

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070083

1. ACTION REQUESTED/PURPOSE:

Approve an endorsement to the contract with ICMA Retirement Corporation (ICMA/RC) which reduces the administrative fees for the 457(b) deferred compensation plan effective April 1, 2007.

Adopt the amended and restated 457(b) Plan and Trust Document to comply with IRS regulations.

Adopt loan guidelines in order that participants may borrow their money from their account.

2. WHAT ACTION ACCOMPLISHES:

Lowers the administrative fees charged to employees for their deferred compensation accounts. The restated plan documents bring the plan into compliance with IRS regulations. The loan guidelines allow employees to borrow up to 50% of their money, and set rules for repayment.

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: CIA		5. Meeting Date: February 6, 2007
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other IRS	
	<input type="checkbox"/> Code Section 457	
		8. Request Initiated: Commissioner _____ Department <u>Administrative Services</u> Division <u>Human Resources</u> By: <u>Dinah L. Lewis</u>

9. Background:

ICMA is willing to lower its administrative fees for our deferred compensation plan in several steps. Adoption with the new plan document will place our plan in conformity with Federal regulations. Our other 457 plan has a similar loan agreement in place. No County funds are involved.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
									1-18-07

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY	
COUNTY ADMIN:	M
1-17-07	1:15
COUNTY ADMIN	MP
FORWARDED TO:	
✓ 11:00	
18	PR

Rec. by CoAtty
Date: <u>1/16/07</u>
Time: <u>4:20 pm</u>
Forwarded To: <u>1/16/07</u> <u>4:57 pm</u>

**AMENDMENT
TO THE
Administrative Services Agreements
for Plan Numbers 301980, 109282, 304478**

This Amendment to the Administrative Services Agreements (“Agreements”) for Plan number 301980, 109282, 304478 (the “Plans”) is entered by and between Lee County (“Employer”) and ICMA Retirement Corporation (“ICMA-RC”), effective as of the date of execution by the Employer below (“Execution Date”).

WHEREAS, the Employer sponsors the Plans on behalf of its eligible employees and retirees; and

WHEREAS, the Employer entered the Agreements to engage ICMA-RC to provide administrative services and investments for the Plans under the terms specified in the Agreements; and

WHEREAS, the parties wish to amend the Agreements to provide for an annual reduction in the Plan Administration fee paid under the Agreements and elimination of the Mutual Funds Fee under the Agreements for the Plans over the term of the Agreements contingent on the Employer’s use of EZLink for enrollment and contribution processing over the term of the Agreements and contribution funds are submitted through wire transfer or ACH; and

WHEREAS, Section 10(a) of the Agreements provides that the Agreements may be amended pursuant to a written instrument signed by the parties;

NOW, THEREFORE, the Agreements are hereby amended as follows:

FIRST

Section 6 of the Agreements, titled “Compensation and Payment” is amended by replacing subsections (a) and (d) with the following:

(a) Plan Administration Fee. The amount to be paid for plan administration services under this Agreement for Years one and two of the Term shall be 0.45% per annum of the amount of Plan assets invested in the Trust. The amount to be paid for plan administration services under this Agreement for Years three through seven of the Term shall be 0.29% per annum of the amount of Plan assets invested in the Trust. Such fee shall be computed based on average daily net Plan assets in the Trust. If within the first two years of this Agreement, Lee County qualifies for the reduction to 0.29%, it will be implemented by RC.

(d) Mutual Fund Services Fee. For years one and two of the Term of the Agreement, there is an annual charge of 0.15% assessed against average daily net Plan assets invested

in the Trust's non-proprietary funds of VantageTrust. For years three through seven of the Term of the Agreement, there is an annual charge of 0.00% assessed against average daily net Plan assets invested in the Trust's non-proprietary funds of VantageTrust.

The compensation and payment set forth in this section 6 is contingent upon the Employer's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement.

SECOND

Section 9 of the Agreements, titled "Term" is amended to provide as follows:

This Agreement shall be in effect for an initial term beginning on the Execution Date and ending 7 years after the Execution Date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such Agreement year.

