SUMMARY PLAN DESCRIPTION OF THE BENCHMARK 401(K) PLAN

(Effective as of January 1, 2017)

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SUMMARY PLAN DESCRIPTION OF THE BENCHMARK 401(K) PLAN

AN INTRODUCTION FOR PARTICIPANTS

Benchmark Management Company, Inc. originally adopted "The Benchmark Management Company, Inc. 401(k) Plan" effective as of January 1, 1986. This Plan document was amended, effective as of July 13, 2016, to change the name of the Plan Sponsor to BGGMC, LLC (the "Plan Sponsor") and the name of the Plan to the Benchmark 401(k) Plan (the "Plan").

The Plan is sponsored for the exclusive benefit of the eligible employees of the Plan Sponsor and its affiliates which adopt the Plan (collectively and individually, the Plan Sponsor and each adopting employer will be referred to as the "**Employer**").

Your job performance is very important for our business. We want to encourage and reward you for your contributions to our shared success. The Plan is designed to help accomplish your goals by assisting you in providing for your retirement.

The Plan is a lengthy, complex document which sets forth the terms and provisions of this retirement program. In order to find out how the program affects you and your family, you may read the actual Plan document (you may obtain a copy by contacting the Human Resources Department at (281) 367-5757 during regular business hours). For your convenience, we have condensed the Plan into a series of questions and answers which summarize and explain the principal features of the Plan. We urge you to carefully review this Summary. If you have additional questions, please contact the Human Resources office.

Whenever the context so requires, words of the masculine gender will include the feminine gender. Also, "you" as used in this Summary refers to a "Member" of the Plan as defined in the definition section of this Summary.

This Summary is not meant to interpret, extend or change the Plan in any way. In case of any conflict, express or implied, between this Summary and the terms and provisions of the actual Plan document, the Plan will govern and control.

GENERAL INFORMATION

Plan Name:	Benchmark 401(k) Plan	
Plan Sponsor and Address:	BGGMC, LLC	
	4 Waterway Square, Suite 300	
	The Woodlands TX 77380-2692	
Employer Identification Number:	76-0090369	
Plan Number:	001	
Plan Administrator:	BGGMC, LLC	
Plan Administrator Address and	BGGMC, LLC	
Telephone Number:	4 Waterway Square, Suite 300	
	The Woodlands TX 77380-2692	
	(281) 367-5757	
Type of Plan:	The Plan is a defined contribution, profit sharing plan	
	with a 401(k) feature. The Plan is also intended to satisfy	
	Section 404(c) of ERISA.	
Type of Administration:	Administrative Committee appointed by the Board of	
	Directors of the Plan Sponsor; however, certain	
	administrative functions are performed by a third-party	
	record keeper.	
Funding Medium:	Trust Fund	
Trustee and Address:	Prudential Bank & Trust FSB	
	280 Trumbull Street H16T	
	Hartford, CT 06103	
Agent for Services of Legal	The Plan Sponsor, c/o Chief Financial Officer. Service	
Process:	of legal process may also be made on the Trustee.	
Adopting Employers:	In addition to the Plan Sponsor, the Plan has been	
	adopted by certain affiliated Employers. You may	
	request a list of affiliated Employers that have adopted	
	the Plan from the Plan Administrator.	

<u>Note</u>: The Pension Benefit Guaranty Corporation established by the U.S. Government does not insure benefits payable under a defined contribution plan such as the Plan.

1. What does this Plan do for me?

Terms with initial capital letters are defined in Question 2.

The Plan is the type of retirement plan which is commonly referred to as a "401(k) plan." It is primarily designed to assist you in accumulating funds to supplement your retirement income. Additional benefits of participation in the Plan include, among others, the accumulation of funds for the support of your Beneficiary in the event of your death prior to retirement or for your support if you become disabled and are no longer able to work, or if you are no longer employed by the Employer for any other reason.

Once you become a Member, you may authorize the Employer to deduct up to sixty percent (60%) of your Base Compensation and contribute that amount as Elective Contributions to your Account in the Plan, subject, however, to the dollar limit prescribed in the Internal Revenue Code (\$18,000 in 2017) and the limits imposed by applicable nondiscrimination tests under the Internal Revenue Code. You may also be able to make Catch-Up Elective Contributions during any taxable year in which you have attained at least age 50. Such Elective Contributions and Catch-Up Elective Contributions are deducted from your wages before the deduction for income tax withholding is calculated. Therefore, the actual amount contributed to the Plan is greater than the amount by which your paycheck decreases as a result of the deduction for the Elective Contributions. For example, if you earn \$30,000 a year, your semi-monthly gross wages are equal to \$1,250. Assuming that you have elected to have your income tax withholding calculated as if you are single, with no dependents and no other deductions, your take home-pay (with and without an Elective Contribution to the Plan) is probably similar to the following:

	With Plan Contribution	Without Plan Contribution
Semi-Monthly Wages	\$1,250	\$1,250
401(k) Contribution (6% of pay)	\$75	\$0
FICA Withholding	\$96	\$96
Income Tax Withholding	\$144	\$155
Take Home Pay	\$935	\$999
Net difference	\$64	

In the above illustration, the after-tax cost to contribute \$75 to the Plan on a semi-monthly basis is only \$64. The figures above are *estimates* and are for illustration purposes only. The actual amount that you save through the Plan will depend on your withholding elections (your IRS Form W-4), the amount of your wages, the amount you elect to save, whether you are subject to state income taxes, and any other deductions from your paycheck. Further, the Employer may use a different method to calculate the income tax withholding.

The Employer may in its discretion, but is not required to, make "Matching Contributions" in an amount determined by the Employer as a percentage of your Elective Contributions, except with respect to Members employed by Benchmark Hospitality of Roanoke, Inc. (see Question 16

for more information). Any Matching Contributions that are made by the Employer will be subject to a vesting schedule. Please see <u>Question 16</u> for a description of vesting and how it works.

For instance, assume the Employer decided to make Matching Contributions equal to 50% of your Elective Contributions which do not exceed 6% of your Base Compensation. For example, if the Member elected to contribute 6% of his Base Compensation, and his Base Compensation was \$30,000, the Member would receive a Matching Contribution of \$900 to his or her Account $(6\% \ x \ \$30,000 \ x \ 50\% = \$900)$. Therefore, by deciding to make Elective Contributions of \$1,800 (\\$30,000 \ x \ 6%), the Member was able to have total contributions of \$2,700 credited to his or her Account for the year (\\$1,800 + \\$900). Plus, the Member's Account grows on a tax-deferred basis. With conventional savings, for example, a savings account at a bank, the Member would be subject to tax each year on the interest earned and would not receive Matching Contributions.

You save more because both your money and any money contributed by the Employer on your behalf is tax deferred. You also get long-term tax savings because the interest and other earnings on your Account balance are exempt from taxes as long as such amounts remain in your Account.

The Plan gives you an easy way to save and invest for your own financial security. The money accumulated in your Account can help provide income for your retirement or disability, or for your designated Beneficiary upon your death. In addition, any contributions made by the Employer will help your Account grow faster.

