

**Florida Municipal Pension Trust Fund**  
**457(b) Deferred Compensation Plan**  
**As amended and restated November 29, 2018**

Florida Municipal Pension Trust Fund  
457(b) Deferred Compensation Plan

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## **1. Establishment and purpose of the Plan**

### **1.1 Purpose of the Plan**

The purpose of the Plan is to provide Employees with a convenient way to save for retirement. Under the Plan, Deferred Compensation is held until paid to the Participant or to his or her Beneficiary(s) according to the provisions of the Plan. With limited exceptions, a Distribution can become available only after the Participant's death or Severance.

### **1.2 Establishment of the Plan**

This document together with the Participating Employer's Adoption Agreement states the provisions of this eligible deferred compensation Plan established and maintained by the Participating Employer(s).

### **1.3 Previous plan replaced**

To the extent of the Participating Employer's participation in the Florida Municipal Pension Trust Fund 457(b) Deferred Compensation Plan, this Plan shall amend and restate any similar plan previously in effect. The restated Plan is effective as of the Restatement Date, except as otherwise specified by this Plan and the Adoption Agreement. This Provision shall not affect the authority of the Master Trustees to amend and restate this Plan as provided in Part 2.

### **1.4 Eligible Plan**

The Participating Employer intends to maintain the Plan as a plan that is an eligible deferred compensation plan within the meaning of IRC § 457(b).

### **1.5 Individual account plan**

The Plan is an individual account plan that provides for an individual Account for each Participant and for Deferred Compensation based solely upon the amount of Contributions, rollovers, transfers, income, dividends, interest, gains (or losses), and Fees and expenses credited to or charged against the Participant's Account.

### **1.6 Exclusive benefit**

The Plan is established for the exclusive benefit of Participants and their Beneficiaries. All assets and income of the Plan shall be held for the exclusive benefit of the Plan's Participants and their Beneficiaries.

## **2. Participating Employers**

### **2.1 Adoption by Participating Employer**

A Participating Employer may make the Plan available to its Employees if it takes the following actions:

- a) The Governing Authority of the Participating Employer must pass an ordinance or resolution formally adopting this Plan for its Employees and approving the Adoption Agreement.
- b) The ordinance or resolution must indicate the date of adoption.

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- c) The ordinance or resolution must commit to the terms of an Adoption Agreement as completed by the Participating Employer.
- d) The ordinance or resolution must specify that the Participating Employer shall abide by the terms of the Plan, including all investment, administrative, and service of the Plan, and all applicable provisions of the Code and other applicable law.
- e) The ordinance or resolution must acknowledge that the Master Trustee is only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.
- f) Participating Employers whose Employees are already participating in a deferred compensation plan under Code Section 457(b) as of the effective date of the Adoption Agreement must inform the Plan Administrator of the name of and the provider of that plan and must provide any other information requested by the Plan Administrator. Upon reasonable request by the Participating Employer, the Plan Administrator shall provide a Participating Employer with information reasonably necessary to comply with the applicable deferral limits under the Plan.

The Master Trustees, through the Plan Administrator, shall determine whether the ordinance or resolution complies with this section. If it does, and provided the other requirements of the Plan and the Master Trust are met, the Master Trustees, through the Plan Administrator, shall execute the Adoption Agreement and provide appropriate forms for the Employer to implement its participation in the Plan.

**2.2 Participating Employer has same provisions**

Except as properly specified by the Adoption Agreement, each Participating Employer adopts the Plan. The Participating Employer's adoption of the Plan is stated by the Adoption Agreement.

**2.3 Amendment binding upon all Participating Employers**

- a) Subject to the provision of any applicable law, the Master Trustee may at any time amend or modify this Basic Plan Document without the consent of the Participating Employers or of Participants (or any Beneficiaries thereof). Any modification, alteration, or amendment of the Basic Plan Document, made in accordance with this Provision, may be made retroactively, if deemed necessary or appropriate by the Master Trustee. A copy of the resolution of the Master Trustee making such amendment shall be delivered to the Plan Administrator, and the Basic Plan Document shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Employees, Participants, Beneficiaries, Master Trustee, and Plan Administrator shall be bound by the amendment. A Participating Employer may not amend the Basic Plan Document in any way.
- b) Subject to the provisions of applicable law, the Master Trustee and the Administrator may at any time amend or modify the form of Adoption Agreement with the consent of the Participating Employers, unless otherwise required under Provision 2.4.

- c) The Master Trustee and Plan Administrator shall ensure that each Participating Employer receives a copy of any modification, alteration, or amendment of the Basic Plan Document. The Participating Employer shall be bound by all such amendments and shall adopt a modified, altered or amended Adoption Agreement when necessary.

#### **2.4 Amendment of Adoption Agreement by Participating Employer**

The Governing Authority shall have the right at any time to amend, in whole or in part, any or all of its elections under the Adoption Agreement without the consent of the Participants or any Beneficiaries. Provided, however, that no such amendment shall:

- a) Deprive any Participant or Beneficiary of any of the benefits to which the Participant or Beneficiary is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment; or
- b) Authorize or permit any part of the Master Trust to be diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries; or
- c) If an amendment limits or otherwise restricts the deferral and distribution rights of the Participants, the amendment shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment to Participants. If the amendment was made by the Master Trustee, notice shall be deemed given when the amendment is sent to each Participating Employer. If the amendment was made by the Participating Employer, notice shall be deemed given when the amendment is sent to the Plan Administrator. No amendment shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respects to amounts credited prior to the effective date of the amendment, and
- d) If the Plan is amended or modified, the Plan Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Part.

#### **2.5 Contributions by Participating Employer**

Contributions made by a Participating Employer shall be determined separately by each Participating Employer and shall be paid to and held by individual Account(s) under the Investment(s) for the exclusive benefit of the Participants (and their Beneficiaries) who are Employees of the Participating Employer.

#### **2.6 Transfer of Participant among Participating Employers**

The transfer of any Participant from or to any Participating Employer shall not affect the Participant's Benefit or rights under the Plan other than as provided by the Plan.

### **3. Definitions**

Whenever used in the Plan, each of the following terms has the meaning stated or provided by this Part.

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If a term is not defined by this Part and is defined by the Internal Revenue Code or the Enabling Statute or relevant Investment Law, the term has the meaning given by the Internal Revenue Code or the Enabling Statute or relevant Investment Law.

**3.1 "Account"**

means the bookkeeping Account (including each sub-Account) maintained for each Participant (or Beneficiary or Alternate Payee) which at all times shows: the amount of the Participant's Deferred Compensation (including any income or loss attributable to the investment of the Participant's Deferred Compensation); any amounts accepted as a transfer under Provision 5.2 ["Acceptance of transfers"]; any Distributions to the Participant, and any Fees or expenses charged against the Participant's Deferred Compensation. "Account" also may refer to each of the sub-Accounts. There shall be separate accounting for the amount of Designated Roth Contributions (and any income or loss attributable to the investment of such contributions).

The Account balance is the total amount or value of the Account (or sub-Account as applicable) reduced by any security interest held by the Issuer(s) or by the Master Trustee for an outstanding loan and reduced by any applicable Investment Fees, charges, expenses, and taxes and any Master Trust charges, Fees, expenses, and taxes.

To the extent that the Participant's Deferred Compensation is held in (and Distributions and Fees or expenses are charged against) an Allocated Investment(s), the value of the Participant's Account is the value of the applicable sub-Account(s) under the Investment(s).

To the extent necessary to administer the Plan, the Plan Administrator shall keep a separate sub-Account to receive each kind of Deferred Compensation (and attributable interest or investment earnings). These subaccounts may include, but are not limited to, the following: pre-tax employee contributions, Designated Roth Contributions, employer contributions, rollovers, and transfers. However, the Plan Administrator, in its sole discretion, may combine any sub-Accounts if so doing does not impair the Plan Administrator's ability to operate this Plan according to its provisions.

The Participant shall receive (until a Retirement Distribution begins) periodic Account reports in the form prescribed by the Plan Administrator.

If the Participant (or Beneficiary) elects more than one Distribution Commencement Date, the Plan Administrator shall maintain a separate account with respect to the portion of the Account to be applied as of each Distribution Commencement Date.

To the extent required by a Plan-approved Domestic Relations Order, the Plan Administrator shall maintain a separate sub-Account for the Alternate Payee.

If the Participant designates more than one Beneficiary, upon the written request of any Beneficiary or upon an approved claim payable to any Beneficiary and not all Beneficiaries, the Plan shall maintain a separate account with respect to the interest of each Beneficiary, beginning as of the next Valuation Date that occurs after the Beneficiary's approved request or claim is received and processed by the Plan Sponsor.

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If a Plan-approved Domestic Relations Order applies with respect to a Participant, the Plan shall maintain a separate account for the interest of the Alternate Payee, beginning as of the next Valuation Date available after the court order is determined by the Plan Sponsor to be a Plan-approved Domestic Relations Order.

A Participant's Plan Account shall be reduced to the extent that any portion of the Participant's Plan Account has been paid or set aside for payment to an Alternate Payee or to the extent that the Participating Employer or the Master Trustee or the Plan Administrator or the Agent otherwise is subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of the Participant's Account or of any distribution therefrom. The Participant shall be deemed to have released the Participating Employer and the Master Trustee and the Plan Administrator and the Agent from any claim with respect to such amounts in any case in which any of them was served with legal process or otherwise joined in a proceeding relating to such amounts, and the Participant was notified of the pendency of such proceeding, and the Participant fails to obtain an order of the court that relieves the Participating Employer and the Master Trustee and the Plan Administrator and the Agent from any obligation to comply with the judgment, decree, or order.

Each Account statement or confirmation furnished by (or on behalf of) the Plan Administrator or the Master Trustee is intended as a legally significant statement of the Participant's Deferred Compensation. As to each Account statement or confirmation, if, by the date that is 60 days after the date that the statement or confirmation was mailed or otherwise sent or delivered, the Participant (or Beneficiary or Alternate Payee) has not delivered a written objection as to the accuracy of the statement, the accounting reported is then settled and conclusive and an account stated. If an objection to any Account statement or confirmation is withdrawn or is adjusted to the objector's satisfaction, the accounting is then settled and conclusive and an account stated. To the extent that an Account statement or confirmation is an account stated, the Plan Administrator and every party acting under the instruction of the Plan Administrator is discharged from any liability that might otherwise arise out of the Account statement as fully as if the Account had been settled by an appropriate court proceeding. Without limiting the comprehensive effect of the above, if an Account statement or confirmation furnished to the Alternate Payee shows the amount segregated to his or her separate sub-Account under a Plan-approved Domestic Relations Order or other court order if, by the date that is 60 days after the date that the statement or confirmation was mailed or otherwise sent or delivered, the Alternate Payee has not delivered a written objection as to the accuracy of the statement or the objection is withdrawn or is adjusted to the Alternate Payee's satisfaction, the accounting reported is then settled and conclusive and an account stated, and shall constitute a release of any obligation under the court order to segregate or set aside the appropriate amount for the Alternate Payee. If a court finds that the application of this paragraph or any part of it is void as against public policy, this provision shall apply to the extent not so found.

### **3.2 "Adoption Agreement"**

means the separate but related written agreement executed by the Participating Employer that states the establishment of the Participating Employer's Plan and its adoption of this Basic Plan Document, The Florida Municipal Pension Trust Fund 457(b) Deferred Compensation Plan Trust,

and that states those conforming and elective provisions of this Plan specified by the Participating Employer.

**3.3 "Agent"**

means a person that the Plan Administrator appoints to perform services regarding the Plan.

**3.4 "Allocated Investment"**

means an Investment for which the Issuer under the terms of the Investment (and not as a separately agreed service) records individual accounts with respect to each Participant.

**3.5 "Allocation Date"**

Means the last day of the Year, unless otherwise specified by the Adoption Agreement.

**3.6 "Alternate Payee"**

means a person who has a right under a court order that the Plan Sponsor has determined to be a Plan-approved Domestic Relations Order to receive part or all of the Participant's Account.

**3.7 "Annuity Payout Option"**

means a Payout Option which includes a provision for payments based, in whole or in part, upon the life of a natural person.

**3.7.1 "Basic Plan Document"**

means this Plan document

**3.8 "Beneficiary"**

means the person(s), whether natural or non-natural, including but not limited to a trustee or other fiduciary, designated by the Participant by a valid Beneficiary Designation in his or her Participation Agreement to receive any undistributed Deferred Compensation payable upon or after the Participant's death (the "primary" Beneficiary(s)), or upon or after the primary Beneficiary's death (the "contingent" or "alternate" Beneficiary(s)).

The Participant's right to designate his or her Beneficiary is limited by Provision 3.9 and by all of the following provisions.

Notwithstanding any Beneficiary designation in the Participation Agreement or otherwise to the contrary, a person shall not be a Beneficiary unless he or she is living or in existence (and, to the extent that the Beneficiary is entitled to receive Deferred Compensation as a trustee or other fiduciary, the person or the entity that the person represents or acts for, is living or in existence) on the Distribution Commencement Date. Any right of a Beneficiary is strictly personal to that Beneficiary and lapses upon his or her death. Any undistributed Deferred Compensation that would have been distributable to a Beneficiary if he or she had lived is not distributable to the Beneficiary's heirs. Upon a Beneficiary's death, any undistributed Deferred Compensation with respect to that Beneficiary becomes distributable to the remaining primary Beneficiary(s) if any, or if none, to the remaining contingent Beneficiary(s), in each case to be distributable in equal shares to all living Beneficiaries of the applicable primary or contingent Beneficiary class.



