

**THE MONEY ACCUMULATION PENSION PLAN
FOR EMPLOYEES OF THE CITY OF LEXINGTON**

This Plan, effective February 1, 1972, as amended and restated as of ~~February~~January 1, ~~1997,2008,~~ and as subsequently amended, is hereby further amended and restated effective January 1, ~~2008,2015,~~ except as otherwise provided herein, by and between the City of Lexington, Nebraska, organized and existing under the laws of the State of Nebraska (hereinafter referred to as the "Employer") and ~~First National~~Union Bank ~~of Omaha and Trust Company,~~ of ~~Omaha~~Lincoln, Nebraska (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, to maintain its qualification as a tax-exempt money purchase pension plan and trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended, ~~and to make other changes to the Plan as said sections apply to government plans,~~ it is necessary that the Plan be amended and restated to incorporate the applicable changes in tax laws and regulations ~~required for the Plan under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, certain changes under~~that have been enacted or promulgated since the Plan was last restated, including the requirements enacted by the Pension Protection Act of 2006, ~~and all other changes required by applicable~~the Heroes Earnings Assistance and Relief Tax Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008, the Small Business Jobs Act of 2010, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, the Moving Ahead for Progress in the 21st Century Act, the American Taxpayer Relief Act of 2012, the Highway and Transportation Funding Act of 2014, the Cooperative and Small Employer Charity Pension Flexibility Act, and to adopt such additional amendments as required by law or as otherwise determined to be necessary and appropriate by the City of Lexington, Nebraska.

NOW, THEREFORE, pursuant to its power and authority to amend the Plan, the Plan is hereby amended and restated by the City of Lexington, Nebraska, as follows:

INTRODUCTORY ARTICLE

CREATION AND PURPOSE OF TRUST

Name. Effective ~~February~~January 1, ~~1997,~~2015, except as otherwise provided herein, the Employer, pursuant to authorization of its governing body, hereby amends and restates and continues this Plan, and continues this Trust Agreement, said Plan and Trust known as "THE MONEY ACCUMULATION PENSION PLAN FOR EMPLOYEES OF THE CITY OF LEXINGTON" (hereinafter generally called the "Trust" or "Plan"); and the Trustee signifies its willingness to continue to act as Trustee under said Trust.

Purpose. The purpose of the Plan and Trust is to accumulate for the benefit of the Employees who are and will become Participants, as hereinafter provided, certain sums as provision for themselves after retirement from service.

Compliance with Internal Revenue Code. The Plan is intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended, that apply to government plans in order that the Plan may continue to qualify as a tax-exempt money purchase plan. If any provision of this Plan is subject to more than one interpretation, such ambiguity shall be resolved in favor of the interpretation which is consistent with this Plan being so qualified.

Employees Who Retired or Separated Prior to Restatement. Except as otherwise provided herein, the provisions of this amendment and restatement of the Plan and Trust are applicable only to Employees in the employ of the Employer on or after January 1, ~~2008-2015~~. Employees who retired with benefits commencing before January 1, ~~2008~~2015, or who terminated employment prior to January 1, ~~2008,~~2015, and the Beneficiaries of such Employees, shall be entitled to the benefits, if any, to which they were entitled under the Plan and Trust as it existed on the date of such retirement or termination of employment.

ARTICLE I
DEFINITIONS

When used in this Plan, the following terms shall have the meanings set forth below unless a different meaning is plainly required by the context:

Section 1.1 "Annuity Starting Date" means the first day of the month following the Valuation Date after the date the Trustee receives from the Administrative Committee a written notice of a distribution or, if later, the first day of the month specified by the Participant or Beneficiary for the commencement of benefit payments in accordance with Article VII and Article VIII hereof.

Section 1.2 "Basic Contributions" means those contributions made in accordance with Article III, Section 3.2.

Section 1.3 "Basic Contributions Account" means that portion of a Participant's interest in this Plan which is attributable to his Basic Contributions made in accordance with Section 3.2, and earnings thereon.

Section 1.4 "Beneficiary" means any individual, trust or other recipient named by a Participant to receive benefits payable hereunder upon the Participant's death, or the spouse, children or estate of the Participant, all as provided in Article VIII, Section 8.6.

Section 1.5 "Break in Service" means a consecutive twelve (12) month period, commencing on an Employee's Employment Commencement Date and each anniversary thereof or, if applicable, commencing on the Employee's Reemployment Commencement Date and each anniversary thereof, during which an Employee's status as an Employee is interrupted for more than three (3) months; provided, however, service in the armed forces of the United States during any period of qualified military service as defined in Section 414(u) of the Internal Revenue Code shall not be treated as an interruption of service for this purpose.

Section 1.6 "Compensation" means the sum of the Participant's gross salary or wage paid by the Employer to a Participant and reportable to the Internal Revenue Service for Federal Income Tax withholding purposes, and contributions made pursuant to a salary reduction agreement between the Participant and the Employer in accordance with the provisions of any cafeteria plan sponsored by the Employer pursuant to Section 125. Compensation shall also include a Participant's Contributions which are picked up by the Employer pursuant to Section 3.2 of this Plan.

For Plan Years beginning on or after December 31, ~~2001,2015~~, only the first ~~\$200,000~~265,000 of Compensation paid in a Plan Year, as adjusted after December 31, ~~2001,2015~~, for increases in the cost of living in accordance with Section 401(a)(17)(B) of

the Internal Revenue Code, may be taken into account for all purposes of the Plan. The compensation limit in effect for a Plan Year is the compensation limit in effect at the beginning of that Plan Year and applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such Plan Year. If a determination period consists of fewer than 12 months, the Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Section 1.7 "Continuous Vesting Service" means the number of whole years of continuous employment, commencing on the Employee's Employment Commencement Date and each anniversary thereof or, if applicable, commencing on the date the Employee first performs an Hour of Service subsequent to the date he incurs a Break in Service and each anniversary thereof. If the Employee incurs a Period of Severance, such Period of Severance shall be taken into account for purposes of determining Continuous Vesting Service if the Employee again performs an Hour of Service within the three (3) consecutive month period that commences on his Severance from Service Date. If the Employee fails to perform an Hour of Service within such three (3) consecutive month period, but again resumes employment, Continuous Vesting Service occurring prior to the Break in Service shall be disregarded for purposes of calculating the vested percentage of his Employer Contributions Account resulting from Employer Contributions made after the Participant's reemployment.

Section 1.8 "Covered Employment Classification" means the class or classes of Employees eligible to participate in this Plan who are customarily scheduled to work thirty (30) or more hours per week and for the full twelve (12) months of the calendar year, other than elected officials and firefighters and police officers who participate in the separate retirement systems established pursuant to state law for such employees.

Section 1.9 "Effective Date" means the Effective Date of this Plan, and shall be February 1, 1997. The Effective Date of this amended and restated Plan is January 1, ~~2008~~[2015](#).

Section 1.10 "Employee" means any person on the active employment rolls of the Employer on or after the Effective Date of this Plan and who is in a Covered Employment Classification. In no event shall any person who is a Leased Employee within the meaning of Section 414(n) of the Internal Revenue Code or who is classified by the Employer under its employment tax records as an independent contractor be an Employee who is eligible to participate in the Plan during the period of such classification, regardless of the common law or tax classification of such person under the work relationship with the Employer.

Section 1.11 "Employer" means The City of Lexington, Nebraska, or any successor organization which shall assume the obligations of this Plan with respect to its employees.

Section 1.12 "Employment Commencement Date" means the date on which the Employee first performs an Hour of Service.

Section 1.13 "Employer Contributions Account" means the portion of a Participant's interest in this Plan which is attributable to Employer Contributions made on behalf of a Participant in accordance with Article III, Section 3.3 and earnings thereon.

Section 1.14 "Entry Date" means the first day of each month coincident with or next following the date the Participant satisfies the eligibility requirements of Section 2.1.

Section 1.15 "Hour of Service" means:

(a) Each hour for which an Employee is paid, or entitled to payment by the Employer for the performance of duties. Hours under this paragraph shall be credited to the Employee for the computation period or periods in which the duties are performed; and

(b) Each hour for which an Employee is paid, or entitled to payment by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours shall be credited under this paragraph for any single period (whether or not such period occurs in a single computation period). Hours under this paragraph shall be credited to the Employee for the computation period or periods in which the period during which no duties are performed occurs; and

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same hours shall not be credited under both paragraph (a) or paragraph (b), as the case may be, and this paragraph (c). Hours under this paragraph shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award or agreement is made.

Section 1.16 "Insurer" means a legal reserve life insurance company organized or incorporated under the laws of any one of the United States of America duly licensed in the jurisdiction of Nebraska.

Section 1.17 "Leased Employee" means any person other than an Employee of the Employer who, pursuant agreement between the Employer and any other person, has performed services for the Employer or a substantially full-time basis for at least one (1) year provided such services are performed under the primary direction or control by the Employer.

Section 1.18 "Normal Retirement Date" means the date that the Participant attains age 65 or the completion five (5) years as a Participant in the Plan, whichever occurs later.

Section 1.19 "Participant" means an Employee who meets the eligibility requirements as specified in Article II, Section 2.1 hereof and who has taken all of the steps required by Article II to become a Participant of the Plan.

Section 1.20 "Period of Service" means a period of service commencing on the Employee's Employment Commencement Date or Reemployment Commencement Date and ending on the Employee's Severance From Service Date.

Section 1.21 "Period of Severance" means the period of time commencing on the Employee's Severance From Service Date and ending on the date the Employee again performs an Hour of Service.

Section 1.22 "Plan" means the Money Accumulation Pension Plan for Employees of the City of Lexington set forth in this document and all subsequent amendments and shall be known by the title set forth on its cover page.

Section 1.23 "Plan Administrator" means the legal entity, person or persons designated as the Administrative Committee as established in accordance with Article X hereof for the purpose of administering the Plan.

Section 1.24 "Plan Year" means the 12-consecutive month period used for maintaining the financial records of the Plan and begins on each ~~February~~January 1st and ends on each ~~January 31st; provided, however, effective January 1, 2002, "Plan Year" means the 12 consecutive month period that begins on each January 1st and ends on each December 31st; provided, further, the period that begins on February 1, 2001 and ends on December 31, 2001, shall be a short Plan Year~~December 31st.

Section 1.25 "Reemployment Commencement Date" means the first date following a period of severance on which the Employee performs an Hour of Service.

Section 1.26 "Related Plan" means any other defined contribution plan (as defined in Section 415(k) of the Internal Revenue Code) maintained by the Employer or by any other entity that is, along with the Employer, a member of a controlled group (as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h) thereof), or a member of an affiliated service group (as defined in Section 414(m) of the Internal Revenue Code).

Section 1.27 "Severance From Service Date" means the earlier of:

(a) The date on which an Employee quits, retires, is discharged or dies;
or

(b) The first anniversary of the first date of a period in which the Employee remains absent from service (with or without pay) with the Employer for any reason other than resignation, retirement, discharge or death, such as vacation, holiday, sickness, disability, leave of absence, or layoff.

Section 1.28 "Social Security Wage Base" is the taxable wage base as determined under Section 230 of the Social Security Act in effect on the first day of the Plan Year.

Section 1.29 "Valuation Date" means each day the New York Stock Exchange is open.

The singular form of any word shall include the plural and the masculine gender shall include the feminine wherever necessary for the proper interpretation of this Plan.

ARTICLE II

ELIGIBILITY TO PARTICIPATE

Section 2.1 Each ~~Employee who is employed in a Covered Employment Classification shall be eligible to become a Participant as of the first Entry Date coincident with or next following the date the Employee completes a one-year Period of Service and attains age 21; provided, however, effective June 12, 2001, each~~ Employee who is employed in a Covered Employment Classification shall be eligible to participate in the Plan as of the first Entry Date coincident with or next following the date the Employee completes his probation period (as determined pursuant to the Employer's personnel policies) and attains age 19; provided, further, an Employee's probation period shall not exceed six (6) months after such Employee's Employment Commencement Date.

Section 2.2 In the event an Employee incurs a Period of Severance, such Period of Severance shall be taken into account for the purposes of determining his eligibility in accordance with Section 2.1 if the Employee again performs an Hour of Service within the three (3) consecutive month period that commences on his Severance from Service Date. If the Employee fails to perform an Hour of Service within such three (3) consecutive month period, but again resumes employment, the Employee shall be deemed to be a new employee from the date of such resumption for purposes of eligibility to participate. An Employee who incurs a Period of Severance subsequent to becoming eligible to participate in this Plan shall again become eligible to participate upon the Entry Date coincident with or next following the Participant's Reemployment Commencement Date.

Section 2.3 An Employee who is not employed in a Covered Employment Classification shall not be eligible to participate in this Plan during the period he is not employed in a Covered Employment Classification. In addition, any person who is classified by the Employer as a Leased Employee or as an independent contractor (as determined under the Employer's employment tax records), or an employee of an independent contractor shall not be eligible in this Plan during the period of such classification.

Section 2.4 An Employee who is excluded from participating in this Plan because he is not employed in a Covered Employment Classification and who is subsequently employed in a Covered Employment Classification shall be eligible to become a Participant on the later of the date the Employee is employed in a Covered Employment Classification or the date set forth in Section 2.1 of this Article.

Section 2.5 The Administrative Committee shall notify every Employee of his eligibility and shall give the Employee an opportunity to become a Participant.

Section 2.6 To become a Participant, an Employee must meet the requirements of this Article and, at least thirty (30) days prior to the first day of the month the Employee wishes to become a Participant, the Employee must execute an application for participation which authorizes the Employer to make regular payroll deduction of his Basic Contributions pursuant to Section 3.2 of this Plan. No Employee shall become a Participant until the Employee has met the above requirements.

Section 2.7 In no event shall any Employee who is an active participant under the Police Officers' Retirement System Fund or the Firefighters Retirement System Fund be eligible to become a Participant in this Plan.

Section 2.8 A Participant shall continue to be such until the later of (1) the Participant's termination of employment with the Employer, or (2) the date all benefits, if any, to which the Participant is entitled under the Plan have been distributed to the Participant.

ARTICLE III
CONTRIBUTIONS

Section 3.1 Except as otherwise provided herein, all contributions to the Plan shall be paid to the Trustee for investment as provided in Article IV as part of a single Trust Fund. All funds held under group annuity contracts which had served as the funding medium for the Plan, if any, shall be transferred to the Trustee and made part of the Trust Fund in accordance with the terms and conditions of such contracts and pursuant to the Employer's exercise of any transfer options under the contracts. The Trust Fund is established and shall be administered for the exclusive benefit of the Participants and ~~beneficiaries~~Beneficiaries and no part thereof shall be diverted to other purposes.

The Trustee shall create and maintain two (2) separate accounts (hereinafter referred to as the "Accounts") in the name of each Participant:

- (a) The Participant's Basic Participant Contributions Account which shall relate to such Participant's participation in such Account and to which all Basic Participant Contributions pursuant to Section 3.2 shall be credited; and
- (b) Employer Contributions Account which shall relate to such Participant's participation in such Account and to which such Participant's share of the Employer's Contribution pursuant to Section 3.3 shall be credited.

Each such Account shall be adjusted to reflect investment gains, losses, and appreciation of the Trust Fund as of the end of each Plan Year. The Trustee shall maintain such subaccounts within each Account as may be necessary to provide an accounting for Employer Contributions made before April 25, 1989, and Employer Contributions made after such date. The Trustee shall not be required to maintain separate investments for any Account. All amounts transferred to the Trustee from any terminated group annuity contract shall be held in the same Account that such sums were held or allocated to under the group annuity contract.

Section 3.2 As a condition to participating in this Plan, each Participant shall elect in writing to make Basic Contributions hereunder while he remains an Employee of the Employer in the amount of three percent (3%), four percent (4%), five percent (5%), or six percent (6%) of the Participant's Compensation which is not in excess of the Social Security Wage Base. Such election may be amended in writing at least thirty (30) days prior to the beginning of any Plan Year and shall be effective for the entire Plan Year.

~~Effective April 25, 1989, the~~The Employer shall, pursuant to Section 414(h)(2) of the Internal Revenue Code, pick up the Basic Contributions which are deducted from the

Compensation of the Participants for direct contribution to the Plan, and the contributions so picked up shall be treated as employer contributions ~~in determining for purposes of federal and state income tax treatment of the amounts so picked up by the Employer under the Internal Revenue Code.~~ In no event shall any Participant be entitled or be given an option to directly receive the amount picked up ~~contributions in cash or any other form of remuneration by the Employer~~ in lieu of having such contributions being paid directly into ~~the Plan. The Employer shall continue to withhold federal and state income taxes on the picked up contributions until a ruling is received from the Internal Revenue Service that the contributions picked up by the Employer are not, pursuant to Section 414(h)(2) of the Internal Revenue Code, to be included in the gross income of the participating employees until distributed from~~ the Plan. All picked up contributions shall be deemed to arise either through a reduction in the Compensation of the Participant or a combination of a reduction in Compensation and offset against future increases in Compensation. All Basic Contributions shall be made by means of payroll deduction and be credited to each Participant's Basic Contributions Account. The Basic Contributions made by each Participant shall be paid to the Trustee no later than the fifteenth (15th) day of the month following the month in which the Basic Contributions were withheld by the Employer from the Participant's Compensation.

Section 3.3 The Employer shall make Employer Contributions each month on behalf of each Participant who has made Basic Contributions for such month. Such Employer Contributions shall be paid to the Trustee and be credited to each eligible Participant's Employer Contributions Account. The amount of the Employer Contribution to be made for any particular month with respect to any eligible Participant shall be equal the Participant's Basic Contribution for that month. The Employer Contribution for each Plan Year may be paid to the Trustee in one or more installments, without interest, within the time prescribed by the Internal Revenue Code or applicable Income Tax Regulations.

Section 3.4 Notwithstanding any other provisions of the Plan, the Annual Addition with respect to any Participant hereunder shall be limited to the Maximum Annual Addition in accordance with the provisions of Section 415 of the Internal Revenue Code, and the limitations, adjustments, and other requirements prescribed in Sections 3.4 to 3.6 ~~and~~ shall at all times comply with the provisions of Section 415 of the Internal Revenue Code and the Income Tax Regulations thereunder, the provisions of which are hereby incorporated herein by this reference. For the purposes of Sections 3.4, ~~3.5, 3.5,~~ and 3.6, the following definitions shall be applicable ~~beginning with the Limitation Year commencing January 1, 2002:~~

(a) "Annual Addition" shall mean, with respect to any Limitation Year, the sum of the following which are actually credited to a Participant's Account or Accounts as of any date within such Limitation Year:

(1) All Employer Contributions (including Basic Participant Contributions which are treated as Employer Contributions pursuant to Section 3.2) allocated to a Participant;

- (2) All forfeitures, if any, allocated to a Participant;
- (3) All of the Participant's Voluntary Participant Contributions;
- (4) Amounts described in Sections 415(l)(2) and 419A(d) of the Internal Revenue Code; and
- (5) Allocations under a simplified employee pension plan.

Contributions by the Employer are treated as credited to a Participant's Accounts under the Plan for a particular Limitation Year only if the contributions are actually made to the Plan no later than the fifteenth (15th) day of the tenth (10th) calendar month following the end of the fiscal year with or within which such Limitation Year ends.

(b) The "Maximum Annual Addition" which shall be permitted during any Limitation Year with respect to any Participant hereunder shall be the lesser of:

- (1) ~~\$40,000~~53,000 (as such limit may be adjusted on and after January 1, ~~2002~~2015, for increases in costs of living in accordance with Section 415(d) of the Internal Revenue Code in effect for that Limitation Year), or
- (2) 100 percent (100%) of the Participant's compensation (as defined in subsection (e) below) paid to the Participant by the Employer for such Plan Year (subject to the Compensation limitation of Section 401(a)(17)(B) of the Internal Revenue Code).

The limit in subsection (b)(2) above shall not apply to any contribution for medical benefits after a separation from service (within the meaning of Sections 401(h) or 419(f)(2) of the Internal Revenue Code) which is otherwise treated as an Annual Addition.

(c) "Excess Amounts" shall mean the lesser of the excess of the Participant's Annual Addition for the Limitation Year over the applicable Maximum Annual Addition as specified in this Section 3.4.

(d) "Limitation Year" shall mean the Plan Year ~~for this Plan~~. In lieu thereof, the Employer may adopt any other 12 consecutive month period by amending the Plan. ~~If the Employer is a member of a controlled group of corporations, trades or businesses under common control or an affiliated service group (as defined in Sections 414(b), (c) or (m) of the~~

~~Internal Revenue Code) the election to use a consecutive 12 month period other than the Plan Year must be made by all members of the group that maintains the Plan.~~

(e) "Compensation" shall mean wages within the meaning of Section 3401(a) of the Internal Revenue Code (for purposes of income tax withholding at the source) plus amounts that would be included in wages but for an election under Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code.

Except as provided herein, Compensation for a specified period is the Compensation actually paid or made available (or if earlier, includible in gross income) during such period.

Compensation for a Limitation Year shall also include Compensation paid by the later of ~~2-1/2~~ two and one-half (2 1/2) months after a Participant's severance from employment with the Employer ~~maintaining the Plan~~ or the end of the Plan Year that includes the date of the severance from employment with the Employer, if the payment is regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the Participant while the Participant continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of ~~2-1/2~~ two and one-half (2 1/2) months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

If Compensation for any prior determination period is taken into account in determining a Participant's contributions or benefits for the current Plan

Year, the Compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that determination period.

Section 3.5 In the event that any Participant is a participant in any other qualified defined contribution plans maintained by the Employer or any trade or business under common control with the Employer during any Limitation Year, the sum of such Participant's Annual Additions under all such qualified defined contribution plans shall be subject to the limitation set forth in Section 3.4. Any Excess Amounts which result during a Limitation Year shall be deemed to have occurred under the other qualified defined contribution plans before being deemed to have resulted from contributions allocated to a Participant's account under this Plan.

Section 3.6 If in any Limitation Year an Excess Amount should result for any Participant, then such Excess Amount may be corrected in accordance with the Employee Plans Compliance Resolution System ("EPCRS") as set forth in IRS Revenue Procedure ~~2006~~[2013-712](#) or any superseding guidance, including but not limited to the Income Tax Regulations under Section 415 of the Internal Revenue Code.

ARTICLE IV

INVESTMENT OF CONTRIBUTIONS

Section 4.1 All Plan contributions shall be delivered to the Trustee, and all such contributions, including all income or other property derived therefrom, shall be held, managed, administered, invested and reinvested by the Trustee in accordance with the terms and provisions of this Plan and Trust.

Section 4.2 As of each Valuation Date, the value of each Account shall be adjusted to reflect the effect of distribution, transfers, withdrawals, income, losses, contributions, expenses, and other transactions with respect to that Account.

~~Effective June 12, 2001, the~~The Trustee shall cause to be established and maintained at least (but not limited to) five (5) funds (collectively, the "Funds") for the investment of all Trust funds ~~as follows~~with, at all times, at least one fund from each of the following categories:

- (a) An income and equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks of U.S. companies, or securities convertible into common stocks of U.S. Companies, with a view to both income from cash dividends and opportunity of growth in value;
- (b) An equity growth fund, in which sums received for investment in such fund shall be invested primarily in a diversified portfolio or portfolios of common stocks, or securities convertible into common stocks of companies which have higher market growth potential, with better performance over longer periods of time, but having dividend income which may be incidental to the growth of capital. This fund will normally carry a higher risk profile than the equity fund described in (a) above;
- (c) An international equity fund, in which sums received for investment in such fund shall be primarily invested in a diversified portfolio or portfolios of common stocks, or securities convertible into common stocks, of companies which are non-U.S. based or companies established in major world markets;
- (d) A bond fund, in which sums received for investment in such fund shall be invested in a diversified portfolio or portfolios of marketable interest-bearing bonds, mortgage-related securities, U.S. government securities, commercial paper, bankers' acceptances, or other debt securities; and

(e) A money market fund in which sums received for investment in such fund shall be invested in a diversified portfolio or portfolios of high quality short-term interest bearing notes, commercial paper or deposits, including certificates of deposit, bankers' acceptances, repurchase agreements, and other similar money-market and interest-bearing investments pursuant to meeting the objectives of stability of principal and current income consistent with the stability of principal.

Section 4.3 The Trustee may, except as herein provided, invest and reinvest the Trust Fund without distinction between principal and income. The Trustee is authorized to invest the Trust Fund in such bonds, notes, debentures, mortgages, investment trust, certificates, preferred or common stocks, or in such other property, real or personal, within the United States, as the Trustee may deem advisable, provided such investments are authorized or appropriate for trustees under the laws of the State of Nebraska and consistent with the above-stated investment objectives for each of the investment funds. The Trust Fund may be invested wholly or partly through (i) the purchase of shares in a mutual fund or funds; or (ii) the medium of any common, collective, or commingled trust fund maintained by a bank or other financial institution (including the Trustee) and which is qualified under Section 401(a) and 501(a) of the Internal Revenue Code, to constitute a part of this Plan and Trust.

The Trustee may, in its discretion, temporarily hold in cash such portion of any Fund as shall be reasonable under the circumstances, pending investment or payment of expenses or distribution of benefits, without liability for interest; or, in the alternative, all of such temporary cash positions may be held in interest-bearing deposits of any bank or financial institution (to include the Trustee).

Section 4.4 ~~Effective June 12, 2001,~~ Participants shall direct the investment of their Basic Participant Contributions Accounts and Employer Contributions Accounts, subject to the following:

(a) All investment directions shall be in a form and manner as prescribed by the Trustee, Employer, and Administrative Committee. An initial investment direction shall be filed with the Participant's election made pursuant to Section 3.2. Subsequent directions may be filed on a daily basis, subject to such rules and regulations as may be established by the Trustee, Employer, and Administrative Committee. Elections shall be filed with the Administrative Committee or with such agent or agents as may be designated from time to time by the Administrative Committee for this purpose. Investment directions shall be implemented as soon as possible after they are filed, consistent with the orderly administration of such directions pursuant to procedures established by the Trustee, Employer, and Administrative Committee. An investment direction shall remain in effect until a new investment direction is filed by the Participant.

(b) Such investment direction shall specify the percentage of all contributions which are made on the Participant's behalf under the Plan and shall be invested in the Funds, or any single fund. Unless an effective investment is made by the Participant, all Accounts for such Participant shall be invested in the money market fund.

In the event that the Employer, Administrative Committee, and Trustee authorize the transmission of investment directions by voice, electronic, or other paperless system, written confirmation of each investment direction shall be maintained as a Plan record and such record shall be conclusive and binding upon the Participant, terminated Participant or Beneficiary unless the person who made the investment direction files a written objection thereto with the Administrative Committee (or with such agent or agents as may be designated from time to time by the Administrative Committee for this purpose), within five (5) days of the mailing or other delivery of the written confirmation of the investment direction or, if a written confirmation of the investment direction is not issued, within five (5) days of the receipt of the Plan's next report of the Participant's Accounts.

(c) All investment directions by a Participant shall be complete as to the terms of the investment transaction. Directions for the investment of any contributions shall be stated in percentages (in multiples of five (5) percent) of the amount contributed. A Participant's investment directions may provide for both the investment of existing Account balances and the investment of future contributions on behalf of the Participant. Participants may file individual investment directions that change the investment of all or only a portion of existing balances or future contributions.

(d) All dividends, gains, income, interest, and distributions of every nature received in respect of the assets held by a particular Fund shall be credited solely to such Fund and shall be reinvested in the investment assets of the Fund from which the earnings were derived. All losses attributable to a Fund shall be debited to such Fund alone, and shall accordingly be borne and payable proportionately from those Participant Accounts which are invested in such Fund. Unless paid by the Employer, the expenses of a particular Fund, such as commissions, transferred taxes, management fees, and other related investment expenses, shall be charged and debited to such Fund.

(e) Following the death of the Participant, each of the Participant's Beneficiaries shall have the right to direct the investment of the portion of the Participant's Accounts held on behalf of the Beneficiary, subject to the same terms and conditions as applied to the Participant prior to death.

(f) All investment directions shall be in accordance with such uniform rules and regulations as the Trustee, Employer, and the Administrative Committee may establish from time to time for this purpose.

(g) Each Account shall be valued at fair market value as of each Valuation Date and at such other times as may be necessary for the proper administration of the Plan. If fair market value of an asset is not available, it shall be deemed to be fair value as determined in good faith by the Administrative Committee or other fiduciary assigned such function, or if such asset is held in trust and the trust agreement so provides, as determined in good faith by the trustee.

(h) No person who is a fiduciary to this Plan, including the Trustee, shall be liable hereunder for any loss, or by reason of any breach, which results from a Participant's direction that his Accounts be invested in the Funds established hereunder.

Section 4.5 The Employer shall have the power to appoint or remove one or more investment advisers and to delegate to such adviser authority and discretion to manage the assets of the Trust Fund or of any Fund established pursuant to Section 4.2; provided that (i) such adviser is either a bank, an insurance company, or a registered investment adviser under the Investment Advisers Act of 1940 and shall acknowledge in writing that it is a fiduciary to the Plan; and (ii) the Employer shall periodically review the investment performance and methods of each such adviser.

Section 4.6 Notwithstanding the provisions of Section 4.2 above, the Employer may direct that any or all of the Funds established under Section 4.2 consist of one or more mutual funds sponsored by a regulated investment company selected by the Employer. In the event such mutual funds are selected by the Employer, the Trustee shall not be liable for any loss, or by reason of any breach, associated or in any way connected with the Employer's selection and retention of any mutual fund as an investment medium for the Plan.

ARTICLE V

VESTING

Section 5.1 The Participant's interest in his Basic Contributions Account shall be fully vested at all times.

Section 5.2 The Participant's interest in his Employer Contributions Account shall become fully vested at the earliest of the following dates:

- (a) The date the Participant shall have completed at least seven (7) years of Continuous Vesting Service in the employ of the Employer;
- (b) The date the Participant attains his Normal Retirement Date while in the service of the Employer;
- (c) The date of the Participant's death while employed in a Covered Employment Classification; or
- (d) The date of termination of this Plan or the date of the complete cessation of Employer Contributions hereunder.

Section 5.3 Prior to the date that the Participant becomes fully vested in his Employer Contributions Account in accordance with Section 5.2, the Participant shall earn a vested interest in his Employer Contributions Account which accrued after his most recent Employment or Reemployment Commencement Date in accordance with the following schedule:

<u>Continuous Vesting Service</u>	<u>Portion of Employer Contributions Account Currently Vested in Participant</u>
Less than 3 years	0%
At least 3 but less than 4	20%
At least 4 but less than 5	40%
At least 5 but less than 6	60%
At least 6 but less than 7	80%
7 year or more	100%

Section 5.4 In the event the Employer is a member of a controlled group within the meaning of Section 414(b) or (c) of the Internal Revenue Code, service completed by a Participant with any employer who is a member of such controlled group shall be treated as service with the Employer for the purposes of determining such participant's vested interest under this Plan.

Section 5.5 No amendment to the Plan's vesting provisions shall deprive a Participant of his nonforfeitable right accrued to the date of any such amendment.

Section 5.6 The portion of a Participant's Employer Contribution Account that is not vested pursuant to Section ~~5.15.2~~ of the Plan or the vesting schedule of Section ~~5.25.3~~ of the Plan shall be forfeited upon the Participant's severance of employment in accordance with and at the time provided in Section 9.3 of the Plan, and shall be applied to reduce future Employer Contributions to the Plan.

ARTICLE VI

PREMATURE WITHDRAWALS FROM THE PLAN

Section 6.1 A Participant may, at any time prior to the distribution of the Participant's Basic Contributions Account, elect to withdraw a cash amount equal to the value of such Participant's Basic Contributions Account. A Participant's election for a withdrawal must be made in writing to the Administrative Committee.

Such withdrawal shall be made as soon as administratively practicable following receipt by the Trustee of proper written notification from the Administrative Committee. The amount to be so withdrawn shall be limited to the value of the Participant's Basic Contributions Account as of such Valuation Date plus any contributions which have been made to the Plan since such Valuation Date which have been designated for such Account.

Section 6.2 A Participant who makes a withdrawal in accordance with Section 6.1 shall cease to be a Participant in the Plan and shall forfeit any portion of the Participant's Employer Contributions Account in which the Participant has become vested. Any amounts so forfeited shall be used to offset future Employer Contributions under this Plan, except as otherwise provided in Article XII, Section 12.3 of this Plan.

Section 6.3 Amounts withdrawn by a Participant under this Article VI cannot be returned to the Plan.

ARTICLE VII

RETIREMENT DISTRIBUTIONS

Section 7.1 A Participant shall be entitled to a distribution, in accordance with Section 7.2 or Section 7.3, of his Basic Contributions Account and his Employer Contributions Account upon his severance from service with the Employer on or after his Normal Retirement Date. A Participant who has become entitled to receive a distribution of his vested Accounts may elect to defer the distribution date of his Accounts to a date which is no later than his Required Beginning Date. If the Participant continues in the employ of the Employer beyond the Participant's Normal Retirement Date, distribution of the Participant's Accounts shall be deferred until the Participant's actual retirement. In no event shall the distribution of a Participant's benefits commence later than the April 1 following the calendar year in which the Participant attains age 70 ~~4~~¹/₂ or, if later, the calendar year of his severance from service (the "Required Beginning Date").

Section 7.2 Upon any distributable event, insurance contracts, if purchased by the Plan, and/or for proceeds thereof shall be distributed to a Participant, provided that the Trustee, upon direction the Administrative Committee, may pay additional premiums from the Participant's Employer Contributions Account to exercise options under the contracts.

Section 7.3 Subject to the minimum distribution requirements of Section 7.8 of the Plan, payment of a Participant's vested Accounts at retirement or upon his severance from service shall be in one or more of the following forms:

- (a) Lump sum payment in cash;
- (b) An immediate annuity under an annuity contract purchased from an Insurer;
- (c) Cash payments in monthly, quarterly, semiannual, or annual installments over any period not exceeding the life expectancy of the Participant or the joint life expectancy of the Participant and his designated Beneficiary; or
- (d) A combination of the foregoing distribution methods.

The Administrative Committee shall furnish to the Participant descriptions of the forms of immediate annuity available for purchase from an Insurer. After having so informed the Participant and having consulted with him, the Administrative Committee shall select the method or methods of payment as elected by the Participant; provided, however, that an annuity payment under any annuity contract shall be in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the Proposed

Income Tax Regulations thereunder. Payments of the vested Accounts shall be made or commence within the time period specified in Section 7.6 following the Participant's retirement, severance or his deferred distribution date.

Section 7.4 An election of any method or methods of payment made by a Participant in accordance with Section 7.3 may be revoked by the Participant and a subsequent election made at any time prior to the 30th day preceding the Participant's Annuity Starting Date. Any election or revocation of a previous election must be made in writing and submitted to the Plan Administrator.

Section 7.5 Notwithstanding the foregoing provisions, upon a Participant's termination of employment, if such Participant's vested Accounts shall be in an amount not in excess of \$5,000, the Trustee shall pay such vested Accounts to the Participant as soon as administratively practicable following the date of such termination in the form of a single lump sum payment. Upon such payment, all obligations of the Plan to pay benefits to the Participant, his spouse and Beneficiaries, shall terminate, without exception.

In no event shall a mandatory distribution greater than \$1,000 be made to a Participant before the Participant's Normal Retirement Age if such Participant has not elected to have such distribution paid directly to an eligible retirement plan in a direct rollover in accordance with Section 7.9 of the Plan or to receive the distribution directly, unless the Participant's vested Accounts are distributed in a direct rollover to an individual retirement plan designated by the Administrative Committee.

Section 7.6 All benefit distributions in accordance with this Article shall be made based on the value of the Participant's Accounts as of the Valuation Date coincident with or immediately preceding the date of distribution, plus any Basic Participant Contributions or Employer Contributions which have been made to this Plan since such Valuation Date. The actual payment of benefits shall be made or shall commence to be made no later than the 60th day following the selected distribution date with respect to which the distribution event occurs, unless:

- (a) The Participant shall have made a written irrevocable election to the Administrative Committee prior to the commencement of benefit payments, to defer payment to a later date (but no later than the Participant's Required Beginning Date) and the Administrative Committee shall have so informed the Trustee in the distribution notice; or
- (b) The amount of such payment cannot be ascertained by such date.

Section 7.7 Any annuity benefit under this Plan shall be obtained through the purchase of an annuity contract from an Insurer using the amounts then credited to the Participant's vested Accounts (as determined in Section 7.6). Any such annuity contract shall be nontransferable and comply with all applicable requirements of this Plan, including the requirements of Section 401(a)(9) of the Internal Revenue Code. Upon the

purchase of an annuity contract and distribution thereof to the Participant or his Beneficiary, all obligations of the Plan to pay benefits to the Participant, his spouse, and Beneficiaries shall terminate, without exception.

Section 7.8 All distributions under this Article VII shall be determined and made in accordance with the following minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations thereunder, and in accordance with the minimum incidental benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code.

(a) Time and Manner of Distribution.

(1) Required Distribution Date. The Participant's entire interest in the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Distribution Date.

(2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph (a)(2), other than subparagraph (a)(2)(A) above, will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (a)(2) and subsection (c), unless subparagraph (a)(2)(D) applies, distributions are considered to begin on the Participant's Required Distribution Date. If subparagraph (a)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph (a)(2)(A) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Distribution Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subparagraph (a)(2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Distribution Date, as of the first Distribution Calendar Year distributions will be made in accordance with subsections (b) and (c). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the Regulations thereunder.

(b) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(A) the quotient obtained by dividing the Participant's Accrued Benefit by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Accrued Benefit by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined

under this subsection (b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

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

(II) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

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

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death

is the quotient obtained by dividing the Participant's Accrued Benefit by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent calendar year.

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (c)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, and the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (c)(1), this subsection (c)(2) will apply as if the surviving spouse were the Participant.

(43) Definitions. For purposes of this Section 7.8, the following terms shall have the following meaning:

(A) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 8.6 of the Plan other than the estate of the Participant and who also qualifies as a designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A 4 of the Income Tax Regulations.

(B) Distribution Calendar Year. A calendar year for which a minimum distribution is required. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Distribution Date. The required minimum distribution for other Distribution Calendar

Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Distribution Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(C) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Income Tax Regulations.

(D) Participant's Accrued Benefit. The Participant's combined Accounts as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the combined Accounts as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Accrued Benefit for the valuation calendar year includes any amounts transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(E) Required Distribution Date. The Required Distribution Date of a Participant is the April 1 following the later of (i) the calendar year in which the Participant attains age 70 ~~4/2~~^{1/2}, or (ii) the calendar year in which the Participant retires.

Section 7.9 Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article VII, a distributee may elect, at the time and in the manner prescribed by the Administrative Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For the purposes of this Section 7.9, the following definitions shall apply:

(a) "Eligible Rollover Distribution" means 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 of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's ~~designated~~Designated Beneficiary, or for a specified period of ten years or more; any portion of a distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and any ~~hardship distribution (if permitted by the Plan). For purposes of this Section 7.9, a~~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). A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee ~~distributions~~contributions or other amounts which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in ~~Section~~Sections 408(a) or 408(b) of the Internal Revenue Code, or to a qualified ~~defined contribution~~ plan described in Section 401(a) ~~or of the Code or a plan described in Section~~ 403(~~ab~~) of the Internal Revenue Code that ~~agrees to separately~~provides for a separate account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) ~~"Eligible Retirement Plan"~~ is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution and which agrees to separately account for amounts transferred into such plan from this Plan ~~or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution.~~ This. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse ~~of the Participant,~~ or to a spouse or former spouse who is the alternate payee under a ~~Qualified Domestic Relations Order~~qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, ~~that accepts the distributee's eligible rollover distribution.~~ For purposes of a distribution on behalf of a Designated Beneficiary who is not a spouse or former spouse of the Participant, "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code or an individual retirement annuity described in Section 408(b) of the Internal Revenue Code established for the purpose of receiving a distribution on behalf of the Designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Internal Revenue Code. For distributions made after December 31, 2007, an "eligible retirement plan" shall include a Roth IRA described in Section 408A of the Internal Revenue Code.

(c) "Distributee" includes a Participant or former Participant, and the Participant's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, ~~"Distributee"~~ shall also include a Participant's Designated Beneficiary who is not the Participant's surviving

spouse or former spouse, [including a trust that qualifies as a Designated Beneficiary under Section 401\(a\)\(9\)\(E\) of the Internal Revenue Code.](#)

(d) "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE VIII

DEATH BENEFITS

Section 8.1 The Plan does not provide death benefits greater than those provided by the value of the vested balance of the Participant's Accounts as of the date of his death.

Section 8.2 If a Participant dies before benefits have commenced, then the Participant's Basic Contributions Account and the Participant's vested interest in his Employer Contributions Account shall, subject to Section 8.3, be paid to the Participant's designated Beneficiary. In the event of a Participant's death subsequent to his severance from service with the Employer, a distribution of the remaining balance of the deceased Participant's Accounts (as determined on the Valuation Date coincident with or immediately preceding the Participant's death) shall be made to such Participant's designated Beneficiary unless the Participant's benefit had commenced to be paid in the form of an annuity. If benefits had commenced in the form of an annuity pursuant to Section 7.3(b), any death benefits which became payable subsequent to the Participant's annuity starting date shall be provided in accordance with the particular form of annuity contract which was payable to the Participant, and the Plan shall have no obligation to pay any death benefit to the Beneficiary.

For purposes of the death benefit provided under the Plan, in the case of a death of a Participant occurring on or after January 1, 2007, while performing qualified military service (as defined in Section 414(u) of the Code), the Participant's Beneficiary(ies) shall be entitled to any additional death benefit (other than accrued benefits relating to the period of qualified military service) provided under the Plan as if the Participant had returned to employment and then incurred a severance from service on account of the Participant's death.

Section 8.3 Payment of any death benefits which become due in accordance with Section 8.2 shall be in a lump sum, as an immediate annuity purchased from an Insurer, or as a combination of such methods of payment; provided, however, if the balance of the deceased Participant's vested Accounts is less than \$5,000, the only form of payment to a Beneficiary shall be a single lump sum payment. The method or methods of payment shall be chosen by the designated Beneficiary unless the Participant shall have previously elected to have any death benefits which become payable under the Plan paid in a form other than a lump sum. Such an election by a Participant must be made in writing on a form prescribed by the Administrative Committee.

Section 8.4 The deceased Participant's designated Beneficiary entitled to make an election in accordance with Section 8.3 may, at any time subsequent to the Participant's death but prior to the commencement of any benefit payments hereunder, make a written request to the Administrative Committee for an explanation of the methods

of payment which may be selected by the Beneficiary. Within a reasonable amount of time, the Administrative Committee shall furnish a written non-technical explanation of the methods of payment which may be selected. This explanation shall include a statement of the general financial effect of each method of payment based on the value of the Participant's Basic Contributions Account and the Participant's vested interest in his Employer Contributions Account as of the most recent Valuation Date for which such data is available. The Administrative Committee need comply with only one such request made by, or with respect to, such designated Beneficiary.

Section 8.5 With respect to the Annuity Starting Date of any Participant's designated Beneficiary, the payment of death benefits in accordance with this Article shall be made based on the value of the Participant's Basic Contributions Account and the Participant's vested interest in his or her Employer Contributions Account as of the Valuation Date coincident with or immediately preceding the date of distribution, plus any Basic Contributions or Employer Contributions made to this Plan since such Valuation Date which have been designated to these Accounts. In all events, the actual payment of death benefits shall commence in the following manner:

(a) If the Participant dies after benefits have commenced pursuant to Section 7.3(c) before the Participant's death, his Accounts will be paid to the Beneficiary in accordance with the period selected under Section 7.3(c) unless the Beneficiary elects to accelerate the payout period.

(b) If the Participant dies before his benefits have commenced, the entire death benefit, if any, due as a result of the Participant's death, will commence to be distributed no later than the December 31 of the calendar year which contains the fifth (5th) anniversary of the Participant's death. However, if any portion of the Participant's benefit is payable to a designated Beneficiary, the designated Beneficiary may, subject to the minimum distribution requirements of Section 7.8(a)(2) and (c) of the Plan, elect to receive distributions in substantially equal amounts over the life or life expectancy (as determined on a basis consistent with both the group annuity contract or contracts and Section 1.72-9 of the Income Tax Regulations) of the designated Beneficiary, commencing no later than the December 31 of the calendar year of the Participant's death.

(c) In no event, however, will benefits be delayed beyond the 60th day following the close of the Plan Year in which the distribution event occurs unless the amount of payment cannot be ascertained by such date.

If the Participant elected a method of distribution under a written designation which was made before January 1, 1984, and such method of distribution meets the requirements of Internal Revenue Code Section 401(a)(9) as in effect prior to January 1, 1984, then any distributions can be made without regard to this Section 8.5. If the

designation is revoked, any subsequent distribution must satisfy the requirements of this Section 8.5.

If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Internal Revenue Code, as amended. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

Section 8.6 Any designation of a Beneficiary for the payment of death benefits under this Article shall be effective only if made by a written instrument filed with the Administrative Committee and signed by the Participant. If no such designation is on file at the time of the Participant's death, or if for any reason in the sole discretion of the Administrative Committee, such designation is defective, then the Participant's spouse, if living, the Participant's children, if living, or the Participant's estate, in that order of preference, shall be conclusively deemed to be the Beneficiary designated to receive such benefit.

Section 8.7 Notwithstanding anything herein to the contrary, in the event the value of the Participant's Accounts at the time of his death is less than ~~\$3,500 (\$5,000 after January 31, 1998)~~, 5,000, the death benefits payable under this Plan with respect to such Participant shall be paid in the form of a single lump sum payment.

Section 8.8 In all events, the time and method of distribution of benefits under this Article VIII or any annuity contract purchased to provide such benefits shall be subject to the Plan's minimum distribution rules of Section 7.8(a)(2) and (c) as required by Section 401(a)(9) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder, and the provisions of Section 401(a)(9) and such regulations shall override any distribution provisions of the Plan which are inconsistent therewith.

ARTICLE IX

SEVERANCE FROM SERVICE

Section 9.1 Upon a Participant's severance from service with the Employer prior to his attainment of his Normal Retirement Date, the Participant's vested interest in his Basic Contributions Account and Employer Contributions Account shall be determined in accordance with Article V hereof. Except as provided in Section 7.5 and Section 9.2, distribution of the Participant's vested interest in his Basic Contributions Account and Employer Contributions Account shall be made or commence to be made as soon as practicable following the Participant's attainment of age sixty-five (65).

Section 9.2 If a Participant severs from service with the Employer in accordance with Section 9.1 of this Article, the Participant may make a written request to the Administrative Committee within thirty (30) days after such severance for the distribution of an amount equal to the value of his Basic Contributions Account and the vested interest in his Employer Contributions Account. The distribution shall be made in any method or methods described in Article VII, Section 7.3 hereof, as elected by the Participant. Payment of such benefits shall be made as soon as practicable following the date the Participant attains age 65 or such earlier date as may be specified by the Participant.

Section 9.3 If a Participant severs from service with the Employer in accordance with Section 9.1 and does not perform an Hour of Service within the three (3) consecutive month period that commences on the Participant's Severance From Service Date, the value of that portion of his Employer Contributions Account in which he was not vested at his Severance From Service Date shall be immediately forfeited and made available to offset future Employer Contributions under this Plan. Such value shall be determined as of the earlier of the first anniversary of the Participant's Severance From Service Date or the date of the Participant's death. In no event shall a Participant who returns to employment with the Employer after the twelve (12) consecutive month period following his Severance From Service Date be entitled to restore the portion of his Employer Contributions Account which was forfeited under this Section 9.3.

Section 9.4 If insurance contracts are held by the Plan with respect to a Participant's Accounts, upon a severance from service causing a forfeiture, the Plan Administrator shall direct the Trustee to designate the Trustee, if not then so designated, as beneficiary under any contract issued on the life of the Participant and held for his benefit. Such Participant shall be entitled to receive a percentage of the cash value of such contract, equal to the percentage of the vested balance of his Accounts at the time of his severance.

ARTICLE X

ADMINISTRATION

Section 10.1 The Employer shall appoint an Administrative Committee to serve in the capacity of Plan Administrator, which Administrative Committee at all times shall consist of one or more members who shall hold office during the pleasure of the Employer. The Employer shall fill vacancies on the Administrative Committee. Any Administrative Committee member may resign his duties hereunder by filing with the Employer his written resignation at least thirty (30) days prior to the effective date of such resignation. The Employer shall certify to the Trustee the names and specimen signatures of the Administrative Committee members appointed by the Employer and of any changes therein from time to time.

Section 10.2 The Administrative Committee, with the approval of the City Manager, may make rules and regulations for the administration of the Plan which are not inconsistent with the terms and provisions hereof.

Section 10.3 Any act which this Plan authorizes or requires the Administrative Committee to do may be done by a majority of the Administrative Committee members at the time acting hereunder at a meeting of said Committee called for such purpose. The action of such majority of the members of the Administrative Committee expressed from time to time by a vote at a meeting, or in writing without a meeting by a unanimous action of all members, shall constitute the action of the Administrative Committee and shall have the same effect for all purposes as if assented to by all members of the Administrative Committee at that time in office.

Section 10.4 The Administrative Committee may certify to the Trustee by majority vote or action, as provided for in Section 10.3 of this Article, the name of one or more of its members authorized to act for it in its relationship with the Trustee. The Trustee shall be, and hereby is, authorized to act in pursuance of written instruction of any individual Administrative Committee member so designated and shall be, and hereby is, completely released from any liability resulting from, or in connection with, any action taken pursuant to instructions so received.

Section 10.5 The Administrative Committee shall supervise and control the operation of this Plan, with the approval of the City Manager, in accordance with the terms hereof and shall have all discretionary powers necessary to accomplish that purpose. The Administrative Committee shall have the power and complete discretion to construe this Plan, and its construction hereof and actions thereon in good faith shall be final and conclusive on all Participants and Beneficiaries, subject only to review by the City Council of the Employer upon a written appeal filed by a Participant or Beneficiary with the City Council within sixty (60) days of receipt of a ruling or notice of action by the

Administrative Committee on any claim for benefits under this Plan by such Participant or Beneficiary.

Section 10.6 The Administrative Committee shall use ordinary care and reasonable diligence in the exercise of its powers and the performance of its duties hereunder, but shall not be liable for any mistake of judgment or other action taken in good faith, or for any loss, unless resulting from its own gross neglect.

Section 10.7 The Administrative Committee shall see that books of account are kept which shall show all receipts and expenses and a complete record of the operation of the Plan, including records of the accounts of individual Participants. Any Participant may demand a record of the Administrative Committee's accounts with respect to his own participation but shall have no right to inquire as to accounts of other Participants. If the services of the Trustee are utilized by the Administrative Committee for the purpose of keeping records for the accounts of individual Participants, it shall be the responsibility of the Administrative Committee to transmit to the Trustee in writing all information and instructions necessary for the maintenance of such records. The Administrative Committee shall have the right to inspect and verify any such records maintained by the Trustee.

Section 10.8 The Employer may at any time inspect the books and records of the Administrative Committee or have the same inspected by any agent or employee.

Section 10.9 The Administrative Committee shall file with the Employer an annual statement of its acts hereunder, and the Employer may enter into an agreement approving and allowing the same, and any such agreement made in good faith shall be final, binding and conclusive on all persons and parties hereto or claiming any interest hereunder and shall be a full discharge and acquittance of the Administrative Committee with respect to the matters set forth in such statement.

Section 10.10 The Employer and/or the Administrative Committee may consult with counsel who may be counsel to the Employer. The Administrative Committee shall be relieved of all responsibility whatsoever for anything done or omitted upon the written advice of counsel.

Section 10.11 In the event that any dispute shall arise regarding the person to whom payment or delivery of any sums shall be made by the Trustee, or regarding any act to be performed by the Administrative Committee or the Trustee, the Administrative Committee may direct that such payment be retained and have postponed such delivery, or have postponed the performing of such act, until adjudication of such dispute shall have been made in a court of competent jurisdiction or until it shall have indemnified against loss to its satisfaction.

Section 10.12 The Administrative Committee, upon approval by the City Manager, is authorized to incur those expenses necessary to the proper discharge of its duties and

responsibilities in administering this Plan. The Employer agrees to pay such incurred expenses which have been approved by the City Manager.

Section 10.13 The Administrative Committee shall not be bound to institute any legal action against the Trustee or any Insurer or to become a party to any legal action against any person or persons, or between any persons, unless they shall first have been indemnified to their satisfaction.

Section 10.14 In any case where the provisions of this Plan require the consent or approval by the Administrative Committee of an election or request made by an Employee, Participant or Beneficiary in order to make such election or request effective, the Administrative Committee shall act on such election or request as promptly as shall be reasonable in the circumstances. In any case where action by the Trustee is necessary in order to make operative an effective election or request made by an Employee, Participant or Beneficiary, it shall be the responsibility of the Administrative Committee to transmit such election or request to the Trustee in writing and as promptly as shall be reasonable in the circumstances. The Trustee shall not be obliged to take action with respect to any particular elections or request unless the Trustee shall have received the election or request in such form and detail as shall reasonably be required by the Trustee.

Section 10.15 The Administrative Committee shall have the power and authority to make such equitable adjustments to the Accounts of any Participant to correct any mathematical or accounting errors or any mistakes that may arise by reason of factual errors in information supplied to the Employer, Administrative Committee or Trustee. The Administrative Committee and the Employer may also take appropriate action to correct errors in the administration or operation of the Plan as the Administrative Committee deems necessary or appropriate to preserve the tax qualification of the Plan under Section 401(a) of the Internal Revenue Code, including the power and authority to correct operational errors and defects pursuant to any correction action as may be authorized under the Internal Revenue Service Employee Plans Compliance Resolution System ("EPCRS"), or any successor program to EPCRS. Such corrective actions may include causing appropriate distributions to be made to a Participant from the Plan, to the extent such distribution is made to correct a qualification defect or as may otherwise be required or authorized under the EPCRS.

Section 10.16 The Administrative Committee, Employer and Plan Trustee may use telephone or electronic media to satisfy any administrative duty or notice requirements required by this Plan, to the extent permissible under the Code or Income Tax Regulations (or other generally applicable guidance). The Administrative Committee, Employer and Trustee may also use telephonic or electronic media to conduct Plan transactions, such as enrolling Participants, electing and changing investment allocations, and other Plan transactions to the extent permissible under the Internal Revenue Code or other Income Tax Regulations.

Section 10.17 The Administrative Committee in interpreting any provision of this Plan or in making any judgment or determination with respect to any person hereunder will apply uniform rules in a like manner to all persons under similar circumstances.

In the event any Participant or former Participant is denied a claim for benefits, he shall be advised in writing of the reasons for such denial, in a manner calculated to be understood by him, and he shall thereafter have the right to a full and fair review by the Administrative Committee of the decision denying any such claim for benefits, if he so requests in writing such a review.

ARTICLE XI

RIGHTS OF PARTICIPANTS

Section 11.1 The adoption and maintenance of this Plan shall not be construed as creating any contract of employment between the Employer and any Employee, and the Employer shall have the right in all respects to deal with Employees, their hiring, discharge, compensation and conditions of employment as though this Plan did not exist. No Employee shall have any right to question the action of the Employer in terminating the liability to contribute to this Plan or in terminating this Plan in its entirety. Each Participant shall have the right only to see the record of the Administrative Committee's accounts with respect to his own participation and shall have no right to inquire as to accounts with respect to other persons.

Section 11.2 The sole rights of a Participant under this Plan shall be to have this Plan administered according to its provisions, to receive whatever benefits to which he may be entitled hereunder and to name the Beneficiary to receive any death benefits to which such person may be entitled in accordance with the terms of this Plan.

Section 11.3 This Plan is established for the purpose of providing for the support of the Participants upon retirement in the first place, and, in the second place, for the support of their families as herein provided. No right or interest of any kind of any Participant in this Plan shall be transferable or assignable by the Participant or subject to alienation, anticipation or encumbrance by the Participant, and no rights or interest of any kind of any Participant shall be subject to garnishment, attachment, execution or levy of any kind. The preceding also applies to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined by the Administrative Committee to be a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code (assuming that the Employer was not a government employer). The Administrative Committee shall establish procedures in accordance with Section 414(p) of the Internal Revenue Code for determining the qualified status of a domestic relations order served upon the Plan. Such procedures shall require appropriate releases and benefit waivers from the Participant and any other person as the Administrative Committee may deem necessary to protect the Plan and the Employer from any claims which may arise as a result of complying with the order. Any domestic relations order which alters or changes benefit, provides for a form of benefit not provided for by the Plan, increases benefits, or accelerates or defers the time of payment of benefits shall not be recognized by the Plan as a qualified domestic relations order. The reasonable and direct expenses incurred by the Plan and/or Administrative Committee in determining the qualified status of a domestic relations order and the administration of the assignment of benefits pursuant to a qualified domestic relations order shall be paid from the Accounts of the Participant and the alternate payee subject to the domestic relations order. Subject to the foregoing, the Administrative Committee shall follow all applicable procedures set forth in Section 414(p)

of the Internal Revenue Code which apply when a domestic relations order is received, including given appropriate instructions to the Trustee with respect to segregating amounts in separate accounts pending the resolution of all matters relating to the domestic relations order and the distribution of Plan benefits with respect thereto.

Section 11.4 The Employer, the Trustee, and the Administrative Committee do not, in any way, guarantee the Plan from loss or depreciation; nor do they guarantee any payment to any person. The liability of the Plan and Trust to make any payment at any time and at all times is limited to the then available assets, if any, of the Trust Fund under Article IV.

Section 11.5 In the event of any suit or proceeding with respect to this Plan shall be instituted against the Employer or the Administrative Committee by, or on behalf of, any Participant or former Participant, the result of which shall be adverse to such claimant, all costs, attorney's fees, expenses, judgments, or settlements incurred or paid by the Employer in connection therewith shall be charged directly to the account of such Participant or former Participant.

ARTICLE XII

TERMINATION OF THE PLAN

Section 12.1 This Plan may be terminated at any time for the following reasons:

- (a) the voluntary termination of this Plan by the Employer,
- (b) the discontinuance of Employer contributions,
- (c) the legal dissolution of the Employer, or
- (d) the filing of a petition of bankruptcy by the Employer.

Notice of termination of this Plan shall be given in writing to the Employees and the Trustee no later than ten (10) days prior to the proposed effective date of such termination.

Section 12.2 Except as provided in Article XIV, each Participant and the Beneficiary of each deceased Participant shall be vested with all rights to any funds in the investment accounts as of the date of such termination, and such funds shall be distributed to such persons within a reasonable time in a manner consistent with the provisions of Article VII and Article VIII hereof; provided, however, that any such annuity purchased therein shall be purchased as a deferred annuity rather than as an immediate annuity.

Section 12.3 Any forfeitures which shall have occurred in accordance with Article IX, Section 9.3, prior to the termination of this Plan but which shall not have been applied to reduce Employer Contributions, shall be distributed pro rata to those Participants who were Employees of the Employer on the effective date of the termination of this Plan in the same proportion that the sum of each such Participant's Employer Contributions Account bears to the sum of such account balances of all such Participants. Any such amounts, if applicable, shall be deemed Employer Contributions and shall be maintained in the Participant's Employer Contributions Account.

Section 12.4 In the event of a partial termination of this Plan, each Participant affected by such partial termination shall be vested with all rights to any funds in the investment accounts as of the date of such partial termination, and such funds shall be distributed to such persons within a reasonable time in a manner consistent with the provisions of Article VII and Article VIII, hereof.

ARTICLE XIII

AMENDMENT

Section 13.1 The Employer shall have the right to amend this Plan in whole or in part at any time and from time to time. Any such amendment may be made retroactively effective.

Section 13.2 It is expressly understood, however, that the power of the Employer to amend this Plan is subject to this Section 13.2. No amendment shall be made which would:

- (a) deprive any Beneficiary of a then deceased Participant of the right to receive the accrued benefits to which the Beneficiary may be entitled;
- (b) deprive any Participant of the benefits accrued to the date of the amendment to which the Participant is entitled;
- (c) deprive any Participant of any of the proportionate interest in this Plan to which the Participant would be entitled, were he to sever from service with the Employer on the date of such amendment;

except to the extent such amendment may be required to qualify, or as a condition of continued qualification of this Plan, under Section 401(a) of the Internal Revenue Code.

Section 13.3 ~~It is also expressly understood that no~~ No amendments shall be made which would increase the duties or obligations of the Administrative Committee or Trustee without the written consent thereto by the Administrative Committee or Trustee, as applicable.

Section 13.4 Any merger or consolidation with, or transfer of assets or liabilities to, any other plan shall not be permitted unless each Participant's interest in this Plan immediately after such merger, consolidation, or transfer (if this Plan had then terminated) is equal to or greater than each Participants interest in this Plan immediately prior to the merger, consolidation, or transfer (if this Plan had been terminated).

ARTICLE XIV

REVOCABILITY

Section 14.1 This Plan is based upon the condition that it shall be approved and qualified by the Internal Revenue Service as meeting the requirements of the Internal Revenue Code and regulations issued thereunder with respect to Section 401(a) money purchase pension plans.

Section 14.2 Any provisions of this Plan to the contrary notwithstanding, if a Final Ruling shall be made that this Plan does not qualify under the terms of Section 401(a) of the Internal Revenue Code, there shall be no vesting in any Participants of any assets of this Plan held by the Trustee which are attributable to Employer Contributions; and the Trustee, upon written receipt of written notice from the Employer, together with a copy of such a determination, shall transfer and pay over to the Employer all of the net assets in this Plan which are attributable to Employer Contributions and which remain after deduction of proper expenses of termination. The assets in this Plan which are attributable to Basic Contributions shall be returned to the applicable Participants, and this Plan shall thereupon cease to exist. For purposes of this Article XIV, "Final Ruling" shall mean either (1) the initial letter ruling from the District Director, in response to the Employer's original application for a ruling, or (2) if such letter ruling is unfavorable and a written appeal is taken or protest filed within sixty (60) days of the date of such letter ruling it shall mean the ruling received in response to such appeal or protest.

