

ORDINANCE NO. MEP-583,CC

AN ORDINANCE PROVIDING FOR THE AMENDMENT AND RESTATEMENT OF THE OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES PENSION PLAN AND TRUST AGREEMENT.

WHEREAS, the City of Overland Park, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas (the "City"), did, on the 8th day of December, 1969, create and establish by Ordinance No. MEP-583 the Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement (the "Plan"); and

WHEREAS, the Internal Revenue Service, Department of the Treasury, United States of America, has notified the City that the Plan is qualified under Section 401(a) of the Internal Revenue Code (the "Code") and therefore exempt from tax under Section 501(a) of the Code; and

WHEREAS, the City has from time to time amended and restated the Plan, the most recent restatement being adopted on April 1, 1996, through Ordinance No. MEP-583,S; and

WHEREAS, the April 1, 1996, Restated Plan was amended by Amendment Number One on October 12, 1998 (MEP-583,T), Amendment Number Two on February 1, 1999 (MEP-583,U), Amendment Number Three on November 20, 2000 (MEP-583,V), Amendment Number Four on December 2, 2002 (MEP-583, W), Amendment Number Five on August 11, 2003 (MEP-583, X), Amendment Number Six on August 1, 2005 (MEP-583,Y), Amendment Number Seven on August 8, 2006 (MEP-583, Z); and Amendment Number Eight on July 9, 2007(MEP-583,AA); and Amendment Number Nine on February 4, 2008(MEP,BB), and

WHEREAS, the City now wishes to amend and restate the Plan, effective January 1, 2008, by this Ordinance No. MEP-583,CC.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. ADOPTION OF THE AMENDMENT AND RESTATEMENT OF THE PLAN

There is hereby incorporated and adopted by reference herein, and made part of this resolution as if the same had been set out in full herein, the amended and restated Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement. Said amended and restated Plan is set forth in Exhibit "A." That said amended and restated Plan is hereby approved and accepted and that the Mayor and City Clerk are authorized and directed to execute said amended and restated Plan for and on behalf of the City of Overland Park, Kansas. Three copies of the Plan shall be marked "Official Copy as incorporated by reference" and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

SECTION 2. This ordinance shall take effect and be in force from and after its publication in an official city newspaper.

PASSED by the Governing Body this 15th day of December, 2008.

APPROVED by the Mayor this 15th day of December, 2008.

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney

EXHIBIT "A"

RESTATED
OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES
PENSION PLAN AND TRUST AGREEMENT

INTRODUCTION

THIS RESTATEMENT OF THE OVERLAND PARK, KANSAS, MUNICIPAL EMPLOYEES PENSION PLAN AND TRUST AGREEMENT is made and entered into on this _____ day of _____, 2008, effective for all purpose as of January 1, 2008, by and between the City of Overland Park, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas (hereinafter referred to as the "Employer"), and the duly appointed Trustees of the Trust Agreement originally executed effective as of October 1, 1969, and previously restated on April 24, 1985, August 7, 1989, and April 1, 1996.

WITNESSETH:

WHEREAS, the Employer did enter into an agreement with the Trustee, dated February 16, 1970, for establishment of the Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement (the "Plan") for the benefit of the Employer's Employees; and

WHEREAS, the Plan was restated on April 24, 1985, to incorporate all Amendments up to that time into one document; and

WHEREAS, the Plan was again restated on August 7, 1989, to incorporate all Amendments to the 1985 restatement into one document; and

WHEREAS, the Plan was again restated on April 1, 1996, to incorporate all Amendments to the 1989 restatement into one document; and

WHEREAS, it is considered to be in the best interests of the Employer and Participants once again to restate the Plan to incorporate into one document all of the changes made by nine amendments to the 1996 restatement, as well as to make certain additional modifications; and

NOW, THEREFORE, in accordance with the authority granted in Article X of the Plan, the Plan is hereby further amended and restated to read as follows:

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ARTICLE I DEFINITIONS

The following definitions are listed. Wherever used herein:

1.1 "Active Participant" means an Employee who has completed the requirements specified in Article II.

1.2 [Reserved]

1.3 [Reserved]

1.4 "Annual Additions" has the meaning specified in Article XVII.

1.5 "Beneficiaries" mean those persons as designated in writing to the Trustee to receive any benefits payable upon the death of a Participant, and includes any contingent Beneficiaries.

1.6 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.7 "Compensation" means the actual compensation (excluding bonuses, overtime, reimbursement for expenses, fees, and all other forms of unusual or nonrecurring compensation, but including any annual performance compensation, bilingual incentive pay, and, in the case of administrative employees of the Fire Department, educational and longevity pay) received by an Employee from the Employer for services rendered, plus any reductions in regular compensation pursuant to Section 132(f)(4) of the Code, under the City of Overland Park, Kansas Flexible Compensation Plan, and/or under the City of Overland Park, Kansas Deferred Compensation Plan(s).

For any Plan Year beginning in 1989 or thereafter, Compensation for purposes of this Plan shall be limited in accordance with Section 401(a)(17) of the Code, as adjusted by the Secretary of the Treasury pursuant to applicable cost-of-living changes. Notwithstanding the preceding sentence, the limit on Compensation for an Employee who first became a Participant in the Plan before January 1, 1994, shall not be less than \$200,000 (the limit in effect under the Plan on July 1, 1993).

1.8 "Contract" means any contract purchased from an Insurer for the benefit of all Participants or any Participant.

1.9 "Effective Date" means the Effective Date of this amendment and restatement which is January 1, 2008.

1.10 "Eligible Spouse" means the spouse to whom a Participant was married on the date benefit payments under the Plan commenced; or if benefit payments have not commenced, the spouse to whom the Participant was married on the Participant's date of death.

1.11 "Employee" means any individual employed by the City of Overland Park, Kansas, in the employment classification of regular full-time employee or regular part-time employee (Class A), excluding, however,

a. any commissioned police officer who is eligible to participate in the retirement plan maintained by the City for commissioned police officers; and

b. any certified fire fighter or emergency medical technician who is eligible to participate in the retirement plan maintained by the City for such individuals.

1.12 "Employer" means City of Overland Park, Kansas, and its predecessor organization, Mission Urban Township, Kansas.

1.13 "Fund" or "Trust Fund" means the property held by the Trustee pursuant to this Agreement.

1.14 [Reserved]

1.15 "Inactive Participant" means a former Active Participant who is no longer employed by the Employer, but whose accounts under the Plan have not yet been fully distributed or used to purchase a Contract.

1.16 "Insurer" means any insurance company licensed to do business in the State of Kansas.

1.17 "Leave of Absence" means:

a. A leave of absence for any reason, provided the leave is approved by the Employer in accordance with its leave of absence policies; or

b. A leave of absence under the Family and Medical Leave Act of 1993; or

c. A military leave of absence, provided the Employee's reemployment rights are guaranteed by federal law and the Employee is reemployed after the expiration of his or her active duty within the time required by such federal law.

1.18 "Limited Participant" means an individual described in Section 2.3.