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The Participant must designate each Beneficiary by name. A Beneficiary(s) cannot be designated by relationship, and any such attempted beneficiary designation is absolutely void.

As provided by law, including section 732.703, Florida Statutes, a designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse is void as of the time the decedent's marriage was judicially dissolved or declared invalid by court order prior to the decedent's death, if the designation was made prior to the dissolution or court order. The decedent's interest in the asset shall pass as if the decedent's former spouse predeceased the decedent. An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986, or an employee benefit plan, may not be treated as a trust for purposes of the law.

Notwithstanding any law to the contrary, a separation, separate maintenance, revocation of a domestic partner registration, termination or revocation of any living together contract, or interruption or termination of any contract not recognized by the State as a marriage, has no effect in any way concerning who is the Beneficiary under the Plan.

If the Participant designates as Beneficiary more than one person, all persons of the same Beneficiary Designation ("primary" or "contingent") have equal shares (per capita and not per stirpes), unless the Participant specifies otherwise.

If a Participant fails to designate a Beneficiary, or if for any reason (including the absence of a surviving designated beneficiary) the Participant's beneficiary designation is invalid or ineffective, the person(s) entitled to the residuary estate of the Participant's estate is(are) the Beneficiary(s), to the extent of the failure or invalid or ineffective designation, with the applicable share of the Plan Account divided among those Beneficiaries in the same shares as their shares of the residuary estate. For the purposes of this Provision, the Plan Sponsor and Plan Administrator may rely on an appropriate court order or the personal representative's written statement as to the identity (including name, address, and Taxpayer Identifying Number) of and shares allocable to the persons entitled to such residuary estate.

A named beneficiary who feloniously and intentionally kills the Participant or Beneficiary is not a Beneficiary and is not entitled to any Distribution or any other right under the Plan; and any Deferred Compensation is payable as though the killer had predeceased the Participant or Beneficiary.

**3.9 "Beneficiary Designation"**

means the valid and effective Beneficiary Designation made by the Participant, designating the person(s) (which may be a non-natural person) who shall be his or her Beneficiary(s) entitled to receive any undistributed Deferred Compensation.

At any time before his or her death, the Participant has the right to designate a Beneficiary(s), including a contingent Beneficiary(s), subject to the provisions of the Plan. The Participant shall have the right to change his or her Beneficiary Designation at any time, subject to the provisions of the Plan.

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A Beneficiary Designation must be in writing, on the form(s) prescribed by the Plan Administrator. A Beneficiary Designation (or change) is not effective until the Plan Administrator receives it. Each Beneficiary Designation completely revokes and cancels any and every previous beneficiary designation.

The Participant must designate each Beneficiary by name. A Beneficiary(s) cannot be designated by relationship, and any such attempted beneficiary designation is absolutely void.

Notwithstanding the rule that a Participant must designate each Beneficiary by name, if the Plan Sponsor, in its sole discretion, finds that a Beneficiary Designation sufficiently describes a trust, that Beneficiary Designation will be construed as naming the duly appointed and currently acting trustee of that trust.

Any beneficiary designation that, in whole or in part, designates the Participant's estate as beneficiary shall be construed as designating as Beneficiary(s), to the extent of the share of Deferred Compensation specified or otherwise provided for the estate, the personal representative of the Participant's estate.

Any statement in a Beneficiary Designation referring to the Beneficiary's relationship to the Participant is for convenience or information only and has no effect in the construction or interpretation of the Beneficiary Designation.

Any statement in a Beneficiary designation attempting to state or create a condition or restriction upon the Beneficiary's receipt or enjoyment of any Deferred Compensation is invalid and the Beneficiary is entitled to the Deferred Compensation without regard to any attempted condition or restriction.

Notwithstanding anything to the contrary in any Beneficiary designation in the Participation Agreement or any other document or otherwise (including but not limited to any court order), any designation of a Beneficiary cannot be irrevocable and any such designation shall be construed as a revocable designation of that Beneficiary.

If the Participant designates as Beneficiary more than one person, all persons of the same Beneficiary Designation ("primary" or "contingent") have equal shares (per capita and not per stirpes), unless the Participant specifies otherwise.

If a Beneficiary Designation divides a Benefit between or among two or more Beneficiaries, the "primary" Beneficiary Designation must allocate the share of each such Beneficiary solely by specifying a percentage of the Participant's Account and the "contingent" Beneficiary Designation must allocate the share of each such Beneficiary solely by specifying a percentage of the Participant's Account. Without limiting the comprehensive effect of the preceding sentence, any division of any Benefit under a Beneficiary Designation shall be ineffective to the extent that it would ask the Plan Sponsor to consider any fact other than the amount of the Participant's Account.

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A Beneficiary Designation shall be construed to dispose of all of the remaining Plan Account or Deferred Compensation.

Except as otherwise provided by the Plan, a Beneficiary Designation that uses a term or phrase that would have significance in construing or interpreting a conveyance or a disposition of a decedent's estate shall, except as otherwise specified by the Participant, be construed or interpreted according to the *Uniform Probate Code* (without regard to the Participant's domicile at the time he or she made the Beneficiary Designation or the Participant's domicile at the time of his or her death). Likewise, if a Beneficiary Designation remains ambiguous after applying all provisions and construction rules stated by this Plan and can be resolved by applying the rules of construction and interpretation of the *Uniform Probate Code* for construing a beneficiary designation or conveyance, such rules shall apply to the Beneficiary Designation, except as otherwise provided by the Plan. Any provision of the *Uniform Probate Code* concerning the effect of divorce or marital separation shall not apply.

After the Participant's death, no person has any right or power or discretion to change any Beneficiary (except to disclaim his or her or its Deferred Compensation as permitted by Provision 15.13 ["Disclaimer by Beneficiary"]), and any such purported provision stated in a Beneficiary Designation or otherwise is ineffective.

**3.9.1 "Benefit"**

refers to the right under this Plan of the Participant (or Beneficiary or other payee) to receive a Distribution of all or any portion of the Participant's Deferred Compensation.

Any Benefit under the Plan shall not be paid or payable except as a:

Retirement Distribution;  
Death Distribution;  
Unforeseeable Emergency Distribution;  
Required Minimum Distribution;  
Permitted Distribution;  
Corrective Distribution

or according to the provisions of a Plan-approved Domestic Relations Order [all as defined and provided below].

All rights and Benefits, including elections, provided by the Plan shall be subject to and limited by the rights awarded to any Alternate Payee pursuant to a Plan-approved Domestic Relations Order.

Any Distribution may, to the extent that the Distribution is an eligible rollover distribution, be paid as a rollover distribution.

### **3.10 "Business Day"**

means any day on which both the New York Stock Exchange [NYSE] is open for regular trading and the person that is required or permitted to act or that is entitled to receive notice is (or was) open for regular business at its home office or National Office or principal place of business.

A Business Day ends at 4 p.m. New York Time, or, if earlier, the time that regular trading closes on the NYSE.

As required or permitted by applicable Investment Law, any Agent may make reasonable rules governing the time of the day after which investment instructions will be treated as received on the next Business Day. Without limiting the comprehensive effect of the preceding sentence, any investment direction that includes an instruction to buy or sell registered investment company shares that is received after the closing of the NYSE shall be treated as received on the next Business Day.

A day that is not a Business Day ends at 4 p.m. New York Time.

### **3.11 "Compensation"**

means the total wages, salaries, fees, and other amounts paid (except as modified below) during each Plan Year to the Employee by the Participating Employer for personal services actually rendered in the course of employment with the Participating Employer, including compensation payable as bonuses or as overtime, and excluding any compensation received in the form of non-taxable fringe benefits. Compensation shall include any amounts deferred as Employee Contributions under this Plan, and any amounts of compensation deferred as "elective deferrals" (within the meaning of IRC § 402(g)(3) or similar provisions) under IRC § 125, IRC § 132(f), IRC § 401(k), IRC § 403(b), or IRC § 457(b). Compensation does not include any amount paid as Participating Employer-provided education assistance, notwithstanding that such payment may be taxable wages to the Participant. Compensation may also include those provisions which are specifically included or specifically excluded in the Adoption Agreement, including (if so provided in the Adoption Agreement), certain additional amounts if paid no later than 2½ months after Severance from employment or, if later, the end of the calendar year that includes a Participant's Severance from employment that, absent a Severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer.

This definition of "Compensation" is not intended to control or affect the construction of the definition of "Includible Compensation". However, for the purposes of computing any Contributions required or permitted under Part 8 ["Reemployment after Uniformed Service"], the reemployed Participant's Compensation shall be as provided by Provision 8.4.

### **3.12 "Contributions"**

means Employee Contributions (both pre-tax deferrals and Designated Roth Contributions) and (if any) Employer Contributions, deferred under the Plan according to the provisions of the Plan.

Contributions under the Plan shall not be reduced because of the Participant's attainment of any age.

Contributions shall be made according to the payroll methods of and at such times as may be determined by the Participating Employer, except as otherwise required by the Enabling Statute.

**3.13 "Corrective Distribution"**

means a Distribution required or permitted to remedy a potential violation or correct a violation of any provision of Part 5 ["Contribution limit"] or under Provision 17.9 ["Mistaken contributions"].

The amounts corrected by a Corrective Distribution are disregarded for all purposes of the Plan, except as otherwise expressly provided by the Plan.

A Corrective Distribution cannot be counted as a required distribution for the purpose of applying the minimum distribution and incidental benefit requirements of IRC § 401(a)(9).

**3.14 "Death Distribution"**

means any Distribution that does not begin before the death of the Participant.

**3.15 "Deferred Compensation"**

means the amount of compensation that the Participant and the Participating Employer agree to defer according to the provisions of the Plan.

The amount or value of the Participant's Deferred Compensation is the amount or value of the Participant's Account (including any rights purchased under the Account).

Deferred Compensation may also refer to the right under this Plan of the Participant or Beneficiary to receive a Distribution of all or any portion of the Account.

Deferred Compensation may include either pre-tax contributions, pre-tax elective deferral contributions or after-tax Designated Roth Contributions as provided in Provision 4.9.

Deferred Compensation further means the amount of Compensation otherwise payable to the Participant that the Participant elects to defer under the Plan (as either pre-tax elective deferral contributions or after-tax designated Roth contributions, if applicable), any amount credited to a Participant's Account by reason of a transfer or a rollover permitted under the Plan, or any other amount that the Employer agrees to credit to a Participant's Account (as an Employer Contribution) and that does not exceed the Maximum Limitation.

**3.15.1 "Designated Roth Contributions"**

means the amount of a Participant's Compensation that he or she elects to defer under the Plan on an after-tax basis, as provided in IRC section 402A.

Designated Roth Contributions under the Plan are allowable only if elected by the Participating Employer in an Adoption Agreement or otherwise. The Participant may designate that all or part of his or her elective contributions under the Plan be treated as after-tax Designated Roth Contributions. Designated Roth Contributions shall be accounted for separately from all other contributions under the Plan.

**3.16 "Distributee"**

means any person who receives or but for his or her or its instruction to the Plan Sponsor is entitled to receive a Distribution. Effective January 1, 2010, a "Distributee" includes a nonspouse designated beneficiary (as defined in section 401(a)(9)(E) of the Code). A Distributee includes an Alternate Payee to whom the Plan Sponsor is directed to make a payment under a Plan-approved Domestic Relations Order.

**3.17 "Distribution"**

means, as appropriate in the context, any kind of Distribution or the particular kind of Distribution provided by the Plan, as follows:

- Permitted Distribution
- Unforeseeable Emergency Distribution
- Retirement Distribution
- Death Distribution
- Corrective Distribution
- Transfer Distribution

Any Distribution may be made, in whole or in part, in cash, or by delivery of an Investment(s) (including any annuity or life insurance contract), Fund Shares, other securities, or other assets or property of any kind. Any Distribution of property other than cash shall be valued at fair market value as of the date of the Distribution.

If a payee does not as a part of his or her or its written claim specify that a Distribution is to be made in the form of a specified property(s), any Distribution is payable as a cash payment(s).

Any Distribution paid after December 31, 2001 may, to the extent that the Distribution is an eligible rollover distribution, be paid as a direct rollover.

**3.18 "Distribution Commencement Date"**

means the date(s) selected by the Participant under Provision 12.2, or by the Beneficiary under Provision 13.2; or the "default" date that results by operation of Provision 12.2.1 or Provision 13.2.1 from the Distributee's failure to make such an election.

**3.19 "Effective Date"**

means with respect to a Participating Employer's participation the date so specified by its Adoption Agreement. If no date is so specified, the Effective Date shall be the date that the Adoption Agreement is executed.

**3.20 "Eligible Participating Employer"**

means any Participating Employer that is a State or a political subdivision of the State or an agency or instrumentality of a state(s) or a political subdivision(s) and that is an "eligible Participating Employer" within the meaning of IRC § 457(e)(1)(A).

**3.21 "Eligible Retirement Plan"**

means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, a qualified trust described in section 401(a) of the Code that accepts the Distributee's Eligible Rollover Distribution or an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and, effective January 1, 2008, a Roth IRA described in section 408A of the Code. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of an Eligible Retirement Plan for a nonspouse designated beneficiary of a deceased participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Code Section 408(d)(3)(C)).

**3.22 "Eligible Rollover Distribution"**

means any distribution under Provision 14 of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includable in gross income; or (iv) any distribution which is made upon the unforeseeable emergency of the Distributee.

**3.23 "Employee"**

means the natural person, whether appointed, elected, salaried, or under contract, or otherwise, who performs services for the Participating Employer on a regular basis as a common-law employee and who has Compensation paid by the Participating Employer, unless the individual is precluded from participation under the Plan by the Enabling Statute or other State or local law (including an ordinance or resolution) or the Adoption Agreement. The terms of the Adoption Agreement shall specify the eligibility to participate in the Plan.

The fact that a natural person is or is determined to be an employee for the purpose of another employee benefit plan (including another pension plan or retirement plan) or for any other legal purpose shall not be construed as any inference that the natural person is an eligible Employee under this Plan.

The Plan Sponsor shall decide all questions of eligibility for participation in the Plan, except as otherwise required by the Enabling Statute.

An Employee shall not be excluded from participation in the Plan solely on the basis of age, other than any minimum age participation required in a Participating Employer's Adoption Agreement.

**3.24 "Employee Contributions"**

means elective deferrals made pursuant to a salary reduction agreement as specified by a Participation Agreement. Employee Contributions may be either pre-tax elective deferral contributions or after-tax Designated Roth Contributions, if a Participating Employer authorizes after-tax Designated Roth Contributions in an Adoption Agreement or otherwise.

**3.25 "Employer Contributions"**

means those Contributions made by the Participating Employer that are not Employee Contributions, and which the Participant could not have elected to receive as immediate cash compensation or other taxable benefit.

The Plan Administrator shall not permit Employer Contributions unless it has received and reasonably relies upon an acceptable written legal opinion concluding that the Participating Employer has legal power under the Enabling Statute and all applicable State and local law to make such Employer Contributions.

The Plan's provisions concerning Employer Contributions may be specified by the Adoption Agreement.

**3.26 "Enabling Statute"**

means the State statute or similar law that grants the Participating Employer legal authority to maintain this Plan.

**3.27 "Fees"**

means any fees required or permitted to be charged against the Participant's (or Beneficiary's or Alternate Payee's) Plan Account according to (any one or more of the following): the Plan, the Master Trust Agreement, the Participation Agreement, an Investment, an investment advisory agreement, any other writing signed by the Participant (or, after the Participant's death, the Beneficiary), any written notice given by or on behalf of the Plan Administrator or the Master Trustee that is accepted or deemed accepted by the Participant (or Beneficiary), or any court order.

**3.28 "Fund"**

means a registered investment company or an insurance company separate account or collective investment fund or group trust or any similar pooled investment under which the value of the holder's interest is calculated according to the number of shares or units held for the holder's account.

**3.28.1 "Governing Authority"**

means the entity authorized by law to act for the Employer and adopt this Plan and the Adoption Agreement.

**3.29 "Includible Compensation"**

means an Employee's actual wages for services performed for the Participating Employer for the year reported in box 1 of Form W-2, increased by any compensation reduction election under Sections 125, 132(f), 401(k), 403(b) or 457(b) of the Code (including an election to defer



compensation under this Plan). Includible Compensation is determined without regard to any community property laws.

For the purposes of computing any Contributions required or permitted under Part 8 ["Reemployment after Uniformed Service"], the reemployed Participant's Compensation shall be as provided by Provision 8.4 and Includible Compensation shall be determined consistent with such provision.

**3.30 "Internal Revenue Code" or "IRC" or "Code"**

means the Internal Revenue Code of 1986, as amended, including any Regulations or rulings (or other guidance of general applicability) under the IRC. Any reference to Regulations is a reference to Treasury department regulations under the Internal Revenue Code, unless otherwise specified. Any reference to a Section of the Internal Revenue Code shall be construed to also refer to any successor provision. Any reference to a Section of Treasury Regulations shall be construed to also refer to any successor provision of such Treasury Regulations. Any reference to a Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement shall be construed to also refer to any guidance of general applicability that extends, amplifies, or modifies the Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement.

**3.31 "Internal Revenue Service" or "IRS"**

means and refers to the Internal Revenue Service, a division of the Department of the Treasury of the United States of America, and thereby an agency of the government of the USA, and any related departments, divisions, or offices under the supervision of the Secretary of the Treasury of the USA.

**3.32 "Investment"**

means (any of the following): an annuity contract or custodial account that satisfies the requirements of IRC § 401(f) and IRC § 457(g)(3); any annuity contract or life insurance contract that may be held by the Master Trust; any Fund shares that may be held by the Master Trust; an interest under a group trust (as described in Rev. Rul. 81-100 1981-1 C.B. 326, as amended by Revenue Ruling 2011-1, 2011-2 I.R.B. 251) that may be held by the Master Trust; or any investment that may be held by the Master Trustee.

The Master Trust shall not hold any Investment that has provisions (whether express or incorporated by reference or at law) that would preclude the correct application of the Plan or the Master Trust Agreement.

The Master Trust shall maintain (or cause to be maintained) the indicia of ownership of each Investment within the USA, except as otherwise permitted by 29 C.F.R. § 2550.404b-1(b) applied as if this Plan were a plan subject to 29 U.S.C. § 1104(b).

All Investments to be used under the Plan must be specified by the Master Trustee, except under Open Architecture Investment as provided in the Master Trust Agreement. Under Open Architecture Investment the Participating Employer selects and oversees the investment options (Investments) used under the Plan.

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The provisions of each Investment (including any provisions stated by each Investment's and each Fund's prospectus and the statement of additional information) are to the extent not inconsistent with the Plan incorporated in the Plan by reference.

An Investment may also be referred to (in Plan documents, disclosure information, and forms) by other terms that are not misleading in the context.

**3.32.1 "Open Architecture Investment"**

means a Participating Employer that has been acknowledged through the Trust Joinder Agreement to select and oversee the investment options under and for the FMPTF 401(a) Defined Contribution Retirement plan and/or FMPTF 457(b) Deferred Compensation plan, rather than using the investment options selected by the Master Trustees. Under Open Architecture Investment, the Master Trustees and Plan Administrator are responsible for only the administrative services to the plan.

**3.33 "Investment Adviser"**

has the meaning given by § 202(a)(11) of the Federal *Investment Advisers Act of 1940*, as amended [15 U.S.C. § 80b-2(a)(11)].

An agreement to provide investment advice (or the giving of investment advice) to a Participant or Beneficiary or Alternate Payee does not constitute an Investment Adviser as an investment manager or investment adviser as to the Plan or the Master Trust. An agreement to provide investment advice (or the giving of investment advice) to any Fund or to the Issuer of any Investment does not constitute an Investment Adviser as an investment manager or investment adviser as to the Plan or the Master Trust.

**3.34 "Investment Law"**

means, as applicable or relevant in the context, any United States law or Florida law relating to banking, insurance, securities, investment companies, investment advice, or commodities trading, including any self-regulatory organization rules. Investment Law includes the Bylaws, Rules of Fair Practice, Code of Arbitration Procedure, and other Rules of the National Association of Securities Dealers, Inc. [NASD] and the rules of each securities exchange or clearing agency.

**3.35 "Investor"**

means, solely for the purposes of Part 6 ["Investment direction"] and solely for convenience of reference, the person that has the duty or holds a power to give investment direction according to Provision 6.2.2.

Any reference using the term or word "Investor" shall not be construed to constitute any person as an investor regarding any Investment or under any Investment Law.

**3.36 "Issuer"**

means the person who has issued or may issue an Investment held regarding the Plan.

An Issuer may be a bank, or an insurance company, or a registered investment company, or the issuer of any other instrument or indicia of ownership or beneficial ownership that is held as a Plan Investment. When appropriate in the context, the term Issuer also includes the definition of "issuer" provided by 15 U.S.C. § 77b(4).

**3.37 "Master Trust"**

means the trust created and maintained by the Master Trust Agreement.

**3.38 "Master Trust Agreement"**

means the Agreement made as of 16<sup>th</sup> day of December, 1983 as may be amended and restated, by and between all parties that are now or may hereafter become Participating Employers of the Florida Municipal Pension Trust Fund and the individuals named as Master Trustees pursuant to provisions of the Agreement.

**3.39 "Master Trustee"**

means the individuals collectively who serve as trustees pursuant to the Master Trust Agreement.

**3.39.1 "Maximum Limitation"**

means the maximum amount that may be deferred under this Plan (other than Transfer Contributions and rollover amounts permitted under this Plan) for the taxable year of a Participant. Such amount shall be either the Normal Limitation or Catch-Up Limitation, whichever is applicable.

- a) Normal Limitation: The maximum amount deferred shall not exceed the lesser of the Applicable Dollar Amount (as described in (c) below) or 100% of the Participant's Includible Compensation, as adjusted by (d) below. Notwithstanding the preceding provisions of this paragraph, for calendar years prior to 2002, the maximum amount deferred shall not exceed such limit or limits in effect for the applicable year pursuant to Code Section 457.
- b) Catch-Up Limitation: For each one of the last three (3) taxable years of a Participant ending before the Participant's attainment of Normal Retirement Age, the maximum amount deferred for each such year shall be the lesser of:
  - (1) twice the Applicable Dollar Amount (as described in (c) below): or
  - (2) the sum of the Normal Limitation, plus that portion of the Normal Limitation not used in each of the prior taxable years of the Participant commencing after 1978 in which (i) the Participant was eligible to participate in this Plan or another eligible plan of the Employer, and (ii) compensation deferred under this Plan (or such other plan) was subject to the deferral limitations set forth in this section.

A Participant may utilize the Catch-Up Limitation only if the Participant has not previously utilized it with respect to a different Normal Retirement Age under this Plan or any other plan.

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For years prior to 2002, the limit under this provision (b) for any year shall not exceed \$15,000.

- c) Applicable Dollar Amount: For contributions in 2006 and subsequent years, the Applicable Dollar Amount shall be \$15,000 as adjusted for cost-of-living increases in accordance with Code Section 457(e)(15). The Applicable Dollar Amount for the 2018 calendar year is \$18,500.
- d) Coordination with Other Pre-2002 Plans: For contribution years prior to 2002, the amount excludible from a Participant's gross income for any taxable year under this Plan or any other plan under Code Section 457(b) shall not exceed \$7,500 (as adjusted for cost-of-living increases in accordance with Code Section 457(e)(15)) or such greater amount allowed under provision (b) above, less any amount excluded from gross income under Code Section 403(b), 402(e)(3), or 402(h)(1)(B) or (k), 408(p) or any amount with respect to which a deduction is allowable by reason of a contribution to an organization under Code Section 501(c)(18).
- e) Coordination with Other Post-2002 Plans: For contribution years after 2002, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Section 403(b) or to a 401(k) plan pursuant to Code Section 402(g)(3) shall not reduce the Maximum Limitation.
- f) Age-Based Catch-Up Contributions: In addition to any other limit set forth in this section, a Participant who will attain age 50 or greater in the calendar year may contribute an additional \$5,000 as adjusted for cost-of-living increases in accordance with Code Section 414(v)(2)(C). The Age-Based Catch-Up limitation for the 2018 calendar year is \$6,000.
- g) Coordination of Catch-Up Contributions: A Participant may not utilize both the Catch-Up Limitation and the Age-Based Catch-Up Contribution in the same year. The Age-Based Catch-Up Contribution shall not apply for any taxable year for which a higher Catch-Up Limitation applies.
- h) Excess Deferrals: Any amount deferred in excess of the Maximum Limitation or Age-Based Catch-Up Contribution shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. An excess deferral as a result of a failure to comply with the individual limitation under Treas. Reg. Section 1.457-5 for a taxable year may be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral.

**3.40 "Normal Retirement Age"**

means the age elected by the Participant which may not be earlier than the earliest age at which the Participant has the right to retire without the consent of the Participating Employer and to immediately receive unreduced retirement benefits under the Participating Employer's basic retirement plan and which may not be later than the Participant's age 70½, or, if earlier, the date of the Participant's Severance from employment.

If the Participant will not become eligible to receive a benefit under the Participating Employer's basic retirement plan, he or she may elect a Normal Retirement Age that is not earlier than his or her age 65 and not later than his or her age 70½ or, if earlier, the date of his or her Severance from employment.

The Participant's Normal Retirement Age does not control his or her Distribution Commencement Date.

**3.41 "Notarial Officer"**

means a natural person who is authorized to take oaths under the law of the jurisdiction in which the relevant document is signed.

**3.42 "Participant"**

means the Employee (or former Employee) who has Deferred Compensation under the Plan who has not yet received all of the payments of Deferred Compensation to which he or she is entitled under the Plan.

**3.43 "Participating Employer"**

means an Employer that has passed the Trust Joinder Agreement to become a party to the Florida Municipal Pension Trust Fund and has passed an Adoption Agreement to participate in this Plan.

**3.44 "Participation Agreement"**

means the agreement (in the form prescribed by the Plan Administration), as amended from time to time, entered into by and between the Participant and Participating Employer under which the Employee provides all necessary information to the Plan Administrator.

**3.45 "Payout Option"**

means any, except as limited below, of the annuity options or other options for payment that are available under the applicable Plan Investment(s).

As to an unallocated investment, the Payout Options are as specified by the current written agreement between the Plan Administrator and the Agent.

The Plan Sponsor shall not permit the use of any payout option that is based on gender-distinct actuarial tables or that otherwise unlawfully discriminates against any person.

The Plan Sponsor shall not permit the Participant (or Beneficiary) to elect any Payout Option that (at the time the Distribution begins or is scheduled to begin) does not satisfy all applicable provisions of the Plan, including all applicable requirements of IRC § 457(d)(2) and IRC § 401(a)(9).

If an Investment permits a Payout Option to be arranged "as mutually agreed", any such unspecified Payout Option, regardless of whether the Payout Option is the actuarial equivalent of any other Payout Option, shall not be a Payout Option under the Plan unless the Issuer offers this

Payout Option on a uniform and non-discriminatory basis to all Participants and Beneficiaries in similar circumstances.

**3.46 "Plan"**

means the Plan specified by this Basic Plan Document together with the Participating Employer's Adoption Agreement and, to the extent necessary to comply with IRC § 457(b), the Master Trust Agreement, and any executed amendments thereof, which together constitute the Plan of the Participating Employer specified by the Adoption Agreement.

**3.47 "Plan-approved Domestic Relations Order"**

means a court order that is lawfully directed to this Plan and that is served upon the Plan Sponsor before the Participant's Distribution Commencement Date that pursuant to a State domestic relations law creates or recognizes the existence of the right of an Alternate Payee to receive all or a portion of any Deferred Compensation of a Participant and that meets all of the following requirements.

An order shall not be a Plan-approved Domestic Relations Order unless the Plan Sponsor determines that the court order on its face and without reference to any other document states all of the following:

- The court order expressly states that it relates to the provision of support, alimony, or marital property rights to a spouse or former spouse of a Participant and is made pursuant to State domestic relations law.
- The court order clearly and unambiguously specifies that it refers to this Plan.
- The court order clearly and unambiguously specifies the name of the Participant's Participating Employer.
- The court order clearly specifies: the name, mailing address, and Taxpayer Identifying Number of the Participant; and the name, mailing address, and Taxpayer Identifying Number of the Alternate Payee.
- The court order clearly specifies the amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's Account to be segregated for the separate sub-Account of the Alternate Payee.
- The court order expressly states that the Alternate Payee's segregated Account shall bear all Fees and expenses as though the Alternate Payee were a Participant.
- The court order if made before January 1, 2002 clearly specifies that any Distribution to the Alternate Payee becomes payable only after the Participant's death or Severance.
- The court order clearly specifies that any Distribution to the Alternate Payee becomes payable only upon the Alternate Payee's written claim made to the Plan Sponsor or the Agent.
- The court order clearly specifies that any Distribution to any Alternate Payee shall be payable only as a lump sum.
- The court order expressly states that it does not require this Plan to provide any type or form of benefit or any option not otherwise provided under this Plan.

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- The court order expressly states that the order does not require this Plan to provide increased Deferred Compensation.
- The court order expressly states that any provision of it that would have the effect of requiring any Distribution to an Alternate Payee of Deferred Compensation that is required to be paid to another person under any court order is void.
- The court order expressly states that nothing in the order shall have any effect concerning any party's tax treatment, and that nothing in the order shall direct any person's tax reporting or withholding.

An order shall not be a Plan-approved Domestic Relations Order if it includes any provision that does not relate to this Plan. Without limiting the comprehensive effect of the preceding sentence, an order shall not be a Plan-approved Domestic Relations Order if the order includes any provision relating to any pension plan, retirement plan, deferred compensation plan, health plan, welfare benefit plan, or employee benefit plan other than this Plan.

An order shall not be a Plan-approved Domestic Relations Order unless the order provides for only one Alternate Payee.

An order shall not be a Plan-approved Domestic Relations Order if the order includes any provision that would require the Plan Sponsor to calculate the amount to be segregated to the Alternate Payee's separate sub-Account in a manner not readily calculable by the Agent according to its currently available records and without regard to any records for any accounting period that is an account stated or otherwise settled by the application of the last paragraph of Provision 3.1 ["Account"].

An order shall not be a Plan-approved Domestic Relations Order if the order includes any provision that would permit the Alternate Payee to designate any beneficiary for any purpose. However, an order does not fail to qualify as a Plan-approved Domestic Relations Order because it provides that any rights not paid before the Alternate Payee's death shall be payable to the duly appointed and then-currently serving personal representative of the Alternate Payee's estate.

The Plan Sponsor may assume that the Alternate Payee named by the court order is a proper payee and need not inquire into whether the person named is a spouse or former spouse of the Participant.

**3.48 "Plan Administrator" or "Administrator"**

means the Florida League of Cities, Inc. or any successor of it.

Except as otherwise indicated, any reference to the Plan Administrator refers also to the Agent to the extent of any service required or permitted to be performed by the Agent.

**3.49 "Plan Loan"**

Means a loan to a Participant under Part 20 of this Plan.

**3.50 "Plan Sponsor"**

means the Participating Employer or any successor to it.

**3.51 "Registered Investment Adviser"**

means an investment adviser that is registered with the SEC pursuant to § 203(c) of the federal *Investment Advisers Act of 1940*, as amended [15 U.S.C. § 80b-3(c)].

An agreement to provide investment advice (or the giving of investment advice) to a Participant or Beneficiary or Alternate Payee does not constitute a Registered Investment Adviser as an investment manager or investment advisor as to the Plan or any Master Trust.

**3.52 "Restatement Date"**

means the date that the Participating Employer executes the Adoption Agreement, unless otherwise specified in the Adoption Agreement. An amendment or restatement of this Plan by the Master Trustee does not require execution of a new Adoption Agreement by a Participating Employer.

**3.53 "Retirement Distribution"**

means any Distribution other than an Unforeseeable Emergency Distribution or a Permitted Distribution or a Corrective Distribution that begins after the Participant's Severance and before the Participant's death.

**3.54 "SEC"**

means and refers to the Securities and Exchange Commission, an agency of the government of the United States of America, established by § 4(a) of the federal Securities Exchange Act of 1934.

**3.55 "Severance"**

after December 31, 2001

means, consistent with IRC § 457(d)(1)(A)(ii), the time when the Participant has a severance from employment with the Participating Employer.

before January 1, 2002

means the Participant's separation-from-service with the Participating Employer that is consistent with IRC § 457(d)(1)(A)(ii) as in effect before the *Economic Growth and Tax Relief Reconciliation Act of 2001*.

The Plan Administrator is entitled to rely upon the date of Severance certified by the Participating Employer.

Notwithstanding any other information, the Agent shall not be deemed to have any knowledge of any Severance until it receives the Plan Sponsor's certificate of the fact and date of the Participant's Severance.

**3.56 "Shares"**

means shares or similar units of interest in a Fund.

**3.57 "Signature Guarantee"**

means a written guarantee of the signature of the person endorsing a writing that is made by a corporation that is an "eligible guarantor institution" as defined by 17 C.F.R. § 240.17Ad-15(a)(2)



that is not otherwise excluded under the preceding Rule and that is a member of the Securities Transfer Agent Medallion Program ["STAMP"].

**3.58 "Spouse" or "Surviving Spouse"**

means, solely for the purposes of minimum distribution provisions, the natural person who is the Surviving Spouse of the Participant under Federal law.

For all purposes under the Plan, the Plan Sponsor may rely on any written statement furnished to it, and the Plan Sponsor has no duty to inquire concerning the non-existence or identity of a Participant's Spouse unless the Plan Sponsor has received a court order or legal process or a written notice from any office of the IRS concerning the existence or non-existence or identity of the Participant's Spouse.

**3.59 "State"**

means the State of Florida.

**3.60 "Taxpayer Identifying Number"**

has the meaning given by IRC § 6109.

**3.61 "Transfer Contribution"**

means each amount deferred under the Plan pursuant to Provision 5.2.

**3.62 "Transfer Distribution"**

means a Distribution transferred to another eligible deferred compensation plan by or on behalf of the Participant.

**3.63 "Unforeseeable Emergency Distribution"**

means a Distribution under Part 11.

**3.64 "Unallocated Investment"**

means any Investment that is not an Allocated Investment.

**3.65 "USA"**

means the United States of America.

To the extent that any provision of the Plan is intended to state a provision that meets a requirement of or by reference to IRC § 401(a) or IRC § 501(a), USA shall be construed according to IRC § 7701(a)(9), except as otherwise required or permitted by the Internal Revenue Code for the applicable requirement.

**3.66 "Valuation Date"**

means each date provided for valuing Plan Accounts as specified by the Plan Administrator under a written procedure(s).

Each Investment or Master Trust account shall provide that the Allocation Date (or, if for any Year the Allocation Date is not a regular Business Day, the regular Business Day that immediately precedes the Allocation Date) is a Valuation Date.

A Valuation Date that is a Business Day ends at the same time that the Business Day ends. A Valuation Date that is not a Business Day ends at 4 p.m. New York Time.

**3.67 "Valuation Period"**

means the time after the end of a Valuation Date to the close of the next Valuation Date.

**3.68 "Year"**

means the Participating Employer's Plan Year, as specified by the Adoption Agreement.

For all purposes of administering the Plan, the Plan Sponsor shall be entitled to rely on the assumption that a Participant's taxable year is the calendar year, unless the Participant gives written notice specifying his or her taxable year.

**4. Participation in the Plan**

**4.1 Enrollment**

An eligible Employee who wishes to become a Participant shall complete and execute and deliver all of the instruments or forms required by the Plan.

**4.2 Participation Agreement**

If the Employee elects to make Employee Contributions, the Participant shall enroll in the Plan by executing a Participation Agreement (on the form prescribed by the Plan Administrator) to make those Employee Contributions. When entering into or amending his or her Participation Agreement, the Participant must agree to defer the minimum amount that is required under each Plan Investment indicated by the Participant's Participation Agreement, and must agree to defer not more than the maximum amount provided by Part 5 ["Contribution limit"].

**4.3 Enrollment Date**

An Employee who has become eligible to participate in this Plan shall be eligible to enroll as a Participant as of the date on which the Employee satisfies this Plan's eligibility requirements; provided the Employee is still employed as of that date, or, if not employed on that date, as of the date of rehire (if he or she then satisfies this Plan's eligibility requirements).

**4.4 Employee responsible to enroll**

If the Employee fails to complete and execute and deliver any enrollment forms required according to Provision 4.1, he or she shall not be entitled to receive an allocation of any Contributions under the Plan.

The Plan Administrator shall not be responsible to notify any Employee that he or she has become eligible to participate in the Plan. The Employee shall be responsible to know when he or she

becomes eligible to participate in the Plan, and shall be responsible to take any action necessary to enroll in the Plan. The Plan Administrator shall not be liable for any missed Contributions.

**4.5 Time for Contributions to begin**

Contributions will be deferred for any calendar month only if a Participation Agreement providing for the deferral has been entered into before the beginning of the month.

**4.6 Amendment of Participation Agreement**

Subject to all of the provisions of the Plan, a Participant may at any time amend his or her Participation Agreement to change: the amount of his or her Contributions, his or her investment direction; his or her designated Beneficiary(s).

Unless the Participation Agreement specifies a later effective date, a change in the amount of Contributions shall take effect as of the next available pay period in the next calendar month. A change in the investment direction for Contributions shall take effect after investment direction is received according to Provision 6.2. A change in the Beneficiary Designation shall take effect when the Participation Agreement is accepted by the Plan Sponsor, Plan Administrator or Agent.

**4.7 Leave of absence**

Unless his or her Participation Agreement is otherwise amended, if a Participant is absent from work by a leave of absence, Contributions under the Plan shall continue to the extent that Compensation continues, or the Participation Agreement shall remain in effect and Contributions shall resume when the Participant returns to work.

**4.8 Disability**

A disabled Participant may make Employee Contributions during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed compensation and not disability benefits) from which to make Employee Contributions.

**4.9 Designated Roth Contributions**

If elected by the Participating Employer in the Adoption Agreement or otherwise in a manner acceptable to the Plan Administrator, the Participant may designate that all or a portion of his or her elective contributions to the Plan be treated as after-tax Roth contributions (referred to herein as "Designated Roth Contributions"). Such designations must be made before the date upon which the amounts designated would otherwise have been payable to the Participant (but for the election to defer), and such designation must be irrevocable on and after that date. Designated Roth Contributions, and the earnings, losses or expenses thereon, shall be accounted for separately from all other contributions to the Plan (including rollovers of Roth contributions from other plans, if permitted by the Plan Administrator) and the earnings, losses or expenses on those contributions. If a Participant takes a distribution of less than 100% of his or her Account, the Participant may designate whether such distribution shall be made from the Participant's pre-tax elective deferral contributions or after-tax Designated Roth Contributions.

If elected by the Participating Employer in the Adoption Agreement, the Participating Employer may make contributions (that are not part of the Participant's Compensation) to the Plan as

additional Deferred Compensation. Participating Employer Contributions may, but need not, be accounted for separately from Participant pre-tax elective deferral contributions, but shall be accounted for separately from Designated Roth Contributions, and rollover contributions (whether from a non-Roth account or a designated Roth account, if permitted by the Plan Administrator).

