

2005 AMENDMENT AND RESTATEMENT  
OF  
KEYBANK EB MANAGED GUARANTEED INVESTMENT CONTRACT FUND

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**2005 AMENDMENT AND RESTATEMENT  
OF  
KEYBANK EB MANAGED GUARANTEED INVESTMENT CONTRACT FUND**

WHEREAS, on October 21, 1987, the establishment of the Plan of the Managed Guaranteed Investment Contract Fund of Ameritrust Company National Association was approved by the Board of Directors of Ameritrust Company National Association ("Ameritrust"); and

WHEREAS, Society National Bank ("Society") was the successor by merger to Ameritrust; and

WHEREAS, effective January 1, 1995, Key Trust Company of Ohio, N.A. ("Key Trust"), was substituted for Society pursuant to Ohio Revised Code Section 1109.021; and

WHEREAS, KeyBank National Association ("KeyBank") is the successor by merger to Key Trust effective as of December 29, 2000; and

WHEREAS, KeyBank as Trustee of the EB Managed Guaranteed Investment Contract Fund, as amended to date (the "Fund") wishes to further amend and restate the Fund as provided in Article 11 thereof in order to make certain changes deemed appropriate for the effective and efficient administration and operation of the Fund.

NOW, THEREFORE, in consideration of the premises, the Fund is hereby amended, effective as of January 1, 2005, as set forth below.

**ARTICLE 1  
PURPOSE AND DEFINITIONS**

1.1 Purpose. The KeyBank EB Managed Guaranteed Investment Contract Fund is hereby continued for the purpose of providing for the collective investment and reinvestment of assets held by Participating Trusts in accordance with the provisions of Section 3.1, below. The KeyBank EB Managed Guaranteed Investment Contract Fund is created and organized in the United States and shall be maintained at all times as a domestic trust in the United States.

1.2 Definitions. Unless the context indicates otherwise, the following terms when used herein with initial capital letters, shall have the meanings set forth below.

- (A) "Affiliate", any bank, trust company or other subsidiary of KeyCorp and its successors and assigns.

- (B) "Code", the Internal Revenue Code of 1986, as the same has been, or may hereafter be, amended.
- (C) "Employee Benefit Trust", any retirement trust, pension trust, profit-sharing trust, stock bonus trust, collective trust fund or other trust which is a qualified trust under Section 401(a) of the Code and is exempt from Federal income taxation under Section 501(a) of the Code, or an individual retirement account which is qualified under Section 408 of the Code and is exempt from Federal income taxation under Section 408(e) of the Code, or a governmental plan described in Section 818(a)(6) of the Code and for which KeyBank or an Affiliate is the trustee, a co-trustee, or agent for the trustee or trustees.
- (D) "Employer", the corporation, partnership, sole proprietorship, or other entity which has established a Participating Trust.
- (E) "Fiduciary", KeyBank, or any Affiliate, acting alone, or jointly with others, as a trustee or co-trustee of any Employee Benefit Trust or as agent for the trustee or trustees thereof.
- (F) "Fund", the Fund established under 3.1.
- (G) "KeyBank", KeyBank National Association, or any successor bank and/or trust company into which it may be merged or with which it may be consolidated.
- (H) "Liquidating Accounts", the segregated accounts provided for in Article 8.
- (I) "Managing Agent", the fiduciary relationship assumed upon the creation of an account which confers investment discretion upon a Person and which also imposes upon it the fiduciary responsibilities imposed upon executors, administrators, guardians or trustees under will or deed, but as to which the technical legal relationship is that of agent and principal.
- (J) "Participating Trust", an Employee Benefit Trust which (1) meets and continues to meet all of the eligibility requirements contained in 2.1 or 2.2, and (2) holds Units.
- (K) "Person", any individual, partnership, corporation or other entity, whether natural or legal.
- (L) "Property", anything which is the subject of ownership, including, but not limited to, real, personal and mixed property of every kind and description and wherever situated.
- (M) "Trust", the KeyBank EB Managed Guaranteed Investment Contract Fund and all amendments thereto.

