

**RESOLUTION NO. 160908**

**PASSED April 6, 2017**

**A resolution of the City of Gainesville, Florida adopting the ICMA Retirement Corporation Governmental Profit Sharing Plan & Trust for Plan Number 109086 for the benefit of eligible employees and their beneficiaries; providing an immediate effective date.**

**Whereas**, the City of Gainesville, Florida has employees rendering valuable service; and

**Whereas**, the Employer has established a qualified retirement plan, which includes a Police Member Share Plan, for such employees that serves the interest of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

**Whereas**, the Employer has determined that the continuance of the qualified retirement plan will serve those objectives.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:**

**Section 1.** The Employer hereby adopts the qualified retirement plan(the plan) in the form of the ICMA Retirement Corporation Governmental Profit-Sharing Plan & Trust.

**Section 2.** The assets of the Plan shall be held in trust, with the Employer serving as trustee (theTrustee), for the exclusive benefit of the Plan participants and their beneficiaries , and the assets shall not be diverted to any other purpose. The Trustee's beneficial ownership of Plan assets held is in the VantageTrust for the further exclusive benefit of plan participants and their beneficiaries.

**Section 3.** The Employer hereby agrees to serve as Trustee under the Plan.

**Section 4.** This resolution shall take effect immediately upon adoption. The City Manager or designee is authorized to execute the ICMA Retirement Corporation

Governmental Profit-Sharing Plan and Trust Adoption Agreement, subject to approval of the City Attorney as to form and legality.

**PASSED and ADOPTED** this 6<sup>th</sup> day of April 2017.



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LAUREN B. POE  
MAYOR

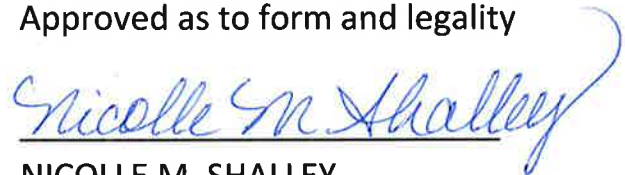
ATTEST:



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KURT M. LANNON  
CLERK OF THE COMMISSION

Approved as to form and legality



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NICOLLE M. SHALLEY  
CITY ATTORNEY

**ICMA RETIREMENT CORPORATION**

**GOVERNMENTAL PROFIT-SHARING PLAN & TRUST  
ADOPTION AGREEMENT**



**V. ELIGIBILITY REQUIREMENTS**

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) Vested Police Members of the Consolidated Police Officers and Firefighters Retirement Plan

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. Note: As stated in Sections 4.08 and 4.09, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) 10 years of credited service with the City of Galveston.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

**VI. CONTRIBUTION PROVISIONS**

1. The Employer shall contribute as follows (Choose all that apply):

**Fixed Employer Contributions With or Without Mandatory Participant Contributions.** (If Option B is chosen, please complete section C.)

A. Fixed Employer Contributions. The Employer shall contribute on behalf of each Participant \_\_\_\_\_% of Earnings or \$\_\_\_\_\_ for the Plan Year (subject to the limitations of Article V of the Plan). Mandatory Participant Contributions:

- are required       are not required
- to be eligible for this Employer Contribution.

**Fixed Employer Match of Voluntary After-Tax Participant Contributions.**

The Employer shall contribute on behalf of each Participant \_\_\_% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

**Variable Employer Match of Voluntary After-Tax Participant Contributions.**

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ );

PLUS \_\_\_\_\_ % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \_\_\_\_\_ \$ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_ more or \_\_\_ less.

2. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.06 and Article V of the Plan:

Yes  No (*"No" is the default provision under the Plan if no selection is made.*)

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

December 1 each year

4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

\_\_\_\_\_

5. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

A. Plan contributions will be made based on differential wage payments:

Yes  No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here

\_\_\_\_\_.