## **5. Contribution limit and acceptance of transfers and rollovers**

### **5.1 Deferral limit**

The maximum amount deferred for any Participant for any taxable year of the Participant shall not exceed the lesser of (i) the Applicable Dollar Amount, or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under Section 457(e)(15) of the Code. For 2018, the Applicable Dollar Amount is \$18,500. To the extent another Maximum Limitation applies, the amount deferred shall not exceed the applicable Maximum Limitation for any Participant. The amount deferred includes all Contributions (Employee Contributions, Employer Contributions, and Designated Roth Contributions).

### **5.2 Acceptance of transfers and rollovers**

The Participating Employer shall credit to a Participant's Account the amount transferred from another eligible deferred compensation plan (within the meaning of IRC § 457(b)). Any transferred amount is not treated as Contributions subject to the limitation of Provision 5.1, except for the amount of deferred compensation during the Participant's taxable year in which the transfer occurred which is treated as a Contribution subject to the limitation of Provision 5.1.

To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, a Participant may contribute to the Plan in cash as a rollover contribution a qualified rollover amount from a governmental deferred compensation plan under Code Section 457(b). In the event that the Plan Administrator establishes a procedure under which all amounts received from a qualified plan, individual retirement account or annuity, or a tax-sheltered 403(b) plan would be separately accounted for, a Participant may contribute to the Plan in cash as a rollover contribution a qualified rollover amount from a qualified plan, provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code.

### **5.3 Qualified governmental excess benefit arrangement**

Consistent with IRC § 457(e)(14), Provision 5.1 and IRC § 457(c) shall not apply to any qualified excess benefit arrangement (as defined by IRC § 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether this Plan is an eligible deferred compensation plan.

### **5.4 Corrective Distribution for excess deferrals**

A Corrective Distribution for excess elective deferrals shall be paid if the Participant designates (or the Participant is deemed to have notified the Plan Sponsor of) an amount of excess deferrals. Such excess shall be distributed to the Participant as soon as administratively practicable after the Administrator is notified by the Plan Sponsor that the amount is an excess annual deferral.

**5.4.1 Designation of excess deferrals**

The Participant shall designate excess deferrals by delivering to the Plan Sponsor a written claim in the form prescribed by the Plan Administrator that certifies and otherwise establishes to the satisfaction of the Plan Sponsor and the Plan Administrator an amount of excess deferrals.

If the Plan Sponsor finds that the Participant has excess deferrals for the calendar year calculated by taking into account only Contributions under this Plan and other plans of the same Participating Employer, the Participant is deemed to have notified the Plan Sponsor of the excess deferrals so determined, unless the Participant certifies that he or she has received a corrective distribution under another plan.

**5.4.2 Calculation of allocable income**

The income or loss allocable to excess deferrals shall be determined according to a reasonable method of allocating income or loss. For this purpose, the method described in Treasury Reg. § 1.402(g)-1(e)(5) is deemed to be a reasonable method.

**5.4.3 Amount to be distributed**

The amount to be distributed as a Corrective Distribution shall be the amount designated (or deemed designated) under Provision 5.4.1 together with any allocable income determined under Provision 5.4.2.

**5.4.4 Plan Administrator not responsible to determine "excess deferrals"**

The Plan Administrator shall not be responsible to determine the amount of any excess deferrals.

**6. Investment direction**

**6.1 Participant's duty of investment direction**

Each Participant (and, when applicable, each Beneficiary or Alternate Payee) shall, subject to the requirements of any applicable Investment Law and of any procedures established by the Plan Administrator and the Agent, direct the investment of his or her or its Account(s).

**6.2 Procedure for giving investment direction**

The Investor must give his or her or its investment direction according to the provisions of this Plan, including any procedure or form required by the Plan Administrator or the Agent or the Issuer.

**6.2.1 Reasonable frequency**

The Plan Administrator, Issuer or each Investment may, but only on a uniform and consistent basis, impose reasonable restrictions on the frequency with which all Investors may give investment directions. In addition to (and not by limitation upon) such restrictions, the Investor cannot give more than one investment direction in any Valuation Period and the latest investment direction in a Valuation Period cancels all earlier inconsistent investment directions in that Valuation Period.

**6.2.2 Who directs investment**

During the Participant's life, the Participant shall direct the investment of his or her Account. During the Participant's disability or incompetence, the person who has authority to act for the Participant under a power-of-attorney accepted by the Plan Sponsor or the agent according to Provision 17.15 ["Power-of-attorney"] or, if there is no such agent, the person that is the duly appointed and currently serving conservator or guardian of the estate of the Participant shall direct the investment of the Participant's Account. After the Participant's death, the Beneficiary shall direct the investment of his or her or its Account or each Beneficiary shall direct the investment of his or her or its segregated Account. A Participant or Beneficiary may delegate investment responsibility for all of his or her or its Account to an agent or attorney-in-fact by giving written notice acceptable to the Plan Sponsor and furnishing a power-of-attorney that is accepted by the Plan Sponsor according to Provision 17.15. A Participant or Beneficiary cannot delegate investment responsibility for only part of his or her or its Account. Solely for the purposes of this Part and solely for convenience of reference, the person that has the duty or holds a power to give investment direction is referred to as the "Investor".

### **6.2.3 Investment direction must be in writing**

Each investment direction shall be in writing and shall not be proper unless the writing is signed by the Investor. Except as otherwise specified by the Agent's investment direction procedure, "writing" and "signed" shall be construed according to Provision 17.23 ["Signatures and broad acceptance of writings"], subject to any security procedures required by the Agent or the Issuer. Without limiting the comprehensive effect of the above, a signed writing includes, to the extent permitted by the applicable Investment(s), a proper telephone or Internet-based communication made in the manner prescribed by the Agent and the Issuer.

### **6.2.4 Proper person to receive investment direction**

The Investor shall give his or her or its investment direction only to the Plan Administrator or Agent, except as otherwise permitted by a uniform written procedure adopted by the Plan Administrator.

For any Investment, notwithstanding any service or assistance that may be provided by the Agent, only the Issuer(s) has authority to accept an investment direction and any direction is effective only when and as so received. Nothing in this Plan or otherwise shall be construed to enlarge or augment any legal obligation of the Agent.

### **6.2.5 Investment can't avoid Distribution Commencement Date**

Notwithstanding any provision or privilege for investment direction, if, consistent with Provision 12.2 ["Election of Distribution Commencement Date"], the Participant or if, consistent with Provision 13.2 ["Election of Distribution Commencement Date"], the Beneficiary has selected more than one Distribution Commencement Date, he or she or it is not permitted to make any investment transfer from any portion or Investment of his or her or its Account to any other portion or Investment of his or her or its Account that has a different Distribution Commencement Date.

### **6.3 Plan Administrator not responsible**

Except as provided by Provision 6.4, the Plan Administrator must accept every proper investment direction and the Plan Administrator is obligated to comply with such proper investment direction.

Without limiting the comprehensive effect of the above, the Plan Administrator is not under any duty to question any investment direction of a Participant or Beneficiary (or his or her or its agent), or to make any investment recommendations, or to provide to any person any investment advice or investment education.

If the Participating Employer or the Plan Administrator or the Master Trust provides any investment education or investment information or investment advice of any kind, the Participating Employer and the Plan Administrator and the Master Trust shall not be liable for any loss or liability arising out of such investment education or investment information or investment advice.

#### **6.4 Investment direction refused**

The Plan Sponsor, Plan Administrator, the Agent or any person may decline to implement any investment direction if:

- the person receiving the investment direction knows (or a court order has determined) that the Investor is legally incompetent;
- the investment direction would be contrary to this Plan;
- the investment direction would be contrary to a court order, even if the court order is not a Plan-approved Domestic Relations Order;
- the investment direction would jeopardize the Plan's (or the Master Trust's) tax qualified status;
- the investment direction would generate income that would be taxable to the Master Trust;
- the investment direction would result in a prohibited transaction within the meaning of IRC § 503; or
- the investment direction would cause the Master Trust or any person to maintain the indicia of ownership of an Investment or any assets of the Plan outside the jurisdiction of the district courts of the USA or outside the jurisdiction specified by the Master Trust Agreement.

If an investment direction is declined, the Plan Sponsor, Plan Administrator, or Agent shall notify the Investor.

#### **6.5 Failure to give investment direction**

If at any time a Participant or Beneficiary fails to exercise his or her or its duty of investment direction (or an investment direction is refused), the Master Trustee shall, to the extent of the failure of proper investment direction, cause the Account or applicable sub-Account(s) or segregated Account to be invested as specified under a written procedure adopted by the Master Trustee. In such event, the Participant or Beneficiary shall be deemed to have directed that option (or options) for investment of their Account. Except for investment options under Open Architecture Investment that are further provided for herein, if the Master Trustee has appropriately exercised its fiduciary duty in selecting a default option(s), there shall be no liability for any loss sustained by a Participant or Beneficiary whose Account is invested in the default option(s). The Master Trustee shall have no fiduciary duty nor any liability for any loss sustained by a Participating Employer, Participant, Beneficiary, or Alternate Payee whose Account in whole or

part is invested under Open Architecture Investment and whose investment options, including any default option(s), have been selected by the Participating Employer.

**6.6 Expenses of investment direction**

The Plan may charge the Participant's or Beneficiary's Account for the expenses of executing his or her or its investment direction. If such expenses are so charged, the Plan Administrator shall maintain reasonable procedures to inform Investors that such charges are made and to inform each Investor as to the actual expenses charged to the Participant's or Beneficiary's individual Account.

If the execution of an investment direction would incur an unusual charge or any tax under the Investment or otherwise under applicable law, any person receiving the investment direction may (but is not required to) require the Investor to acknowledge in writing that he or she or it understands each charge or tax and how the charge or tax is calculated or determined.

**6.7 Relief from fiduciary responsibility**

To the extent of the Participant's or Beneficiary's investment direction, the Participating Employer and the Plan Administrator and the Master Trust and the Agent and each Issuer and each person performing services regarding the Plan is relieved of any fiduciary responsibility and every kind of liability, and is not responsible for or liable for any damage or loss or expense or other claim which may arise from that Participant's or Beneficiary's investment direction or exercise of control (or from that Participant's or Beneficiary's failure to exercise his or her or its duty of investment direction and control).

**6.8 Participating Employer and Plan Administrator not responsible for Plan Investment selection**

Except as otherwise required by the Enabling Statute, and except as provided herein for Open Architecture Investment, each Participating Employer and the Plan Administrator does not have any responsibility and shall not have any liability relating to the selection of Plan Investments. Without limiting the comprehensive effect of the above, the Participating Employer and Plan Administrator are not liable for losses or damages arising out of: any action in approving or purchasing any Plan Investment(s), any bankruptcy or insolvency or impairment or liquidation or rehabilitation or supervision of any Issuer(s), any other impairment of any Issuer's ability to meet its obligations, or the performance of any Plan Investments. Notwithstanding any provision of this Plan to the contrary, an Employer who has selected the Open Architecture Investment shall select and oversee investment options, including default option(s), for the Plan rather than using the investment options selected by the Master Trustees, and shall be responsible for the selection and oversight of investment options for the Plan. The Plan Administrator and Master Trustees have no responsibility for the selection or oversight of investment options selected by an Employer who has selected investment options for the Plan under Open Architecture Investment, and therefore, neither the Plan Administrator nor the Master Trustees shall have any liability relating to the selection of Plan investment options under Open Architecture Investment. Without limiting the comprehensive effect of the above, the Plan Administrator and Master Trustees are not liable for losses or damages arising out of: any action in approving or purchasing any investment option under Open Architecture Investment, any bankruptcy or insolvency or impairment or liquidation or rehabilitation or supervision of any Issuer(s), any other impairment of any Issuer's ability to



meet its obligations, or the performance of any investment option under Open Architecture Investment.

### **6.9 Selection of Open Architecture Investment**

Notwithstanding any provisions of this Plan to the contrary, including but not limited to Provisions 3.32, 6.5, 6.8, and 16.1, a Participating Employer acknowledged through the Trust Joinder Agreement may elect Open Architecture Investment. If a Participating Employer selects Open Architecture Investment, the Participating Employer will be responsible for selecting and overseeing Plan investment option(s) rather than using the investment options selected by the Master Trustees. Notwithstanding any provisions of this Plan to the contrary, a Participating Employer acknowledges by the selection of Open Architecture Investment that neither the Plan Administrator nor the Master Trustee has any responsibility and shall not have any liability relating to the selection or oversight of Plan investment options. The Master Trustee shall have no fiduciary duty or any liability for an investment option or any loss sustained by a Participating Employer, Participant, Beneficiary, or Alternate Payee whose Account, in whole or in part, is invested through Open Architecture Investment.

### **6.10 Obligation is limited**

The Master Trustee's or the Participating Employer's obligation to pay Deferred Compensation shall not exceed the actual amount or value of the Participant's Account.

## **7. Allocation methods**

### **7.1 Employee Contributions**

Each Employee may elect to defer a portion of his or her Compensation as Employee Contributions, subject to all limitations of the Plan. An Employee is always 100% vested in Employee Contributions under the Plan.

### **7.2 Employer Contributions are discretionary**

This Provision applies only if Employer Contributions are permitted by the Enabling Statute and the Adoption Agreement. All Employer Contributions under this Plan are discretionary and the Employer Contributions made (if any) for any Year shall be as declared by each Participating Employer. All Employer Contributions shall be allocated as specified by the Participating Employer in the Adoption Agreement. If the Participating Employer sets minimum requirements to be eligible for an Employer Contribution, it is the Participating Employer's responsibility to monitor any such requirements and to report to the Plan Administrator a change in Employee eligibility. Employer contributions will be subject to the vesting schedule established in the Adoption Agreement. In the absence of a completed vesting schedule, the Employee shall be 100% vested in Employer Contributions.

### **7.3 Plan Accounts**

The Plan Administrator shall keep (or cause to be kept) the Account for each Participant (or Beneficiary).

**7.4 Allocation of investment return**

To the extent that an Account is held under an Allocated Investment, all income, gains, losses, other elements of investment return or contract value, and expenses shall be allocated with respect to each participant.

To the extent that an Account is held under an Unallocated Investment, all income, gains, losses, other elements of investment return or contract value, and expenses shall be allocated as provided by a written procedure adopted by the Plan Administrator, which may be an agreement between the Plan Administrator and the Agent.

**7.5 No rights created by allocation**

Any allocation of Contributions or investment earnings to any Account shall not cause the Participant to have any right, title, or interest in any assets of the Plan, except as expressly provided by the Plan.

**7.6 Delinquent contributions**

It is the Participating Employer's responsibility to correctly calculate and remit the appropriate Employee and Employer Contributions. Neither the Plan, Plan Administrator, Master Trustee, nor the Agent shall have any liability for the delinquency of the Employer.

**8. Reemployment after Uniformed Service**

**8.1 Protection of persons who serve in a Uniformed Service**

To the extent required by 38 U.S.C. § 4318, a person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform service in a Uniformed Service shall not be denied any Deferred Compensation or right under this Plan on the basis of such membership, performance of service, application for service, or obligation.

Consistent with all provisions of USERRA, any provision of this Part and any other right under the Plan arising out of or related to reemployment after Service in the Uniformed Services does not apply unless and until: the person is eligible for reemployment under 38 U.S.C. § 4304 [honorable discharge], the person applied for reemployment in compliance with 38 U.S.C. § 4312, and the Participant or Employee furnishes to the Plan Sponsor satisfactory documentation concerning the Service in the Uniformed Services 38 U.S.C. § 4312(e)(3)(B),.

The provisions of IRC § 414(u) are incorporated by reference and made a part of the Plan as required to be in compliance with the IRC.

**8.1.1 Effective Dates**

Consistent with USERRA § 8, the provisions of United States Code Title 38 Chapter 43, as in effect on the day before the date of enactment of USERRA, apply to reemployments before December 12, 1994. Consistent with USERRA § 8, the provisions stated in this Part apply to reemployments on or after December 12, 1994, except that any obligation under this Part shall not commence until October 13, 1996.

## **8.2 Definitions**

Solely for the purposes of this Part (including any Provision or Definition that refers to this Part), each of the following terms has the meaning stated below.

### **8.2.1 "Qualified Military Service"**

means, consistent with IRC § 414(u)(5), any Service in the Uniformed Services (as defined below) if the individual is entitled to reemployment rights under USERRA with respect to such service.

### **8.2.2 "Service in the Uniformed Services"**

means, consistent with 38 U.S.C. § 4303(13), the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honor duties.

### **8.2.3 "Uniformed Service"**

means, consistent with 38 U.S.C. § 4303(16), any one or more of the Armed Forces, the Army National Guard or the Air National Guard when engaged in active duty for training or inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, or any other category of persons designated by the President of the USA in time of war or national emergency.

### **8.2.4 "USERRA"**

means the *Uniformed Services Employment and Reemployment Rights Act of 1994* (Public Law No. 103-353) [October 13, 1994] codified at 38 U.S.C. § 4301 et seq..

## **8.3 Service crediting**

Consistent with 38 U.S.C. § 4318(a)(2)(A) and IRC § 414(u)(8)(A), a person who timely resumes employment with the Participating Employer under 38 U.S.C. § 4301 et seq. shall be treated as not having incurred a break-in-service by reason of such person's period(s) of Qualified Military Service.

Consistent with 38 U.S.C. § 4318(a)(2)(B) and IRC § 414(u)(8)(B), upon reemployment under 38 U.S.C. § 4301 et seq., each period of Qualified Military Service shall constitute service under this Plan for the purpose of determining the nonforfeitability of the Participant's accrued benefits under this Plan and for the purpose of determining the accrual of benefits under this Plan.

Consistent with the Heroes Earning Assistance and Relief Tax (HEART) Act, a deceased person's period of qualified military service will be credited service under this Plan.

#### **8.4 Compensation**

Consistent with 38 U.S.C. § 4318(b)(3) and IRC § 414(u)(7) and IRC § 457(e)(5), for the purposes of computing any Contributions required or permitted under this Part, the reemployed Participant's Compensation during the period of Qualified Military Service shall be either the Compensation the Participant would have received during such period if the Participant were not in Qualified Military Service, determined based on the rate of pay the Participant would have received from the Participating Employer but for absence during the period of Qualified Military Service, or, if the Compensation the Participant would have received during the period of absence for Qualified Military Service was not reasonably certain, the Participant's average Compensation from the Participating Employer during the 12-month period (or, if shorter, the entire period of employment) immediately preceding the Qualified Military Service.

#### **8.5 Non-matching Employer Contributions**

Consistent with 38 U.S.C. § 4318(b)(1) and IRC § 414(u), if a person is reemployed under 38 U.S.C. § 4301 et seq., with respect to the period(s) of Service in the Uniformed Services, the Participating Employer shall pay (if it has not already done so) and direct the Plan Administrator to allocate to the reemployed Participant's Account any Participating Employer Non-matching Contribution for the Participant in the amount (without investment income or earnings of any kind) that would have been allocated to the Participant's Account if the Participant had been actively at work for the Participating Employer. Such contributions must be made no later than ninety (90) days after the date of such reemployment or when contributions are normally due for the year in which the Qualified Military Service was performed, if later.

#### **8.6 Matching Employer Contributions**

Consistent with 38 U.S.C. § 4318(b)(2), if a person is reemployed under 38 U.S.C. § 4301 et seq. and makes Employee Contributions as permitted by Provision 8.7 with respect to the period(s) of Service in the Uniformed Services, the Participating Employer shall pay (if it has not already done so) and direct the Plan Administrator to allocate to the reemployed Participant's Account any Participating Employer Contribution for the Participant in the amount (without investment income or earnings of any kind) that would have been allocated to the Participant's Account if the Participant had been actively at work for the Participating Employer to the extent that the reemployed Participant makes payment of the Employee Contributions. Consistent with IRC § 414(u)(2)(A)(ii), the Participating Employer has no obligation to pay the matching Employer Contribution until, and its obligation is only to the extent that, the reemployed Participant pays his or her Employee Contribution.

#### **8.7 Employee Contributions**

Consistent with 38 U.S.C. § 4318(b)(2) and IRC § 414(u)(2), if a person is reemployed under 38 U.S.C. § 4301 et seq., with respect to the period(s) of Service in the Uniformed Services, the Participant may pay (if he or she has not already done so), and the Participating Employer shall direct the Plan Administrator to allocate to the reemployed Participant's Account, any Employee Contributions in the amount required or any amount permitted that would have been required or permitted to be made and then allocated to the Participant's Account if the Participant had been actively at work for the Participating Employer. No such payment shall exceed the amount the

reemployed person would have been permitted to contribute had the person remained continuously employed by the Participating Employer throughout his or her Service in the Uniformed Services. Consistent with IRC § 414(u)(2)(A)(i), any such payment to the Plan may be made during the period beginning with the date of reemployment and whose duration is the lesser of five years or three times the period of the reemployed person's Service in the Uniformed Services.

### **8.8 Plan Loan repayment**

To the extent permitted by IRC § 414(u)(4), the Plan may suspend the Participant's Plan Loan repayment obligation for any part of the period during which the Participant performs Service in the Uniformed Services, even if such service is not Qualified Military Service.

### **8.9 HEART Act**

If a Participant dies while engaged in Qualified Military Service, the Participant's beneficiaries shall be entitled to any benefits the Participant would have been entitled to as if the Participant had resumed employment immediately prior to his or her death in accordance with the Heroes Earning Assistance and Relief Tax (HEART) Act and any regulations promulgated thereunder.

### **8.10 Differential wage payment**

Effective January 1, 2009, a Participant receiving a differential wage payment within the meaning of Code Section 414(u)(12)(D) from a Participating Employer, shall be treated as a Participant and the differential wage payment shall be treated as Compensation and shall also be treated as Compensation subject to Code § 415(c). This provision shall apply to all similarly situated individuals in a reasonably equivalent manner.

## **9. Plan-approved Domestic Relations Order**

### **9.1 Domestic relations order procedures**

In fulfilling the duties set forth in this Part 9, the Plan Sponsor may use the services of its own agent or an Agent of the Plan Administrator to determine whether an order directed to the Plan is a Plan-approved Domestic Relations Order.

### **9.2 Determination as to order's status**

The Plan Sponsor or agent may make a determination on whether a final court order directed to the Plan is a Plan-approved Domestic Relations Order. The Plan Sponsor or agent may delay the commencement of its consideration of any order until the later of the date that is 30 days after the date of the order or the date that the Plan Sponsor or agent is satisfied that all rehearing and appeal rights with respect to the order have expired.

### **9.3 Investment direction during domestic relations matter**

Notwithstanding any notice to the Plan Sponsor (or to any other person dealing with or performing services regarding the Plan) that a domestic relations order is or may be presented to be determined as a Plan-approved Domestic Relations Order, the Participant shall continue to exercise his or her duty of investment direction as required by the Plan unless a court order expressly provides otherwise and the Plan Sponsor determines that the court order is a Plan-approved Domestic Relations Order. If a Plan-approved Domestic Relations Order provides for an Alternate Payee

(or any person other than the Participant) to have a right of investment direction under the Plan, the Plan Sponsor shall give effect to that court order to the extent permitted by the Plan.

#### **9.4 Giving effect to a Plan-approved Domestic Relations Order**

If the Plan Sponsor determines that an order is a Plan-approved Domestic Relations Order, the Plan Sponsor or agent shall instruct the Plan Administrator to instruct the Issuer to cause the payment of amounts pursuant to or segregate a separate sub-Account as provided by (and to prevent any payment or act which might be inconsistent with) the Plan-approved Domestic Relations Order.

#### **9.5 Domestic relations proceeding**

Each Participating Employer and the Master Trustee and the Plan Administrator and the Agent and each Issuer and any person serving under contract or otherwise with respect to the Plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of or levy upon the Participant's Plan Account or any Distribution, including (but not limited to) any domestic relations proceeding. Notwithstanding the foregoing, if any such person is joined in any proceeding, the party may take such action as it considers necessary or appropriate to protect any and all of its legal rights, and the Participant (or Beneficiary) shall reimburse all actual fees of lawyers and legal assistants and expenses reasonably incurred by such party.

#### **9.6 Notice of determination**

The Plan Sponsor, or agent, Plan Administrator or Agent may notify the Participant and any Alternate Payee, or their attorneys, of its determination on any order.

#### **9.7 Plan-approved Domestic Relations Order procedures**

The procedure for the Plan Sponsor or agent in administering Plan-approved Domestic Relations Orders shall be as follows:

The Plan Sponsor or agent shall promptly notify the Participant and each Alternate Payee of receipt of such order and the Plan's procedures for determining the qualified status of domestic relations orders.

The Plan Sponsor or agent will then determine if the order meets the requirements of the Plan.

If the Plan Sponsor or agent determines the order to be a Plan-approved Domestic Relations Order, it will send a written determination to the named Issuer(s) of the Investment(s), and give notice to the Plan Administrator, Plan Participant, the Alternate Payee(s), and their attorneys, so that they may act according to the provisions of the order.

If the Plan Sponsor or agent determines that the order is not a Plan-approved Domestic Relations Order, it must ensure that the Plan does not make any distribution from the Participant's Account for a period of 18 months, unless the Alternate Payee either releases a claim to the Benefits or the parties obtain an amended order which is determined by the Plan Sponsor or agent to be a Plan-approved Domestic Relations Order.

**9.8 Death of alternate payee**

Unless otherwise provided by the Plan-approved Domestic Relations Order, in the event of an Alternate Payee's death, any remaining benefits shall be payable solely to the Alternate Payee's estate, via the duly appointed and then-currently serving executor of the Alternate Payee's estate.

**10. Permitted Distribution**

**10.1 Permitted Distribution for inactive Participant**

Consistent with IRC § 457(e)(9)(A), a Participant (but not a Beneficiary or Alternate Payee) may elect to receive a Permitted Distribution if the Participant's Account does not exceed the amount described in IRC § 457(e)(9)(A) and the Participant has not made and the Participant's Account has not received any Contributions during the two-year period that ends on the date of the Permitted Distribution and the Participant has not previously received any Permitted Distribution under this Plan.