- (N) "Trustee", KeyBank, as Trustee under this Trust, which shall be the agent for service of process.
- (O) "Unit", an undivided interest in the Fund which represents an equal right to share in the net income, profits and losses of the Fund.
- (P) "Valuation Date", the close of business on any day selected by the Trustee, but not less frequently than the last business day of each month.

1.3 Number. Unless the context indicates otherwise, the use of any word herein in the singular shall include the plural and vice versa.

## ARTICLE 2 PARTICIPATING TRUST

2.1 Eligibility Requirements. An Employee Benefit Trust shall be eligible to become a Participating Trust only if all of the following requirements are met:

- (A) KeyBank or another bank and/or trust company which is owned or controlled by a bank holding company which owns or controls KeyBank is a Fiduciary of such Employee Benefit Trust;
- (B) Such Employee Benefit Trust is authorized by the instrument creating the trust or by court order to commingle its assets with assets of other trusts through the medium of pooled, commingled or group trust funds and to the extent required by applicable law, such Employee Benefit Trust provides in its trust instrument that, to the extent of the participation of such trust in this Trust, this Trust shall be adopted as a part of such Employee Benefit Trust and/or the plan or plans in connection with which such Employee Benefit Trust was established;
- (C) all Persons who are required to approve investments by the Fiduciary for such Employee Benefit Trust have consented in writing to the participation of such Employee Benefit Trust herein; and
- (D) the Trustee has consented to the participation of such Employee Benefit Trust herein.

2.2 Other Participating Trusts. A bank , trust company or registered investment advisor that (i) is not affiliated with KeyBank; (ii) is the trustee or Managing Agent for an Employee Benefit Trust; and (iii) adopts an agreement acceptable to KeyBank that appoints KeyBank as a Fiduciary with respect to such Employee Benefit Trust and permits the investment of the assets of such Employee Benefit Trust in Units, may cause such Employee Benefit Trust to become a Participating Trust.

2.3 Adoption of Trust. The Employer or other fiduciary of an Employee Benefit Trust seeking to become a Participating Trust shall first execute and deliver to the Trustee a written agreement which, among other things, specifically acknowledges and agrees to the withdrawal restrictions set forth in Section 7.1 below. So long as a Participating Trust holds any Units, it shall be conclusively deemed to have adopted this Trust and shall be governed by all the provisions hereof.

### ARTICLE 3 THE FUND

3.1 Establishment of the Fund. The Trustee hereby establishes the Fund, which will be invested primarily in: (i) contracts of insurance that are guaranteed as to return of principal and rate of interest paid thereon by the issuing insurance company; (ii) investment contracts issued by banks and other financial institutions, the proceeds of which are guaranteed as to return of principal and rate of interest paid thereon by the contracting bank or financial institution; and (iii) collective trust funds, whether or not maintained by the Trustee and its affiliates, for the pooled investment of Employee Benefit Trusts; and (iv) other investments having the characteristics of a guaranteed return of principal and fixed rate of interest. As long as the Trustee holds any units of any collective trust fund hereunder, the instrument establishing such collective trust fund (including all amendments thereto) shall be deemed to have been adopted and made a part hereof and incorporated herein by this reference. The objective of the Fund is a reasonable level of income together with stability of principal. The Trustee may establish specific investment guidelines in furtherance of managing the Fund consistent with this Trust. The effective average maturity of the Fund is five years or less. The Fund may also invest in short term money market instruments, including but not limited to U.S. Treasury bills and notes, commercial paper, certificates of deposit, variable amount notes, any common or collective fund invested in similar Property and may invest in options, futures contracts, including, without limitation, stock index futures, interest rate futures and other derivative securities and may utilize short-selling and other hedging strategies.

3.2 Prohibition Against Diversion By Participating Trusts. At no time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries entitled to benefits under any Participating Trust shall the Units held by such trust be used for, or diverted to, any purposes other than for the exclusive benefit of such employees and their beneficiaries.

