (i) a Qualifying Child (within the meaning of Code Section 152(c), subject to the exceptions of Code Section 152(b)) or Participant's child (within the meaning of Code Section 152(f)(1)) who has not attained age 27 as of the end of the taxable year, or (ii) a Qualifying Relative who qualifies as a dependent under an Insurance Contract or under (within the meaning of Code Section 152(d), subject to the exceptions of Code Section 152(b)) (as modified by Code Section 105(b)), as applicable. Certain provisions of "Michelle's Law," in which the requirement that a Dependent child have a full-time status in order to extend coverage past a stated age, will generally not apply if the child's failure to maintain full-time status is due to a medically necessary leave of absence or other change in enrollment (such as a reduction of hours). Notwithstanding anything in the Plan to the contrary, the Plan will comply with Michelle's Law.
- 2.7 **Effective Date** means January 01, 2021.
- 2.8 **Eligible Employee** means an Employee who meets the eligibility requirements described in Section 3.1. An individual who does not meet the eligibility requirements in Section 3.1 will not be eligible to participate in the Plan under any circumstances.
- 2.9 **Election Period** means the period immediately preceding the beginning of each Plan Year established by the Administrator for the election of Benefits and Salary Redirections, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to the Section titled: "Initial Elections".
- 2.10 **Employee** means any common law employee of the Employer. Employee will not include an independent contractor, consultants, leased employee, 2% shareholder of an S-Corporation, a partner in a partnership or an owner or member of a limited liability company that elects partnership status on its tax return, or an individual who is self-employed (including partner) in accordance with Code Section 401(c). Any such determination of an individual's status as an Employee will be made solely by the Employer without regard to whether any determination by an agency, governmental or otherwise, or court concludes that such classification or characterization was in error.
- 2.11 **Employer** means the Government Entity or any such entity specified in Item 1 of the Adoption Agreement, and any Affiliated Employer (as defined in the Article titled: "Definitions"), that adopts this Plan; and any successor, that maintain this Plan; and any predecessor that has maintained this Plan.
- 2.12 **Highly Compensated Employee** means, for the purposes of determining discrimination, an Employee so described in Code Section 125 and the Treasury Regulations thereunder.
- 2.13 **Insurance Contract** means any contract issued by an Insurer underwriting a Benefit, or any self-funded arrangement providing any Benefit offered for health and welfare coverage to Eligible Employees of the Employer.
- 2.14 **Insurance Premium Payment Plan** means the plan of benefits contained in the Section titled: "Benefit

Options" of this Plan, that provides for the payment of Premium Expenses.

- 2.15 **Insurer** means any insurance company that underwrites a Benefit or any self-funded arrangement under this Plan.
- 2.16 **Key Employee** means any person who is a key employee, as defined in Code Section 416(i)(1), with respect to the Employer.
- 2.17 **Optional Benefit Coverages** means the coverage option(s) available to a Participant as set forth in the eligible benefit plans sponsored by Marchese Ford of Mechanicville, Inc. .
- 2.18 **Participant** means any individual who participates in the Plan in accordance with Article 3.
- 2.19 **Plan** means this cafeteria plan named the Marchese Ford of Mechanicville, Inc. Section 125 Premium Only Plan.
- 2.20 **Plan Year** means the twelve (12) month period commencing January 01 and ending December 31 or means the 12-month period beginning and ending on the dates specified in the Adoption Agreement. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.
- 2.21 **Salary Redirection** means the contributions made by the Employer on behalf of Participants in accordance with the Section titled: "Salary Redirection". These contributions shall be allocated to the funds or accounts established for cost of applicable Benefits provided under the Plan pursuant to the Participants' elections made under the Article titled: "Participant Elections".
- 2.22 **Spouse** means "spouse" as defined in an Insurance Contract, then, for purposes of coverage under that Insurance Contract only, "spouse" shall have the meaning stated in the Insurance Contract. In all other cases, "spouse" shall have the meaning stated under applicable federal or state law.
- 2.23 **Waiting Period** means the period during which an otherwise Eligible Employee is ineligible to Participate in the Plan because he or she has not met the eligibility requirements in Article 3.

All other defined terms in this Plan shall have the meanings specified in the various Articles of the Plan in which they appear.