2. Are there any terms I need to know in reading this SPD?

These terms have the following meaning when used in this SPD:

- (a) **Account** means all of your individual accounts under the Plan.
- (b) **Active Service** means the number of whole years and complete months of employment service with an Employer (or with an affiliated employer which is counted for this purpose). In determining whole year periods of service, non-successive periods of service will be aggregated on the basis that 12 complete months of service (30 days will be deemed to be a month of service in the case of aggregation of fractional months) equals a whole year of service. See <u>Question 20</u> for a description of how Active Service is credited.
- (c) Administrative Committee means the committee selected by the Board to oversee the daily operation of the Plan. The Administrative Committee has the complete discretion to interpret the terms and provisions of the Plan and to adopt such policies and procedures which it deems necessary for the administration of the Plan. If the Board does not appoint individuals to serve as members of the Administrative Committee, the Board will be deemed to be the Administrative Committee.
- (d) **Base Compensation** generally means your Considered Compensation, but excluding (i) amounts paid or reimbursed by the Employer for moving expenses to the extent that at the time of the payment it is reasonable to believe that these amounts are deductible under Code Section 217, (ii) the taxable portion of the premiums for group term life insurance paid by the

Employer in excess of the limit under Code Section 79, (iii) car allowances, (iv) fringe benefits, (v) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or other property) held by you, if any, either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (Code Section 83 and the regulations thereunder), (vi) amounts realized from the sale, exchange or other disposition of stock acquired by you under a qualified stock option, if any, and (vii) compensation which is payable in the form of cash (currency) or cash equivalents such as gift-cards, or gift certificates. Base Compensation will be determined before reduction under a Compensation Deferral Agreement under (i) the Plan or another plan described in Code Section 401(k) or 408(k), (ii) an annuity described in Code Section 403(b), and (iii) an election under a cafeteria plan described in Code Section 125. Elective amounts that are not includible in your gross income by reason of Code Section 132(f)(4) will also be excluded from Base Compensation.

- (e) **Beneficiary** means each person or entity that is (i) named by you to receive the benefits payable under the Plan in the event of your death or (ii) otherwise designated as a Beneficiary under the Plan if no Beneficiary has been selected or otherwise does not exist.
- (f) **Board** means the Board of Directors (or equivalent governing authority) of the Plan Sponsor.
- (g) **Code** means the Internal Revenue Code of 1986, as amended, and regulations or other authority issued thereunder by the appropriate governmental authority.
- (h) **Compensation Deferral Agreement** means an agreement that you enter into with the Employer pursuant to which you agree to make Elective Contributions via a payroll deduction. Such an election results in your agreement to "defer" the receipt of a portion of your Base Compensation until such amounts become payable under the Plan. A Compensation Deferral Agreement is also sometimes known as a "401(k) Election Form" or a "Salary Deferral Election Form."
- Considered Compensation generally means your wages, salaries, fees for professional services, and other amounts received for personal services rendered in the course of your employment with the Employer, including, but not limited to, commissions, compensation for services on the basis of a percentage of profits, tips, bonuses, fringe benefits, reimbursements or other expense allowances under a nonaccountable plan, and any military differential pay earned while you are performing qualified military service for a period of more than 30 days. Considered Compensation does not include items such as contributions made by the Employer to a plan of deferred compensation to the extent the contributions are not includible in your gross income for the year in which contributed, amounts realized from the exercise of a non-qualified stock option or when restricted stock you hold becomes freely transferable, amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option or other amounts which receive special tax benefits. Considered Compensation will include your Elective Contributions, your contributions to a cafeteria plan sponsored by your Employer which are not includible in your gross income by reason of Code Section 125, and income which is not includible in your gross wages because it qualifies as a "qualified transportation fringe benefit" under Code Section 132(f)(4). Considered Compensation for Plan purposes is limited to the amount allowed under Code Section 401(a)(17) (\$270,000 for 2017).

- (j) **Early Retirement Age** means the later of your (i) attainment of age 55 or (ii) completion of six Years of Service.
- (k) **Elective Contributions** are pre-tax contributions which are withheld from your Base Compensation and deposited in your Employer Nonforfeitable Contributions Account pursuant to your Compensation Deferral Agreement. Elective Contributions are also sometimes known as "401(k) contributions" or "salary deferral contributions." Your Elective Contributions are limited to the lesser of (i) the dollar amount established each year by the IRS (\$18,000 for 2017) or (ii) 60% of your Base Compensation. You will be eligible to make Catch-up Elective Contributions in excess of the dollar limit described in the preceding sentence if you are at least age 50, or will attain age 50 before the end of the taxable year in which such Catch-up Elective Contributions are to be made. For 2017, the maximum Catch-up Elective Contribution is \$6,000; thereafter it is adjusted for inflation in \$500 increments as determined by the IRS. Your Elective Contributions, including your Catch-up Elective Contributions, will be deposited in your Employer Nonforfeitable Contributions Account and are always 100% vested.
 - (l) **Employee** means an employee of the Employer.
- (m) **Employer** individually or collectively means the Plan Sponsor and any other business organization which adopts the Plan for the benefit of its eligible employees with the consent of the Board.
- (n) **Employer Contributions Account** is the sub-account to which Matching Contributions and Employer Nonelective Contributions that are made under the Plan on your behalf are credited. This Account is subject to a vesting schedule.
- (o) **Employer Nonforfeitable Contributions Account** is the sub-account to which your Elective Contributions are credited, along with any Employer Qualified Non-Elective Contributions or Qualified Matching Contributions. This portion of your Account is fully vested and nonforfeitable.
- (p) **Entry Date** means the date on which you complete three (3) months of Active Service (as defined in the Plan) if you are hired or rehired on or after July 1, 2015. If you were hired or rehired before July 1, 2015, your Entry Date will be the January 1, April 1, July 1, or October 1 which is coincident with or immediately follows the date you complete three (3) months of Active Service (as defined in the Plan). You will become a Plan Member on your Entry Date.
 - (q) **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
- (r) **Forfeiture** means any nonvested amount in your Employer Contributions Account which you would forfeit and thus lose if you terminate employment before you are entitled to be 100% vested in that Account.
- (s) **Gemstone Plan** means the Gemstone Hotels & Resorts, LLC 401(k) Plan which was merged into the Plan effective as of January 1, 2017.
- (t) **Gemstone Profit Sharing Transfer Account** means an Employer Contributions Account that is established to hold any Profit Sharing Contributions that were transferred to the

Plan on your behalf from the Gemstone Plan, and any investment earnings or losses allocated to such Account.

(u) **Gemstone Roth Transfer Account** means an Employer Nonforfeitable Contributions Account that is established to hold any Roth Deferral Contributions that were transferred to the Plan on your behalf from the Gemstone Plan, and any investment earnings or losses allocated to such Account.

(v) **Highly Compensated Employee** means an Employee who:

- (1) Owns 5% or more of an Employer for the Plan Year or the immediately preceding Plan Year; or
- (2) Earns in excess of \$120,000 (for 2016 and 2017) in the preceding Plan Year (as adjusted for inflation under the Code).
- (w) **Hour of Service** means each hour for which you are paid for the performance of duties for the Employer. Payments which you receive for medical benefits, workers' compensation, unemployment compensation or disability insurance are not considered compensation and thus do not result in credit for Hours of Service.
- (x) **Matching Contributions** are Employer Contributions which may be made to the Trust to match a portion of your Elective Contributions for the Plan Year.
- (y) **Member** means an Employee who has satisfied the Plan's eligibility requirements and who is participating in the Plan, and, if consistent with the context in which such term is used, a former Member or his designated Beneficiary(ies).
- (z) **Non-Highly Compensated Employee** means any Employee who is not a Highly Compensated Employee.
- (aa) **Normal Retirement Date** means your 65th birthday, which is your "**Normal Retirement Age**."
 - (bb) **Period of Service** and **Period of Severance** are defined under Question 20.
 - (cc) **Plan** means the Benchmark 401(k) Plan, as it may be amended from time to time.
 - (dd) **Plan Year** means a calendar year ending December 31st.
- (ee) **Qualified Matching Contribution** means a special contribution which may be made to the Trust, in the Employer's discretion, on behalf of the Non-Highly Compensated Employees who made Elective Contributions during the Plan Year. Qualified Matching Contributions, if made, may be applied to satisfy the nondiscrimination tests described under Question 7.
- (ff) **Qualified Non-Elective Contribution** means a special contribution which may be made by the Employer to the Trust, in the Employer's discretion, on behalf of the Non-Highly

Compensated Employees in an amount necessary to satisfy the nondiscrimination tests described under Question 7.

- (gg) **Rollover Account** means an account containing amounts that you rolled over from another qualified retirement plan to this Plan with the consent of the Administrative Committee, and any investment earnings or losses allocated to such Account.
- (hh) **Special Compensation Deferral Agreement** means an agreement entered into with the Employer under which you elect to defer all or any part of your Base Compensation for all or any part of a specified portion of the Plan Year. For example, the Committee may elect to allow all Members to execute a Special Compensation Deferral Agreement for the last quarter of the Plan Year. In that case, for that quarter you may defer up to 100%, or such other amount determined by the Committee, of your Base Compensation provided you do not exceed the annual limitations discussed under Question 7.
 - (ii) **SPD or Summary** means this Summary Plan Description.
- (jj) **Total and Permanent Disability** means a mental or physical disability which will render you incapable of continuing your usual and customary employment with the Employer. For this purpose, you will be deemed to have suffered a Total and Permanent Disability only if you are eligible to receive benefits under the long term disability plan maintained by the Employer (the "**LTD Plan**"). If you are not covered under the LTD Plan for whatever reason, then you will be deemed to have suffered a Total and Permanent Disability only if you are determined to be disabled under the federal Social Security Act.
 - (kk) **Trust** means the trust created to fund the Plan.
 - (ll) **Trust Fund** means all of the assets and liabilities of the Trust.
 - (mm) **Trustee** means the trustee qualified and acting under the Trust.
- (nn) **Valuation Date** means each date on which the fair market value of each Account is determined, including its allocable investment earnings or losses, since the last Valuation Date. Generally, the Valuation Date will be daily. The last day of the Plan Year will always be a Valuation Date.

3. How do I become a Member of the Plan?

If you are already a Member of the Plan, you will continue to be a Member until you terminate employment or you transfer to a class of ineligible employees. Otherwise, you will become a Member on your Entry Date as defined under <u>Question 2</u>, unless you are not employed on that date. If you return to work for an Employer after that date, please consult the Human Resources Department concerning when you will become a Member.

Prior to your Entry Date, you will be given detailed instructions on how to enroll in the Plan. You will be asked to enter into a Compensation Deferral Agreement to specify the amount you want deducted from your pay check as an Elective Contribution and to execute a Designation of Beneficiary form. The Compensation Deferral Agreement authorizes your Employer to deduct

the amount you specify from your Base Compensation and to contribute that amount to the Plan as an Elective Contribution on your behalf.

The Designation of Beneficiary Form names the individual(s) who will receive your undistributed Plan Account balance upon your death. Your designated Beneficiary may be changed by completing a new form. If your primary designated Beneficiary is someone other than your spouse, your spouse must consent, in writing (and such consent must be witnessed by a member of the Administrative Committee or notary public), to the other primary designated Beneficiary on the form for such other designation to be valid.

4. How do I defer Compensation?

There is no requirement that you make any contributions to the Plan; however, if you do not make Elective Contributions to the Plan, you will not share in the Employer's Matching Contributions. To make Elective Contributions, follow the instructions which are contained in the enrollment materials which are provided to you when you become eligible to participate. The Employer will deduct your Elective Contributions from your paycheck and transfer those amounts to the Trustee to be credited to your Employer Nonforfeitable Contributions Account.

Once you have elected to make Elective Contributions, you may modify the amount of your Elective Contributions as of the first day of any future payroll period. You may completely discontinue your Elective Contributions upon giving advance written notice utilizing the same method you used to authorize your Elective Contributions. Following such discontinuance, you may resume making Elective Contributions as of any future payroll period.

5. How are my Elective Contributions taxed?

Elective Contributions are made with pre-tax dollars for federal income tax purposes. However, Elective Contributions are considered to be made with after tax dollars for purposes of withholding for FICA (Social Security) taxes. You do not pay income tax on your Elective Contributions until such amounts are distributed to you.

6. <u>Does the Employer make any other types of Contributions to the Plan and how do I share in those Contributions?</u>

The Employer may, in its discretion, but is not required to, make Matching Contributions to the Trust in an amount determined by the Employer as a percentage of the Base Compensation contributed to the Plan as Elective Contributions by each eligible Member for the Plan Year (or such shorter period designated by the Employer). Matching Contributions, if any, will be made only on behalf of eligible Members who are employed on the last day of the Plan Year (or such shorter period as may be prescribed by the Administrative Committee). However, the Employer will make Matching Contributions as required under the terms of a collective bargaining agreement with a labor union.

Effective January 1, 2016, the Employer will make Matching Contributions in the amount of one hundred percent (100%) of the first three percent (3%) plus fifty percent (50%) of the next two percent (2%) of the Base Compensation contributed to the Plan as Elective Contributions by eligible Members employed by Benchmark Hospitality of Roanoke Inc. ("Roanoke").

Your Matching Contributions will be transferred to the Trust and credited to your Employer Contributions Account.

7. What are the limitations on contributions under the Plan?

- (a) Annual Limit on Elective Contributions. The aggregate amount which you can contribute on a pre-tax basis to this Plan and any other qualified plan, simplified pension plan, or tax-sheltered annuity cannot be more than the dollar limit in effect under Code Section 402(g) for the calendar year (\$18,000 during 2017, as adjusted in future years). If you participate in, or participated in, another qualified plan of another employer which allows you to defer a portion of your compensation during the year, and your combined pre-tax contributions exceed this limit, you must notify the Administrative Committee by March 1st of the following year if you want to have the portion of your deferral contributions which exceed the limit ("excess deferral contributions") returned from this Plan. Failure to remove the excess deferral contributions by April 15th will result in such amounts being taxed to you in the year in which you made the excess deferral contributions and again in the year in which your Account is distributed. Distribution of the excess deferral contributions must be made not later than April 15th of the calendar year following the year in which such excess deferral contributions were made.
- (b) Catch-Up Elective Contributions. You are entitled to make "Catch-Up Elective Contributions" in any taxable year during which you are or will attain at least 50 years of age. The Catch-Up Elective Contributions can be made in addition to the limits described under this Question 7. For 2017, the annual limit on Catch-Up Elective Contributions the lesser of (i) your Base Compensation (as reduced by any other Elective Contributions) or (ii) \$6,000 (as adjusted by the IRS in future years).
- (c) Nondiscrimination Tests for Contributions. No contribution to the Plan will be made in violation of the nondiscrimination rules under Code Sections 401(a)(4), 401(k) and 401(m). These nondiscrimination rules are designed to ensure that the contributions made on behalf of Highly Compensated Employees are not substantially more than those made on behalf of all other Employees. If for any reason the nondiscrimination rules are not satisfied for a Plan Year, the Administrative Committee will correct the nondiscrimination test failure by instructing the Trustee to refund a portion of the Elective Contributions which were made by certain Highly Compensated Employees and/or reduce the Matching Contributions that would otherwise be allocated to their Accounts. In the alternative, the Employer could elect to make a Qualified Matching Contribution or a Qualified Nonelective Contribution in an amount necessary to satisfy the nondiscrimination tests. However, it is anticipated that any failed nondiscrimination test will be corrected by processing refunds of Elective Contributions and/or reducing Matching Contributions to certain Highly Compensated Employees.
- (d) **Limitation on Annual Additions**. The total amount of Employer and Employee contributions and Forfeitures allocated to your Account during any given Plan Year beginning on or after January 1, 2017, cannot exceed the lesser of (i) \$54,000 (adjusted by the IRS in future years) or (ii) 100% of your Compensation (as defined in the Plan) for the Plan Year. If you have participated in any other qualified defined contribution plan maintained by the Employer during the year, the limitation on annual additions applies to your contributions and forfeitures allocated under all such defined contribution plans. If this limitation is exceeded, the Employer must reduce

the amounts allocated to your Account for the Plan Year, including by distributing a portion of your Elective Contributions to the extent that your Elective Contributions cause your allocations to exceed this limitation.

(e) **Limitation on Deductible Contributions**. It is intended that all Employer contributions under the Plan will be deductible by the Employer pursuant to applicable provisions of the Code. Accordingly, Employer contributions will not exceed an amount equal to 25% of the total Considered Compensation paid to all Members during the taxable year of the Employer ending with or within the Plan Year. The Employer may recover Employer contributions which were made under a mistake of fact or for which a tax deduction is disallowed.

8. What becomes of the contributions made to the Trust?

The contributions are deposited to the Trust Fund and allocated to your Account which is held and invested by the Trustee for the exclusive benefit of the Members and their beneficiaries. In accordance with rules prescribed by the Administrative Committee, you may direct the investment of amounts credited to your Account in the various investment funds offered under the Plan. You will receive information regarding the investment alternatives under the Plan and how your investment elections are to be made.

If you do not make an affirmative investment election, you will be deemed to have elected to invest contributions credited to your Account in the "qualified default investment alternative" ("QDIA"), which is the Vanguard Target Retirement Fund that corresponds with your age. Whether your Account is invested in accordance with your affirmative election or by default, you can modify your investment elections for your existing Account balance or for future Contributions to your Account at any time pursuant to the Plan's administrative procedures.

Benefits provided by the Plan are payable only from the Trust Fund. While it is hoped and expected that the Trust Fund (including each separate investment fund) will increase in value over time, neither the Employer, the Trustee, the Administrative Committee, investment manager, nor any other person can guarantee favorable investment results for any time period. Your Account will be credited with its proportionate share of any gain, or charged with its proportionate share of any loss, of each investment fund in which your Account balance is invested.

The Plan is intended to comply with Section 404(c) of ERISA. This means that since you direct how your Account balance is to be invested, the Plan fiduciaries are relieved from liability for any investment losses resulting from your investment decisions.

9. May I roll over a distribution from the Plan or into the Plan?

(a) Rollovers from this Plan.

If you are eligible for a distribution under the Plan, under certain circumstances you may be able to roll over all or a portion of your distribution from the Plan into another qualified plan or into an individual retirement account or annuity ("**IRA**") and further defer income tax and imposition of the 10% penalty tax, if applicable. You may also be able to roll over all or a portion of your distribution to a Roth IRA; however, income taxes will apply. You should contact your

personal tax advisor before, or as soon as possible after, your receipt of a distribution that you desire to roll over. There are time limits to effectuate a rollover.

The Employer generally will be required to withhold 20% of the taxable portion of a distribution from the Plan that is not transferred directly to another qualified retirement plan or to an IRA (called a "direct rollover"). Under these rules, the taxable part (and in some situations, the after-tax part) of most Plan distributions may be transferred directly or "rolled over" tax-free to another qualified retirement plan that accepts rollovers or to an IRA, *except* for distributions below a specified dollar amount (\$200 or, if less than 100% of your eligible rollover distribution is to be a direct rollover, \$500). Required minimum distributions after age 70½ may not be rolled over (or transferred directly to another qualified retirement plan or IRA), but are subject to income tax withholding amounts other than the 20% mandatory withholding.

If you wish to make a rollover of your distribution from the Plan, in order to avoid the 20% mandatory withholding, it will be necessary for you (1) to establish an IRA and arrange for a direct rollover from the Plan to the IRA or (2) to arrange with your new employer for a direct rollover from the Plan to the new employer's qualified retirement plan. In addition, you and the IRA or other plan's trustee or custodian must provide certain information to the Administrative Committee (or its delegate) about the direct rollover you wish to make. If no direct rollover has been arranged, the mandatory 20% will be withheld and the remaining 80% will be distributed to you. In order to avoid current taxation on the entire distribution, it will be necessary for you to deposit the 80% you received and an additional amount (from your personal funds) equal to the 20% which was withheld into an IRA or qualified retirement plan within 60 days of your receipt of the distribution. Otherwise, any portion of your distribution which is not rolled over will be subject to income taxes and, if applicable, a 10% excise tax on early distributions.

If you have any amount credited to a Gemstone Roth Transfer Account, such amount can only be rolled over from the Plan to a Roth individual retirement account or to a qualified retirement plan that will accept a rollover of Roth Contributions.

If you are entitled to receive benefits from the Plan as an Alternate Payee under a Qualified Domestic Relations Order ("QDRO"), or as the surviving spouse of a deceased Member, you may be able to elect to have the amounts distributable to you in the form of a direct rollover to another qualified plan sponsored by your employer or to an IRA established in your name. A rollover to a qualified plan sponsored by your employer will require your employer's consent.

If you are entitled to receive benefits under the Plan as a non-spouse Beneficiary of a deceased Member, you may be able to have the amounts distributed to you paid in the form of a direct rollover to an IRA. Please note that this distribution must be made not later than December 31 of the year following the year in which the Member died if you intend to receive periodic payments from the rollover IRA. Also, the IRA must be established in the name of the deceased Member for your benefit. The rules regarding a direct rollover for a non-spouse Beneficiary are complex and you should consult a competent tax advisor if you become entitled to receive benefits upon the death of a Member or former Member.

(b) Rollovers into this Plan.

If permitted by the Administrative Committee, you may roll over employer contributions (including your pre-tax contributions) previously made to another qualified retirement plan into your Rollover Account under the Plan. Similarly, if permitted by the Administrative Committee, the Trustee of the Plan may accept a transfer of your account balance directly from the trustee of another qualified plan in which you participated. The Administrative Committee will not permit a rollover or a direct transfer into the Plan until it is satisfied that it is a qualifying rollover (or transfer) and the former employer's plan was considered to be a qualified retirement plan under the Code. A distribution must generally be rolled over within 60 days of its receipt. If you roll over an amount into this Plan, it will be credited to a Rollover Account established in your name. You may elect to withdraw all or any portion of your Rollover Account at any time. The withdrawal(s) will be subject to income taxation, and may also be subject to a 10% early distribution penalty tax under Code Section 72(t).

The qualified plans from which rollovers may be received by the Plan are those described in Sections 401(a) or 403(a) of the Code, annuity contracts described in Section 403(b) of the Code, and eligible plans under Section 457(b) of the Code which are maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Rollovers attributable to qualified plans described in Code Sections 401(a) or 403(a) may include after-tax contributions. The Plan will not accept a rollover of Roth Contributions.

This Summary is not intended to provide any tax advice. You are strongly advised to contact your personal tax advisor.

10. How does my Account share in the earnings and other changes in value of the Trust's investments?

The Plan Administrator has selected a variety of investment funds among which you may choose to invest your Account balance. The earnings and other investment changes in the value of your Account will depend on the investment choices you make. Most of the funds are "daily valued." If the value of the assets in a fund you choose as an investment option increases, the portion of your Account invested in that fund will increase proportionately. Likewise, a decrease in the value of the assets in a fund you choose will result in a proportionate loss to your Account.

You may change your investment elections for your current Account balance and for future contributions. The Administrative Committee and the Trustee will provide detailed instructions to assist you in the implementation of your investment choices, including steps to initiate investment instructions, to subsequently modify your investment instructions and how to verify your Account balance. At least quarterly, you will receive a personalized statement showing the value of your Account balance and the gain or loss for that period.

An investment in a money market mutual fund (or a stable value mutual fund) is not insured or guaranteed by the Federal Deposit Insurance Corporation or by any other government agency. Although the fund managers seek to preserve the value of your investment at \$1 per share, it is possible to lose money by investing in such a fund.

For more information about any fund, including investment objectives, risks, charges, and expenses, call Prudential Bank & Trust, FSB at 1-877-778-2100 to obtain a prospectus. The prospectus contains important information about the fund. Read and consider the prospectus information carefully before you invest.

The value of your selected investment funds will fluctuate depending on their investment performance. There are no guarantees or assurances that investments will always increase in value, and they may decrease.

11. Are any fees charged to my Account?

Fees and expenses charged under your Account will impact your retirement savings, and fall into three basic categories. *Investment fees* are generally assessed as a percentage of assets invested, and reduce your investment returns. Investment fees can be in the form of sales charges, loads, commissions, 12b-1 fees, or management fees. *Plan administration fees* cover the day-to-day expenses of your Plan for recordkeeping, accounting, legal and trustee services, as well as additional services that may be available under your Plan.

For more information on fees associated with your Account, refer to your quarterly Account statement, or contact the Plan Administrator. In addition, you can obtain more information about all fees from the documents that describe the investments available under the Plan and from the annual Participant Fee Disclosure Statement.

12. What happens when I retire?

If you retire on or after your Normal Retirement Date, you will be entitled to receive 100% of the amount credited to your Account as of your retirement date, plus any amounts credited to your Account after such date. Distribution will be made as described under <u>Question 17</u>. If you continue working after your Normal Retirement Date, you can continue to participate in the Plan.

13. What happens if I become disabled while employed by an Employer?

If you incur a Total and Permanent Disability while employed by an Employer, you will be entitled to receive 100% of the amount credited to your Account as of the date of your termination due to your Total and Permanent Disability, plus any amounts credited to your Account after such date. Distribution will be made as described under Question 17.

14. What happens if I die while employed by an Employer?

If you die while employed by an Employer, your death benefit will be 100% of the amount credited to your Account as of your date of death, plus any amounts credited to your Account after such date. If you die while performing qualified military service, your death benefit will include any additional benefits you would have received under the Plan had you resumed and then terminated employment on account of death. Your death benefit will be paid to your surviving spouse, or if there is no surviving spouse, or if both you and your spouse consent in writing (and such consent is witnessed by a member of the Administrative Committee or a notary public), to another Beneficiary you (and your spouse, if any) have designated in writing. Your death benefit will be paid as described under Question 17.

15. What happens if my employment is terminated prior to retirement?

If your employment is terminated for a reason other than due to Total and Permanent Disability, death or attaining Normal Retirement Age, you will be entitled to receive the vested portion of your Account balance as of the date of your termination, plus the vested portion of any amounts credited to your Account after such date. For more information on vesting, see <u>Question</u> 16. Distribution will be made as described under Question 17.

16. What is vesting and how does it work?

Vesting refers to the percentage of your Account balance that cannot be forfeited and which will be paid to you when your Account is distributable. You are immediately 100% vested in all of your individual subaccounts under your Account, except your Employer Contributions Account. The Plan's vesting schedule for the Employer Contributions Account is as follows:

Less than one year of Active Service	0%
One year of Active Service	20%
Two years of Active Service	40%
Three years of Active Service	60%
Four years of Active Service	80%
Five years, or more, of Active Service	100%

Notwithstanding the vesting schedule above, Matching Contributions made to the Plan on behalf of eligible Members employed by Benchmark Hospitality of Roanoke, Inc. will be immediately 100% vested. Also, if your employment is terminated as the result of the termination of your Employer's management contract with a property at which you work, you will be fully vested in all of your Accounts at the time of your termination of employment.

You become 100% vested in the balance credited to your Employer Contributions Account if:

- (a) you retire on or after you attain age 65;
- (b) you die while a Member;
- (c) you incur a Total and Permanent Disability while a Member; or
- (d) the Plan is terminated, or contributions to the Plan are permanently discontinued.

If you terminate employment and your Account is not fully vested, the nonvested portion of your Account balance will be forfeited on the earlier of (i) the date you receive a distribution of the vested portion of your Account balance or (ii) the date you have incurred five consecutive one-year Periods of Severance.

17. How is my Account to be paid after termination of employment?

(a) **Form of payment**. You may request that your vested Account balance be paid in any one of the following forms:

- 1. Single lump sum;
- 2. Direct Rollover to an Individual Retirement Account or Individual Retirement Annuity or to another employer's qualified retirement plan;
- 3. Payments in monthly, quarterly, semi-annual or annual installments over a fixed period of time not exceeding your life expectancy or the joint and last survivor expectancy of you and your Beneficiary; you may elect to accelerate the payment of all or any portion of your unpaid vested Account balance; or
 - 4. Withdrawals in such amounts and at such times as you elect.
- (b) **Distributable Account Balance Does Not Exceed \$5,000 or \$1,000**. If your distributable Account balance does not exceed \$5,000, it will be subject to mandatory cash-out rules and will be distributed without the necessity of obtaining your consent, or the consent of your spouse or any other Beneficiary. To determine whether your Account balance is subject to the mandatory cash-out rules, the Plan Administrator will disregard any Rollover Account which you may have under the Plan. The amount of any distribution will be reduced by the then outstanding balance of any Plan loan you may have (including accrued interest) at the time of distribution.

If you do not elect a form of distribution, and your distributable Account balance is not more than \$1,000, your Account balance will be automatically distributed to you in a lump-sum distribution, less the mandatory 20% withholding for federal income taxes, as soon as practicable after you terminate employment. For this purpose, any Rollover Account which you may have under the Plan will be included in determining whether your distributable Account balance exceeds \$1,000.

If your Account balance is subject to the mandatory cash-out distribution rules for Account balances not exceeding \$5,000, but your distributable Account balance is more than \$1,000 (including any Rollover Account), the Plan Administrator will distribute your Account balance in the form of a mandatory cash-out distribution to a rollover Individual Retirement Account ("automatic rollover IRA") established with Prudential Bank & Trust, FSB, unless you elect another form of distribution. Your automatic rollover IRA will maintain the same investment elections you had elected. You will be responsible for paying all fees and expenses assessed against your automatic rollover IRA. You will also be entitled to (i) request a distribution, including a direct rollover to another qualified retirement plan or to another IRA, at any time from your automatic rollover IRA, and (ii) transfer the investment of your automatic rollover IRA to any other investment option offered to holders of IRAs at Prudential Bank & Trust, FSB.

(c) **Distributable Account Balance Exceeds \$5,000**. If your distributable Account balance exceeds \$5,000 and you consent to the distribution, your Account balance will be distributed in the form you elect as soon as administratively practicable. Your consent to a distribution will not be valid unless you receive a notice which generally describes the tax effects of taking a distribution and notifies you of your right to defer receipt of your distribution. The notice must be provided to you not less than 30 days and not more than 180 days prior to your distribution date. If you elect to receive a distribution, you may have the right to waive the 30-day advance notice period.

- (d) **Mandatory Distribution Commencement Date**. In accordance with the Code, the Trustee must make full settlement or begin payments to you, unless you elect to defer receipt of the distribution, not later than the 60th day after the latest of the close of the Plan Year in which (i) you attain the Normal Retirement Age, (ii) occurs the tenth (10th) anniversary of the year in which you commenced participation in the Plan, or (iii) you terminate employment with the Employer. In any event, your distributable Account balance must be paid or begin to be paid to you not later your "Required Beginning Date" (defined below), and you may not elect to defer receipt after your Required Beginning Date. Your Required Beginning Date is April 1 of the calendar year following your attainment of age 70½ if you are a 5% owner. If you are not a 5% owner, your Required Beginning Date is April 1 of the calendar year following the later of (i) your attainment of age 70½ or (ii) the date you terminate employment. If you have attained your Required Beginning Date and you have not elected a form of distribution, you will be deemed to have automatically elected to receive payments equal to the required minimum distribution each year.
- (e) **Member's Death Prior to Payment**. In the event that you die prior to distribution of your entire Account balance, your Account balance will be distributed on or as soon as administratively practicable following the date elected by your designated Beneficiary (but in any event not later than by December 31 of the calendar year in which occurs the fifth (5th) anniversary of your date of death). If your Account balance which is distributable due to your death does not exceed \$5,000, it will be distributed in a lump sum payment as soon as administratively practicable following your death and without the consent of your designated Beneficiary.

If any portion of your distributable Account balance is payable to your surviving spouse and your distributable Account balance exceeds \$5,000, your surviving spouse may elect to defer receipt of the distribution until April 1 of the calendar year following the year in which you would have attained age 70½.

18. What happens to Forfeitures?

All Forfeitures which occur during a Plan Year will be applied to reinstate any Accounts required to be reinstated (see <u>Question 19</u>). Any remaining Forfeitures will be applied first to pay administrative expenses of the Plan and then used to offset future Matching Contributions.

19. <u>If I terminate employment and then I am rehired, will my Account balance be reinstated?</u>

If you terminate employment and receive a distribution of the vested portion of your Account balance, and then return to employment with an Employer prior to incurring five consecutive one-year Periods of Severance (see <u>Question 20</u>), any amounts forfeited from your Account will be restored if you repay the distribution before you incur five consecutive one-year Periods of Severance. If you do not return to employment with an Employer prior to incurring five consecutive one-year Periods of Severance, your previously forfeited Account balance cannot later be restored. Please contact your Human Resources Department if this situation applies to you.

20. How do I receive credit for service under the Plan?

For purposes of determining your vested interest in your Employer Contributions Account, you will receive credit for Active Service using the rule that 12 complete months equal a whole year and 30 days equal a complete month. Non-successive periods of Active Service will be aggregated. If you terminate employment and then perform an Hour of Service within 12 months of your severance from service date, the period of absence will be counted as Active Service. If you incur five (or more) consecutive one-year Periods of Severance and you are reemployed by the Employer, Periods of Service after such five consecutive one-year Periods of Severance will not be considered in determining your vested interest in your Employer Contributions Account balance that was credited prior to such five one-year Periods of Severance.

If you are reemployed by an Employer and you had a vested interested interest in your Employer Contributions Account as of your severance from service date, your Active Service prior to your periods of severance will be considered in determining your vested percentage in amounts credited to your Employer Contributions Account after your reemployment commencement date. However, if you have incurred a one-year (or more) Period of Severance, your prior service will not be considered for future vesting purposes until you have completed a one-year Period of Service after your reemployment commencement date.

A one-year Period of Severance is a 12-consecutive month period during which you do not perform an Hour of Service. The 12-consecutive month period will begin on the earlier of (i) the date you terminate employment, or (ii) the first anniversary of your absence from service (with or without pay) for any other reason, such as an approved leave of absence. However, if you are absent from work for maternity or paternity reasons (as defined in the Plan) or because of a leave of absence to which you are entitled under the Family and Medical Leave Act, the 12 consecutive month period beginning on the first anniversary of the first day of such absence will not constitute a one-year Period of Severance if the initial 12-consecutive month period during which you are absent is counted as a Period of Service.

The following examples will help to explain the operation of these rules:

Example A:

Employee A is hired on January 1, 2016. He terminates his employment on December 31, 2019, and is rehired on July 1, 2020. Employee A then works until December 31, 2020, at which time he permanently terminates his employment. As of December 31, 2020, Employee A would be credited with five years of Active Service and thus he would be 100% vested in his Employer Contributions Account. He would receive credit for his period of absence from January 1, 2020 through June 30, 2020, since he did not incur a one-year Period of Severance.