3.3 Prohibition Against Assignment By Participating Trusts. No Unit held by a Participating Trust shall be assignable by such trust, or by any Person having or claiming to have an interest therein.

3.4 Diversification. Within the investment guidelines described in 3.1 hereof the Trustee shall diversify investments in the Fund so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

3.5 Provisions Relating to Fund. The Fund established hereunder shall be subject to the following provisions:

- (A) All Property held in the Fund shall be owned exclusively by the Trustee and no Participating Trust shall have individual ownership of such Property.
- (B) As payment for Units acquired by a Participating Trust as of any Valuation Date, the Trustee in its sole discretion shall accept cash or such other Property (at its market value on such date) which is acceptable to the Trustee and is permitted under the applicable laws and regulations then in effect.
- (C) The Trustee may not have an interest in the Fund other than in its fiduciary capacity unless otherwise permitted by applicable laws and regulations. The Trustee may not make any loan on the security of a Participating Trust's interest in the Fund. If KeyBank, because of a creditor relationship or for any other reason, acquires an interest in any Units held by any Participating Trust, such Units shall be withdrawn as of the first Valuation Date as of which such withdrawal can be reasonably effected, but in no case shall an unsecured advance to such trust, until the time of the next Valuation Date, be deemed to constitute the acquisition of an interest in the Fund by KeyBank.

#### ARTICLE 4 ADMINISTRATION OF THE FUND

4.1 Rights, Powers and Duties of Trustee. The Trustee shall have the following rights, powers and duties in managing and controlling the Fund, which it shall exercise exclusively, except as a prudent person might delegate responsibilities to others:

- (A) to hold for such period of time as it deems appropriate, manage, improve, repair and control all Property held hereunder;
- (B) to sell, write options on, convey, transfer, exchange, partition, lease (with or without an option to purchase) for any length of time, mortgage, pledge and otherwise dispose of any Property held hereunder in such manner, for such consideration and upon such terms and conditions as the Trustee, in its discretion, shall determine;
- (C) to renew or extend any mortgage or lease upon such terms as the Trustee may deem expedient; to agree to reduction of the rate of interest on any mortgage; to agree to any modification in the terms of any lease or mortgage or of any guarantee pertaining to either of them; to exercise and enforce any right of foreclosure; to bid in Property on foreclosure; to take a deed in lieu of foreclosure with or without paying consideration therefor and in connection therewith to release the obligation on the note secured by the mortgage; and to exercise and

enforce in any action, suit or proceeding at law or in equity any rights, covenants, conditions or remedies with respect to any lease or mortgage or to any guarantee pertaining to either of them or to waive any default in the performance thereof;

- (D) to exercise, personally or by general or limited proxy, the right to vote any shares of stock, securities or other Property held in the Fund; to delegate discretionary voting power to Trustees of a voting trust for any period of time; and to exercise or sell, personally or by power of attorney, any conversion or subscription or other rights appurtenant to any Property held hereunder;
- (E) to join in or oppose any reorganization, recapitalization, consolidation, merger or liquidation, or any plan therefor, or any lease (with or without an option to purchase), mortgage or sale of the Property of any organization the securities of which are held hereunder; to pay from the Fund any assessments, charges or compensation specified in any plan of reorganization, recapitalization, consolidation, merger or liquidation relating to such Fund; to deposit any Property held hereunder with any committee or depository; and to retain any Property allotted to the Fund in any reorganization, recapitalization, consolidation, merger or liquidation;
- (F) to compromise, settle or arbitrate any claim, debt or obligation of or against the Fund; to enforce or abstain from enforcing any right, claim, debt or obligation; and to abandon any Property held hereunder which the Trustee deems to be worthless;
- (G) to hold Property of the Fund in bulk, in bearer form, in the Trustee's own name or in the name of a nominee, and deposit it with any depository, but the Trustee shall be liable for any loss occasioned by the act of such nominee, and the records of the Trustee shall at all times show that the Property is held for the Fund;
- (H) to make, execute and deliver, as Trustee, any deeds, conveyances, leases (with or without an option to purchase), mortgages, options, contracts, waivers or other instruments that the Trustee shall deem necessary or desirable in the exercise of its powers hereunder;
- (I) to employ KeyBank or any other Person, including such agents, appraisers, investment advisers (including, without limitation, an Investment Manager as defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended) and counsel as may be reasonably necessary to manage, service, administer and protect the property of the Fund and to pay their reasonable compensation and expenses from the Fund in conformity with the requirements of 12 CFR. §9.18 and its interpretation as expressed in the precedents and opinions of the Office of the Comptroller of the Currency for the proper handling of all expenses incurred in the administration and operation of a collective investment fund;



- (J) to pay out of the Fund all taxes imposed or levied with respect to the Fund and in its discretion to contest the validity or amount of any tax, assessment, penalty, claim or demand respecting the Fund;
- (K) to lend any securities to broker-dealer(s) or bank(s), and in connection therewith to enter into securities loan agreement(s), be entitled to receive a reasonable fee, to deliver to any such broker-dealer(s), or bank(s), such securities and to permit the loaned securities to be transferred into the name of and voted by the borrower or others;
- (L) to do all other acts which the Trustee deems necessary or desirable for the proper administration and protection of this Trust, although the right and power to do such acts are not specifically set forth herein.

4.2 Limitation of Trustee's Liability. The Trustee shall not be liable for the purchase, retention or sale of any Property held hereunder nor for any loss to or diminution of the Fund, unless the same were due to its own negligence, willful misconduct or lack of good faith.

4.3 Right to Consult With Counsel. The Trustee shall have the right to consult with legal counsel of its choice (including counsel for KeyBank) with respect to any question relating to the construction or interpretation of any provision hereof, or of the Trustee's rights, powers and duties hereunder. The Trustee shall be fully protected and shall incur no liability in taking any action, or refraining from taking any action, in good faith, pursuant to the opinion of such counsel.

4.4 Persons Dealing With Trustee. No Person dealing with the Trustee shall be required to inquire into the authority of the Trustee or to see to the application of any money or assets paid or delivered to it.

## ARTICLE 5 VALUATION OF UNITS AND THE FUND

5.1 Units. The interest of each Participating Trust in the Fund shall be measured in terms of Units thereof. No Unit shall have priority or preference over any other Unit. The records of the Trustee shall at all times reflect the number of Units held by each Participating Trust. The Trustee may divide the Units of the Fund into a greater number of Units of lesser value or combine them into a smaller number of Units of greater value. The interest of each Participating Trust in the Fund shall not be changed by such division or combination of Units except to the extent necessary for the Trustee to redeem from such Fund any resulting fractional Units. The Trustee shall not issue any certificate or other document evidencing a direct or indirect interest of a Participating Trust, except as permitted by 12 CFR 9.18(b)(11) with respect to interests in a segregated investment.

5.2 Unit Value. At the inception of the Fund, the value of each Unit thereof shall be fixed by the Trustee. As of each Valuation Date after the inception of the Fund, the Trustee shall determine the Unit value of the Fund by dividing the value thereof (as determined in 5.3) by the number of Units of the Fund then outstanding on such Valuation Date before the admissions and withdrawals of any such Units to be made as of such Valuation Date. The determination of the Unit value of the Fund as of each Valuation Date shall be completed within 10 days after such Valuation Date. The reasonable and equitable decision by the Trustee regarding the determination of Unit values of the Fund shall be conclusive and binding upon all Persons.

