



SWINERTON INCORPORATED

SHORT TERM DISABILITY BENEFIT PROGRAM

Effective Date of Program: January 1, 2004

The provisions of this restatement of the Program apply to periods of Disability beginning on or after January 1, 2010.

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INTRODUCTION

The purpose of this Short Term Disability Benefit Program is to aid Employees in the establishment of financial security for themselves in the event of short-term disability. This Program is unfunded and Program benefits and expenses are made from the Company's general assets. The Company has discretionary and exclusive authority for all matters in connection with the operation, administration, modification or termination of this Payroll Practice Program.

I. DEFINITIONS

- A. Active Employment "Active Employment" means performance by the Employee of the regular duties of his or her work on any day that is one of the Company's scheduled work days. A period of Active Employment will also include (i) day(s) of vacation that have been scheduled by an Employee and (ii) days which are not the Company's scheduled work days provided the Employee is in Active Employment on the preceding scheduled work day.
- B. Company "Company" means Swinerton Incorporated and any successor thereto. In addition, for the purpose of determining eligibility to participate in the Program, "Company" also means any affiliates or subsidiary of Swinerton Incorporated that the officers of Swinerton Incorporated, in their sole discretion, authorize to participate in the Program.
- C. Disability "Disability" means any physical or mental condition arising from an illness, pregnancy or injury which (i) renders a Participant incapable of performing the material duties of his or her regular occupation, and (ii) results in a weekly loss of Earnings equal to at least twenty percent (20%).

A Participant will not be considered disabled if (i) he or she is performing work of any kind for remuneration or profit for any employer other than the Company (including self-employment) unless with the prior approval of the Company, or (ii) he or she declines alternative employment offered by the Company that is within the Participant's capabilities and, as determined solely by the Company, has status and compensation comparable to the Participant's previous occupation, or (iii) he or she declines part-time work in his or her regular occupation offered by the Company which is within the Participant's capabilities.

The loss of a professional or occupational license or certification does not, in itself, constitute Disability.

- D. Earnings "Earnings" means gross base pay in effect on the date immediately preceding the date the period of Disability begins, plus, if applicable, paid commissions, averaged over the lesser of the (i) twelve (12) months immediately preceding the date the period of Disability begins, or (ii) duration of employment. Bonuses, overtime, differentials and other forms of additional compensation are excluded.

"Earnings," with respect to a Participant who sustains a Disability while on an approved leave under the federal Family and Medical Leave Act (FMLA) and/or state law with provisions similar to FMLA, means gross base pay in effect just prior to the date his or her leave begins, plus, if applicable, paid commissions, averaged over the lesser of the (i) twelve (12) months immediately preceding the date the leave begins, or (ii) duration of employment. Bonuses, overtime, differentials and other forms of additional compensation are excluded.

- E. Effective Date "Effective Date" of the Program means January 1, 2004.
- F. Employee "Employee" means an individual who is (i) an employee of the Company, working outside of Hawaii, working thirty (30) or more hours per week

(ii) an employee of the Company, working in Hawaii, working twenty (20) or more hours per week (iii) assigned to or attached to a geographic location within the United States of America, and (iv) a member of one of the following classes:

- Class 1: Administrative employees or union superintendents; or
Class 2: Management employees classified in any one of the following job grades:
A005 (Executive Management – Level 1)
A010 (Executive Management – Level 2);
A015 (Senior Corporate Department Manager);
A020 (Corporate Department Manager);
E005 (Regional Manager);
E010 (Division Manager); or
E015 (General Manager).

Excluded from the definition of "Employee" is any individual who is performing services for the Company through an employment or leasing agency, classified by the Company as a union or nonunion craft worker, or a temporary or seasonal worker.

- G. Participant "Participant" means an Employee who satisfies the requirements for participation in the Program as hereinafter specified.
- H. Payroll Practice "Payroll Practice" means the practice of providing income replacement to employees through a Program that is not an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. This Program is a Payroll Practice within the meaning of regulation section 29 C.F.R. 2510.3-1(b)(2).
- I. Physician "Physician" means (i) a person performing tasks that are within the limits of his or her medical license, and (ii) a person who is licensed to practice medicine and prescribe and administer drugs or to perform surgery, or (iii) a person with a doctoral degree in Psychology (Ph.D. or Psy.D.) whose primary practice is treating patients, or (iv) a person who is a legally qualified medical practitioner according to the laws and regulations of the governing jurisdiction and acting within the scope of his or her practice.

A Participant, their spouse, children, parents or siblings will not be considered as a physician for the purposes of a Participant's claim for benefits under this Program.

- J. Program "Program" means the Swinerton Incorporated Short Term Disability Benefit Program, as herein set forth and as it may be amended from time to time.

II. PARTICIPATION

- A. Eligibility for and Effective Date of Participation A person who is an Employee on the Effective Date of the Program becomes a Participant on such Effective Date. A person who becomes an Employee after the Effective Date of the Program and works in Hawaii becomes a Participant on the first of the month coinciding with or next following four (4) weeks of continuous employment. A person who becomes an Employee after the Effective Date of the Program and does not work in Hawaii becomes a Participant on the first of the month coinciding with or next following thirty (30) days of continuous employment.

If an Employee is not in Active Employment on the date that his or her participation would otherwise become effective, his or her participation will be deferred until the date that he or she returns to Active Employment.

If, after completion of the waiting period, an Employee ceases to be eligible due to termination of employment, and returns to an eligible status within six (6) months after the date employment terminated, participation will begin on the first day of the month following the date of return.

- B. Cessation of Participation A Participant will automatically cease to participate on the earliest of the following:
1. the date on which the Participant ceases to be an Employee;
 2. the date on which the Participant commences a leave of absence unless the leave has been approved under the federal Family and Medical Leave Act (FMLA) and/or state law with provisions similar to FMLA;
 3. the date on which the Participant is placed on layoff status; or
 4. the date on which this Program terminates.

III. ELIGIBILITY FOR BENEFITS

- A. Elimination Period A Participant who sustains a Disability will, subject to the provisions of the Program, become eligible to receive benefits on the eighth (8th) consecutive day of Disability, provided the Participant has been examined by or is under the care of a Physician during some portion of that eight-day (8-day) period.

Successive periods of Disability separated by fourteen (14) or fewer days of continuous Active Employment at the Participant's normal work schedule will be considered one period of Disability, unless the subsequent Disability is due to an illness or injury found by the Company to be entirely unrelated to the cause of the previous Disability and commences after return to Active Employment with the Company for at least one day.

- B. Disability Determination The Company will determine whether a Disability exists with respect to a Participant on the basis of (i) a certificate from the Participant's Physician, or (ii) any such other information which the Company, in its sole discretion, deems relevant to such determination.

Certificates from the Participant's Physician must contain (i) a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms, (ii) a statement of the medical facts within the Physician's knowledge, based on a physical examination and documented medical history of the Participant by the Physician, (iii) the Physician's conclusion as to the Participant's Disability, and (iv) a statement of the Physician's opinion as to the expected duration of the Disability.

- C. Exclusions No Participant will be entitled to a benefit under this Program if:
1. his or her Disability arises out of, relates to, is caused by or results from an intentionally self-inflicted illness or injury;
 2. his or her Disability arises out of, relates to, is caused by or results from an illness or injury to which the contributing cause was the Participant's commission or attempted commission of a felony, or the Participant's engagement in an illegal occupation;
 3. his or her Disability arises out of, relates to, is caused by or results from an illness or injury due to war or any act of war, declared or undeclared, insurrection, rebellion, participation in a riot, or service in the armed forces of any country or international authority;
 4. his or her Disability arises out of, relates to, is caused by or results from cosmetic surgery that has not been approved as a covered medical expense by the Company's group medical insurance carrier;
 5. the Participant is not under the regular and continuous care and treatment of a Physician acting within the scope of his or her practice, unless the Company determines that such regular and continuous care and treatment are not medically indicated given the nature of the Disability;
 6. the Participant is incarcerated in any federal, state or municipal penal institution, jail, medical facility, hospital (public or private) or in any other

place because of a criminal conviction under federal, state or municipal law or ordinance;

7. the period of Disability begins when the Employee is not a Participant in the Program;
8. his or her Disability arises out of, relates to, is caused by or results from an illness or injury due to dipsomania, drug addiction or sexual psychopathy; provided, however, that this exclusion will apply only to periods during which the Participant is confined by court order or certification as a result of such condition or conditions; or
9. the Participant is receiving unemployment compensation under any federal or state program.

IV. DISABILITY BENEFITS

- A. Amount of Benefit Subject to reduction as hereinafter provided, the amount of weekly benefit for which a Participant is covered under the Program will be equal to:

Class 1:	80% of weekly Earnings
Class 2:	100% of weekly Earnings

For each day of any period of Disability for which benefits are payable and which is less than a full week, the amount of benefit payable will be 1/7th of the amount of the weekly benefit.

- B. Benefits During Partial Disability A Participant who is working fewer hours than he or she is regularly scheduled to work for the Company will receive benefits equal to the difference between Earnings and income from employment, multiplied by (i) 80%, in the case of a Class 1 Participant, or (ii) 100%, in the case of a Class 2 Participant. Benefits paid under this provision will be subject to reduction as hereinafter provided.

If a Participant performs work for any employer other than the Company (including self-employment) the above-described benefit will be paid only if prior approval is obtained from the Company.

- C. Reductions to the Amount of Benefit The Disability benefit will be reduced by any of the following which are available to the Participant for the same period for which the Disability benefit is payable hereunder:

1. primary disability or retirement benefits under the Federal Social Security Act, or any similar plan or act; provided, however, that any cost-of-living increases in such benefits, effective after the initial reduction in the Program benefit, will not serve to further reduce the Program benefit;
2. temporary disability (whether total or partial) payments, vocational rehabilitation payments, and, if for the same injury or illness, permanent disability payments made to the Participant under any workers' compensation law, occupational disease law, or any other legislation or law of similar purpose;
3. benefits under any plan, fund or other arrangement, by whatever name called, providing disability benefits pursuant to any compulsory benefit act or law of any government;
4. benefits under a State disability plan or a Company plan established in lieu thereof;
5. payments received as a result of the Participant's Disability from a no fault motor vehicle plan or any automobile insurance policy; or
6. retirement benefits under any Company-sponsored or Company-funded plan except the Company's 401(k) plan.

If a Participant is or might be entitled to any of the above-itemized benefits (except reduced early-retirement benefits), the full Program benefit will be paid upon receipt by the Company of (i) evidence that the Participant has applied for

such benefits and (ii) an executed agreement to reimburse the Company, up to the amount of payments made, immediately upon receipt of such benefits.

If the Participant fails to apply for any of the above-itemized benefits (except Company-paid sick leave and reduced early-retirement benefits) to which he or she might be entitled, the Program benefit will be reduced by the amount of the benefit that the Participant would have received had application been made. Determination of the amount of such benefit will be made by the Company.

D. Acts of Third Parties In the event that a Participant is injured through the acts or omissions of another person or organization, benefits under the Program will be provided only on the condition that the Participant agree in writing to the following:

1. to reimburse the Company for the full amount of payments made under the terms of the Program, immediately upon receipt of the proceeds of any settlement of, or judgment in, an action at law, arbitration, claim, or other proceedings to determine his or her rights of recovery arising out of his or her injury, net of his or her reasonable expenses in collecting such amount including reasonable attorney's fees, and net of any amounts which are allocated by terms of any judgment for the payment of unreimbursed medical expenses; he or she will execute and deliver instruments and papers and do whatever else is reasonably necessary to secure the rights of the Company to reimbursement out of such proceeds, and he or she will do nothing to prejudice such rights;
2. to provide the Company with a lien on the proceeds described in the preceding paragraph, to the extent of the full amount of payments made under the terms of the Program; and
3. to provide the Company with a credit against payments to be made in the future under the Program equal to the proceeds described above, less any amount paid to the Company by way of reimbursements.