### **Article 3. Participation.**

- 3.1 **Eligibility** As to each Benefit provided hereunder, any Eligible Employee shall be eligible to participate as of the date he or she satisfies the eligibility conditions set forth in the policy or plan providing such Benefit (the "Eligibility Requirements"), the provisions of which are specifically incorporated herein by reference.
- 3.2 **Effective Date of Participation** (a) An Eligible Employee shall become a Participant effective as of the later of the date on which he or she satisfies the Eligibility Requirements of the Plan or the Effective Date of this

Plan. (b) If an Eligible Employee terminates employment after commencing participation in the Plan, except as otherwise provided in the applicable policy or plan providing a Benefit, and such terminated Eligible Employee is rehired within 30 days or less of the date of termination of employment, such rehired Eligible Employee shall not be considered a newly eligible employee and will be reinstated with the same election(s) such individual had before termination. If a terminated Eligible Employee is rehired more than 30 days following termination of employment and is otherwise eligible to participate in the Plan, the individual shall be treated as a newly Eligible Employee and may make a new election under procedures otherwise set forth within this section or the Section titled: "Initial Elections" below as applicable.

- 3.3 **Application to Participate** An Employee who is eligible to participate in this Plan may, during the applicable Election Period, complete an Election to Participate form that the Administrator shall furnish to the Employee. The Election to Participate form is an irrevocable election made by the Employee to redirect and reduce taxable compensation to cover the Employee's applicable cost of Benefits elected, which shall be applicable until the end of the current Plan Year, unless the Participant is entitled to change his or her Benefit elections pursuant to the Section titled: "Change of Elections". Such election shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to the Section titled: "Effective Date of Participation".
- 3.4 **Cessation of Participation** A Participant will cease to be a Participant as of the earlier of (a) the date on which the Plan terminates, (b) the end of the Participant's Benefit Coverage Period, or (c) the date the Participant ceases to be an Eligible Employee, subject to the provisions of the Section titled: "Termination of Employment", or his or her death.
- 3.5 **Termination of Employment** If a Participant terminates employment with the Employer for any reason other than death, his or her participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid or any other ability to continue participation in a Health Savings Account pursuant to Code Section 223. When an Employee ceases to be a Participant, the cafeteria plan must pay the Employee any amount the Employee previously paid for coverage or Benefits to the extent the previously paid amount relates to the period from the date the Employee ceases to be a Participant through the end of that Plan Year.
- 3.6 **Reinstatement of Former Participant** A former Participant who meets the requirements for an Eligible Employee will become a Participant again if and when he or she becomes an Eligible Employee, subject to the completion of any applicable Waiting Period and upon proper enrollment as prescribed by the Administrator.

## **Article 4. Contributions to the Plan.**

- 4.1 **Salary Redirection** Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premium Expenses. The salary administration program of the Employer shall allow each Participant to agree to reduce his or her pay during a Plan Year by an amount determined necessary to purchase the elected Benefit and to pay the Participant's Premium Expenses. The amount of such Salary Redirection shall be specified by the Plan Sponsor and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirections shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the

last day of the Plan Year. These contributions shall be allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made in accordance with the Article titled: "Participant Elections". Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to the Section titled: "Initial Elections") and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election after the Plan Year has commenced and make a new Election to Participate (or decline participation on the Election to Not Participate form) with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under the Article titled: "Participant Elections" of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Election forms are deemed to be part of this Plan and incorporated herein by reference.

- 4.2 **Application of Contributions** As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirections to provide the Benefits elected by the affected Participants. Any contributions made or withheld from an Employee's compensation, pursuant to the Employee's signed Election to Participate for the Health Savings Account shall be credited to such account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.
- 4.3 **Periodic Contributions** Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. In the event Salary Redirections are not made on a pro rata basis, upon termination of participation, a Participant may be entitled to a refund of such Salary Redirections pursuant to the Section titled: "Termination of Employment".

## **Article 5. Optional Benefit Coverages.**

- 5.1 **Coverage Options** Each Participant may choose under this Plan to receive his or her full compensation in cash or to have all or a portion of such compensation applied by the Employer toward the cost of the Optional Benefit Coverages elected by the Participant. The Employer may select suitable health and hospitalization Insurance Contracts for use in providing health Benefits, which policies will provide uniform benefits for all Participants electing this Benefit.