5.3 Valuation of Fund. As of the Valuation Date, the Trustee shall determine the fair market value of the Fund in the following manner:

- (A) In determining the fair market value of assets (stocks, bonds) listed on a generally recognized exchange or over the counter market the Trustee may employ any of the following methods or combination thereof which in its judgment may seem appropriate:
  - (1) Quotations from any such exchange or market reflecting
    - (i) the last sales price on the Valuation Date;
    - (ii) the mean of the most recent bid and ask price.
- (B) In determining the fair market value of assets not listed on a generally recognized exchange or over the counter market, or for which market value is not readily ascertainable the Trustee may rely upon the opinion of the issuing company for a guaranteed interest contract or security dealer for valuation of the security, or may rely upon valuations made by one or more members of the Trustee's own staff, but in any event the responsibility for determining the fair value of such assets shall be solely that of the Trustee.
- (C) The Trustee may rely, as sufficient evidence of value, upon reports of sale and bid and asked prices, and over-the-counter quotations, printed in any newspaper of general circulation or in an financial periodical or quotation service or in the record of any security exchange.
- (D) An investment purchased by the Fund and awaiting payment against delivery shall be included for valuation purposes as an investment held, and the accounts of the Fund shall be adjusted to reflect the purchase price, including broker's commission and other expenses of the purchase.
- (E) An investment sold but not delivered pending receipt of proceeds shall be valued at the net sale price, after deducting broker's commission and other expenses of the sale.

- (F) Except for an investment sold but not delivered, it shall be unnecessary in determining the value of an investment to deduct the indicated broker's commission and other expenses which would be incurred upon a sale.
- (G) With respect to short-term money market securities, fixed income obligations intended to be held to maturity shall be valued at cost. The difference between cost and anticipated receipt on maturity will be accrued on a straight line basis.

## ARTICLE 6 INCOME OF FUND

6.1 Use of Income. The net income earned and collected by the Fund shall, in the discretion of the Trustee be:

- (A) distributed equally among all of the Units of such Fund as of such Valuation Dates as the Trustee shall select; or
- (B) added to the principal of such Fund and invested and reinvested as a part thereof.

The Trustee shall determine whether Property received by the Fund constitutes income or principal thereto. The Trustee shall not be required to distribute any income before it is actually received, but the Trustee may, in its discretion, distribute income earned but not collected, provided that it maintains principal cash sufficient to offset the payments so made. If thereafter any part or all of the earned income so distributed is not collected, the Trustee may charge to and recover ratably from each Participating Trust the amount so distributed.

6.2 Accrual of Income. The income earned by the Fund between Valuation Dates shall be deemed to accrue at an equal rate from day to day, and the Trustee shall not be required by any Person to make any calculation for the purpose of determining the amount of income actually earned or accrued for any period other than a full period between Valuation Dates. The Trustee may accrue income through the last day of the month in those cases where a Valuation Date is not the last day of such month and treat such accrued income as part of the income for such Valuation Date.

## ARTICLE 7 ADMISSIONS AND WITHDRAWALS OF UNITS

7.1 Notice of Admissions and Withdrawals. Acquisition of Units by a Participating Trust shall be made only as of a Valuation Date and only on the basis of a valuation described in Article 5. Except as provided in 7.2, the Fiduciary of a Participating Trust may, by written notice delivered to the Trustee on or before a Valuation Date request the admission or withdrawal of Units as of such date. The Trustee will make all reasonable effort to comply with such request. Notwithstanding anything herein to the contrary: (1) withdrawals for participant benefit payment transactions in accordance with the provisions of a plan maintained in conjunction with a

Participating Trust (including, without limitation, benefit distributions or elections by participants to change investments or to obtain a loan from such plan) may be delayed for up to 30 days and (2) all other withdrawals of assets by a Participating Trust from the MaGIC Fund may be delayed for up to twelve (12) months in the sole discretion of the Trustee. All distributions required by the withdrawal of Units may, in the discretion of the Trustee, be made in cash or in kind or partly in both. If the total amount of all withdrawals from the Fund as of a Valuation Date exceeds the amount of cash and other liquid assets in the Fund on such Valuation Date, each withdrawal shall be satisfied on a pro rata basis and the unsatisfied amounts of withdrawal shall be carried over to the next succeeding Valuation Date. No withdrawal shall remain unsatisfied beyond the one year period beginning with the date the Trustee receives the withdrawal notice.