The fee amendment will take effect in the calendar quarter following the Retirement Corporation's receipt of one fully-executed copy of this Amendment based upon the following schedule:

- | | |
|----------------------------|-------------------|
| - Received by February 20: | Effective April |
| - Received by May 20: | Effective July |
| - Received by August 20: | Effective October |
| - Received by November 20: | Effective January |

In all other respects, the Agreements are hereby ratified and affirmed.

IN WITNESS WHEREOF, Employer has caused this Amendment to be executed by its duly authorized officer this _____ day of _____, 2006.

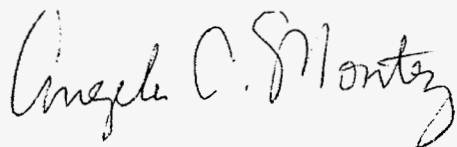
LEE COUNTY

By: _____

Print Name: _____

Title: _____

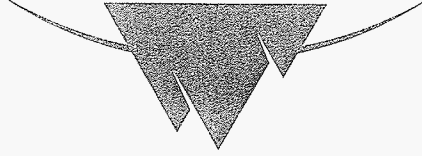
INTERNATIONAL CITY/COUNTY MANAGEMENT
ASSOCIATION RETIREMENT CORPORATION



By _____

Angela C. Montez
Corporate Secretary

Loan Guidelines



ICMA RETIREMENT CORPORATION
The Public Sector Expert

ICMA-RC 457 LOAN ADMINISTRATION AGREEMENT

This Agreement is not required if you have 1) only one 457 plan provider or 2) more than one plan provider each with its own plan document and provisions unique to each provider. The Agreement only applies if you have adopted a single 457 plan document under which ICMA-RC and one or more other provider(s) must operate. Please refer to Appendix A of *A Guide to Implementing a 457 Deferred Compensation Loan Program* brochure for more details.

This Agreement shall serve as an Addendum to the Loan Guidelines established by the Employer identified below as an Addendum to the Administrative Services Agreement (ASA) made by and between the ICMA Retirement Corporation (ICMA-RC) and the Employer.

The Employer currently sponsors a section 457 deferred compensation plan administered by two or more providers (co-provider plan). In order to ensure the efficient administration of the loan program established by the Employer, the Employer hereby agrees and declares that

- (1) For purposes of issuing loans from the plan, that portion of the plan's assets administered by ICMA-RC will be treated as though it were a separate and distinct plan.
- (2) The Employer shall calculate the amount a participant may borrow from the ICMA-RC administered portion of the plan. No loan amount may exceed the lesser of (a) the maximum loan amount specified in Internal Revenue Code section 72(p)(2)(A) or (b) 50% of the participant's ICMA-RC-administered account balance.
- (3) All loan repayments must be made to the participant's ICMA-RC-administered account for the life of the loan.

AGREED as of the _____ day of _____, 200__:

Name of Employer: Lee County BOCC _____
Authorized Official

State: _____

Employer Plan Number

3	0	1	9	8	0
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 - 304478, 109282

ICMA RETIREMENT CORPORATION

Paul Gallagher
Corporate Secretary

**Mail this Agreement and the completed 457 Plan Loan Guidelines
in the enclosed postage-paid envelope or to:**

ICMA Retirement Corporation • Attention: New Business Analyst
777 North Capitol Street, NE • Washington, DC 20002-4240

Name of Plan: ICMA-RC 457 Retirement Plan

I. Purpose

The purpose of these guidelines is to establish the terms and conditions under which the employer will grant loans to participants. This is the only official Loan Program Document of the above named Plan.

II. Eligibility

Loans are available to all active employees. Loans will not be granted to participants who have an existing loan in default. Loans will be pro-rated among all the funds in which the participant is invested at the time the loan is made.

Loans are available for the following purposes: [select one]

- All purposes

- Loans shall only be granted in the event of a participant's hardship or for the purpose of enabling a participant to meet certain specified financial situations. The employer shall determine, based on all relevant facts and circumstances, that the amount of the loan is not in excess of the amount required to relieve the financial need. For this purpose, financial need shall include, but not be limited to: unreimbursed medical expenses of the participant or members of the participant's immediate family, establishing or substantially rehabilitating the principal residence of the participant, or paying for a college education (including graduate studies) for the participant or his/her dependents.

III. Frequency of loans [select one]

- Participants may receive one loan per calendar year. Moreover, participants may have only one outstanding loan at a time.

- Participants may receive one loan per calendar year. Moreover, no participant may have more than five (5) loans outstanding at one time.

IV. Loan amount

The minimum loan amount is \$1,000.

The maximum amount of all loans to the participant from the plan and all other plans sponsored by the employer that are qualified employer plans under section 72(p)(4) of the Code is the lesser of:

- (1) \$50,000, reduced by the excess (if any) of
 - a. The highest outstanding balance of loans during the one-year period ending on the day before the date a loan is to be made, or
 - b. The outstanding balance of loans on the date the loan is to be made; or

- (2) one half of the participant's vested account balance.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

A loan cannot be issued for more than the above amount. The participant's requested loan amount is subject to downward adjustment without notice due to market fluctuation between the time of application and the time the loan is made.

V. Length of loan

A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years.

Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over no more than 15 [state number of years] years (maximum 30 years).

VI. Loan repayment process

Loans for active employees must be repaid through payroll deduction. Repayment will begin as soon as practicable on a date determined by the employer's payroll cycle.

Loans outstanding for former employees or employees on a leave of absence must be repaid on the same schedule as if payroll deductions were still being made unless they reamortize their loans and establish a new repayment schedule that provides that substantially equal payments are made at least monthly over the remaining period of the loan. All repayments must be made through the employer.

Loan payments, including loan payments from former employees, are allocated to the participant's current election of investment options on file with ICMA-RC.

The participant may pay off all or a portion of the principal and interest early without penalty or additional fee. Extra payments are applied forward to both principal and interest as specified in the original repayment schedule, unless the additional payment is for the balance due.

VII. Loan interest rate

The rate of interest for loans of five (5) years or less will be based on prime plus 0.5%.

The rate of interest for loans for a principal residence will be based on the FHA/VA rate.

Interest rates are determined on the last business day of the month preceding the month the loan is disbursed. The interest rate is locked in at the time a loan is approved and remains constant throughout the life of the loan.

The prime interest rate is determined on the last business day of each month using the *Wall Street Journal* as the source. The FHA/VA interest rate is also determined on the last business day of each month using the Telerate Information Service as the source.

Loan interest rates for new loans may fluctuate upward or downward monthly, depending on the movement of the prime and FHA/VA interest rates.

The employer may modify the manner in which loan interest rates will be determined, but only with respect to future loans.

VIII. Loan application procedure

All loans must be requested in writing on an application approved by the plan administrator. The application must be signed by the participant. The employer must review and approve the application.

The participant will be required to sign a promissory note evidencing the loan and a disclosure statement that includes an amortization schedule prior to receiving a loan check. Loan checks will generally be issued on the Friday following the receipt of a complete loan application. The loan check, promissory note, disclosure statement and truth-in-lending rescission notice will be sent to the employer, who will obtain the necessary signatures and deliver the check to the participant. All executed documents must be returned to the plan administrator within 10 calendar days from the date the check is issued.

IX. Security/Collateral

That portion of a participant's account balance that is equal to the amount of the loan is used as collateral for the loan. The collateral amount may not exceed 50 percent of the participant's account balance at the time the loan is taken. Only that portion of the account-balance that corresponds to the amount of the outstanding loan balance is used as collateral.

X. Acceleration [select one]

- All loans are due and payable in full upon separation from service.
- All loans are due and payable when a participant receives a distribution of all of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.
- All loans are due and payable when a participant receives a distribution of part of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

XI. Reamortization

Any outstanding loan may be reamortized. Reamortization means changing the terms of a loan, such as length of repayment period, interest rate, and frequency of repayments. A loan may not be reamortized to extend the length of the loan repayment period to more than five (5) years from the date the loan was originally made, or in the case of a loan to secure a principal residence, beyond the number of years specified by the employer in Section V above.

A participant must request the reamortization of a loan in writing on a reamortization application acceptable to the plan administrator. Upon processing the request, a new disclosure statement will be sent to the employer for endorsement by the participant and approval by the employer. The executed disclosure statement must be returned to the plan administrator within 10 calendar days from the date it is signed. The new disclosure statement is considered an amendment to the original promissory note, therefore a new promissory note will not be required.

A reamortization will not be considered a new loan for purposes of calculating the number of loans outstanding or the one loan per calendar year limit.

XII. Refinancing existing loans

If a participant has one outstanding loan, that loan may be refinanced. If a participant has more than one outstanding loan, no loans may be refinanced. Refinancing means concurrently repaying an existing loan and borrowing an additional amount through a new loan. A participant may not refinance a residential loan.

In order to refinance an existing loan, a participant must request a new loan in writing on an application approved by the plan administrator. Such request must be made at a time when the participant is eligible to obtain a loan as defined by the employer in Section III above. The amount of a new loan requested for the purpose of refinancing is subject to the loan limits specified in Section IV above.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan.

XIII. Reduction of Loan

If a participant dies prior to full repayment of the outstanding loan(s), the outstanding loan balance(s) will be deducted from the account prior to distribution to the beneficiary(ies). The unpaid loan amount is a taxable distribution and may be subject to early withdrawal penalties. The participant's estate is responsible for taxes or penalties on the unpaid loan amount, if any. The beneficiary is responsible for taxes due on the amount he/she receives. A Form 1099 will be issued to both the beneficiary and the estate for these purposes.

XIV. Loan default

If a required payment of principal and interest is not made within 90 days of the date such payment is due, the loan is considered in default. If a loan is in default, the loan will be foreclosed during the calendar year in which the participant separates from service. If a participant has separated from service and defaults on a loan, then the loan will be foreclosed during the calendar year in which the default occurs.

If the employer has elected in Section X, and the promissory note so provides, a loan becomes due and payable when the participant separates from service. If the terms of the loan contain this provision, the outstanding loan amount is "deemed" in default as of the date of separation from service. The amount of the outstanding loan, including accrued interest, will be reported to the IRS as a distribution that may be subject to taxes.

If the employer has so elected in Section X, and the promissory note so provides, a loan becomes due and payable when the participant takes a distribution of some or all of the balance in his/her account after separation from service. If the terms of the loans contain such a provision and the outstanding loan balance is not paid prior to the distribution from the account, the outstanding loan amount will be considered in default upon issuance of the distribution check. The amount of the outstanding loan, including accrued interest, will be reported to the IRS as a distribution that may be subject to taxes. Participants who have an existing loan in default will not be eligible for additional loans.

XV. Fees

Fees may be charged for various services associated with the application for and issuance of loans. All applicable fees will be debited from the participant's account balance and/or from the participant's loan repayments prior to crediting the repayment of principal and interest to the participant's account. A schedule of fees applicable to this plan is available from the plan administrator.

XVI. Other

The employer has the right to set other terms and conditions as it deems necessary for loans from the plan in order to comply with any legal requirements. All terms and conditions will be administered in a uniform and non-discriminatory manner.

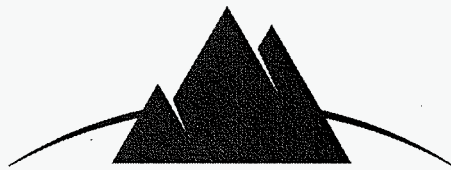
In Witness Whereof, the employer hereby caused these Guidelines to be executed this _____ day of _____, 20_____.

EMPLOYER
By: _____
Title: _____
Attest: _____

Accepted: ICMA RETIREMENT CORPORATION
By: _____
Title: _____
Attest: _____

457 Deferred Compensation Plan

PLAN & TRUST DOCUMENT



ICMA RETIREMENT CORPORATION

The Public Sector Expert

457 Plan and Trust Document

DEFERRED COMPENSATION PLAN & TRUST

As Amended and Restated Effective January 1, 2002

Article I. Purpose

The Employer hereby establishes the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

2.01 Account: The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 Accounting Date: Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

2.03 Administrator: The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 60 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 60 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

2.04 Automatic Distribution Date: April 1 of the calendar year after the Plan Year the Participant attains age 70-1/2 or, if later, has a Severance Event.

2.05 Beneficiary: The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then

457 Plan and Trust Document

the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.

2.06 Deemed IRA: A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder.

2.07 Deferred Compensation: The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.

2.08 Dollar Limitation: The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

2.09 Employee: Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.10 Employer: Lee County BOCC, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of Florida, described in Section 457(e)(1)(A) of the Code.

2.11 457 Catch-Up Dollar Limitation: Twice the Dollar Limitation.

2.12 Includible Compensation: Includible Compensation of a Participant means the "Participant's compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. Includible Compensation shall include any pre-tax contributions to an integral part trust of the employer providing retiree health care benefits.

2.13 Joinder Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.14 Normal Limitation: The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).

2.15 Normal Retirement Age: Age 70-1/2, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during

457 Plan and Trust Document

which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70-1/2. If a Participant continues employment after attaining age 70-1/2, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually has a Severance Event if the Employer has no mandatory retirement age. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70-1/2.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70-1/2. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70-1/2.

2.16 Participant: Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes a former Employee of the Employer.

2.17 Percentage Limitation: 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

2.18 Plan Year: The calendar year.

2.19 Retirement: The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.

2.20 Severance Event: A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

457 Plan and Trust Document

2.21 Trust: The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

3.01 Duties of the Employer: The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 Duties of Administrator: The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

4.01 Initial Participation: An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

4.02 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

Article V. Limitations on Deferrals

5.01 Normal Limitation: Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations:

- (a) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable

457 Plan and Trust Document

dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code, or (2) the excess (if any) of (i) the Participant's compensation (as defined in Section 415(c)(3) of the Code) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a). An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) **Last Three Years Catch-up Contribution:** For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) the 457 Catch-Up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Sick, Vacation and Back Pay: If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made pursuant to a Joinder Agreement entered into before the beginning of the month in which the amounts would otherwise be paid or made available to the Participant, and the Participant must be an Employee in that month. In the case of sick, vacation and back pay that is payable before the Participant has a Severance Event, the preceding requirements are deemed to be satisfied if the Joinder Agreement providing for the deferral is entered into before the amount is currently available.

5.04 Other Plans: Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 Excess Deferrals: Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations.

457 Plan and Trust Document

Article VI. Trust and Investment of Accounts

6.01 **Investment of Deferred Compensation:** A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) 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 that agrees to act in that capacity hereunder.

6.02 **Investment Powers:** The trustee or the 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 directed by Participants, pursuant to Section 6.05.

- (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, loans, notes, debentures, 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 described under Sections 457 or 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 Plans the declaration of trust of such commonly 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 457 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 Administrator, or such custodian as the 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.

457 Plan and Trust Document

- (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 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 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 claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 **Taxes and Expenses:** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

457 Plan and Trust Document

6.04 **Payment of Benefits:** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 **Investment Funds:** In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 **Valuation of Accounts:** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 **Participant Loan Accounts:** Participant Loan Accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 **Crediting of Accounts:** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 **Post-Severance Transfers Among Eligible Deferred Compensation Plans:**

- (a) **Incoming Transfers:** A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) in the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer; (ii) the other employer's plan provides that such transfer will be made; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance

457 Plan and Trust Document

with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

- (b) **Outgoing Transfers:** An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if: (i) in the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer; (ii) the other employer's plan provides that such transfer will be accepted; (iii) the Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and (iv) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer:

- (a) **Incoming Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be made; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) **Outgoing Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be accepted; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

457 Plan and Trust Document

6.11 Eligible Rollover Distributions:

- (a) **Incoming Rollovers:** An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the Code maintained by an eligible governmental employer described in Section 457(e)(1)(A) of Code.
- (b) **Outgoing Rollovers:** 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 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:**
 - (1) **Eligible Rollover Distribution:** An eligible rollover distribution is 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: 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; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
 - (2) **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.