E. Commencement and Duration of Benefits Benefits will be payable as of the first day that a Participant becomes eligible to receive benefits and applies therefor. Thereafter, benefits will be payable periodically so long as such eligibility continues.

Eligibility for benefits will terminate on the earliest of the following:

1. the date following the period of ninety (90) days of Disability;
2. the date employment with the Company is terminated for any reason;
3. the date of the Participant's death; or
4. the date the Disability ceases to exist.

F. Discontinuance and Resumption of Benefits Benefits will be discontinued on the date, as determined by the Company, that any of the following has occurred:

1. the Participant has refused to undergo a medical examination; failure by the Participant to undergo a scheduled medical examination following a written request by the Company to do so will be considered a refusal;

2. the Participant has refused to provide information requested in writing by the Company for the purpose of determining whether the Participant is entitled to benefits under the Program; failure to furnish such information within twenty (20) days after such information has been requested will be considered a refusal;
3. the Participant has refused to follow or has rejected the treatment plan recommended by his or her Physician, unless the Participant disputes such treatment plan in good faith and on the advice of another Physician; or
4. the Participant is no longer under the regular and continuous care and treatment of a Physician acting within the scope of his or her practice, unless such regular and continuous care and treatment are not medically indicated, given the nature of the Disability.

Benefits that have been discontinued in accordance with the above may resume if the reason for discontinuance ceases to apply. In no event, however, will benefits be paid for the period during which the Participant was not in compliance with the Program unless the Company determines that the Participant's failure to comply was due to reasonable cause.

The Participant will not be required to reimburse the Company for benefits which may have already been paid between the date on which the reason for discontinuance occurred and the date of the Company's determination.

- G. *Suspension and Reinstatement of Benefits* Benefits will be suspended as of the date of any medical examination conducted pursuant to Section V. D. If the Company, on the basis of the results of such examination, determines that eligibility for benefits continues, benefits will be reinstated as of the date of the medical examination.

V. PAYMENT OF BENEFITS

- A. Application for Benefits To be entitled to any benefits under the Program, a Participant must comply with such procedures and requirements as the Company may have prescribed with respect to the completion and filing of an application for such benefits and submission of evidence that the Participant is entitled to such benefits. The Company may require information with respect to the Participant's age, address, marital status, dependents, employment record, medical history and evidence that the Participant has applied for any benefits which would serve to reduce benefits under this Program.

The Company may require any other information reasonably relevant to a determination of whether the Participant is eligible to receive benefits and may also require written authorization to obtain:

1. information from the Participant's Physician or Physicians with respect to his or her physical condition, diagnosis, prognosis, date of expected return to work and related matters;
 2. relevant medical records on file in any hospital, Physician's or government office; and
 3. such other records from any company having information reasonably relevant to a determination.
- B. Time Limit for Application for Benefits An application for benefits must be filed no later than forty-five (45) calendar days after the date benefits may become payable under the Program unless it is not reasonably possible for the Participant or his or her representative to do so. In no event will the Company accept an application if such application is filed more than ninety (90) days after the date benefits become payable.
- C. Claim Processing and Benefit Determination Upon receipt of the Participant's application, the Company will make a determination as to the eligibility of the Participant for benefits within thirty (30) days after receipt of the claim. The decision of the Company will be final. If the Company requires additional information to make a determination, the Participant will be notified as to what information is required and be entitled to forty-five (45) days within which to provide the additional information.
- D. Medical Examinations The Company may require that a Participant applying for benefits submit to an examination by a Physician designated by the Company, for his or her medical opinion as to whether the Participant is disabled so as to meet the eligibility requirements under the Program for benefits. Reexaminations of a Participant receiving benefits may be directed by the Company from time to time for the purpose of assisting the Company in determining whether continued eligibility for such benefits exists. The fees of such Physician and the expenses of such examination will be paid by the Company.
- E. Non-Alienation of Benefits To the extent permitted by law, no benefit payable at any time under the Program will be assigned or transferable, or subject to any lien, in whole or in part, either directly or by operation of law or otherwise, including, but not limited to, execution, levy, garnishment, attachment, pledge,

bankruptcy, or in any other manner. No benefit payable under the Program will be liable for, or be subject to, any obligation or liability of any Participant.