5.2

**Description of Optional Benefit Coverages** While the election of Optional Benefit Coverages may be made under this Plan, the coverages and benefits elected by Participants will be provided not by this Plan but by the applicable benefit plans governing the Optional Benefit Coverages. The types and amounts of benefits available under each benefit plan, the requirements for participating in such benefit plan, and the other terms and conditions of coverage and benefits under such benefit plan are as set forth from time to time in such benefit plan's plan document. See component plan documents for benefit coverage details. If offered by employer and elected by participant, the following group plans are available for pretax salary deduction contributions under this plan:

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|---|--|
| a) Medical Insurance                          | h) Accidental Death & Dismemberment Coverage                                 |
| b) Dental Insurance                           | i) Long-term Disability and Short-term Disability Coverage                   |
| c) Vision Insurance                           | j) Premiums for Individual Coverage Health Reimbursement Arrangement (ICHRA) |
| d) Prescription Drug Coverage                 | k) 401(k) Contributions  |
| e) Health FSA                                 | l) Any other allowable benefits under Section 125                            |
| f) Dependent Care FSA                         |  |
| g) Health Savings Account (HSA) Contributions |  |

### 5.3 **Nondiscrimination Requirements**

- (a) It is the intent of this Plan to provide benefits to a classification of Employees that the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination is prohibited under Code Section 125 or applicable Regulations thereunder.
- (b) If the Administrator deems it necessary, in order, to avoid discrimination or possible taxation to Highly Compensated Employees, Key Employees or a group of employees in whose favor discrimination is prohibited by Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this section. Any act taken by the Administrator under this section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his or her non-taxable benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his or her non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among all insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the Plan surplus.

- 5.4 **Non-Tax Dependent Coverage** a. If (i) Employee Salary Redirections are made to fund Benefits under the Plan, and (ii) the Employer allows a Participant to elect to cover a Non-Tax Dependent through the

Participant's coverage under group Medical, Dental or Vision benefit(s), a Participant who elects to participate in the Salary Redirection program may pay on a pre-tax basis through salary reduction contributions the Participant's portion of the premium cost of coverage under the Employer's Medical, Dental or Vision Benefits, provided that the full fair market value of such Medical, Dental or Vision coverage for any such Non-Tax Dependent shall be includible in the Participant's gross income as a taxable benefit in accordance with applicable federal income tax rules. For purposes of this Plan, the Participant electing coverage for Non-Tax Dependent(s) shall be treated as receiving, at the time that coverage is received, cash compensation equal to the full fair market value of such coverage and then as having purchased the coverage with after-tax employee contributions. b. Notwithstanding the foregoing, no medical care or dependent care expenses incurred by or with respect to a Non-Tax Dependent of a Participant shall be eligible for reimbursement as eligible expenses under the Health Flexible Spending Account or Dependent Care Flexible Spending Account.

- 5.5 **No Financial Responsibility for Optional Benefit Coverages** In no event will the Employer or any of its affiliates or subsidiaries or any of their agents, directors, employees, consultants, insurers or owners have any obligation whatsoever to provide any actual benefits or cost reimbursements under Optional Benefit Coverages as a result of this Plan. The Employer's sole and exclusive obligation under this Plan is to collect from Participants compensation reductions elected hereunder.
- 5.6 **Election of Optional Benefit Coverages in Lieu of Cash** A Participant may elect under this Plan, in accordance with the procedures described in Sections 5.7 through 5.11, to receive one or more Optional Benefit Coverages to the extent available to the Participant under terms of such plans. If a Participant elects an Optional Benefit Coverage for a Coverage Period, the Participant is required to pay the employee portion of the cost of such coverage. Such share will be paid by a reduction in the Participant's regular compensation for the Coverage Period. In the event that the Participant's compensation during any pay period is insufficient in amount to pay the Participant's share of the monthly cost of such Optional Benefit Coverage by compensation reduction, the Employer has no responsibility under this Plan to cover, pay or advance on behalf of the Participant any such shortfall and the Participant must make immediate arrangements with the plan administrator of such Optional Benefit Coverage to pay such shortfall on an after-tax basis.
- 5.7 **Election Procedure** Prior to the commencement of each Coverage Period, the Administrator will provide (or make available) a means of election to each individual who is eligible to become a Participant at the beginning of the applicable Coverage Period, i.e. an "Open Enrollment". Each Participant who desires to elect an Optional Benefit Coverage available for the Coverage Period must specify in his or her election during Open Enrollment. The election will be effective as of the first day of the Coverage Period. The Participant must agree to a reduction in his or her compensation equal to the employee portion of the cost of the Optional Benefit Coverages elected. Each election must be made on or before such date and in such manner as the Administrator specifies. If a Participant fails to complete an election form for this Plan but elects an Optional Benefit Coverage, such Participant will be deemed to have elected to pay such employee portion of the cost of benefits on a pre-tax basis.
- 5.8 **New Participants** Upon becoming a Participant mid-year, the Administrator will provide the means of election described in Section 5.7 to such participant. If the individual desires one or more Optional Benefit Coverages for the balance of the Coverage Period, the individual must specify in his or her election. The Participant shall agree to a reduction in his or her compensation equal to the cost of the Optional Benefit Coverages elected. Each election must be made on or before such date and in such manner as the



Administrator specifies. Compensation reductions and elections will become effective as of the first day of the first Benefit Coverage Period specified by the Administrator following completion of the enrollment and election process.