Example B:

Employee B is hired on January 1, 2016. On January 1, 2021 he goes on authorized leave of absence, and on June 30, 2021, while still on leave, he permanently terminates his employment. As of June 30, 2021, Employee B would have a Period of Service to his credit of five years and

six months. For purposes of determining vesting under the Plan, he would have five complete Years of Service and thus would be 100% vested in his Employer Contributions Account.

Example C:

Employee C is hired on January 1, 2016 and terminates his employment on December 31, 2018. He is rehired on January 1, 2024. Employee C would not be able to increase his vested interest in his Employer Contributions Account balance (as of December 31, 2018) because service after five consecutive one-year Periods of Severance does not count for purposes of vesting in amounts credited prior to such five-year Period of Severance.

If you were an employee of Gemstone Hotels & Resorts, LLC ("Gemstone") as of July 13, 2016, you will receive credit for the period of service that you accrued while employed by Gemstone prior to its merger into the Plan Sponsor.

21. May I withdraw amounts from my Account for a hardship?

You may request a withdrawal from your vested Account balance if (i) you have withdrawn the maximum permissible amount from your Rollover Account, if any, and (ii) you are suffering an immediate and heavy financial hardship due to:

- (a) certain medical expenses (not covered by insurance or otherwise reimbursable from any other source) previously incurred, or necessary to be incurred, by you, your spouse, your dependents or your primary Beneficiary;
- (b) expenses required to purchase your principal residence (excluding mortgage payments);
- (c) a lack of funds needed to prevent eviction from and/or foreclosure on your principal residence;
- (d) lack of funds to pay tuition and related educational fees for the next 12 months of post secondary education for you, your spouse, your dependents or your primary Beneficiary;
- (e) lack of funds to pay burial or funeral expenses for your deceased parent, spouse, children, dependents or primary Beneficiary;
- (f) lack of funds for the repair of damage to your principal residence that would qualify as a casualty that would qualify as a casualty loss under Code Section 165; or
- (g) any other financial needs that the Commissioner of Internal Revenue may deem to be immediate and heavy financial needs through published guidance.

With respect to any requested hardship withdrawal from your Employer Nonforfeitable Contributions Account, the maximum amount you will be entitled to withdraw for hardship purposes is the lesser of: (1) the amount needed to alleviate your hardship including an additional amount necessary to pay any income or penalty taxes which are reasonably expected to result from

the withdrawal or (2) the balance credited to your Employer Nonforfeitable Contributions Account; provided, however, only the portion that is attributable to Elective Contributions (net of earnings credited thereon after 1988) can be withdrawn. The Plan Administrator will be able to assist you regarding whether your particular situation meets these eligibility requirements and the amount available for a hardship withdrawal.

You will not be considered as suffering an immediate and heavy financial hardship unless you submit satisfactory written evidence to the Administrative Committee (or its delegate), including the amount needed to alleviate your hardship. If the Administrative Committee does not have actual knowledge to the contrary, you will be considered as having satisfied the previously mentioned eligibility requirements, provided that you submit a written request in which you specifically identify the hardship and attach a photocopy of:

- (a) medical bills, or physician's reports and other evidence of expenses to be incurred for medical care;
- (b) a contract to purchase your principal residence;
- (c) a notice or other evidence of imminent eviction from and/or foreclosure on your principal residence;
- (d) enrollment or registration forms or other evidence of tuition and related educational fees due for the next 12 months of post secondary education; or
- (e) any other bona fide evidence of your claimed hardship and the amount required to alleviate such hardship.

In addition, you must represent in writing that:

- (a) your financial need cannot be relieved through reimbursement or compensation by insurance;
- (b) your financial need cannot be relieved through liquidation of any of your remaining assets (or any remaining assets of your spouse or minor children that are readily available to you) without such liquidation itself causing an immediate and heavy financial hardship;
- (c) your financial need cannot be relieved through your discontinuance of Elective Contributions to the Plan, if applicable;
- (d) you have received or applied for all distributions available to you from the Plan (and any other plans maintained by your Employer), and such distributions have not, or will not, relieve your financial hardship; and
- (e) you have received or applied for all nontaxable loans available to you from the Plan (and any other plans maintained by your Employer) and from commercial sources, and such loans have not, or will not, relieve your financial hardship.

You will not be required to take a loan from any plan sponsored by the Employer or from commercial sources if the loan will create a greater hardship, or in the case of a hardship distribution to purchase your principal residence, the loan will cause you to not qualify to complete the purchase transaction.

No repayment of any amounts withdrawn from your Account will be permitted. You will not be permitted more than one hardship withdrawal during any given Plan Year. Your hardship withdrawal is considered separate from your other benefits and will thus reduce your Account balance when you receive a distribution. The amount of your hardship withdrawal will be subject to applicable income tax and if you are under age 59½, a 10% penalty tax under Code Section 72(t) may be assessed.

Any withdrawal from your Employer Nonforfeitable Contributions Account as a result of a financial hardship will result in a suspension of your right to make Elective Contributions to the Plan (and certain other types of plans that may be maintained by the Employer) for a period of six (6) months following your receipt of a hardship withdrawal.

22. Are there any other circumstances where I can withdraw funds from the Plan prior to my termination of employment?

If you have attained the age of 59½, you may withdraw all or a portion of your vested Account balance in the Plan, even if you have not terminated your employment.

During the period you are performing qualified military service while on active duty for a period of more than 30 days, you may withdraw all or any portion of your Account balance attributable to Elective Contributions, subject to a six month suspension of Elective Contributions. In addition, if you are ordered or called to active duty for a period of more than 179 days (or an indefinite period) as a member of a reserve component, you may withdraw all or any portion of your Account balance attributable to Elective Contributions.

If you have attained the Early Retirement Age, you may withdraw the vested portion of your Matching Contributions Account.

23. May I borrow amounts from my Account?

Loans are permitted to any current Member. Loans are also available to a former Member, Beneficiary or Alternate Payee under a qualified domestic relations order (described under Question 25) who is also a "party-in-interest" (as defined in ERISA) and on whose behalf an Account is maintained (referred to as a "Qualified Participant"). The Administrative Committee has established guidelines for Plan loans ("Loan Policy"). The Loan Policy will govern the Administrative Committee's approval or disapproval of a Qualified Participant's loan application. The Loan Policy may be amended at any time without the necessity of formally amending this SPD. Therefore, if you decide to borrow an amount from your Account balance, please contact the Administrative Committee (or its delegate) to request a copy of the current Loan Policy.

If you satisfy the requirements set forth in the Loan Policy, you will be entitled to borrow from your vested Account balance an amount which is not in excess of the lesser of (a) \$50,000, reduced by the excess, if any, of (i) your highest outstanding balance of Plan loans made during

the one-year period ending on the day before the loan was made, less (ii) your outstanding balance of all Plan loans on the date that the loan was made, or (b) fifty percent (50%) of your vested Account balance. The Loan Policy limits the number of loans which you may have outstanding at a time to two loans.