7.2 Withdrawal of Units Upon Loss of Exemption. If the Trustee receives notice that a Participating Trust has ceased to be an Employee Benefit Trust, then all of the Units held by such trust shall be withdrawn by the Trustee as of the first Valuation Date as of which such withdrawal can be reasonably effected. The Trustee shall not be required to notify or obtain the approval of any Person maintaining such Participating Trust before it makes such withdrawal.

7.3 Trading Abuses. Notwithstanding anything herein to the contrary, the Trustee is empowered, in its discretion, to take such actions as it shall reasonably determine to prevent practices relating to the purchase and redemption of Units of this Trust which may be harmful to this Trust and the holders of Units of this Trust, such as, but not limited to, market timing, short-term trading, excessive trading and failure to comply with or otherwise attempting to circumvent the provisions of this Trust. Such actions may include, but are not limited to, delaying or declining to process a request for admission to or withdrawal from this Trust.

## ARTICLE 8 LIQUIDATING ACCOUNTS

8.1 Establishment of Liquidating Accounts. The Trustee may segregate and place in a Liquidating Account such Property of the Fund which the Trustee deems advisable to distribute in kind or to liquidate in order to prevent any Participating Trust in the Fund from suffering loss or prejudice by reason of subsequent admissions and withdrawals of Units therefrom. A Liquidating Account for the Fund shall be established as of a Valuation Date and shall be held for the benefit of those trusts which were Participating Trusts in the Fund immediately prior to such date. Property held in a Liquidating Account shall not be considered to be an asset of the Fund. The Trustee shall have, with respect to any Liquidating Account, all the rights, powers and duties which it has with respect to the Fund, except that the Trustee:

- (A) shall, at such time as it deems appropriate, make distributions from any Liquidating Account to the Participating Trusts having an interest therein; and
- (B) need not make periodic valuations, as provided in 5.3, of any Liquidating Account.

## ARTICLE 9 ACCOUNTS AND AUDITS

9.1 Accounts and Records. The Trustee shall keep accurate and detailed accounts and records of all investments, receipts, disbursements and other transactions involving this Trust. The Trustee may, in its discretion, establish one or more accounts or sub-accounts hereunder for purposes of accounting for the proportionate interest of each Participating Trust and the fees and expenses chargeable to any one or all of the Participating Trusts or to the Fund. Any such account or sub-account will be subject to all applicable laws, rules and regulations relating to collective trust funds. Such accounts and records shall be open for inspection, during the Trustee's regular business hours, by any Person designated by any Employer. The Trustee's accounts shall be kept on an accrual basis, except that any Liquidating Account shall be kept on a cash basis. Within a reasonable length of time following the close of each fiscal year of this Trust, the Trustee shall prepare a financial report (based on the audit provided for in 9.2). The report must disclose the Fund's fees and expenses in a manner consistent with applicable law. This report must contain a list of investments in the Fund showing the cost and current market value of each investment, and a statement covering the period since the last report showing the following (organized by type of investment): (a) A summary of purchases (with costs); (b) A summary of sales (with profit or loss and any other investment changes); (c) Income and disbursements; and (d) An appropriate notation of any investments in default. The Trustee may furnish a condensed statement thereof and shall furnish a copy of such report to such persons as may be required by applicable statutes or regulations or by the terms of the instrument under which it is acting.

9.2 Audits. The Trustee shall, at least once during each fiscal year of this Trust, cause a complete audit to be made of the Fund and each Liquidating Account, either by auditors responsible only to the Board of Directors of the Trustee or to the Board of Directors of the bank holding company which owns or controls KeyBank, or by independent public accountants. In making such audit, such auditors shall be required to make only such examination of the Trustee's accounts and records as they deem reasonably necessary. Such auditors shall incur no liability for any act done or suffered by them in good faith and in the exercise of reasonable care. If independent public accountants are used as such auditors, their reasonable compensation and expenses shall be charged by the Trustee in a fair and equitable manner to the Fund and each Liquidating Account.

9.3 Settlement of Accounts. Whenever ordered to do so by a court of competent jurisdiction, the Trustee shall render to such court an accounting of this Trust; and upon application of the Trustee to such court, it may obtain a settlement of the Fund on such conditions as such court specifies.