- F. Payment to Representative In the event that a guardian, conservator, committee or other legal representative has been duly appointed for a Participant entitled to any payment under the Program, any such payment due may be made to the legal representative making claim therefor. Any such payment so made will be in complete discharge of the liabilities of the Program therefor, and the obligations of the Company.
- G. Payment In the Event of Death In the event of the death of the Participant, any payment due under this Program as a result of the Participant's Disability will be made to his or her beneficiary as noted in the Participant's group life insurance policy or, if no such policy exists, to the Participant's spouse. If payments cannot be made under either of the above methods, payment will be made to the Participant's estate.

VI. PROGRAM FINANCING

- A. Participant Contributions Participants will not be required to make contributions to the Program.

- B. Company Contributions The Program is unfunded. Disability benefit payments and other such costs as are determined necessary to operate the Program will be paid out of the Company's general assets.

VII. ADMINISTRATION AND RESPONSIBILITY

- A. Duties of the Company The Company will have discretionary and exclusive authority and responsibility for all matters in connection with the operation and administration of the Program. Specifically, the Company will:
1. determine eligibility for benefits under the Program, and compute and authorize the payments of such benefits as they become payable;
 2. decide questions relating to the eligibility of Employees to become Participants; and
 3. interpret this document.
- B. Delegation of Duties The Company may, from time to time, delegate any rights, powers, and duties of the Company with respect to the operation and administration of the Program to one or more committees, individuals or entities. If the Company delegates any rights, powers or duties to any person, such person may from time to time further delegate such rights, powers and duties to another person. If any right, power or duty is delegated to more than one person, such persons may from time to time allocate among themselves any such right, power or duty.
- C. Decisions and Rules The decisions of the Company made in good faith upon any matter within the scope of its authority will be final, but the Company at all times in carrying out its decisions will act in a uniform and nondiscriminatory manner.
- D. Liability; Indemnification The Company will not be liable for any act, omission, determination, or construction made by itself or by its delegated counsel, agents, or other employees, except for willful misconduct. The Company will indemnify and hold harmless any person to whom any duty is delegated from and against any and all liabilities, claims, demands, costs and expenses (including attorneys' fees) arising out of an alleged breach in the performance of its duties under the Program, other than such liabilities, claims, demands, costs and expenses as may result from gross negligence or willful misconduct of such person. The Company will have the right, but not the obligation, to conduct the defense of such person in any proceeding.

VIII. MISCELLANEOUS

- A. Permanence of the Program The Company intends to continue the Program indefinitely, but will not be under any obligation or liability whatsoever to continue to maintain the Program for any given length of time. The Company may, in its sole discretion, terminate the Program any time without any liability whatsoever for such action. If the Program is terminated, the termination will not affect the rights of any Participant to claim benefits with respect to a Disability incurred prior to such termination.
- B. Right to Amend The Company reserves the power and right, at any time or times, to amend any or all of the provisions of the Program to any extent and in any manner it will deem advisable.
- C. Nonguarantee of Employment The adoption and maintenance of the Program will not be considered to be a contract between the Company and any Employee. Therefore, no provision of the Program will give any Employee the right to be retained in the employ of the Company or to interfere with the right of the Company to discharge any Employee at any time, irrespective of the effect such discharge may have upon an Employee as a Participant or prospective Participant under the Program. In addition, no provision of the Program will be considered to give the Company the right to require any Employee to remain in its employ, or to interfere with any Employee's right to terminate his or her employment at any time.
- D. Titles Titles are for reference only. In the event of a conflict between a title and the content of a Section, the content will control.
- E. Gender and Number Wherever used in the Program, the masculine gender will include the feminine gender and the singular will include the plural, unless the context indicates otherwise.

IX. PROGRAM DOCUMENT APPROVAL

SWINERTON INCORPORATED

BY: _____

NAME: _____

TITLE: _____

DATE: _____