**Employer Dollar Match of Elective Deferrals.**

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year (not including Elective Deferrals exceeding \_\_\_\_\_% of Earnings or \$ \_\_\_\_\_ );

PLUS \$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ ).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

3. The Employer will permit Elective Deferrals and Catch-up Contributions elections to be made during the annual election window of \_\_\_\_\_ days (at least 30 calendar days). The election window will run from \_\_\_\_\_ to \_\_\_\_\_ (insert annual time frame for the election window or multiple time periods) and will not apply retroactively.
4. **Roth Provisions.** As provided in Section 20.03, Participants are permitted to make Roth Elective Deferrals from Compensation in the amount or percentage specified in a salary reduction agreement:

Yes                       No (*"No" is the default provision under the Plan if no selection is made.*)

**VIII. EARNINGS**

Earnings, as defined under Section 2.10 of the Plan, shall include:

1. Overtime

Yes                       No

2. Bonuses

Yes                       No

3. Other Pay (specifically describe any other types of pay to be included below)

**IX. ROLLOVER PROVISIONS**

1. The Employer will permit rollover contributions in accordance with Section 4.13 of the Plan:

Yes                       No (*"Yes" is the default provision under the Plan if no selection is made.*)

2. The Plan will accept a direct rollover contribution to a Designated Roth Account as permitted in Section 20.05(b) (*401(k) plans with Roth feature only*):

Yes                       No (*"Yes" is the default provision under the Plan if no selection is made.*)

3. The Plan will allow In-Plan Roth Conversions as provided in Section 20.06 (*401(k) plans with Roth feature only*):

Yes                       No (*"Yes" is the default provision under the Plan if no selection is made.*)

**XII. WITHDRAWALS AND LOANS**

1. Qualified reservist distributions are available under the plan (*401(k) plans only*):
- Yes  No (*"Yes" is the default provision under the Plan if no selection is made.*)
2. In-service distributions are permitted under the Plan, as provided in Section 9.08, after a participant attains age (*select one of the below options*):
- 59 ½  
 70½ (*"70½" is the default provision under the Plan if no selection is made.*)  
 Not permitted at any age
3. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days:
- Yes  No (*"Yes" is the default provision under the Plan if no selection is made.*)
4. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)
5. In-service distributions of the Rollover Account are permitted under the Plan as provided in Section 9.09
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)
6. The Plan will provide the following with respect to loans:
- a. Loans are permitted under the Plan, as provided in Article XIII of the Plan:
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)
- b. Designated Roth Accounts will be available as a source for loans under the Plan (*401(k) plans with Roth feature only*):
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)
7. (*401(k) plans only*) Hardship withdrawals are permitted under the Plan as provided in Section 9.07 but only if specifically elected by the Employer.
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)

If selected, hardship distributions will be available for the following accounts:

- a. Employer Contribution Account (Nonforfeitable Interest):
- Yes  No (*"No" is the default provision under the Plan if no selection is made.*)
- b. Participant Elective Deferral Account (not including earnings thereon accrued after December 31, 1988):
- Yes  No (*"Yes" is the default provision under the Plan if no selection is made.*)

**XV. ACCRUED LEAVE CONTRIBUTIONS**

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: \_\_\_\_\_

**Accrued Leave shall be defined as (select one):**

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of accrued leave that is bona fide vacation and/or sick leave*):  
\_\_\_\_\_

- 1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of \_\_\_\_ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant \_\_\_\_\_ % of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

- 2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute \_\_\_\_\_ % (insert fixed percentage of accrued unpaid leave to be contributed) or up to \_\_\_\_\_ % (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

**XVI.** The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

**XVII.** The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust. This ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.





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**ICMA RETIREMENT CORPORATION**

**GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**



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**2.08 Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

**2.09 Earnings.**

(a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(c)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

(b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

(c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

(d) **Earnings Paid After Severance from Employment.** Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.09(d).