9.4 Representation by Trustee in Judicial Proceedings. In any judicial proceeding affecting this Trust or any Property held hereunder, each Participating Trust and each Person having or claiming to have any interest herein shall be deemed to be fully represented by the Trustee for all purposes if the Trustee shall be a party to such proceedings and duly appear before the tribunal in which such proceedings shall be pending.

## ARTICLE 10 COMPENSATION AND EXPENSES OF THE TRUSTEE

10.1 Compensation. The Trustee may impose management fees or other administrative charges on a Fund or Participating Trusts thereof only if the fee is reasonable and is permitted under applicable law and the amount of the fee does not exceed an amount commensurate with the value of the legitimate services of tangible benefit to the Participating Trusts that would not have been provided to the Participating Trusts were they not invested in the Fund. All such fees and charges shall be adequately disclosed to the Participating Trusts of any Fund against which such fees or charges are imposed which are generated by reason of the participation in such Fund in a manner consistent with applicable laws. In addition, the Trustee may charge a fee to any Affiliate that has trusts which are Participating Trusts.

10.2 Expenses. The Trustee may charge reasonable expenses incurred in operating the collective investments fund, including without limitation the costs, expenses and fees of litigation, attorneys, agents and custodians, to the extent not prohibited by applicable law. However, the Trustee shall absorb the expenses of establishing or reorganizing a collective investment fund.

## ARTICLE 11 AMENDMENT AND TERMINATION

11.1 Amendment. This Trust may be amended by KeyBank with the approvals of its Board of Directors or by a committee authorized by said Board provided that each amendment shall be approved in writing by competent legal counsel.

11.2 Termination. The Board of Directors of KeyBank may at any time, in its discretion, direct the termination and liquidation of this Trust in whole or in part. The Trustee shall give written notice of such action to each Person maintaining a Participating Trust. Thereafter, no new Units shall be issued by any Fund which is to be terminated, and all Property held thereunder may be liquidated and shall be distributed ratably among the Participating Trusts holding Units therein. Any such distributions shall, in the discretion of the Trustee, be made in cash or in kind, or partly in both.

## ARTICLE 12 MISCELLANEOUS

12.1 Applicable Law. This Trust shall be maintained at all times in conformity with the rules and regulations pertaining to collective investment funds which may from time to time be issued by the Comptroller of the Currency or any other governmental office or agency having

jurisdiction of the collective investment of trust funds, all of which shall be deemed to be a part of this plan. In case any provisions hereof shall be invalid, such fact shall not affect the validity of any other provision hereof.

12.2 Effect of Mistakes. No mistake made in good faith and in the exercise of due care in connection with the administration of this Trust or of any Fund created hereunder shall be deemed to be a violation of this Trust or of the applicable laws and regulations then in effect, if, promptly after the discovery of the mistake, the Trustee shall take whatever action may be practicable under the circumstances to remedy such mistake.

12.3 Titles. Titles of articles and sections are placed herein for convenience of reference only and shall have no bearing upon the interpretation of this Trust.

12.4 Notices. Where any notice may be or is required to be given by the Trustee to any Person, such notice shall be deemed given if served personally either within or without the State of Ohio, or by depositing the same in the United States mails, postage prepaid, addressed to such Person's last address known to the Trustee.

12.5 Successors and Assigns. This plan and all the provisions thereof shall be binding upon and inure to the benefit of the Trustee and its successors, and auditors and their successors, the trustees of each Participating Trust and their successors, and each Person, his executors, administrators, successors and assigns, having or claiming to have any interest in any Participating Trust, this Trust or any liquidating account.

KEYBANK NATIONAL ASSOCIATION

By: John C. Barker

Approved this 1st day of January, 2005.