457 Plan and Trust Document

- (3) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit: All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.13 Employer Liability: In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event:

- (a) **General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70-1/2, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

457 Plan and Trust Document

- (b) Loans: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's Loan Account in the event of a default of the Participant's loan.

7.02 Payment Options: As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03.

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer.
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01.
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option made after December 31, 1995, under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options: No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G).

457 Plan and Trust Document

7.04 Post-Retirement Death Benefits:

- (a) Should the Participant die after he/she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.05 Pre-Retirement Death Benefits:

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Unforeseeable Emergencies:

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant or Beneficiary resulting from a sudden unexpected illness, accident, or disability of the Participant, Beneficiary, or of the spouse or dependent (as defined in Section 152(a) of the Code) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster), or other

457 Plan and Trust Document

similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152(a)) of the Code may also constitute an unforeseeable emergency. Absent extraordinary circumstances, the need to send a Participant's or Beneficiary's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

7.07 De Minimis Accounts: Notwithstanding the foregoing provisions of this Article, if the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07. 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 and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants:

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected 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. However, no loans are available from Deemed IRAs.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants:

Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants on a reasonably equivalent basis.

457 Plan and Trust Document

- (b) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (c) Loan Limit. No Participant loan shall exceed the present value of the Participant's Account.
- (d) Foreclosure. In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's 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.
- (f) 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 from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or 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
 - (a) 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
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

457 Plan and Trust Document

- (g) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) Length of Loan. Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) Promissory Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) Security. The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) Assignment or Pledge. For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) 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 457 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 also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

457 Plan and Trust Document

8.03 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 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. Neither the Employer, the Administrator, nor any other person 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, where repayment cannot be made by payroll deduction, by check, 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.
- (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.

Article IX. Deemed IRAs

9.01 **General:** This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supercede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 **Voluntary Employee Contributions:** For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the

457 Plan and Trust Document

Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

9.03 Deemed IRA Trust Requirements: This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

9.04 Reporting Duties: The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

9.05 Deemed Traditional IRA Requirements: Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

(a) Exclusive Benefit. The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) Maximum Annual Contributions.

(1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;
\$4,000 for any taxable year beginning in 2005 through 2007; and
\$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and
\$1,000 for any taxable year beginning in 2006 and years thereafter.

(3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or

457 Plan and Trust Document

rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(c) Collectibles. If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) Life Insurance Contracts. No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) Minimum Required Distributions.

(1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations, rather than paragraphs (2), (3) and (4) below and section 9.05(f). The required minimum distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of section 1.408-8 of the Income Tax Regulations.

(2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70-1/2 (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.

(3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70-1/2 and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of section 1.401(a)(9)-9 of the Income Tax Regulations, using the Employee's age as of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

(4) The required minimum distribution for the year the Employee attains age 70-1/2 can be made as late as April 1 of the following year.

457 Plan and Trust Document

The required minimum distribution for any other year must be made by the end of such year.

(f) Distribution Upon Death.

(1) Death On or After Required Beginning Date. If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

(A) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(C) below if longer.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(C) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(C) below, over such period.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (1)(A) or (1)(B) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.

(D) The amount to be distributed each year under paragraph (1)(A), (B) or (C), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Single Life Tax Regulations.

If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph (1)(A), (B) or (C) and reduced by 1 for each subsequent year.

(2) Death Before Required Beginning Date. If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:

457 Plan and Trust Document

(A) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(C) below.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(C) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(C) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (2)(A) or (2)(B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(B) above).

(D) The amount to be distributed each year under paragraph (2)(A) or (B) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(A) or (B) and reduced by 1 for each subsequent year.

(E) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of section 1.408-8 of the Income Tax Regulations.

457 Plan and Trust Document

(F) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) Nonforfeitable. The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.

(h) Reporting. The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

(i) Substitution of Deemed IRA Trustee. If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of section 1.408-2(e) of the Income Tax Regulations.