**10.2 Permitted Distribution paid as a lump sum**

A Permitted Distribution shall be payable only as a lump sum.

**11. Unforeseeable Emergency Distribution**

**11.1 Unforeseeable Emergency Distribution**

If, before his or her Severance, or after his or her Severance and after he or she has made an irrevocable election of his or her Distribution Commencement Date but before his or her Distribution Commencement Date, the Participant has an unforeseeable emergency that is approved by the Plan Sponsor as satisfying Provision 11.2, the Participant (but not a Beneficiary or Alternate Payee) is entitled to receive an Unforeseeable Emergency Distribution (as a lump sum) of the amount determined by the Plan Sponsor to be the amount requested which is reasonably needed to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) or, if less, the maximum amount determined under the procedures determined by the Plan Sponsor.

**11.2 Definition of unforeseeable emergency**

An unforeseeable emergency means a severe financial hardship to the Participant resulting from

- a sudden and unexpected illness or accident of the Participant, or
- a sudden and unexpected illness or accident of a dependent (as defined by IRC § 152 without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant, or
- loss of the Participant's property due to casualty, or
- other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant.

A need to pay college tuition or a desire to purchase a home is not an unforeseeable emergency.

A Participant's (or his or her dependent's) circumstances is not an unforeseeable emergency and an Unforeseeable Emergency Distribution shall not be paid to the extent that the financial hardship is or may be relieved

- through reimbursement or compensation by insurance or otherwise,
- by borrowing from commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship,
- by cessation of deferrals under the Plan, or
- by liquidation of the Participant's other assets (including assets of the Participant's Spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

For the purposes of the preceding sentence, the Participant's resources shall be deemed to include those assets of his or her spouse and minor children that are reasonably available to the Participant; however, property held for the Participant's child under an irrevocable trust or under a *Uniform Gifts to Minors Act* Master Trusteeship or *Uniform Transfers to Minors Act* Master Trusteeship shall not be treated as a resource of the Participant.

The Participant must provide documentation acceptable to the Plan Sponsor or approver of the unforeseeable emergency that indicates the reason for the hardship and the dollar amount necessary to satisfy the unforeseeable emergency.

### **11.3 Plan Sponsor or agent must determine unforeseeable emergency**

The Plan Sponsor or an agent must determine whether the circumstances of the Participant constitute an unforeseeable emergency within the meaning of Provision 11.2.

Following a uniform procedure, the Plan Sponsor's or agent's determination shall consider any facts or conditions deemed necessary or advisable by the Plan Sponsor or agent, and the Participant shall be required to submit any evidence of his or her circumstances that the Plan Sponsor or agent requires. The determination as to whether the Participant's circumstances are a case of unforeseeable emergency shall be based on the facts of each case; provided however, that all determinations as to unforeseeable emergency shall be uniformly and consistently made according to the provisions of the Plan for all Participants in similar circumstances.

The Plan Sponsor or agent may require that any statement made as part of a claim for an Unforeseeable Emergency Distribution be made under penalties of perjury. The Plan Sponsor or agent may require that any statement made as part of a claim for an Unforeseeable Emergency Distribution be signed in the presence of a Notarial Officer.

## **12. Retirement Distribution**

### **12.1 Retirement Distribution**

Upon his or her Severance, the Participant is entitled to receive his or her Account (not earlier than the applicable Distribution Commencement Date) under any Payout Option that satisfies the provisions of the Plan.



### **12.1.1 Transfer of Deferred Compensation to another eligible 457 Plan of an Employer**

Consistent with IRC § 457(e)(10), upon his or her Severance, a Participant may elect (in the form prescribed by the Plan Administrator) to transfer his or her Account and his or her rights in and to the Plan to another eligible deferred compensation plan (within the meaning of IRC § 457(b)), provided that the Plan Sponsor and Plan Administrator are satisfied that the other plan will accept the transferred amount and obligation and the participant is now performing services for the transferee plan sponsor.

### **12.1.2 Deemed Distribution**

Upon his or her Severance, if the Participant's Account is not more than \$0 (as of the date of or the Valuation Date next following his or her Severance), the Participant shall be deemed to have received a full Retirement Distribution.

## **12.2 Election of Distribution Commencement Date**

If the Participant's Severance occurred before October 15, 2001, not later than 60 days after the date of his or her Severance (and not earlier than the date of the Severance), the Participant shall irrevocably, except as provided by Provision 12.2.2, elect, with respect to all of his or her Account or to each portion of his or her Account that is attributable to each Investment, to defer payment of his or her Deferred Compensation until a fixed future time [the "Distribution Commencement Date"] that is consistent with the provisions of the elected Payout Option and that is at least 75 days after the date that the election is made and that is consistent with the requirements of Provision 12.4 ["Minimum Distribution "].

### **12.2.1 Default Distribution Commencement Date**

If the Participant's Severance occurred before October 15, 2001 and the Participant does not make an election required by Provision 12.2, the Participant shall receive payment (according to the "default" Payout Option provided by Provision 12.3.1) on the first business day of the calendar month that commences not earlier than 90 days and not later than 120 days after the date of the Participant's Severance, or the earlier date that is necessary to satisfy the requirements of Provision 12.4.

### **12.2.2 Election to defer Distribution Commencement Date**

Consistent with IRC § 457(e)(9)(B), if the Participant has elected (or is deemed to have elected) a Distribution Commencement Date, the Participant may elect a later Distribution Commencement Date if the Participant has not made any previous election under this sentence.

## **12.3 Election of Payout Option**

If the Participant's Severance occurred before October 15, 2001, not later than 60 days before the Distribution Commencement Date, the Participant shall irrevocably elect a Payout Option that satisfies the requirements of Provision 12.4.

### **12.3.1 Default Payout Option**

If the Participant's Severance occurred before October 15, 2001 and the Participant does not make an election required by Provision 12.3, the Distribution shall be paid as a lump sum of the amount or cash value of all Investments held for the Participant's Account.

#### **12.4 Minimum Distribution**

Any Retirement Distribution shall be made according to a Payout Option that begins not later than the Required Beginning Date and that meets the requirements of IRC § 401(a)(9) and IRC § 457(d)(2) and corresponding regulations. "Required Beginning Date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one half (70 ½), or (ii) the calendar year in which the Participant retires.

#### **12.5 Involuntary Distribution**

On his or her Severance, a Participant (or Beneficiary), pursuant to the Adoption Agreement, may receive an Involuntary Distribution if as of a Valuation Day on or after the date of his or her Severance from employment his or her Account is no more than \$5,000. If the Involuntary Distribution is more than \$1,000 and it is an Eligible Rollover Distribution, and if the recipient of the distribution does not elect to have the distribution paid directly to an Eligible Retirement Plan specified by the recipient in a direct rollover or does not elect to receive the distribution directly, the Involuntary Distribution will be paid as a direct rollover to an IRA designated by the Plan Sponsor. If the Involuntary Distribution is \$1,000 or less, it will be paid in money as a lump sum.

#### **12.6 Time and Manner of Distribution**

The Participant's entire interest will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.

If the Participant dies before distribution begins, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- If the Participant's surviving Spouse is the Participant's sole 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.
- If the Participant's surviving Spouse is not the Participant's sole Beneficiary, then distributions to the Designated Beneficiary may be made by lump sum, and distribution must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- If there is no Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- If the Participant's surviving Spouse is the Participant's sole Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, these provisions, other than the second bullet above, will apply as if the surviving spouse were the Participant.

If the Participant dies before distributions begin, unless the Participant's surviving Spouse is the sole Beneficiary and the Spouse dies after the Participant but before distributions begin,

distributions are considered to begin on the Participant's Required Beginning Date. If the Participant's surviving Spouse is the sole Beneficiary and the Spouse dies after the Participant but before distributions begin, distributions are considered to begin on the date the distributions are required to begin to the surviving Spouse under the first bullet above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving Spouse under the first bullet of this Section), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Provision 12.7 or Part 13. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

### **12.7 Required Minimum Distributions During Participant's Lifetime**

During the Participant's lifetime, the minimum amount that will be distributed for each Distribution year is the lesser of:

- The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution year; or
- If the Participant's sole Beneficiary for the Distribution year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution year.

Required minimum distributions will be determined under this Provision beginning with the first Distribution year and up to and including the Distribution year that includes the Participant's date of death.

### **12.8 Required Minimum Distribution Waiver of 2009**

Notwithstanding any other provisions of Part 12 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those 2009 distributions unless the Participant or Beneficiary elects to receive such distribution.

Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

### **13. Death Distribution**

#### **13.1 Death Distribution**

Upon the Participant's death before a Retirement Distribution has begun, each Beneficiary is entitled (not earlier than the applicable Distribution Commencement Date) to receive his or her or its separate account under the Participant's Account under any Payout Option that satisfies the provisions of the Plan.

##### **13.1.1 Deemed Distribution**

Upon the Participant's death, if the Account is not more than \$0 (as of the date of or the Valuation Date next following the Participant's death), each Beneficiary shall be deemed to have received a full Death Distribution.

#### **13.2 Election of Distribution Commencement Date**

If the Participant's death occurred before October 15, 2001, not later than 60 days after the date of the death (and not earlier than the date of the death), each Beneficiary may irrevocably elect to defer payment, with respect to all of his or her or its interest or to each portion of his or her or its interest that is attributable to each Investment, until a fixed future time [the "Distribution Commencement Date"] that is consistent with the provisions of the elected Payout Option and that is at least 75 days after the date that the election is made and that is consistent with the requirements of Provision 13.4.

##### **13.2.1 Default Distribution Commencement Date**

If the Participant's death occurred before October 15, 2001 and a Beneficiary does not make an election required by Provision 13.2, the Beneficiary shall receive payment (according to the "default" Payout Option provided by Provision 13.3.1) on the first business day of the calendar month that commences not earlier than 90 days and not later than 120 days after the date of the death.

#### **13.3 Election of Payout Option**

If the Participant's death occurred before October 15, 2001, not later than 60 days before the Distribution Commencement Date, the Beneficiary shall irrevocably elect a Payout Option that satisfies the requirements of Provision 13.4.

##### **13.3.1 Default Payout Option**

If the Participant's death occurred before October 15, 2001 and a Beneficiary does not make an election required by Provision 13.3, the Distribution shall be paid as a lump sum.

#### **13.4 Minimum distribution**

Any Death Distribution shall begin no later than the Required Beginning Date, and the Account shall be distributed in compliance with IRC § 401(a)(9).

### **13.5 Death While Engaged in Qualified Uniform Service**

The benefits described in this Part will be payable to the Designated Beneficiary (or beneficiaries) of a Participant who dies while engaged in Qualified Military Service and will be determined as if the Participant had returned to employment immediately prior to his death in accordance with the Heroes Earnings Assistance and Relief Tax (HEART) Act and any regulations promulgated thereunder.

## **14. Direct Rollover**

### **14.1 Direct Rollover**

Consistent with IRC § 401(a)(31) and IRC § 457(d)(1)(C), for any Distribution paid after December 31, 2001 that is an Eligible Rollover Distribution, the Distributee may elect, at the time and in the manner prescribed by the Plan Sponsor, to instruct the Plan Sponsor (and the Issuer) to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee.

### **14.2 Notice Requirements**

The Plan Administrator or Agent shall provide written information to Distributees regarding Eligible Rollover Distributions to the extent required by Section 402(f) of the Code.

## **15. Administration of Distribution provisions**

### **15.1 Claim for Distribution**

Any Distribution shall be paid only upon a completed and properly executed written claim made in a form acceptable to the Plan Sponsor that states under penalties of perjury all facts and authorizations necessary or appropriate to the Distribution, including but not limited to:

- if the Distribution is a Retirement Distribution, appropriate evidence that the Participant has a Severance;
- if the Distribution is a Transfer Distribution, the Distributee's instruction as to the name and address of the trustee of the transferee eligible deferred compensation plan together with any other information that the Plan Sponsor, Plan Administrator or Master Trustee or Issuer reasonably requests;
- if the Distribution is a Death Distribution, appropriate evidence of the Participant's death;
- if the Distribution is an Unforeseeable Emergency Distribution, an appropriate certificate or evidence of the facts constituting the Participant's unforeseeable emergency;
- if the Participant has a Designated Beneficiary, the date-of-birth of the Designated Beneficiary;
- if the Distribution is in the form of an Annuity Payout Option, the date-of-birth of any annuitant designated under the Annuity Payout Option;
- whenever required by the Plan Sponsor, the date-of-birth of any person as relevant to the Distribution;
- if the Account consists of more than one Investment, the order in which any Investments are to be charged or liquidated to pay the Distribution;

- if the amount of the Distribution is greater than a uniform amount established by the Plan Sponsor, appropriate assurance (including a Signature Guarantee) that the Participant's or Beneficiary's signature is genuine; and
- any other evidence or information that the Plan Sponsor finds is relevant to administer a provision of the Plan in the particular circumstances.

Absent contrary evidence actually known to the Plan Sponsor, an appropriate death certificate or a court order stating that the Participant is found to be absent and presumed dead shall constitute appropriate evidence of the Participant's death.

If the Participant or Beneficiary fails to submit proper instructions, the Plan Sponsor may, at its discretion, deny the claim.