1.19 [Reserved]

1.20 "Normal Retirement Age" means age 65.

1.21 "Normal Retirement Date" means the first day of the month next following a Participant's 65th birthday.

1.22 [Reserved]

1.23 "Participant" means an individual who is either an Active Participant, an Inactive Participant, or a Limited Participant.

1.24 "Plan" or "Agreement" means the provisions set forth in this document, as amended from time to time.

1.25 "Retirement Date" means a Participant's Normal Retirement Date or such earlier or later date selected by the Participant to commence receiving benefits under this Plan.

1.26 [Reserved]

1.27 "Trust" means this Agreement, with any and all amendments or supplements thereto.

1.28 "Trustee" means the trustee or trustees duly appointed by the Employer, and their successors.

1.29 "Year" or "Plan Year" means the 12-month accounting period on which the records of the Plan are maintained, which period shall commence as of January 1 and end on December 31. Prior to January 1, 1994, the Year commenced on October 1 and ended on September 30, with a short Year running from October 1, 1993, to December 31, 1993.

1.30 "Years of Eligibility Service" means an Employee's period of continuous and uninterrupted employment from his or her last date of hire in a Plan-eligible employment classification to the date of determination of eligibility. This term is used to determine eligibility to participate in this Plan. For this purpose, employment shall be considered continuous and uninterrupted during a Leave of Absence.

1.31 "Years of Vesting Service" means an Employee's period of continuous and uninterrupted employment from his or her last date of hire in a Plan-eligible employment classification. This term is used to determine the Participant's vested interest in his or her Employer contribution account. Employment shall be considered continuous and uninterrupted during a Leave of Absence or if an employee ceases to be employed in a Plan-eligible employment classification while continuing to be employed by the Employer, regardless of whether the employee has yet become a Participant in the Plan. However, the period of employment that the employee is not employed in a Plan-eligible classification shall not count toward Years of Vesting Service.

ARTICLE II ELIGIBILITY FOR PARTICIPATION

2.1 In General. An Employee shall become an Active Participant on the first day of the month immediately following three (3) Years of Eligibility Service.

2.2 Rehired Employees. Each Employee whose employment has been terminated and who is subsequently rehired by the Employer will be considered, for all purposes of

the Plan, a new Employee and will be eligible for participation hereunder on the first day of the month coincident with or next following the date he or she meets the requirements of Section 2.1; provided, however, that if any such Employee has completed ten (10) Years of Vesting Service prior to termination and completes an additional three (3) Years of Eligibility Service after rehire, he or she shall be considered to have met the requirements set forth in Section 2.1, and shall be considered to be 100% vested upon reentry into the Plan.

2.3 Limited Participation. If an Active Participant ceases to be an Employee, while remaining an employee of the Employer (because he or she ceases to be employed by the Employer in an eligible position), the Participant shall cease to be an Active Participant and shall become a Limited Participant. As a Limited Participant, he or she shall not be entitled to the allocation of any Employer contribution for any period of employment as an ineligible employee, nor entitled to make a Participant contribution for any such period of employment. The Limited Participant shall also not be entitled to have his or her period of employment as an ineligible employee count as Years of Vesting Service, but such period shall be considered as continuous uninterrupted employment. During any such period as a Limited Participant, his or her Plan account shall remain in the Plan and shall be invested in accordance with the terms of the Plan and Trust, and his or her Plan account shall be credited with investment earnings or losses in accordance with the relevant provisions of the Plan and Trust. Upon the Limited Participant's retirement or other termination of employment, his or her Plan account shall be distributed in accordance with the provisions of Article VI or VII, whichever is applicable. If the Limited Participant again becomes an eligible Employee before he or she retires or otherwise terminates employment, he or she shall again become an Active Participant on the day he or she again becomes an eligible Employee (and shall resume having vesting service recognized and be entitled to the allocation of Employer contributions to his or her Plan account).

2.4 Participation After Ineligible Employment. If an Employee who is not a Participant in this Plan ceases to be an Employee, while remaining an employee of the Employer (because he or she ceases to be employed by the Employer in an eligible position), the employee shall not be entitled to become a Participant in this Plan until he or she again becomes an Employee and completes three (3) Years of Eligibility Service, counted from the date he or she again becomes an Employee.

ARTICLE III PARTICIPATION PROCEDURE

3.1 Participation Procedure. Each Employee will automatically become an Active Participant in accordance with Article II. No action by the Employee is required.

ARTICLE IV CONTRIBUTIONS AND ALLOCATIONS

4.1 Employer Contributions. For each pay period, the Employer shall contribute to the Plan an amount equal to the following:

- a. 10% of each Active Participant's Compensation for the pay period, less
- b. Any forfeitures applied to reduce Employer contributions, as determined under Section 7.2.

4.2 Allocation of Employer Contributions. The Employer's contribution shall be allocated among Active Participants' accounts as of the pay day of each pay period, or as soon as administratively feasible thereafter. Each Active Participant shall be credited with 10% of his or her Compensation for said pay period.

4.3 Participant Contributions. Each Active Participant may elect to make voluntary contributions to the Plan in an amount not to exceed ten percent (10%) of his or her Compensation. Such contributions shall be made by payroll deductions and shall be remitted to the Trustee by the Employer.

4.4 [Reserved]

4.5 [Reserved]

4.6 Rollover Contributions. Any Employee, after filing with the Trustee the form prescribed by the Trustee, may contribute cash to the Trust other than as a voluntary contribution if the contribution is a "rollover contribution." The words "rollover contribution" shall mean an amount that the Code permits an Employee to transfer, either directly or indirectly, from any of the following types of plans, but only of assets that have not yet been subjected to taxation under the Code:

- a. A qualified retirement plan described in Section 401(a) or 403(a) of the Code;
- b. A tax-sheltered annuity plan described in Section 403(b) of the Code;
- c. An eligible deferred compensation plan described in Section 457(b) of the Code, but only if such plan is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state; or
- d. An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code.

The Trustee shall require an Employee to furnish satisfactory evidence, either before or after the transfer, that any such transfer is in fact a "rollover contribution" which the Code permits. A rollover contribution shall not be treated as an Annual Addition under Article XVII.

The Trustee will invest and adjust for investment earnings and losses the rollover contribution in accordance with Article V.

An Employee, prior to satisfying the Plan's eligibility conditions, may make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If

an Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan, except that the Employee shall not be a Participant for Employer contributions and/or voluntary contributions under the Plan until he or she actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee will distribute his or her rollover contribution account as if it were a fully vested Employer contribution account.

ARTICLE V PARTICIPANTS' ACCOUNTS

5.1 Participant Accounts. On behalf of each Participant, the Trustee shall maintain or cause to be maintained the following accounts:

a. An Employer contribution account, to which shall be credited the share to which such Participant shall be entitled of each contribution of the Employer and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund;

b. Where applicable, a Participant's contribution account, to which shall be credited such Participant's voluntary contributions and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund. A Participant's contribution account shall be subdivided into:

- i Pre-1987 voluntary contributions, and
- ii Post-1986 voluntary contributions and investment earnings; and

c. Where applicable, a rollover contribution account, to which shall be credited any rollover contributions made by such Participant and such account's proportionate share of the income, expenses, and realized and unrealized profits and losses of the Fund.

Such accounts and the allocation of credits thereto shall not create or give any Participant any interest or right at any time except at the time and upon the terms and conditions expressly stated and set out in the Plan.

5.2 Valuation Procedures. The Fund shall be valued and the individual accounts adjusted as of the last day of each Year, as of the last day of any month during which a Participant becomes entitled to benefits, and, if deemed necessary or advisable by the Trustee, as of the last day of any other month. Provided the Trustee has entered into an agreement with a third-party record-keeper effective February 1, 2009 (or such later date as the Trustee enters into an agreement with a third-party record keeper, the Fund shall be valued and the individual accounts adjusted daily. In determining the value of the Fund, the Trustee shall evaluate the assets of the Fund at their fair market value as of such valuation date and shall deduct all expenses payable or accruing which may constitute proper charges against the Fund; provided, however, that in the event that the Trustee, in its discretion, invests the whole or any part of the Fund in insurance company group annuity contracts, the Trustee shall evaluate the assets of that

portion of the Fund so invested at their book value as of such valuation date and shall deduct all expenses payable or accruing which may constitute proper charges against the Fund.

5.3 Investment Accounts. Effective as of October 1, 1988, there shall be established within the Trust Fund the following described separate investment accounts:

- a. A Common Stock Account, which shall be a mutual fund invested primarily in common stocks and securities convertible into common stock;
- b. A Balanced Account, which shall be a mutual fund invested in a combination of common or preferred stocks and bonds or other fixed income investments;
- c. A Fixed Income Account, which shall be an investment fund that provides for a fixed rate of return on the principal; and
- d. Any other investment option added by the Trustee, provided that any such other option does not violate the provisions of any investment contract that might then be in effect.

5.4 Participant Direction of Investments. All Participant accounts shall be invested as hereinafter provided:

a. **Direction by Participants.** When an Employee becomes a Participant in this Plan, he or she shall direct the investment of his or her voluntary contributions and his or her Employer contributions in one percent (1%) increments among the investment accounts then provided by the Plan.

In the absence of direction, the Trustee shall invest such contributions in the Fixed Income Account.

b. **Change of Investment for Future Contributions.** A Participant may change the investment of both his or her future voluntary contributions and his or her future Employer contributions in writing, on a form furnished by the Employer, effective as of the first day of any month (hereinafter referred to as a "Change Date"), in one percent (1%) increments among the investment accounts then provided by the Plan. The Trustee may, as it deems appropriate under the circumstances, allow more frequent Change Dates, provided that all Change Dates are equally available to all Participants.

Effective February 1, 2009, provided the Trustee enters into an Agreement with a third-party record-keeper (or such later date as the Trustee enters into an Agreement with a third-party record-keeper), a Participant may change the investment of both his or her future voluntary contributions and his or her future Employer contributions on a daily basis, in one percent (1%) increments among the investment accounts then provided by the Plan.

c. **Change of Investment for Current Accounts.** Prior any change date a Participant may submit in writing, before any Change Date and on a form furnished by the Employer, an election to change or reallocate the investment of his or her accounts. Such election shall be in one percent (1%) increments among the investment accounts then provided by the Plan, and shall be submitted to the Trustee or Employer within the time guidelines established for this purpose and communicated to Participants.

Effective February 1, 2009, provided the Trustee enters into an Agreement with a third-party record-keeper (or such later date as the Trustee enters into an Agreement with a third-party record-keeper), a Participant may change or reallocate the investment of his or accounts daily. Any such change may be subject to redemption fees and/or frequent trading restrictions imposed on the separate investment accounts.

The Trustee shall take all actions within its power to process elections that are timely submitted so as to take effect as soon as is administratively feasible. The Trustee shall not be liable for any delays in processing caused by the Insurer or any entity administering or managing the accounts.

ARTICLE VI RETIREMENT PAYMENTS

6.1 Distribution Options - Single Participants. Upon a Participant's retirement, if the Participant does not have an Eligible Spouse, the entire amount of his or her account will be distributed to the Participant under any one of the following options, as he or she may elect:

- a. Lump sum payment in cash and/or securities;
- b. Direct rollover to an individual retirement account, annuity or trust or to another qualified retirement plan pursuant to the provisions of Section 6.8; provided the distribution qualifies as an "eligible rollover distribution," as defined therein;
- c. A monthly payment for a fixed number of months, not to exceed one hundred twenty (120) months; or
- d. An individual annuity for whatever amount of income can be provided by the Employee's account. However, the annuity must be a form that will pay benefits over the life expectancy of the Participant or the joint life expectancy of the Participant and his or her designated contingent annuitant. Moreover, no less than 50% of the value of the annuity must be expected to be paid to the Participant. Any such annuity purchased by the Plan shall be based on a unisex mortality assumption.

A Participant may revoke an election made under this Section 6.1 until, and only until, beginning to receive a distribution of his or her account.

6.2 Distribution Options - Married Participants. If a Participant has an Eligible Spouse at retirement, the entire amount of his or her account will be used to purchase an immediate

joint and 50% contingent annuity, where the Eligible Spouse is named as the contingent annuitant; unless the Participant and Eligible Spouse elect payment in one of the forms described in Section 6.1. The Participant and Eligible Spouse may make such an election on forms provided by the Trustee any time prior to payment of any benefits. The Participant shall be supplied with written information concerning the financial effect of an election in lieu of the joint and 50% contingent annuity. If the Participant and Eligible Spouse elect an optional form of payment, the election form shall carry the Eligible Spouse's consent in writing to such an election and the Eligible Spouse's signed acknowledgement of the effect of such election. The Eligible Spouse's signature on such an election form must be witnessed by a Trustee or a notary public.

6.3 Valuation Dates. For distributions prior to February 1, 2009, each distribution of marketable securities shall be valued as of the last day of the month in which occurs the later of the following dates:

- a. The last day of the last pay period during which a Participant was on the Employer's active payroll; or
- b. The day the application for distribution is received by the Trustee;

except that, if written application is received less than 15 days prior to the last day of the month, the valuation may, at the option of the Trustee, be delayed until the last day of the month following receipt of such application.

Provided the Trustee enters into an agreement with a third-party record-keeper, distributions after February 1, 2009 (or such later date as the Trustee might enter into an agreement with a third party record keeper), shall be valued as of the first day preceding the date of the distribution on which Plan assets are valued or as otherwise provided for in the third-party record-keeping agreement.

Each distribution from an insurance company guaranteed investment contract shall be based on the value of the account as of the date of distribution or the insurance company's next valuation date, if the valuation cannot be made on the distribution date. The actual distribution of funds will be made as soon as administratively feasible after receipt of a request for distribution from a Participant or Beneficiary.

6.4 Installment Payments. If a Participant is to receive benefits in accordance with the option described in subsection 6.1.c., his or her account shall be valued and deposited in a segregated fund to be paid out in approximately equal installments with the net income therefrom, if any. The Trustee shall administer such accounts with all of the powers and discretion conferred upon the Trustee by the Trust. Any balance remaining in such account at the time of the Participant's death shall be paid in a lump sum to the Participant's designated Beneficiary.

6.5 Minimum Installment or Annuity Payment. No Participant shall be permitted to elect either of the options described in subsections 6.1.c. or 6.1.d. unless each payment

would equal at least \$10, or any higher amount required by any insurance company from which an annuity is purchased or any investment manager which may hold the Participant's segregated fund pursuant to Section 6.4.

6.6 Employment After Normal Retirement Date. A Participant may continue in the employ of the Employer and, beginning January 1, 1988, receive Employer contributions for future service after his or her Normal Retirement Date. The provisions of Sections 6.1 through 6.3 will be delayed until actual retirement occurs.

6.7 Retirement Prior to Normal Retirement Date. A Participant may retire earlier than his or her Normal Retirement Date. Such a Participant will be entitled to retirement benefits as of his or her actual Retirement Date in accordance with the vesting provisions of Section 7.1.

6.8 Deferral of Benefits. A Participant may, by filing a written election with the Trustee, elect to defer the commencement of his or her benefits beyond his or her Retirement Date to a date selected by the Participant. However, any such election shall be subject to the requirements of Section 6.11.

6.9 [Reserved].

6.10 Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under Article VI, a distributee may elect, at the time and in the manner prescribed by the Trustee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, but only if that eligible retirement plan agrees to accept such eligible rollover distribution. For this purpose, the following definitions shall apply:

a. **"Eligible rollover distribution":** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution; or the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Notwithstanding the preceding provisions of this Paragraph, a portion of a distribution shall not fail to be an eligible rollover distribution solely because that portion consists of after-tax employee contributions which are not includible in gross income; provided, however, that such portion may be transferred only to an individual retirement account or annuity described in either of Sections 408(a) or (b) of the Code, or to a qualified defined contribution plan described in either of Sections 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, 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": An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified retirement plan described in either of Sections 401(a) or 403(a) of the Code, a tax-sheltered annuity plan described in Section 403(b) of the Code, or an eligible plan under Section 457(b) of the Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

c. "Distributee": A distributee includes an Employee or former Employee. In addition, an Employee's or former Employee's surviving spouse and an Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

d. "Direct rollover": A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

6.11 Minimum Distribution Requirements. The provisions of this Section 6.11 shall be effective for purposes of determining required minimum distributions made on or after January 1, 2003. The requirements of this Section 6.11 shall take precedence over any inconsistent provisions of the Plan. All distributions required under this Section 6.11 shall be determined and made in accordance with the provisions of Section 401(a)(9) of the Code and the regulations promulgated thereunder:

a. Definitions.

i. "Designated Beneficiary" means the individual who is designated under Section 1.5 and is the designated beneficiary under Section 401(a)(9) of the Code and Treasury Regulation 1.401(a)(9)-1, Q&A-4.

ii. "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required under paragraph 6.11.b.ii. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning 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 Beginning Date occurs, will be made on or before December 31 of the Distribution Calendar Year.

iii "Life Expectancy" means the life expectancy as computed by use of the Single Life Table in Treasury Regulation 1.401(a)(9)-9.

iv "Participant's Account Balance" means the account balance 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 account balance as of the 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 Participant's Account Balance for the Valuation Calendar Year includes any amounts rolled over or 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.

v "Required Beginning Date" means the April 1 of the calendar year following the calendar year in which a Participant attains age 70 1/2 or retires, whichever occurs later.

b. Time and Manner of Distribution.

i The Participant's entire vested interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

ii If the Participant dies before distributions begin, the Participant's entire vested 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 70½, if later; provided, however, the surviving spouse may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this subparagraph 6.11.b.ii.A, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

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; provided, however, the Designated Beneficiary may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this subparagraph b.11.b.ii.B, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

C. If there is no Designated Beneficiary as of the September 30 of the year following the year of the Participant's death, the Participant's entire vested 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 paragraph 6.11.b.ii, other than subparagraph 6.11.b.ii.A, shall apply as if the surviving spouse were the Participant.

For purposes of this paragraph 6.11.b.ii and subsection 6.11.d, unless subparagraph 6.11.b.ii.D applies, distributions are considered to begin on the Participant's Required Beginning Date. If subparagraph 6.11.b.ii.D applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph 6.11.b.ii.A.

iii Unless the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company or in a single lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions shall be made in accordance with subsections 6.11.c and 6.11.d. If the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the regulations promulgated thereunder.

c. Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

i the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

ii if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

Required minimum distributions will be determined under this subsection 6.11.c beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

d. Required Minimum Distributions After Participant's Death.

i If the Participant dies on or after the date distributions begin, and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

A. The Participant's remaining Life Expectancy is calculated by using the age of the Participant in the year of death, reduced by one for each subsequent year.

B. 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.

C. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

ii If the Participant dies on or after the date distributions begin, and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's

remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

iii 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 Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in paragraph 6.11.d.i.

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

v If the Participant dies before the date distributions begin, 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 subparagraph 6.11.b.ii.A, then paragraphs 6.11.d.iii and 6.11.d.iv shall apply as if the surviving spouse were the Participant.

**ARTICLE VII
SEVERANCE, DEATH, AND WITHDRAWAL BENEFITS**

7.1 Vesting Schedule. Upon termination of a Participant's employment for reasons other than death or retirement, the Participant shall be entitled to a vested benefit of 100% of his or her Participant's contribution account, if any, plus a percentage, determined from the vesting schedule below, of his or her Employer contribution account.

Vesting Schedule

<u>Years of Vesting Service</u>	<u>Vested Percentage</u>
Fewer than 4	0%
4	40%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

Except as provided in Section 2.2 (with respect to Employees completing ten or more Years of Vesting Service prior to terminating their employment), any Years of Vesting Service completed prior to a Participant's termination of employment shall be disregarded in applying the

vesting schedule shown above to any Employer contributions made after that Participant's reemployment.

An Active or Limited Participant who dies or attains his or her Normal Retirement Age shall be fully vested, regardless of his or her Years of Vesting Service.

7.2 Forfeitures; Cash-Outs; Timing of Distributions. Any portion of a Participant's Employer contribution account forfeited as a result of the application of the vesting schedule shown in Section 7.1 shall be applied by the Trustee to reduce future Employer contributions due hereunder. The Participant's vested benefit shall remain in the Trust until the earliest of the following:

- a. The Required Beginning Date specified in paragraph 6.11.a.v; or
- b. The date the Participant elects to receive such vested benefit, which shall be either at the time of termination of employment or subsequently upon giving the Trustee written notice as to the intent to withdraw such benefit. Any election by an Inactive Participant to withdraw his or her vested benefit shall be for the full value of his or her vested Employer contribution account, Participant's contribution account, and rollover account. Partial withdrawals shall not be allowed; or
- c. The Participant's death.

Payment of benefits shall be made in accordance with Sections 6.1 through 6.3, as soon as administratively feasible after the applicable event listed above.

7.3 Death Benefits. In the event of the death of a Participant before retirement, his or her death benefit (which shall be the aggregate of the amounts of his or her vested Employer contribution account and his or her Participant's contribution account, if any) shall be distributed, as described in Sections 6.1 through 6.3, to the Beneficiary designated by the Participant, subject to the limitations of Section 8.1.

7.4 Payments to Incompetents. In the event any Participant, Beneficiary, or other person entitled to benefits under this Plan is a minor or otherwise incompetent, the Trustee may, at its option, make payment directly to such person or to a third party for his or her benefit without the necessity of a guardian.

7.5 In-Service Withdrawals. An Active or Limited Participant may from time to time withdraw all or a portion of the funds credited to his or her Participant's contribution account, provided, however, that no withdrawal shall exceed the then value of his or her Participant's contribution account, and provided further that he or she shall be precluded from making any further contributions to the Fund for a period of twelve (12) consecutive calendar months following the date of any withdrawal. Any withdrawal of less than the full value of the Participant's contribution account shall be made first from his or her pre-1987 voluntary contributions until exhausted, then proportionately from both his or her post-1986 voluntary contributions and his or her investment earnings. Any Plan expenses associated with such a

withdrawal shall be charged to the Participant's contribution account prior to distribution of the funds.

ARTICLE VIII BENEFICIARY DESIGNATION

8.1 Designation of Beneficiary. Each Participant shall execute and file with the Trustee (on a form provided by the Trustee) a designation of the person or persons to whom, in the event of his or her death, he or she desires the benefits provided hereunder to be paid and distributed. A Participant shall have the right to change such designation from time to time by executing and filing a subsequent designation with the Trustee.

8.2 Spousal Consent Requirement. Any Beneficiary designation that does not provide for the Participant's Eligible Spouse to receive at least 50% of the Participant's vested account balance in the form of a life annuity must be consented to by the Eligible Spouse in writing, with the signature of the Eligible Spouse witnessed by a Trustee or a notary public.

8.3 Absence of Designation. If no valid Beneficiary designation is on file, or if such designation is not clear in its meaning, such benefits as may become payable as a result of a Participant's death shall be paid to the Participant's estate.

ARTICLE IX ADMINISTRATION OF THE PLAN

9.1 Trustee Administration. The Plan shall be administered by the Trustee, which shall be vested with all the authority and power as may be necessary to carry out the provisions of the Plan and to accomplish its purposes as expressed herein, and the enumeration of specific powers herein shall in no way restrict or limit such general authority.

9.2 Preservation of Records. The Trustee shall record all its acts and determinations, and these and all such other instruments and documents pertaining to the Plan shall be preserved.

9.3 Action by Trustee. The Trustee shall act by a majority of its duly qualified members from time to time, and such action shall be by vote taken at a meeting. It may make such rules and regulations and prescribe such forms and procedures as may be necessary or expedient in the administration of the Plan. The Trustee may authorize one of its members to give notices and directions on its behalf and to certify any act or thing done by the Trustee, and any person accepting and relying upon any notice or certification so given shall be fully protected. The Trustee may also authorize any one or more of its members to execute any instrument, document or consent that may be required in the exercise of its powers and duties, including, but not limited to, any instrument, document or consent in connection with the application for and purchase of Contracts under this Agreement or the exercise of the rights under such Contracts.

9.4 Delegation of Investment Powers. The Trustee is hereby expressly authorized in its discretion to delegate the investment powers granted to it by this Agreement to any corporation authorized to act as a corporate trustee in any state of the United States. In the event of the

delegation of its investment powers as above provided, the Trustee shall have no duty or obligation to supervise or control in any way the investments made and shall in no way be liable or responsible on account of any investments made or retained by the corporation.

9.5 Employment of Agents and Counsel. The Trustee shall have the power to employ suitable agents and counsel and to pay their reasonable expenses and compensation. The Trustee shall not be liable for any neglect, omission, or wrongdoing of such agents or counsel.

9.6 Interpretation of Plan. The Trustee shall have power to construe and interpret the provisions of the Plan and to administer the Plan for the interest and benefit of the Employees. It may construe any ambiguity, supply any omission or reconcile any inconsistency in such manner and to such extent as it deems proper and equitable. It shall have authority to determine all questions with respect to the individual rights of Employees under the Plan and all issues with respect to eligibility, credited service, periods of continuous employment, Retirement Dates and amounts of benefits. All determinations of the Trustee shall be conclusive and binding upon the Employees, Participants and Beneficiaries affected; provided, however, all discretionary actions taken by the Trustee with respect to eligibility, terms of continuous employment, credited service, or the amount of any benefit shall be uniform in nature and applicable to all members similarly situated. All such actions taken by the Trustee shall be final and conclusive and binding upon the Employer, the Employees and all other persons concerned.

9.7 Payment of Trustee Expenses. All expenses incurred by the Trustee, including the fees of accountants, actuaries, attorneys, consultants, and other persons or firms providing services to the Trustee in connection with the investment and administration of the Trust; compensation (if any) of the Trustee; and any and all taxes which may become payable as a result of the operation of the Trust, unless paid by the Employer directly and aside from its contributions to the Trust, shall be deemed to be a charge upon the Trust Fund and shall be paid by the Trustee out of the Trust Fund.

9.8 Reliance on Agents. The Trustee and the Employer may rely upon all tables, valuations, certificates and reports furnished by any actuary so retained, upon all certificates and reports made by any accountant so retained, and upon all opinions given by any legal counsel so retained, and the Employer and the Trustee shall be fully protected with respect to any action taken or suffered by them in good faith in reliance upon any such actuary, accountant or counsel; and all such taken or suffered shall be conclusive upon the Employees, Beneficiaries and survivor annuitants, and all other persons having any interest in the Plan or the Trust.

9.9 Indemnification of Trustee. The Trustee and each member thereof shall be free from all liability, joint and several, for their actions and conduct in the administration of the Plan; and the Employer shall indemnify and save them harmless from any and all liability for their actions and conduct in the performance of their duties as Trustee, except for liability resulting from their own willful misconduct.

**ARTICLE X
AMENDMENT OF PLAN**

10.1 Amendment of Plan. The Employer reserves the right, at any time and from time to time, to modify, amend or change any of the terms and provisions of the Plan and Trust; provided that no such modification or amendment may permit any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Employees, Participants and Beneficiaries at any time prior to the satisfaction of all liabilities under the Plan; and provided further that no such modification or amendments shall have any retroactive effect so as to deprive any Employee, Participant or Beneficiary of any vested interest already accrued, it being expressly stipulated that any modification or amendment made to conform with mandatory provisions of the Code, any federal or state law relevant to employee trusts, or any official regulations or rulings issued pursuant thereto shall not be considered prejudicial to the rights of any Employee, Participant, or Beneficiary.