9.06 **Deemed Roth IRA Requirements:** Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

(a) Exclusive Benefit. The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) Maximum Annual Contributions.

(1) Maximum Permissible Amount. Except in the case of a qualified rollover contribution or a recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (2) below), or the Employee's compensation (as defined in (8) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of section 408(d)(3) of the Code, except the one-rollover-per-year rule of section 408(d)(3)(B) does not apply if the rollover contribution is from an IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (3) through (5) below.

457 Plan and Trust Document

(2) Applicable Amount. The applicable amount is determined under (A) or (B) below:

(A) If the Employee is under age 50, the applicable amount

is --

\$3,000 for any taxable year beginning in 2002 through 2004,
\$4,000 for any taxable year beginning in 2005 through 2007 and
\$5,000 for any taxable year beginning in 2008 and years thereafter.

(B) If the Employee is 50 or older, the applicable amount is --

\$3,500 for any taxable year beginning in 2002 through 2004,
\$4,500 for any taxable year beginning in 2005, \$5,000 for any
taxable year beginning in 2006 through 2007 and \$6,000 for any
taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(A) and (B) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(3) Regular Contribution Limit. If (A) and/or (B) below apply, the maximum regular contribution that can be made to all the Employee's Roth IRAs for a taxable year is the smaller amount determined under (A) or (B).

(A) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (7) below) in accordance with the following table:

Filing Status	
Single or Head of Household	\$
Joint Return or Qualifying Widower	\$
Married- Separate Return	\$

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.

457 Plan and Trust Document

(B) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.

(4) Qualified Rollover Contribution Limit. A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

(5) SIMPLE IRA Limits. No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(6) Recharacterization. A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.

(7) Modified AGI. For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").

(8) Compensation. For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall

457 Plan and Trust Document

include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

(c) Collectibles. If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) Life Insurance Contracts. No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) Distributions Before Death. No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.

(f) Minimum Required Distributions.

(1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code), rather than the distribution rules in paragraphs (2), (3) and (4) below.

(2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:

(A) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(C) below.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(C)

457 Plan and Trust Document

below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(C) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (2)(A) or (2)(B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(B) above).

(D) The amount to be distributed each year under paragraph (2)(A) or (B) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(A) or (B) and reduced by 1 for each subsequent year.

(3) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of section 1.408-8 of the Income Tax Regulations.

(4) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) Nonforfeitable. The interest of an Employee in the balance in his or her account is nonforfeitable at all times.

(h) Reporting. The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

457 Plan and Trust Document

(i) Substitution of Deemed IRA Trustee. If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of section 1.408-2(e) of the Income Tax Regulations.

Article X. Non-Assignability

10.01 **General:** Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders:

- (a) **Allowance of Transfers:** To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, and (iii) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) **Release from Liability to Participant:** The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.
- (c) **Participation in Legal Proceedings:** The Employer and Administrator shall not be obligated to defend against or set aside any judgement, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any

457 Plan and Trust Document

proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

- (d) **Determination of Validity of Domestic Relations Orders:** The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

Article XI. Relationship to other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. 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.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (i) all assets held by the Plan (other than Deemed IRAs) are transferred; (ii) the receiving plan provides for the receipt of transfers; (iii) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iv) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

457 Plan and Trust Document

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

457 Plan and Trust Document

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by

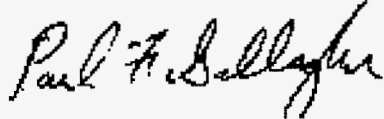
457 Plan and Trust Document

- (b) the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- 2. Compliance with Revenue Procedure 81-100. The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
 - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 - (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 - (c) 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.
 - (d) 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.
- 3. **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.
- 4. **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.

457 Plan and Trust Document

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

VANTAGETRUST COMPANY

A handwritten signature in black ink that reads "Paul F. Gallagher". The signature is written in a cursive style with a large initial 'P'.

By: _____

Name: Paul F. Gallagher

Title: Assistant Secretary



ICMA RETIREMENT CORPORATION

ICMA Retirement Corporation
Attention: New Business Analyst
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