5.9 **Initial Elections** An Employee who meets the Eligibility Requirements of the Plan on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he or she elects to do so before his or her effective date of participation pursuant to the Section titled: "Effective Date of Participation". or for a newly eligible Employee, no more than 30 days after their date of hire. For any such newly Eligible Employee, if coverage is effective as of the date of hire, such Employee shall be eligible to participate retroactively as of their date of hire. Newly Eligible Employee Election amounts will be collected the first pay period on or after his or her election was received. However, if such Employee does not complete an application to participate and a benefit election form and deliver them to the Administrator before such date, his or her Election Period shall extend 30 calendar days after such date, or for such further period as the Administrator shall determine and apply on a uniform and nondiscriminatory basis. However, any election during the extended 30-day election period pursuant to this Section shall not be effective until the first pay period following the later of such Participant's effective date of participation pursuant to the Section titled: "Effective Date of Participation" or the date of the receipt of the election form by the Administrator, and shall be limited to the Benefit expenses incurred for the balance of the Plan Year for which the election is made. Any failure to elect the Benefits set forth herein shall constitute an Employee's election to not participate in the Plan during that Plan Year until a valid election is otherwise made in the manner set forth herein.

5.10 **Subsequent Annual Elections**

- (a) A Participant will automatically be enrolled in subsequent plan years unless the Participant terminates his or her participation in the Plan by notifying the Administrator in writing during the Election Period that he or she does not want to participate in the Plan for the next Plan Year;
- (b) A Participant may terminate his or her participation in the Plan by notifying the Administrator in writing during the Election Period that he or she does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects to not participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in the Section titled: "Change of Elections".

5.11 **Failure to Make Election**

- (a) A new Participant's failure to make an election under Section 5.7 for this Plan on or before the due date specified by the Administrator for the Coverage Period in which he or she becomes a Participant but elects an Optional Benefit Coverage, such Participant will be deemed to have elected to pay the employee portion of the cost of the Optional Benefit Coverages on a pre-tax basis.
- (b) An existing Participant's failure to make an election under this Plan relating to an Optional Benefit Coverage on or before the due date specified by the Administrator for any subsequent Coverage Period constitutes
  - (1) a re-election of the same coverage, if any, as was in effect just prior to the end of the preceding

Coverage Period (to the extent such Optional Benefit Coverage remains available under the Plan), and

- (2) an agreement to a reduction in the Participant's compensation for the subsequent Coverage Period equal to the cost of such coverage on the same basis (pre-tax or post-tax) as was previously elected.

#### 5.12 Revocation or Change of Election by the Participant During the Coverage Period

- (a) Any election made under the Plan (including an election made through inaction under Section 5.11) will be irrevocable by the Participant during the Coverage Period except as otherwise provided in (b) through (l) below.
- (b) With respect to an Optional Benefit Coverage, a Participant may revoke an election for the balance of the Coverage Period and, if desired, file a new election in writing if, under the facts and circumstances,
  - (1) a Change in Status occurs, and
  - (2) the requested revocation and new election satisfy the consistency requirements in Section 5.13 below.

For this purpose, a Change in Status includes the following events:

- **Legal marital status.** An event that changes a Participant's legal marital status, death of spouse, divorce, or legal separation or annulment.
- **Number of dependents.** An event that changes a Participant's number of dependents (as defined in Treasury Regulation 1.125-4(i)(3)), including birth, death, adoption or placement for adoption.
- **Employment Status.** An event that changes the employment status of the Participant, the Participant's spouse or dependent, including termination or commencement of employment, a strike or lockout, a commencement or return from an unpaid leave of absence, and a change in worksite, as well as any other change in the individual's employment status that results in the individual becoming (or ceasing to be) eligible under the qualified benefit plans of the Employer.
- **Requirements For Unmarried Dependents.** An event that causes a dependent (as defined in Treasury Regulation 1.125-4(i)(3)) to satisfy or cease to satisfy the requirements for coverage under an Optional Benefit Coverage on account of attainment of age, student status, marital status or any similar circumstance.
- **Residence.** A change in the place of residence of the Participant or his or her spouse or dependent.
- **Significant Change in Cost** There is a significant change in the cost of an Optional Benefit Coverage.
- **Coverage Curtailment** Coverage under an Optional Benefit Coverage is significantly curtailed.
- **New or Eliminated Optional Benefit Coverage** A new Optional Benefit Coverage is offered or an Optional Benefit Coverage is eliminated.
- **Change in Coverage under Spouse or Dependent's Plan** There is a change in coverage under the Participant's spouse's plan or Participant's dependent's (as defined in Treasury Regulation Section 1.125-4(i)(3)) plan.
- **Open Enrollment in Spouse or Dependent's Plan** The enrollment period for coverage under the

Participant's spouse's plan or Participant's dependent's (as defined in Treasury Regulation Section 1.125-4(i)(3)) plan occurs while the Participant's elections are in effect.

- **Other Events** Such other events that the Administrator determines will permit the revocation of an election (and, if applicable, the filing of a new election) during a Coverage Period under regulations and rulings of the Internal Revenue Service

- (c) In the case of coverage under a group health plan, a Participant may revoke an election for the balance of the Coverage Period and file a new election that corresponds with the special enrollment rights provided in Code Section 9801(f) pertaining to HIPAA special enrollment rights.
- (d) In the case of a judgment, decree or order ("order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order) that requires health coverage for a Participant's child who is a dependent (as defined in Treasury Regulation Section 1.125-4(i)(3)) of the Participant, a Participant may change his or her election:
  - (1) to provide coverage for the child under a health coverage required by the order, or
  - (2) to cancel a health coverage identified required by the order, if the order requires the Participant's spouse or former spouse or another individual to provide coverage for the child and that coverage is, in fact, provided.
- (e) In the case of an accident or health plan Optional Benefit Coverage, a Participant may revoke an election in writing for the balance of the Coverage Period and file a new election in writing in order to cancel or reduce such Optional Benefit Coverage for the Participant and/or for one or more covered dependents (as defined in Treasury Regulation Section 1.125-4(i)(3)) of the Participant to the extent that such individual becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). In addition, if the Participant or any eligible dependent (as defined in Treasury Regulation Section 1.125-4(i)(3)) who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may file a new election in writing for the balance of the Coverage Period to commence or increase an accident or health plan Optional Benefit Coverage.
- (f) A Participant taking leave under the Family Medical Leave Act, if applicable, may revoke existing group health plan coverage and make such other election for the remaining portion of the Coverage Period as may be provided for under the Family Medical Leave Act.
- (g) The Administrator may automatically change a Participant's contribution towards premiums to obtain Optional Benefit Coverages to reflect increase or decrease in cost.
- (h) Any application for a revocation or new election under this Section 5.12 must be made within the time specified by the Administrator following the date of the actual event and will be effective at such time as the Administrator prescribes, unless otherwise required by law.
- (i) A Participant may revoke and or change an election relating to contributions to any health savings account

on a prospective basis at least monthly or, if permitted by the Administrator, more frequently than monthly.

- (j) A Participant may revoke an election for group health Optional Benefit Coverage prospectively for the remainder of the Coverage Period if the Participant has been in an employment status under which the Participant was reasonably expected to average at least 30 hours of service per week and there is a change in such status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change (even if such reduction in hours does not result in the Participant ceasing to be eligible under the group health Optional Benefit Coverage), the revocation corresponds to the intended enrollment of the Participant (and any related individuals) in another plan that provides minimum essential coverage, and such new coverage is effective no later than the first day of the second month following the month that includes the date the group health Optional Benefit Coverage is revoked.
- (k) A Participant may revoke an election for group health Optional Benefit Coverage prospectively for the remainder of the Coverage Period if the Participant is eligible for a special enrollment period to enroll in a qualified health plan through a marketplace or the Participant seeks to enroll in a qualified health plan through a marketplace during the marketplace's annual open enrollment period and the revocation of the election under the group health Optional Benefit Coverage corresponds to the intended enrollment of the Participant (and any related individuals) in a qualified health plan through a marketplace for coverage that is effective beginning no later than the day immediately following the last day of the revoked group health Optional Benefit Coverage.
- (l) Participants may make a prospective election change to add group health coverage for the Participant or the Participant's spouse or dependent if the Participant or the Participant's spouse or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program (SCHIP") under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code Section 7701 (a) (40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable benefit package option(s).  
Further, if the Participant or the Participant's spouse or dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may elect to prospectively commence or increase the accident or health coverage of the individual who loses Medicare or Medicaid eligibility.

5.13 **Consistency Rules** A Participant's requested revocation and new election will be consistent with a change in status if the election change is on account of and corresponds with a change in status that affects the eligibility for coverage under a plan of the Employer or under a plan maintained by the employer of the Participant's spouse or dependent (as defined in Treasury Regulation Section 1.125-4(i)(3)). A change in status that affects eligibility under the Employer's plan includes a change in status that results in the increase or decrease in the number of a Participant's family members or dependents (as defined in Treasury Regulation Section 1.125-4(i)(3)) who may benefit from coverage under the plan.

5.14 **Changes by Administrator** If the Administrator determines, before or during any Coverage Period, that the Plan may fail to satisfy for such year any nondiscrimination or other requirement imposed by the Code or any limitation on benefits provided to Key Employees, the Administrator may take such action as the Administrator deems appropriate to assure compliance with such requirement or limitation. Such action may

include, without limitation, a modification of elections by highly compensated Employees (as defined by the Code for purposes of the nondiscrimination requirement in question) or Key Employees without the consent of such Employees.

- 5.15 **Adjustment of Compensation Reductions** If the cost of an Optional Benefit Coverage provided to a Participant increases or decreases during a Coverage Period, including any increase or decrease due to a change in the Participant's salary, a corresponding change will be made in the compensation reductions of the Participant in an amount reflecting such increase or decrease, as determined by the Administrator to the extent the Administrator is advised of such change by the providers of such Optional Benefit Coverages which Participants may have elected.
- 5.16 **Automatic Termination of Election** Any election made under this Plan (including an election made through inaction under Section 5.11) will automatically terminate at the close of the Benefit Coverage Period on which the Participant ceases to be a Participant in the Plan, although coverage or benefits may continue if and to the extent provided by such coverage. In the event such a former Participant again becomes a Participant within 30 days of ceasing to be a Participant, the elections previously in effect for the Participant will be automatically reinstated for the balance of the Coverage Period, except as otherwise elected by the Participant in accordance with Section 5.12.
- 5.17 **Cessation of Required Contributions** Nothing in this Plan will prevent the cessation of coverage or benefits under any Optional Benefit Coverage, in accordance with the terms of such coverage, on account of a Participant's failure to pay the Participant's share of the cost of such coverage or benefits, through compensation reduction or otherwise.
- 5.18 **Elections Via Other Media** The Administrator may, in its discretion, use any telephonic, electronic or other alternative media form that it deems necessary or appropriate for the election of Optional Benefit Coverages under the Plan.
- 5.19 **Coordination with FMLA** Notwithstanding any other provision of this Plan, the Administrator may (a) permit a Participant to revoke (and subsequently reinstate) his or her election of one or more Optional Benefit Coverages under the Plan, and (b) adjust a Participant's compensation reduction as a result of a revocation or reinstatement to the extent the Administrator deems necessary or appropriate to assure the Plan's compliance with the provisions of the Family and Medical Leave Act of 1993 and any regulations pertaining thereto, if applicable.
- 5.20 **Special Rule for Certain Covered Individuals** Notwithstanding anything in this Plan to the contrary, the cost of providing Optional Benefit Coverage to an individual as a Dependent of the Participant, where the covered individual is not a dependent of the Participant for purposes of Code Section 152 (as modified by Code Section 105(b) and IRS Notice 2004-79) will be paid by the Participant with after-tax contributions. Such costs will either be deducted by the Employer from the after-tax compensation of the Participant or, to the extent the cost of such Optional Benefit Coverage is paid from compensation reduction or any other form of Employer contribution, such contribution will be treated as taxable compensation received by the Participant and contributed by the Participant on an after-tax basis.

## **Article 6. Administration of Plan.**

- 6.1 **Administrator** The administration of the Plan will be under the supervision of the Administrator. It is a principal duty of the Administrator to see that the Plan is carried out, in accordance with its terms without discrimination among participants. The Administrator has full discretionary power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Administrator's discretionary powers include, but are not limited to, the following discretionary authority, in addition to all other powers provided by this Plan:
- (a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;
  - (b) To interpret the Plan;
  - (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
  - (d) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
  - (e) To delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, any such delegation or designation to be in writing.
  - (f) To reject elections or to limit contributions or Benefits for certain Highly Compensated Participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
  - (g) To provide Employees with a reasonable notification of their benefits available under the Plan; and
  - (h) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan; g. To keep and communicate procedures to determine whether a medical child support order is qualified under ERISA Section 609.
- 6.2 **Examination of Records** The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their respective interests under the Plan for examination at reasonable times during normal business hours.
- 6.3 **Payment of Expenses** Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of Highly Compensated Employees.
- 6.4 **Application of Benefit Plan Surplus** Any forfeited amounts credited to the Benefit Plan surplus by virtue of the failure of a Participant to incur a qualified expense may, but need not be, separately accounted for after the close of the Plan Year in which such forfeitures arose. In no event shall such amounts be carried over to

reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the Benefit Plan surplus shall first be used to defray any administrative costs and experience losses and thereafter be retained by the Employer.

- 6.5 **Insurance Control Clause** In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of a particular Insurer or other benefit program that is self-insured whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the Benefits Participants are entitled to and the circumstances under which insurance terminates.
- 6.6 **Indemnification of Administrator** The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

Any determination by the Administrator, or its authorized delegate, is final and conclusive on all persons. Notwithstanding the foregoing, any claim which arises under any Optional Benefit Coverage will not be subject to review under this Plan, and the Administrator's authority under this Section 6.1 does not extend to any matter as to which another administrator or entity is empowered to make determinations under such Optional Benefit Coverage.

## **Article 7. Amendment and Termination of Plan.**

- 7.1 **Amendment of Plan** The power to amend the Plan, in whole or in part, is vested in the Employer, which has the sole discretion to make all amendments to the Plan or any of its provisions. Such amendment will be effected by a written instrument signed by a duly authorized representative of the Employer, or his or her authorized delegate, and delivered to the Administrator.
- 7.2 **Termination of Plan** The Employer has established the Plan with the bona fide intention and expectation that it will be continued indefinitely, but the Employer will have no obligation whatsoever to maintain the Plan for any given length of time and may discontinue or terminate the Plan at any time, without liability, by a written instrument signed by a duly authorized representative of the Employer, or his or her authorized delegate, and delivered to the Administrator

## **Article 8. Miscellaneous Provisions.**

- 8.1 **Plan Interpretation** All provisions of this Plan shall be governed and interpreted by the Employer, or it's

delegated Administrator, as applicable, in its full and complete discretion and shall be otherwise applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in the Section titled: "Severability".

- 8.2 **Written Document** This Plan document, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Regulations thereunder relating to Cafeteria Plans.
- 8.3 **Information to be Furnished** Participants will provide the Employer and the Administrator with such information and evidence, and will sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.
- 8.4 **Limitation of Rights** Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the Employer or the Administrator.
- 8.5 **Employment Not Guaranteed; No Vested Rights** Nothing contained in the Plan nor any action taken hereunder will be construed as a contract of employment or as giving any Employee any right to be retained in the employ of the Employer. Nothing in this Plan is to be interpreted or construed in creating any vested rights in any benefits, coverage entitlements or compensations of any type.
- 8.6 **Unsecured General Creditor** Participants, their beneficiaries, and all others have no rights or interests in any property of the Employer or its affiliates. Assets of the Employer will not be held under any trust for the benefit of Participants, their beneficiaries, or others or as collateral security for fulfilling of the obligations of the Employer under this Plan. All Employer assets will be unpledged and unrestricted assets of the Employer. Each Participant or beneficiary will be treated as a general unsecured creditor of the Employer and has no greater right to any assets other than an unsecured creditor.
- 8.7 **No Liability for Action or Omission** Neither the Employer nor any director, officer or employee of the Employer will be liable in any manner to any Participant, beneficiary or any other person claiming through them for any benefit or action taken or omitted in connection with interpretation and administration of this Plan.
- If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.
- 8.8 **Liability for Benefit Payments and Successorship** The Plan will not be automatically terminated by the Employer's acquisition by or merger into any other entity, but the Plan will be continued after such acquisition or merger if the successor employer elects and agrees to continue the Plan. All rights to amend, modify, suspend or terminate the Plan will be transferred to the successor as of the effective date of the merger or acquisition. This Plan and all of its terms will be binding upon such successors and the Employer's assigns.



- 8.9 **Governing Law and Venue for Disputes** This Plan shall be construed in accordance with and governed by the laws of the State of New York to the extent not superseded by federal law, without reference to New York's conflict of laws provisions. Any action, dispute or challenge regarding the interpretation or enforcement of this Agreement must be brought and litigated in the United States District Court for New York, if it otherwise has subject matter jurisdiction, or otherwise in the Circuit Court for State of New York, Third Judicial District.
- 8.10 **Correction of Defects** The Employer and Administrator may correct any defect, supply any omission, or reconcile any inconsistency in the Plan or any payment as it deems appropriate. If a Participant is overpaid or receives amounts, or has amounts paid on its or their behalf, which the Employer determines have been incorrectly paid to the Participant, the Participant must return such payments to the Employer upon demand. And, the Employer reserves the right to collect from, and offset, against the Participant's future wages from the Employer any amounts which the Employer determines have been overpaid or mistakenly paid to or for the benefit of any Participant.
- 8.11 **Severability of Provisions** If any provision of this Plan is held invalid or unenforceable, such invalidity or unenforceability will not affect any other provisions hereof, and this Plan will be construed and enforced as if such provisions had not been included.
- 8.12 **Acceptance of Terms** As a condition to receipt of benefits under the Plan and being permitted to participate under it, each Participant agrees to accept the terms of this Plan.
- 8.13 **No Fiduciary Relationship** Nothing contained in this Plan, and no action taken pursuant to its provisions by the Employer or the Participants will create, or be construed to create a fiduciary relationship between the Employer, Administrator or any Participant or beneficiary.
- 8.14 **Employer's Protective Clauses**
- (a) Upon the failure of the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), a Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.
  - (b) The Employer's liability to a Participant shall only extend to and shall be limited to any payment actually received by the Employer from the Insurer. In the event that the full insurance Benefit contemplated is not promptly received by the Employer within a reasonable time after submission of a claim, then the Employer shall notify the Participant of such facts and the Employer shall no longer have any legal obligation whatsoever (except to execute any document called for by a settlement reached by the Participant). The Participant shall be free to settle, compromise or refuse the claim as the Participant, in his or her sole discretion, shall see fit.
  - (c) The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

- 8.15 **No Guarantee of Tax Consequences** Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.
- 8.16 **Funding** Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but shall instead be considered general assets of the Employer until the Premium Expense required under the Plan has been paid. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.
- 8.17 **Continuation of Coverage** Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B.
- 8.18 **Health Insurance Portability and Accountability Act** Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.
- 8.19 **Uniformed Services Employment and Reemployment Rights Act** Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA and the regulations thereunder, as well as any other applicable Regulations specific to the rights and obligations of Employers with Employees on active military leave.
- 8.20 **Genetic Information Nondiscrimination Act** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated in accordance with GINA and regulations thereunder.

**IN WITNESS WHEREOF**, Marchese Ford of Mechanicville, Inc. has caused this Plan to be executed in its name and on behalf of its officers there unto duly authorized this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Marchese Ford of Mechanicville, Inc.**

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

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

*This document has legal and tax consequences. The Employer acknowledges that it is advisable to have this document reviewed by legal counsel prior to adoption of this document.*  
*The Employer acknowledges that My Compliance Solution, LLC, its affiliates, agents, employees and counsel have not been retained to provide any such review.*

**UNANIMOUS WRITTEN CONSENT**  
**OF THE BOARD OF DIRECTORS OR OFFICERS OVERSEEING THE COMPANY OF**  
**Marchese Ford of Mechanicville, Inc.**

**THE UNDERSIGNED**, consisting of all members of the Board of Directors (the "Board") of Marchese Ford of Mechanicville, Inc., a New York corporation (the "Company") on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ do hereby waive any and all requirements for the holding of a meeting of the Board and in lieu of holding such meeting, do hereby take the following actions and adopt the following resolutions by signing this unanimous written consent:

**WHEREAS**, the Board desires to adopt the Marchese Ford of Mechanicville, Inc. Section 125 Premium Only Plan (the "Plan") effective January 01, 2021.

**NOW THEREFORE BE IT RESOLVED**, that the Plan is adopted and approved effective January 01, 2021; and

**FURTHER RESOLVED**, that the President, Treasurer or Secretary is authorized and directed to take such actions as are appropriate and necessary to adopt the Plan; and

**FURTHER RESOLVED**, that the Secretary of the Corporation be and hereby is directed to file this Consent with the permanent records of the Corporation as the duly authorized act of the Board.

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