ARTICLE XV

THE TRUSTEE

Section 15.1 The Trustee shall have the following powers, rights, and duties in addition to those vested in it elsewhere in the Plan or by law:

(a) To purchase or subscribe for any securities or other property and to retain the same in trust.

(b) To sell, exchange, convey, transfer, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(c) To vote any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities; to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property held as part of the Trust Fund.

(d) To cause any securities or other property held as part of the Trust Fund, to be registered in the name of the Trustee or in the name of the Trustee's nominee.

(e) To borrow or raise money for the purpose of the Trust in such amount, and upon such terms and conditions as the Trustee shall deem advisable; for any sums so borrowed, to issue its promissory note as Trustee; to secure the repayment thereof by paying all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money loaned or to inquire into the validity, expediency, or propriety of any such borrowing.

(f) To make, execute, acknowledge, and deliver any and all deeds, assignments, conveyances, and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To settle, compromise, abandon, or submit to arbitration, any claims, debts, or damages due or owing to, or from, the Trust Fund; to commence

or defend suits or legal or administrative proceedings; and to represent the Trust Fund in all suits, legal and administrative proceedings.

(h) To employ suitable agents and counsel (who may be counsel to the Employer) and pay their reasonable expenses and compensation.

(i) To make, or cause to be made, proper application for any insurance contracts to be purchased as herein provided, to purchase such contracts, to hold all such contracts in trust pursuant to the terms of this Trust.

(j) With respect to the contracts held for the benefit of Participants hereunder, to sell or assign such contracts, to receive all dividends thereon, to surrender such contracts for cash, to change and successively change the Beneficiary or Beneficiaries named in such contracts, to designate methods of payment and distribution or settlement of the proceeds and values thereof, to convert contracts from one form to another, and otherwise to exercise all the rights and privileges of ownership of such contracts.

(k) In the event the assets of the Trust Fund shall be insufficient to pay the premiums due, to borrow proportionately against the loan values of insurance contracts held for the benefit of Participants hereunder in order to pay such premiums.

(l) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund and to carry out the purposes of this Trust.

Section 15.2 The Trustee shall maintain accurate and detailed records and accounts of all transactions of the Plan and Trust, which shall be available at all reasonable times for inspection or audit by ~~any~~ any person designated by the Employer and the Administrative Committee, and by any other person or entity to the extent required by law. As soon as practicable following the close of each Plan Year, the Trustee shall file with the Employer and the Administrative Committee a written report setting forth all transactions with respect to the Trust Fund during such Plan Year and listing the assets of the Trust Fund and the fair market value thereof as of the close of the period required by such report. The Trustee shall also provide the Administrative Committee with such other information in its possession as may be necessary for the Administrative Committee to conform with the requirements of the Internal Revenue Code that apply to government plans. As soon as practicable after the last day of each Plan Year, the Trustee will deliver to the Administrative Committee a statement of each Participant's Accrued Benefit as of that date, and the Administrative Committee shall forthwith deliver such statements to each respective Participant.

Section 15.3 Each statement of account shall be deemed to have been approved by the Employer if no written objection thereto is filed with the Trustee within ninety (90) days after such statement of account has been delivered to the Employer. If the Trustee and the Employer cannot agree with respect to any matter set forth in any such statement of account, the Trustee shall have the right to have such Accounts settled by judicial proceedings, in which event only the Trustee, the Employer, and the Administrative Committee shall be necessary parties.

The Administrative Committee shall notify the Participants that they must file any objections to the statements furnished them within sixty (60) days of delivery thereof. Objections shall be in writing and submitted to the Administrative Committee and the Trustee. If no written objection is received within the said sixty (60) day period, a Participant shall be conclusively deemed to have approved the statement of his accounts on behalf of himself, his heirs, executors, administrators, assigns, and Beneficiaries.

Section 15.4 All reasonable costs, charges, and expenses incurred by the Trustee in connection with the administration of the Trust Fund, including fees for legal services rendered to the Trustee and such reasonable compensation to the Trustee as may be agreed upon from time to time between the Employer and the Trustee, shall be paid by the Employer, but if not paid by the Employer, shall be paid from the Trust Fund.

Section 15.5 All taxes of any kind whatsoever which may be levied or assessed against the Trust Fund or the income thereof under any existing or future laws shall constitute a charge upon such Trust Fund and shall be payable proportionately from those Participant Accounts giving rise to such taxes.

Section 15.6 Resignation and Removal of Trustee.

(a) The Trustee may resign at any time by at least thirty (30) days' written notice to the Employer effective as of the date specified in such notice.

(b) The Employer may remove the Trustee at any time by at least thirty (30) days' written notice to the Trustee, effective as of the date specified in such notice.

(c) Prior to the effective date of such resignation or removal of the Trustee, the Employer shall appoint a successor Trustee eligible to act as Trustee under the provisions of Nebraska law by written instrument delivered to the Trustee with the acceptance of the successor Trustee endorsed thereon.

(d) Upon the resignation of the Trustee as provided in Section 15.6(a) or upon the removal of the Trustee as provided in Section 15.6(b), the Trustee shall, as of the effective date thereof, deliver to the Employer and to the

successor Trustee a statement of account, and as soon as practicable thereafter shall transfer and deliver to the successor Trustee the full amount of each Participant's accrued benefit either in cash or other assets thereof, in the discretion of the Trustee, together with such records as the Trustee shall deem reasonably necessary for administration of the Plan by a successor Trustee. Upon receiving written receipt from the successor Trustee, the resigning Trustee shall be discharged as Trustee hereunder without further liability to any person or to the Employer. The Trustee shall be under no duty whatsoever to make inquiry as to the power and authority of any successor Trustee so designated to act, or as to the validity or exempt status of the trust instrument under which any successor Trustee so designated shall act, and the Trustee shall not be subject to any liability whatsoever from any person for delivering the assets of each Participant's accrued benefit to the successor Trustee so designated. Prior to transfer of assets held under this Plan and Trust to the successor Trustee, the Trustee may reserve such reasonable amount as the Trustee shall deem necessary to provide for expenses incurred in the settlement of the Trustee's accounts or theretofore incurred, and any sums chargeable against the Trustee for which the Trustee may be liable, but if the sums so reserved are not sufficient for such purposes, the Trustee shall be entitled to reimbursement for any deficiency from the successor Trustee. Should the funds reserved be in excess of those actually needed for the purpose for which reserved, such excess shall be subsequently delivered to the successor Trustee.

Section 15.7 The Trustee shall not be liable for the acts or omissions of any investment manager appointed pursuant to Section 4.5, nor shall the Trustee be under any obligation to inquire into, invest, advise, or otherwise make any recommendation concerning any asset of the Plan which is subject to the management of an investment manager.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 16.1 This Plan is created for the exclusive benefit of Employees and their Beneficiaries. If any provisions of this Plan are subject to more than one interpretation, then among those interpretations which are possible, the one which shall always be given to this Plan shall be the one which is consistent with this Plan being an Employee Benefit Plan within the meaning of Section 401(a) of the Internal Revenue Code, as they may be amended or replaced by any sections of Federal Law of like intent and purpose.

Section 16.2 The Employer, the Trustee, and the Administrative Committee shall be discharged from any liability in acting upon any notice, request, consent, letter, telegram, or other paper or document believed by them, or any of them, to be genuine, and to have been signed or sent by the proper person.

Section 16.3 Except as provided by the terms hereof, no funds contributed hereunder or any assets of this Plan and Trust shall ever revert to, or be used by, the Employer or any successor of the Employer, nor shall any such funds or assets ever be used other than for the benefit of the Employees of the Employer or surviving spouses or the Beneficiaries of such Employees.

Section 16.4 ~~Effective December 12, 1994, notwithstanding~~ Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

Section 16.5 Any distribution to a Participant under this Plan which requires such Participant's consent, shall not be made until the required consent is provided by the Participant. A Participant shall be informed of his right to defer receipt of the distribution and such other information and disclosures that may be required under the Income Tax Regulations to the Code. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefits. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 7.8 of the Plan. A distribution may commence after any required notice is given provided that: (i) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (ii) the Participant, after receiving notice, affirmatively requests a distribution.

IN WITNESS WHEREOF, the Employer has caused this amended and restated Plan and Trust Agreement to be executed by its duly authorized officers, and the Trustee has caused this Trust Agreement to be executed by its duly appointed officer, effective ~~February~~January 1, ~~1997~~2015.

Executed this _____ day of _____, ~~2008~~2015, at Lexington, Nebraska.

ATTEST:

**CITY OF LEXINGTON, NEBRASKA,
EMPLOYER**

By: _____

By: _____

Official Title: _____

Official Title: _____

Executed this _____ day of _____, ~~2008~~2015, at ~~Omaha~~Lincoln, Nebraska.

~~OMAHA~~UNION BANK & TRUST COMPANY,

~~FIRST NATIONAL BANK OF~~

Trustee

By: _____

Its: _____

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**THE
MONEY ACCUMULATION PENSION PLAN
FOR EMPLOYEES OF
THE CITY OF LEXINGTON**

**THE MONEY ACCUMULATION PENSION PLAN
FOR EMPLOYEES OF THE CITY OF LEXINGTON**

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