By: George J. Ehl

First Amendment  
To  
2005 Amendment and Restatement  
of  
KeyBank EB Managed Guaranteed  
Investment Contract Fund

WHEREAS, KeyBank National Association ("KeyBank") amended and restated the KeyBank EB Managed Guaranteed Investment Contract Fund (the "Fund") effective as of January 1, 2005; and

WHEREAS, KeyBank wishes to further amend the Fund to eliminate the provision for a thirty (30) day delay in processing participant initiated withdrawals;

NOW, THEREFORE, in consideration of the premises, the Fund is hereby amended as follows, effective June 1, 2005:

1. The fourth sentence of Section 7.1 is hereby restated in its entirety to read as follows: "Notwithstanding anything herein to the contrary: (1) withdrawals for participant benefit payment transactions in accordance with the provisions of a plan maintained in conjunction with a Participating Trust (including, without limitation, benefit distributions or elections by participants to change investments or to obtain a loan from such plan) will be processed as soon as administratively practicable, subject to available liquidity of the Fund and (2) all other withdrawals of assets by a Participating Trust from the Fund may be delayed for up to twelve (12) months in the sole discretion of the Trustee."

2. In all other respects, the terms and provisions of Fund are hereby ratified, confirmed and continued.

IN WITNESS WHEREOF, KeyBank has caused this First Amendment to be signed by its duly authorized officer effective June 1, 2005.

KeyBank National Association

By: John C. Butler

Approved this 30<sup>th</sup> day of JUNE, 2005.

By: Greg C.



Second Amendment  
To  
2005 Amendment and Restatement  
of  
KeyBank EB Managed Guaranteed  
Investment Contract Fund

WHEREAS, KeyBank National Association ("KeyBank") amended and restated the KeyBank EB Managed Guaranteed Investment Contract Fund (the "Fund") effective as of January 1, 2005 and subsequently amended the Fund effective as of June 1, 2005; and

WHEREAS, KeyBank wishes to further amend the Fund to require that plans investing in the Fund subsequent to October 31, 2014 contain certain restrictions applicable to transfers from the Fund to a competing investment;

NOW, THEREFORE, in consideration of the premises, the Fund is hereby amended as follows, effective October 31, 2014:

1. Section 2.1 is hereby restated in its entirety to read as follows:

2.1 Eligibility Requirements. An Employee Benefit Trust shall be eligible to become a Participating Trust only if all of the following requirements are met:

- (A) KeyBank or another bank and/or trust company which is owned or controlled by a bank holding company which owns or controls KeyBank is a Fiduciary of such Employee Benefit Trust;
- (B) Such Employee Benefit Trust is authorized by the instrument creating the trust or by court order to commingle its assets with assets of other trusts through the medium of pooled, commingled or group trust funds and to the extent required by applicable law, such Employee Benefit Trust provides in its trust instrument that, to the extent of the participation of such trust in this Trust, this Trust shall be adopted as a part of such Employee Benefit Trust and/or the plan or plans in connection with which such Employee Benefit Trust was established;
- (C) All Persons who are required to approve investments by the Fiduciary for such Employee Benefit Trust have consented in writing to the participation of such Employee Benefit Trust herein;
- (D) The Trustee has consented to the participation of such Employee Benefit Trust herein; and

- (E) Effective with respect to any Employee Benefit Trust that becomes a Participating Trust on or after November 1, 2014, such Employee Benefit Trust provides in its trust instrument that any person who has a beneficial interest in the Employee Benefit Trust is prohibited from transferring from the Fund to a "competing investment" (as defined below) without first investing in a "non-competing investment" (as defined below) for a period of at least three (3) months. For purposes of the preceding sentence, a "competing investment" means an investment alternative consisting solely of money market instruments or an investment alternative that has a primary investment strategy of investing solely in debt instruments whose average remaining maturity generally is not in excess of three and one-half years, and self-directed brokerage accounts. A "non-competing investment" meant an investment that does not constitute a competing investment.

2. In all other respects, the terms and provisions of Fund are hereby ratified, confirmed and continued.

IN WITNESS WHEREOF, KeyBank has caused this Second Amendment to be signed by its duly authorized officer effective October 31, 2014.

KeyBank National Association

By: John C. Barker

Approved this 20<sup>th</sup> day of OCTOBER, 2014.

By: Gregory J. Shaw