**ARTICLE XI
TERMINATION OF PLAN**

11.1 Right to Terminate. The Employer reserves the right to terminate the Plan at any time and for any reason.

11.2 Termination Events. The Plan shall terminate:

- a. Upon termination by the Employer as provided in Section 11.1; or
- b. Upon the merger or consolidation of the Employer or the transfer of its assets to another employer by any means and the failure of the transferee to adopt and continue the Plan.

11.3 Vesting on Termination. In case the Plan shall terminate, or in the case of complete discontinuance of contributions under the Plan, the Employer contribution account and the Participant's contribution account of each Participant shall become fully and 100% vested and nonforfeitable. Effective as of the date of termination or discontinuance of contributions, each Participant's account shall be distributed to the Participant, under Section 6.1 (other than subsection c. thereof), or to his or her Beneficiary, if the Participant be not then living, in accordance with Section 7.3.

**ARTICLE XII
THE TRUST FUND**

12.1 Assets Held in Trust. The Trustee shall receive and hold the contributions made by the Employer and Participants pursuant to the Plan, together with the income and other increase thereon, in trust and shall administer the same in accordance with the Plan and Trust, without distinction as between principal and income.

12.2 Use of Trust Assets. The Trustee shall make such distributions and payments from the Trust from time to time and for any and all purposes specified or authorized under the Plan. The Trust Fund shall not be used for or diverted to any purpose other than to satisfy the liabilities of the Plan to Participants and Beneficiaries (except for taxes and administration expenses), except that any contribution made by a mistake of fact (as determined under Section 403(c)(2)(A) of ERISA) shall be returned to the Employer within one (1) year after payment of the contribution.

12.3 Investment in Group Trust Fund. The Employer specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code §401(a), including a group trust fund that also permits the pooling of qualified plan assets with assets of an individual retirement account that is exempt from taxation under Code §408(e) or assets of an eligible governmental plan under Code §457(b) that is exempt from taxation under Code §457(g), including, without limitation, that certain group trust established under Declaration of Trust of Vantage Trust Company made May 19, 2001, and amended June 5, 2008. This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100 (as modified and clarified by Revenue Ruling 2004-67), or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund.

12.4 Plan Expenses/Rebates. The Employer must determine whether a particular Plan expense is a settlor expense which the Employer must pay.

(a) The employer election as to non-settlor expenses. The Employer will direct the Trustee as to whether the Employer will pay any or all non-settlor reasonable Plan expenses or whether the Plan must bear the expense.

(b) Allocation of Plan expense. As to any and all non-settlor reasonable Plan expenses, which the Employer determines that the Plan will pay, the Employer has discretion: (1) to determine which of such expenses will be charged to the Plan as a whole and the method of allocating such Plan expenses; (2) to determine which of such expenses the Plan will charge to an individual Participant's Account under Section 12.3(b); and (3) to adopt an expense policy regarding the foregoing. The Employer must exercise its discretion under this Section 12.3(b) in a reasonable, uniform and nondiscriminatory manner. The Trustee shall pay from the Trust and charge to the overall Plan or to particular Participant Accounts the expenses under this Section 12.3(b) in accordance with the Employer's election of expense charging method or policy.

(i) Charge to overall Plan (pro rata or per capita). If the Trustee is directed by the Employer to charge a Plan expense to the Accounts of all Participants, the Employer will direct the Trustee to allocate the Plan expense either pro rata in

relation to the total balance in each Account on the date the expense is allocated (using the balance determined as of the most recent Valuation Date) or per capita (an equal amount) to each Participant's Account.

(ii) Charge to individual Participant Accounts. The Employer may direct the Trustee to charge a Participant's Account for any reasonable Plan expenses directly related to that Account, including, but not limited to the following categories of fees or expenses: distribution, loan, acceptance of rollover, QDRO, "lost Participant" search, account maintenance, brokerage accounts, investment management and benefit calculations. The Employer may direct the Trustee to charge a Participant's Account for the reasonable expenses incurred in connection with the maintenance of or a distribution from that Account even if the charging of such expenses would result in the elimination of the Participant's Account or in the Participant's not receiving an actual distribution. However, if the actual Account expenses exceed the Participant's Account Balance, the Trustee will not be directed to charge the Participant outside of the Plan for such excess expenses.

(iii)Charges to former Employee-Participants. The Employer may direct the Trustee to charge reasonable Plan expenses to the Accounts of former Employee-Participants, even if Plan expenses are not charged to the Accounts of current Employee-Participants. The Employer may direct the Trustee to charge the Accounts of former Employee-Participants by applying one of the Section 12.3(b)(i) or (ii) methods.

Allocation of Rebates. As to any and all rebates remitted to the Plan from a mutual fund in which the Plan invests, the Employer will direct the Trustee as to the method to allocate to each Participant's Account any share of such rebates received by the Plan.

ARTICLE XIII INVESTMENT POWERS OF THE TRUSTEE

13.1 Investment Powers of the Trustee. The Trustee shall have sole custody of the Fund and, subject to the provisions of Section 5.4, shall have full power and authority to administer, manage and otherwise deal with the Fund to the same extent as an individual owner thereof, and without limiting or restricting the foregoing, but in furtherance thereof, the Trustee is expressly authorized and empowered:

a. To purchase and to acquire, through subscription or other means, real estate, securities and other investments for the Fund;

b. To sell, design, convey, transfer or otherwise dispose of any securities or other property of any description held as a part of the Fund on such terms and

conditions, for cash or on credit, or partly for cash and partly for credit, as it may deem expedient;

c. To lease for any term (even though such term extends beyond the duration of the Fund) any property, real or personal, at any time forming a part of the Fund; and to partition, raze, remove and alter improvements and to erect new improvements on any real estate forming a part of the Fund;

d. To borrow money at any time, if required for the purposes of the Plan and Trust; and to mortgage, pledge and otherwise encumber any property, real or personal, at any time forming a part of the Fund as security therefore;

e. To settle and compromise any debt or obligation due to or from it as Trustee, to reduce interest rates on such obligations, and to extend or otherwise modify or enforce the terms thereof;

f. To vote in person any securities, corporate or otherwise, having voting rights; or to give a proxy (general or special, discretionary or otherwise) to any person it may select to vote such securities; to exercise any conversion privilege or subscription right given to the Trustee as the owner of any security forming a part of the Fund; to consent to or take any action in connection with, and receive and retain any securities resulting from, any reorganization, consolidation, merger, capital readjustment, sale, lease or other disposition of the assets of any corporation or other organization the securities of which are held by the Fund;

g. To cause any securities or other property held for the account of the Fund to be issued in the Trustee's name as Trustee, or in the name of its nominee, or in bearer form, and to hold and to continue to hold such securities or other property so registered;

h. To keep such portion of the Fund in cash as the Trustee may deem reasonably necessary for the purposes of the Trust or while waiting investment; and the Trustee shall not be liable for or required to pay interest on such cash balances;

i. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carrying out the powers herein granted; and

j. To invest and reinvest the Fund and to keep it invested in such property, real or personal, tangible or intangible, wherever located or arising, as the Trustee deems prudent; and such authority shall include corporate stocks of every description, bonds, debentures, equipment trust certificates, evidences of debt of every kind and character, participation certificates and real estate mortgages; but such enumeration shall not limit the authority hereinabove granted or exclude other forms of investment; and such authority shall not be limited in any way, by any law or custom now or hereafter existing in relation to investments by the Trustee.

ARTICLE XIV
MATTERS RELATING TO THE TRUST FUND

14.1 Collection of Employer Contributions. The Trustee shall not be required to take any affirmative action to collect or enforce payment of any contribution to the Plan by the Employer, nor shall it be liable in any manner for the adequacy of the Fund to meet and discharge all liabilities arising under the Plan.

14.2 Reliance by Third Parties. No person dealing with the Trustee shall be required to make inquiry as to the authority of the Trustee to do any act which the Trustee may propose to do hereunder, and any such person shall be entitled conclusively to assume that the Trustee is properly authorized to do any act which it does or proposes to do hereunder. Any person dealing with the Trustee may conclusively assume that the Trustee has full power and authority to receive and receipt for any money or property due and payable to the Trustee, and no such person shall be bound to inquire or see to the disposition or application of any money or property paid to or delivered to the Trustee or paid or delivered in accordance with the written directions of the Trustee.

14.3 Trustee Records and Accounts. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder; and all accounts, books, and records relating thereto shall be open to inspection by any person designated by the Governing Body of the Employer at all reasonable times. Within sixty (60) days following the close of each calendar year, the Trustee shall file with the Employer a written account setting forth all investments, receipts, disbursements, and other transactions effected by it during such Year; and containing an exact description of all securities purchased and sold, with the cost or net proceeds of sale, and showing the securities and investments held at the end of such Year; and the cost of each item thereof as carried on the books of the Trustee, together with the current market value thereof.

**ARTICLE XV
MEMBERS OF TRUSTEE**

15.1 Appointment and Removal. There shall be five (5) members of the Trustee under this Agreement, appointed in the manner described in Ordinance MEP-583. Any member may resign by delivering his or her written resignation to the Employer and the other members. The Employer may remove any member designated by it at any time by written notice to him or her and the other members.

15.2 Successor Members. Upon a member's resignation or removal, upon the death of a member, or upon the inability or refusal of a member to act, the Employer shall appoint a successor member in the same manner as that member was appointed. Each such successor member shall file with the Employer and the other members an instrument in writing accepting his or her membership hereunder. Every successor member so appointed and accepting membership hereunder shall have all the powers and duties of one of the original members hereunder.

**ARTICLE XVI
MISCELLANEOUS**

16.1 Employer Merger. In the event that the City of Overland Park, Kansas, shall merge or consolidate with one or more other municipalities, then such successor may continue this Trust upon executing a proper supplemental agreement with the Trustee.

16.2 Performance of Contracts. Neither the Employer nor the Trustee shall be responsible for the validity of any Contracts, nor for the failure on the part of an Insurer to make payments provided by the Contract(s), nor for the action of any person or persons which may render such Contract(s) null and void or unenforceable, either in whole or in part. In case it becomes impossible for the Employer or the Trustee to perform any act due to any restrictions or provision of any Contract or imposed by an Insurer or any other person, then that act shall be performed which, in the discretion of the Trustee, most nearly carries out the intent and purpose of this Trust.

16.3 Written Notice. In any case in which the Employer, Trustee, or an Insurer shall be directed to take any action upon the occurrence of any event, it shall be under no obligation to take such action unless and until proper satisfactory written notice of such occurrence shall have been received by it.

16.4 Trustee Reliance on Employer Certification. A certificate in writing from any officer of the Employer to the Trustee as to the happening of any event shall constitute conclusive evidence thereof, and the Trustee shall be fully protected and discharged from all liability in accepting and relying upon such certificate.

16.5 Presumption of Genuineness. Neither the Employer nor the Trustee shall incur any liability to any person or party in acting upon the notice, request, consent, letter, telegram or other

paper or document believed by it or any member of the Trustee to be genuine and to have been signed or sent by the proper person.

16.6 Insurer Not a Party. An Insurer shall not be deemed a party to this Trust.

16.7 Ownership of Insurance Contracts. Except for the provisions of a Contract whereby the income at retirement may be paid to the Participant, and whereby amounts payable at death are paid to a Beneficiary, the Trust shall be the legal owner of all Contracts; and the Trustee shall exercise, on behalf of the Trust, all rights, options and benefits thereunder, including the right during the life of the Participant and before the Normal Retirement Date to change the provisions to be then operative. The signature of any one of the individual members of the Trustee, alone, shall be adequate in connection with any application for, change to be made (including a change of Beneficiary), any action to be taken, any right to be exercised or any payment to be made under any Contract, pursuant to action of the Trustee. No Insurer shall be required to make any inquiry regarding the authority of the Trustee to do any of the aforesaid, nor shall it be responsible to see to the distribution or application of any amount paid the Trustee or any amount paid in accordance with the discretion of the Trustee.

16.8 No Contract of Employment. Nothing contained in this Agreement shall be construed as a contract of employment between the Employer and any Employee, nor shall it afford to any Employee a right to continued employment with the Employer.

16.9 Governing Law. This Agreement shall be construed according to the laws of the State of Kansas, where it is made and where it shall be enforced.

16.10 Heirs and Assigns. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of all parties, present and future.

16.11 Prohibition on Alienation. No benefits under the Agreement shall be subject in any manner to be anticipated, alienated, sold, transferred, assigned, pledged, encumbered or charged; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefits as herein provided for him or her.

16.12 Qualified Domestic Relations Orders. Notwithstanding the provisions of Section 16.11, the Trustee shall comply with a Qualified Domestic Relations Order. A "Qualified Domestic Relations Order" is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant ("Alternate Payee") and which:

- a. Creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan; and

b. Specifies:

i The name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order;

ii The amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; and

iii The number of payments or the period to which the order applies and each Plan to which the order relates; and

c. Does not require the Plan to:

i Provide any type or form of benefit, or any option, not otherwise provided under the Plan;

ii Provide increased benefits; or

iii Pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior Qualified Domestic Relations Order.

This Plan will comply with a Qualified Domestic Relations Order only if it provides for a lump sum payment to one or more Alternate Payees, to be made as soon as administratively feasible following the determination of the Order's qualified status, irrespective of whether the Participant has attained the "earliest retirement age," as defined in Section 414(p) of the Code.

For purposes of this Plan, an Alternate Payee who had been married to the Participant for at least one (1) year may be treated as an Eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest, provided that the Qualified Domestic Relations Order provides for such treatment. However, under no circumstances may the spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an Eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order (including approval of a property settlement agreement) relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Trustee shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order; shall notify the affected Participant and any Alternate Payee of the Trustee's procedure for determining whether or not the judgment, decree or order is a Qualified Domestic Relations Order; and shall transfer to a separate account in the name of any Alternate Payee the maximum amount that may be payable to that Alternate Payee if the judgment, decree or order is ultimately determined to be a Qualified Domestic Relations Order. The Trustee shall invest such separate account in the manner it deems appropriate.

The Trustee shall establish a procedure to determine the status of a judgment, decree or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with Qualified Domestic Relations Orders. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the preceding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Trustee, and shall include such other provisions as the Trustee shall determine, including provisions required under regulations promulgated by the Secretary of the Treasury.

No portion of any separate account established in the name of an Alternate Payee shall be paid to any Participant unless (i) the judgment, decree or order is determined not to be a Qualified Domestic Relations Order, and (ii) the Trustee receives no revised judgment, decree or order within the 18-month period following receipt of the original judgment, decree or order. If the original or revised judgment, decree or order is determined to be a Qualified Domestic Relations Order within the 18-month period following the receipt by the Trustee of the original judgment, decree or order, then payment shall be paid to the appropriate Alternate Payee. If such a determination is not made within the 18-month period, payment shall be made at the time and in the manner provided under the Plan as if no order, judgment or decree had been received by the Trustee.

If distributions are made from a Participant's Employer contribution account pursuant to the requirements of a Qualified Domestic Relations Order prior to his or her termination of employment and prior to the date the Participant is 100% vested in his or her Employer contribution account, the Participant's vested interest in his or her Employer contribution account shall not become greater due to the prior distributions made pursuant to the Qualified Domestic Relations Order.

16.13 Exclusive Benefit of Participants and Beneficiaries. This Agreement has been entered into for the exclusive benefit of Participants and their Beneficiaries.

16.14 Qualified Military Service. 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 Code.

ARTICLE XVII MAXIMUM ANNUAL ADDITIONS

17.1 Annual Limit. Notwithstanding anything contained herein to the contrary, the total "Annual Additions" made to all accounts of a Participant shall not exceed the lesser of \$46,000 or 100% of the Participant's "415 Compensation," except that such \$46,000 amount shall be increased as may be permitted by regulations issued pursuant to Code Section 415(d) to reflect changes in the cost of living.

17.2 Definitions. For purposes of this Article XVII, the following terms shall be defined as follows:

a. "415 Compensation" shall include those items listed in Section 1.415(c)-2(b) of the Treasury Regulations and shall exclude those items listed in Section 1.415(c)-2(c) of such Regulations, subject to the provisions set forth in Section 1.415(c)-2(a) of such Regulations; provided, however, that 415 Compensation shall include any elective deferral (as defined in Section 402(g)(3) of the Code) and any amount which is contributed or deferred by the Employer at an Employee's election and which is not includible in the Employee's gross income pursuant to Sections 125, 132(f)(4), or 457 of the Code.

b. "Annual Additions" shall mean the sum of the following amounts allocated on behalf of a Participant for a Year:

i All Employer contributions, including any Employee contributions treated as Employer contributions because they have been picked up by the Employer pursuant to Section 414(h) of the Code;

ii All forfeitures; and

iii All nondeductible Employee contributions contributed for any Plan Year beginning on or after October 1, 1987.

Annual Additions also shall include excess amounts reapplied to reduce Employer contributions under this Article XVII.

17.3 Disposition of Excess Amounts. If the Trustee allocates an excess amount to a Participant's account for a year, the Trustee shall dispose of the excess amount as follows:

a. The Trustee shall return any nondeductible voluntary Employee contributions to the Participant, to the extent that the return would reduce the excess amount.

b. If, after the application of subsection 17.3.a., an excess amount still exists and the Plan covers the Participant at the end of the Year, then the Trustee shall use the excess amount to reduce future Employer contributions (including any allocation of forfeitures) under the Plan for the next Year and for each succeeding Year, as is necessary, for the Participant.

c. If, after the application of subsection 17.3.a., an excess amount still exists and the Plan does not cover the Participant at the end of the Year, then the Trustee shall hold the excess amount unallocated in a suspense account. The Trustee shall apply the suspense account to reduce Employer contributions (including any allocation of forfeitures) for all remaining Participants in the next Year, and in each succeeding Year, if necessary.

d. Except as provided in subsection 17.3.a., the Trustee shall not distribute any excess amount to Participants or former Participants.

17.4 415 Compensation paid after severance from employment. 415 Compensation shall be adjusted for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

a. Regular pay. 415 Compensation shall include regular pay after severance of employment if:

i 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

ii The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

b. Leave cashouts and deferred compensation. Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the Participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

c. Salary continuation payments for military service Participants. 415 Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)) to the extent those 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.

d. Salary continuation payments for disabled Participants. 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code § 22(e)(3)).

17.5 Administrative delay ("the first few weeks") rule. 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one limitation year.

17.6 Inclusion of certain nonqualified deferred compensation amounts. Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant.

17.7 Definition of Annual Additions. The Plan's definition of "Annual Additions" is modified as follows:

a. **Restorative payments.** Annual Additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered Annual Additions.

b. **Other Amounts.** Annual Additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a Participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

c. Date of tax-exempt Employer contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

17.8 Change of limitation year. The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

17.9 Excess Annual Additions. Notwithstanding any provision of the Plan to the contrary, if the Annual Additions (within the meaning of Code § 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.

17.10 Aggregation and Disaggregation of Plans.

a. For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

i A former Employer is a "predecessor employer" with respect to a Participant in a plan maintained by an Employer if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

ii With respect to an Employer of a Participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

b. Break-up of an affiliate employer or an affiliated service group. For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)- 1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

c. Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a Participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

17.11 Compensation paid after severance from employment. Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as 415 Compensation, except the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

17.12 Operating Rules. For purposes of this Article XVII, all defined contribution plans of the Employer, whether or not terminated, shall be treated as one defined contribution plan. The extent to which Annual Additions under the Plan shall be reduced, as compared with the extent to which the Annual Additions under any other defined contribution plan shall be reduced, in order to achieve compliance with the limitations of Section 415 of the Code shall be determined by the Trustee in such a manner so as to maximize the aggregate benefits payable to Participants. If such reduction is made under this Plan, the Trustee shall advise the affected Participants of the limitation on their Annual Additions required by this Section.

17.13 Resolution of Conflicts. The above limitations are intended to comply with the provisions of Code Section 415, so that the maximum benefits provided by plans of the Employer shall be exactly equal to the maximum amounts allowed under Code Section 415 and the regulations thereunder. If there is any discrepancy between the provisions of this Article and the provisions of Code Section 415 and the regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Code Section 415.

SIGNATURES

IN WITNESS WHEREOF, the City of Overland Park, Kansas, has caused this 2008 Restatement to be executed on its behalf, with its official and proper corporate seal affixed hereto, as of this _____ day of _____, _____, but effective as of January 1, 2008.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

Marian Cook

Carl Gerlach, Mayor

TRUSTEES

Robert E. Eisler Jr.

Kristy Stallings

William D. Brown

Reanee Sharpie

Approved as to form:

Michael R. Santos
Deputy City Attorney