A loan will be treated as a directed investment of your Account balance to the extent allocated to your loan. The loan will be secured by the vested interest in your Account. No loan will have a maturity date in excess of five (5) years, unless the loan is used to acquire your principal residence (excluding mortgage payments) in which case the loan's term can be up to fifteen (15) years.

A loan to a Qualified Participant will be amortized into monthly payments over the term of the loan and may be prepaid without penalty. You must remit your loan repayments directly to the Trustee.

You can request a loan by contacting the Administrative Committee (or its delegate) and requesting a loan package. Please review the current Loan Policy for other important information relating to Plan loans.

24. What happens if the Plan is top heavy?

Under the Code, certain provisions of the Plan are required to take effect (and to supersede conflicting provisions of the Plan) in the unlikely event that the Plan should become "top heavy". The Plan is top heavy if, on the last day of the previous Plan Year, the sum of the Accounts of all "key employees" (for example, certain owners, officers, shareholders or highly compensated individuals) is greater than 60% of the sum of the Accounts of all Members.

If the Plan becomes "top heavy" for any Plan Year and you are a non-key employee, your Account will generally be entitled to receive an allocation of the Employer's contribution for such Plan Year in the amount necessary, if any, to provide a contribution at least equal to the lesser of (a) three percent (3%) of your compensation or (b) the largest percentage of compensation provided on behalf of any key employee. This "top-heavy" allocation, which only applies in years when the Plan is "top-heavy", may be required even if you completed less than 1,000 Hours of Service; however, you must be employed on the last day of the Plan Year in order to receive this allocation. Otherwise, the Plan will generally be administered in the same way it is administered in years when the Plan is not top-heavy.

25. May I assign any of my Plan benefits?

As a general rule, your Account balance may not be alienated or assigned. This means that your Account balance and payments from the Plan cannot be sold, assigned, pledged, encumbered or otherwise transferred. Generally, your creditors may not attach, garnish or otherwise interfere with your Account balance or with any payment from the Plan until you receive it; however, the IRS may impose a tax lien for unpaid taxes.

There is a statutory exception, however, to this general anti-alienation rule. The Plan may be required by law to recognize obligations you incur as the result of court ordered child support or alimony payments. In particular, the Plan is required to honor a "qualified domestic relations

order" ("QDRO"). A QDRO is a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your Account balance to your spouse, former spouse, child or other dependent ("Alternate Payee"). If the Plan receives a QDRO that pertains to you, all or a portion of your Account balance may be used to satisfy the resulting obligation as specified in the QDRO. The Administrative Committee (or its delegate) will determine whether any domestic relations order received by the Plan is a QDRO and notify you of its receipt of a domestic relations order that purports to apply to your Account balance, all in accordance with the QDRO procedures. In the event that the Administrative Committee receives a domestic relations order, a temporary hold will be placed on your Account and you will not be able to receive distributions, loans or hardship withdrawals until the matter is resolved.

You may request a copy (free of charge) of the Plan's Qualified Domestic Relations Orders Policies and Procedures.

26. <u>Do I have to give up my IRA contribution?</u>

Your participation in the Plan can affect your ability to make a pre-tax IRA contribution. Generally, the tax rules provide that if you actively participate in the Plan or another qualified retirement plan, your pre-tax IRA limit is progressively reduced depending on your adjusted gross income. The rules are complex and you are strongly encouraged to seek the advice of your personal tax advisor regarding the deductibility of contributions to an IRA.

27. What other Employers have adopted the Plan?

You may obtain a list of the adopting Employers by contacting the Plan Administrator.

28. May the Plan be amended or terminated?

The Board reserves the right to amend the Plan at any time for any reason in its discretion. However, no amendment will deprive you or your Beneficiary(ies) of benefits already earned at the time of such amendment.

The Plan was adopted for the exclusive benefit of eligible Employees and their Beneficiaries and with the expectation that it will be continued indefinitely. However, the Board reserves the right to terminate the Plan, in whole or in part, at any time for any reason in its discretion. If the Plan is terminated, you will be automatically 100% vested in your Account balance.

Under ERISA, the Plan is an "individual account plan". Accordingly, the provisions of Title IV of ERISA dealing with plan termination insurance do not apply to the Plan.

29. What are the procedures for filing a claim or appealing a denied claim?

The Administrative Committee reserves the full authority to interpret and administer the Plan in its discretion, including making all determinations that may impact eligibility or a claim for benefits, including factual determinations. The Administrative Committee, in its discretion, may correct any error or deficiency, supply any omission, and reconcile any inconsistency affecting the Plan.

When a benefit is due under the Plan, a claim should be submitted to the Administrative Committee (or its delegate) on a form provided for such purpose. Normally, you will receive action on your claim within 90 days after it is submitted to the Administrative Committee.

If the claim is denied, you will receive a written explanation, stating the reasons for the denial, relevant Plan provisions on which the decision was based, and the claim review procedure under the Plan. This explanation or, if an extension is necessary under special circumstances, written notification of the extension, will be furnished within 90 days. In any event, you will receive a written explanation of the decision within 180 days after submitting your claim.

If your claim is denied or if no action is taken on the claim within the required time period, you are entitled to a review of your claim. You, or your authorized representative, should file a written request for a review with the Administrative Committee. This should be done no later than 60 days after the claim has been denied (or is deemed to have been denied). As a part of the review process, you or your representative may review pertinent documents and submit written comments supporting your claim.

The Administrative Committee will notify you in writing of its final decision, citing pertinent Plan provisions on which its decision was based. This will normally be done within 60 days after receiving your request for review. However, in special cases, this period may be extended up to an additional 60 days if written notice of the extension is provided during the initial 60 day period.

In any case where an extension of time for a decision upon a claim is required because of special circumstances, you will be provided with written notice of the extension which will indicate the special circumstances and the date by which the decision is expected to be made.

No legal action may be commenced with respect to a claim for benefits later than one (1) year after the claimant originally requested payment of benefits; further, the claimant must exhaust the claims review procedures set forth above prior to the commencement of any legal proceeding.

30. What are my rights under ERISA?

As a Member in the Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 ("**ERISA**"). ERISA provides that all Plan participants shall be entitled to:

Receive Information About Your Plan and Benefits

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as work sites and union halls, all documents governing the Plan, including insurance contracts, collective bargaining agreements and a copy of the latest annual report (Form 5500 series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements,

and copies of the latest annual report (Form 5500 series) and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement at least quarterly showing your Plan account balance and the vested portion of your account. The Plan must provide the statement free of charge.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your Employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a retirement benefit or from exercising your rights under ERISA.

Enforce Your Rights

If your claim for a retirement benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits, which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds that your claim is frivolous.

Assistance with Your Questions

If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and

Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

CONCLUSION

Thank you for your service on behalf of BGGMC, LLC. We are pleased to continue to sponsor the Plan for the benefit of you and your family. We hope that your participation in the Plan will enable you to look with continued confidence to your future with us.