(1) **Leave Cashouts.** Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

**2.17 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

**2.18 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

**2.19 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.

**2.20 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.

**2.21 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

**2.22 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

### III. ELIGIBILITY

**3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

**3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

**3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.
- 4.07 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.09 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

- 4.10 Accrual of Additional Benefits for Qualified Military Service.**
- (a) **Death Benefits with Respect to Qualified Military Service.** In the case of a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- (b) **Benefit Accruals with Respect to Differential Wage Payments.** If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.
- (c) **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).
- 4.11 Changes in Participant Election.** A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

## V. LIMITATION ON ALLOCATIONS

### 5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

### 5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.



- (b) Other Amounts. Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).
- (c) Date of Employer Contributions. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.
- (b) Compensation. Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).
- (1) Notwithstanding the foregoing, Compensation does not include:
- (i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and
- (ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).
- (iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).
- (2) Compensation Paid After Severance or Deemed Severance from Employment. Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.

2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.
2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.

(d) Employer: The Employer that adopts this Plan.

(e) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section IX. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

## VI. TRUST AND INVESTMENT OF ACCOUNTS

- 6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
  - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
  - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
  - (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
  - (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
  - (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any

## VII. VESTING

**7.01 Vesting Schedule.** The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

**7.02 Crediting Periods of Service.** Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

**7.03 Service After Break in Service.** In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

**7.04 Vesting Upon Normal Retirement Age.** Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

**7.05 Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

### 9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
  - (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
    - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
  - (3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).
- (c) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

**9.04 De Minimis Accounts.** Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11) (A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

**9.05 Withdrawal of Voluntary Contributions.** A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.06 Withdrawal of Deductible Employee Contributions.** A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.07 In-Service Distribution from Rollover Account.** Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

**9.08 In-Service Distributions.**

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts.

- (c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

## X. DISTRIBUTION REQUIREMENTS

### 10.01 General Rules.

- (a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002. With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.
- (b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
  - (2) The joint lives of the Participant and a designated Beneficiary,
  - (3) A period certain not extending beyond the life expectancy of the Participant, or
  - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- (e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 ("EESA") shall apply to the Plan.
- (f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 ("KETRA") and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

#### 10.04 Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).



## XI. MODES OF DISTRIBUTION OF BENEFITS

**11.01 Normal Mode of Distribution.** Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

**11.02 Elective Mode of Distribution.** Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.
- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

**11.03 Election of Mode.** A Participant's election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

**11.04 Death Benefits.** Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

## XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

**12.01 Application.** Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

### XIII. LOANS TO PARTICIPANTS

#### 13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

#### 13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
  - (1) \$50,000, reduced by the excess (if any) of
    - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
    - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

- (o) **Other Terms and Conditions.** The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
- (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
  - (2) rules relating to reamortization of loans; and
  - (3) rules relating to refinance of loans.

### 13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

## XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

**14.01 Amendment by Employer.** The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

- 14.04 Discontinuance of Contributions.** A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.
- 14.05 Amendment by Plan Administrator.** The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

- 14.06 Optional Provisions.** Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.
- 14.07 Failure of Qualification.** If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

## XV. ADMINISTRATION

**15.01 Powers of the Employer.** The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;

Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

- 15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

## XVI. MISCELLANEOUS

- 16.01 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.
- 16.02 Rights to Trust Assets.** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- 16.03 Nonalienation of Benefits.** Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.
- 16.04 Qualified Domestic Relations Order.** Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.
- 16.05 Nonforfeitability of Benefits.** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.
- 16.06 Incompetency of Payee.** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

## XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Optional Survivor Annuity.** For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.
- 17.04 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.05 Notice Requirements.**
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:
- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

- (b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.
- (c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

- (e) Qualified Joint and Survivor Annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) Straight Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

## XIX. ACCRUED LEAVE CONTRIBUTIONS

- 19.01 Eligibility.** Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.
- 19.02 Contribution Amount.** At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.
- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

- 19.03 Equivalencies.** The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.
- 19.04 Excess Contributions.** Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

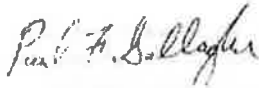


3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
  4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By:



Name:

Paul F. Gallagher

Title:

Assistant Secretary

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements