



EyeCare or Patient fails to timely pay the Membership Fee. The period from the Effective Date through the Initial Term and each (if any) Renewal Term is herein referred to as the “**Term**”.

**4. MEMBERSHIP FEE.** Patient agrees to and shall pay the applicable Membership Fee in advance as provided in Schedule 1 upon execution of this Agreement. Patient shall pay the Membership Fee by cash, Care Credit, cashier's check or other credit card. Unless this Agreement is not renewed, as provided in Section 3 (above), subsequently, the Patient will be billed for the Membership Fee for each Renewal Year prior to the beginning of each Renewal Year, and the Patient agrees to pay the invoiced Membership Fee within 7 days after the date of the invoice. ALL MEMBERSHIP FEES ARE NONREFUNDABLE.

**5. FAMILY PLAN OPTION.** Patient may elect to purchase a Family Membership Plan as further described in Schedule 1, pursuant to which Kearney EyeCare agrees to provide the Plan Benefits to Patient and Patient's family as further described on Schedule 1. For purposes of this Agreement, “**family**” means the Patient and Patient's legal spouse, same-sex or opposite-sex domestic partner, dependent children, including the children of Patient's domestic partner or spouse. If Patient elects to purchase a Family Membership Plan, Patient represents to Kearney EyeCare that information provided to Kearney EyeCare regarding Patient's family is accurate. Patient acknowledges and understands that Kearney EyeCare will rely on the information provided by Patient to Kearney EyeCare. Patient understands and agrees that if any information furnished to Kearney EyeCare is found to be material incorrect, fraudulent or intentionally misrepresented, then Kearney EyeCare may choose to terminate this Agreement and the Plan Benefits and upon such termination Patient will not be entitled to a refund of the Membership Fee or a portion thereof.

## **6. TERMINATION**

(a) Patient may terminate this Agreement at any time upon thirty (30) days prior written notice to Kearney EyeCare. Patient will not be entitled to a refund of the Membership Fee or a portion thereof.

(b) Kearney EyeCare may terminate this Agreement, at any time, upon occurrence of Patient's breach of this Agreement if such breach is not cured within 10 days. In addition, Kearney EyeCare may terminate this Agreement at any time without cause by giving written notice to Patient and paying to Patient an early termination fee equal to the Membership Fee Patient paid for the then current term minus the fair market value of the Plan Benefits Kearney EyeCare furnished to Patient during the term as determined based on Kearney EyeCare's then current fee schedule for professional services furnished to non-members and a reasonable mark-up to actual cost with respect to glasses, contacts and other furnished items.

(c) Upon any failure of Patient to timely pay the Monthly Fee, Kearney EyeCare and the Providers may immediately suspend their provision of Plan Benefits to Patient. Upon any termination of this Agreement, all obligations of Kearney EyeCare and the Providers shall immediately cease, except Kearney EyeCare's obligation to pay the early termination fee described in 6.(b) above in the case of a termination by Kearney EyeCare without cause.

**7. NOTICES.** Any communication required or permitted to be sent under this Agreement are deemed served if hand-delivered to the other party or if sent by first class mail or overnight mail to the address of the party written on the signature page.

**8. INDEPENDENT JUDGMENT.** Notwithstanding anything to the contrary contained in this Agreement, each Provider retains full and free discretion to, and shall, exercise his/her professional judgment on behalf of Patient, with respect to optometry services rendered to Patient. Nothing in this Agreement shall be deemed or construed to influence, limit or affect any Provider's independent judgment with respect to Kearney EyeCare's and Providers' provision of optometry services to Patient and Patient's treatment.

**9. REIMBURSEMENT FOR FURNISHED PLAN BENEFITS.** If for any reason this Agreement is declared invalid by a court of competent jurisdiction, and if Kearney EyeCare is therefore required to refund all or any portion of the Membership Fee paid by Patient, Patient agrees to pay Kearney EyeCare an amount equal to the fair market value of the Plan Benefits actually provided to Patient during the period of time for which the refunded fees were paid as determined based on Kearney EyeCare's then current fee schedule for professional services to non-members and a reasonable mark-up to actual cost with respect to glasses, contacts and other furnished items.

**10. GOVERNING LAW.** This Agreement shall be governed and construed under the laws of the State of Missouri without regard to its choice of law provisions. For all disputes arising under this Agreement, the parties hereby submit to the exclusive jurisdiction of the federal and state courts of Clay County, Missouri.

**11. NO LIABILITY FOR NON-CLINICAL SERVICES.** With respect to such non-professional services under this Agreement, to the fullest extent permitted by applicable law: (a) Kearney EyeCare's (including any of their respective agents or representatives and Providers) (each a “Kearney Party”) liability shall be limited to an amount that is equal to the annual Membership Fee paid by the Patient during the contract year of the Term in which the claim arises; and (b) no Kearney Party will be liable for any indirect, consequential, special or punitive damages of any kind, whether arising in contract, tort, strict liability or otherwise.

**12. AMENDMENT.** Except as provided in this Section 12, no amendment or modification of this Agreement shall be binding unless it is made in writing and signed by both Kearney EyeCare and Patient. Notwithstanding the foregoing, by sending advance written notice to Patient (which may be by email): (a) Kearney EyeCare may unilaterally amend this Agreement to the extent required by federal, state, or local law or regulation (“**Applicable Law**”); and (b) Kearney EyeCare may unilaterally amend the Plan Benefits and Membership Fee as set forth in Section 2(a). Any such changes are incorporated by reference into this Agreement without the need for signature by the parties and are effective as of the date established by Kearney EyeCare, except that Patient shall initial any such change at Kearney EyeCare's request.

**13. LEGAL SIGNIFICANCE.** Patient acknowledges that this Agreement is a legal document and creates certain rights and responsibilities. Patient also acknowledges Patient has had a reasonable time to seek legal advice regarding the Agreement and has either chosen not to do so or has done so and is satisfied with the terms and conditions of the Agreement.

**14. SEVERABILITY.** If any provision of the Agreement is declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of the Agreement will remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

**15. ASSIGNMENT.** Patient may not assign or transfer this Agreement or any rights of Patient hereunder.

**16. ENTIRE AGREEMENT; WAIVER.** The Agreement contains the entire agreement of the parties and supersedes all prior agreements and understandings between the Parties regarding the subject matter hereof.

The parties have signed duplicate counterparts of this Agreement as of \_\_\_\_\_ 20\_\_\_\_ (the “Effective Date”)

**Patient** **Kelli M. Regier-Hermon, OD, PA, D/B/A Kearney EyeCare, PC**

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Kelli M. Regier-Hermon, OD, Sole Shareholder

\_\_\_\_\_  
Signature

**Address:** Kearney EyeCare, PC

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## SCHEDULE 1 to KEARNEY EYECARE MEMBERSHIP PLAN AGREEMENT

### Services and Payment Terms

#### PLAN BENEFITS:

Patient shall pay a Membership Fee and receive Plan Benefits as follows:

**1. Individual Membership Plan - \$240/year paid in advance for the year\*\*.**

Plan Benefits:

- One Routine (i.e. non-medically necessary) Eye Exam annually
- One Refraction (Vision Test) annually
- Screening fundus photos
- \$150 allowance that can be used towards:
  - Contact Lenses; **OR**
  - Frame (this would also include a pair of single vision uncoated CR39 prescription lenses); **OR**
  - Non-prescription sunglasses
- 25% discount off the usual and customary charges for the items and services set forth on Schedule 2 (excluding items for which above allowance applies)

**2. Family Membership Plan -**

For a Family of 2 or 3 - \$240/year per each Family member paid in advance for the year\*\*

For a Family of 4 or greater - \$900/year for entire Family of 4, and \$120/year per each Family member over 4, paid in advance for the year\*\*

Plan Benefits:

- One Routine (i.e. non-medically necessary) Eye Exam annually for each family member
- One Refraction (Vision Test) annually for each family member
- Screening fundus photos for each family member
- \$150 allowance (per family member) that can be used towards:
  - Contact Lenses; **OR**
  - Frame (this would also include a pair of single vision uncoated CR39 prescription lenses); **OR**
  - Non-prescription sunglasses
- 25% discount off the usual and customary charges for the items and services set forth on Schedule 2(excluding items for which above allowance applies)

\*\* Patients who qualify and elect to pay the applicable Membership Fee via a Care Credit account will be charged the entire applicable Membership Fee in advance, but may be eligible with CareCredit for 12 month financing of the Membership Fee at no interest. Patient should refer to the terms of their account agreement with CareCredit for more details. Kearney EyeCare makes no representations or warranties with respect to the terms of Patient's CareCredit account.

**SCHEDULE 2 to KEARNEY EYECARE MEMBERSHIP PLAN AGREEMENT**

**SCHEDULE OF BENEFITS**

The 25% discount shall apply to all non-medically necessary items and services including but not limited to the following items and services. The following list of items and services is non-exhaustive:

Anti-Reflective Coatings  
Aspheric (plastic & digital)  
Bifocal  
Edge Treatments  
High Index  
Oversize Lenses

Photochromics  
Polarized  
Polycarbonate  
Prism  
Progressives  
Rimless Drill

Scratch Resistant Coatings  
Trifocals  
UV Protection

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