### **15.2 Time for Distribution**

The Plan Sponsor may require for payment of any Distribution a minimum advance notice, uniformly determined and consistently applied. In addition to the above, no payment can be made before the Distribution Commencement Date.

### **15.3 Plan Sponsor to approve**

Payments shall not begin until the Plan Sponsor has approved: the Distribution, and the claim for payment, and the Payout Option as satisfying the provisions of the Plan.

### **15.4 Payout Option**

The election of a Payout Option by a Participant or a Beneficiary must be made no later than thirty (30) days before the commencement of such benefits. Subject to restrictions established by the Plan Sponsor, the Plan shall permit Payout Options in the form of lump sums. The Plan may also, but is not required to, provide for periodic payments of a fixed amount or fixed duration, or life contingent annuities.

### **15.5 Payor may rely on apparent entitlement**

The Participating Employer and the Plan Administrator and the Master Trustee and the Issuer and the Agent [a "payor"] are not liable for having made a payment under an unclear Beneficiary designation or Participation Agreement to a person not entitled to the payment, or for having taken or omitted any other action in good faith reliance on a person's apparent entitlement under the Plan, before the payor actually received written notice of a claimed lack of entitlement under this Plan.

Any payor of any Distribution is not liable for having made a payment or having transferred an item of property to a beneficiary designated in a Beneficiary Designation (or in a similar writing reasonably believed to constitute a beneficiary designation) who is not entitled to the Distribution, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the beneficiary designation before the payor received written actual notice alleging that the beneficiary was not entitled to the Distribution.

### **15.6 Instruction to Issuer**

Any Distribution is payable by or on behalf of the Master Trustee or Issuer only upon the Master Trustee's or Issuer's receipt in good order of the Plan Sponsor's approval of the Distributee's claim.

Except to the extent otherwise expressly provided by the Investment(s), any payment or Payout Option shall be determined as of the Valuation Date requested by the Participant or Beneficiary, or if later, as of the Valuation Date that next follows the Issuer's or Master Trustee's receipt in good order (within the meaning of the Investment(s) or applicable law) the approved claim.

### **15.7 Delay of payment**

The Plan Sponsor, in its sole discretion, may delay payment of an approved Distribution:

- to receive any necessary information,
- to permit a valuation of the Account,
- to permit any necessary or appropriate liquidation of assets,
- if a dispute arises as to the proper payee (refer to Provision 15.8 below),
- if the Plan Sponsor has notice of a domestic relations case or petition that may involve the applicable Account,
- if the Plan Sponsor has notice of a bankruptcy case or petition that may involve the applicable Account,
- if the Plan Sponsor has notice of any legal proceeding or petition that may involve the applicable Account, or
- for any reason described elsewhere in this Plan, or
- for any other lawful purpose.

Without limiting the comprehensive effect of the above, to the extent that any Distribution requires a redemption or transfer of Fund shares, the Plan Sponsor shall delay the Distribution during any period: when the NYSE is closed other than for a weekend or a holiday, or when trading on the NYSE is restricted (as determined by the SEC), or when an emergency exists making disposal of a Fund's securities or valuation of a Fund's net assets not reasonably practicable, or when the SEC has required or permitted the suspension of redemptions or transfers by order, or during any period otherwise described by § 22(e)(1)-(3) of the *Investment Company Act of 1940*, as amended [15 U.S.C. § 80a-22(e)(1)-(3)].

If the Participant received an allocation of Employer Contributions for a period that included his or her absence under a federal or state *Family and Medical Leave Act*, the Plan Sponsor shall delay payment of any Distribution until the Plan Sponsor is satisfied that the Participant has returned to work from such absence or that the Participant will not or did not return to work from such absence.

### **15.8 Dispute as to proper recipient**

If a dispute arises as to the proper recipient of any payment(s) under the Plan, the Plan Sponsor, in its sole discretion, may instruct the Issuer(s) to withhold payment until the dispute is determined by a court of competent jurisdiction or is settled by the parties concerned.

**15.9 Doubt as to proper payee**

If the Plan Sponsor determines that there is doubt as to the proper construction of the Plan with respect to determining the Beneficiary(s) or other proper payee(s) under the Plan, the Plan Sponsor shall construe the Plan to state provisions consistent with the Uniform Probate Code applied as though the interest under the Plan were an interest to a commercial annuity contract, to the extent that any such construction is not inconsistent with any requirement of IRC § 457(b).

**15.10 Distribution to minor Beneficiary or incompetent Participant or Beneficiary**

Any Participant, terminated Participant or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Plan Sponsor receives written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event a guardian of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian and the guardian may take any and all actions with respect to the person's interest under the Plan in accordance with the terms of the appointment, provided that proper proof of appointment is furnished in a form and manner suitable to the Plan Sponsor. Any payment so made shall be a complete discharge of liability therefore under the Plan. No person may act as an attorney in fact for an Employee, Participant, terminated Participant, or Beneficiary with respect to a matter involving the Plan unless a valid power of attorney document appointing such person and authorizing such action is submitted in a form and manner acceptable to the Plan Sponsor. The Plan Sponsor shall be entitled to rely upon the power of attorney document which it reasonably determines to be valid, without liability for actions taken by the Plan Sponsor at the request of the designated attorney in fact, unless and until the Plan Sponsor receives notice that the power of attorney is no longer effective.

If at the time a Distribution begins the Participant, terminated Participant, or Beneficiary is incompetent or the Beneficiary is a minor and the Plan Sponsor begins payments to another person under this Provision, the Plan Sponsor may continue all payments under the Distribution to the other person notwithstanding that the Participant, terminated Participant, or Beneficiary may have become competent or that the Beneficiary may have attained full age, unless the Participant, terminated Participant, or Beneficiary files a written claim according to all of the requirements of the Plan, including furnishing satisfactory evidence that he or she is competent, if previously deemed incompetent, or of full age, if previously deemed a minor.

**15.11 Inability to locate payee**

If, at a time when a Distribution other than an Involuntary Distribution is required to be paid, the Distribution cannot be paid because the payee cannot be located upon reasonable efforts, which may include providing notice through certified mail to the last known mailing address, a review of plan and employment records and other publicly available records, attempted contact to a designated plan beneficiary, and a reasonable use of either a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals, the Plan Sponsor may (but is not required to) direct the Plan Administrator or the Agent to rollover the Deferred



Compensation into an eligible individual retirement plan, and such rollover shall discharge the Plan Sponsor's obligation to pay the Deferred Compensation.

**15.12 Payment to Personal Representative**

Any payment (or delivery of property) to the duly appointed personal representative of the Participant shall, to the extent of the payment (or delivery of property), bar recovery by any other person or entity, including every Beneficiary, and shall, to the extent of the payment (or delivery of property), discharge any obligation under the Plan.

**15.13 Disclaimer by Beneficiary**

Any Beneficiary may renounce or disclaim all or any part of any Deferred Compensation by filing a written irrevocable disclaimer not later than 31 days before the Distribution begins or any payment is otherwise to be made and before acceptance of any Deferred Compensation. An acceptance may be express or may be inferred from actions or facts and circumstances, including (but not limited to) those actions described in the *Uniform Probate Code* as establishing an inference of acceptance. In addition to any requirements under State law, the disclaimer is not effective unless the disclaimer describes the Deferred Compensation renounced, expressly declares the renunciation and the extent of it, expressly states the Beneficiary's belief upon reasonably diligent examination that no creditor of the Beneficiary (or, if the Beneficiary is an executor or trustee or guardian or other fiduciary, of any current or reasonably anticipated beneficiary of the estate or trustee or guardianship or other fiduciary relationship or entity) would be adversely affected by the disclaimer, expressly states that the disclaimer is irrevocable, is signed by the Beneficiary, meets all requirements of IRC § 2518 such that the disclaimer would be treated as effective for federal gift and estate tax purposes, and otherwise is made in a form that is acceptable to the Plan Sponsor. Notwithstanding any State law that would permit otherwise, if the Beneficiary is a minor or an incapacitated person, any disclaimer cannot have any effect regarding the Plan until the court having jurisdiction of the minor's or incapacitated person's estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of any interested person. Any Deferred Compensation disclaimed shall be payable as if the Beneficiary who submitted the disclaimer died before the Participant.

**15.14 Receipt and release**

Any Distribution or payment or any agreement to make a payment(s), or any transfer of Deferred Compensation to another eligible deferred compensation plan, shall, to the extent of the Distribution or payment(s) or the agreement, be in full satisfaction of all claims. The Plan Sponsor, in its sole discretion, may require any Distributee or payee, as a condition precedent to making or causing to be made any payment(s) or agreement, to execute a receipt and release.

**15.15 Direct Rollover of Distribution**

Consistent with IRC § 457(d)(1)(C) and IRC § 457(e)(16), a Participant may elect (in the form prescribed by the Plan Administrator) a direct rollover of an eligible rollover distribution.

## **16. Plan Sponsor and Plan Administrator**

### **16.1 Plan Sponsor has full authority**

The Plan Sponsor has full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Plan. The Plan Sponsor has any and all powers as may be necessary or advisable to discharge its duties under the Plan, and has complete discretionary authority to decide all matters and questions under the Plan.

The Plan Sponsor, except for a Plan Sponsor under Open Architecture Investment, and Plan Administrator do not have any duties concerning the selection of Investments. A Plan Sponsor who has selected Open Architecture Investment shall have exclusive duties concerning the selection and oversight of Investments (investment options). The Plan Administrator and Master Trustees do not have any duties concerning the selection or oversight of Investments (investment options) under Open Architecture Investment.

### **16.2 Plan Sponsor must decide all matters**

The Plan Sponsor must decide all matters under the Plan. The discretionary decisions of the Plan Sponsor are final, binding, and conclusive on all interested persons for all purposes.

Without limiting the comprehensive effect of the above, the Plan Sponsor's discretionary decisions may include, but shall not be limited to, any decision as to: whether a natural person is an Employee, whether an Employee belongs to a particular employment classification, whether an Employee is an eligible Employee, the amount of a Participant's Compensation, the amount of Contributions to be made, whether an amount of Contributions exceeds the limits prescribed by the Plan, whether a court order shall be recognized, whether a Participant (or any other person) has established the presence or absence of a Spouse, whether a Payout Option is an Annuity Payout Option, whether a Participant has incurred an unforeseeable emergency, whether a Participant has a Severance, whether a Beneficiary Designation is valid or effective, who is the proper Beneficiary, whether a Participant or Beneficiary is a minor or is of full age, whether a Participant or Beneficiary is an incompetent, the person who is a proper recipient for a Participant or Beneficiary who is a minor or an incompetent, whether any power-of-attorney is effective and acceptable to act with respect to the Plan, whether a Signature Guarantee is required, whether a Signature Guarantee is acceptable for any purpose under the Plan.

### **16.3 Determinations to be uniformly made**

To the extent necessary to avoid discrimination prohibited by any employment law, any determination or decision required or permitted to be made for the purposes of the Plan by the Plan Sponsor shall be uniformly and consistently made according to reasonable procedures established and maintained by the Plan Sponsor.

### **16.4 Plan Administrator is responsible**

The Plan Administrator is responsible for performing all duties agreed to regarding the operation of the Plan, and is responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities. The Plan Administrator does not have the authority or discretion to perform activities or decide any matter or question not provided

for under the Plan, such as, but not limited to, forfeiture of retirement benefits determinations under Section 112.3173, Florida Statutes, and any such activities or decisions shall be the sole responsibility of the Plan Sponsor.

**16.5 Information from Participating Employer**

To enable the Plan Administrator to perform its responsibilities, the Participating Employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter under the Plan. The Plan Administrator shall rely upon this information as supplied by the Participating Employer, and shall have no duty or responsibility to verify this information.

**16.6 Plan Administrator may delegate or contract**

Except as prohibited by the Enabling Statute or other State law, the Plan Administrator may, except when expressly prohibited by this Plan, delegate any of its duties to any Participating Employer, or to any officers, employees, or agents of any kind. Except as prohibited by the Enabling Statute or other State law, the Plan Administrator may, except when expressly prohibited by this Plan, contract any of its duties to the Agent or otherwise.

**16.7 Plan services**

The Plan Administrator may contract with any person or entity to provide services to assist in the administration of the Plan. The Plan Administrator must make such contracts in compliance with the Enabling Statute and other applicable State law.

Any person other than the Plan Administrator who performs services regarding the Plan (including but not limited to the Agent) is subject to the supervision and direction of the Plan Administrator, and does not have authority to control the operation of the Plan.

Any person other than the Plan Administrator who performs services regarding the Plan (including but not limited to the Agent) is entitled to rely upon any direction, instruction, information, or action (or failure to act) of the Plan Sponsor or Plan Administrator as being proper under this Plan, and is not required to inquire into the propriety or correctness of any such direction, instruction, information, or action.

**16.8 Plan Sponsor official may not decide personal benefit**

An individual shall recuse himself or herself from and shall take no part in any Plan Sponsor determination or decision specifically relating to his or her own participation or Deferred Compensation, unless his or her abstention would render the Plan Sponsor, committee or organization incapable of acting on the matter.

**17. General provisions**

**17.1 Anti-alienation**

In addition to (and not by limitation upon) the provisions of the Plan and any provision of applicable law, any benefit or interest available under the Plan, or any right to receive or instruct payments under the Plan, or any Distribution or payment made under the Plan shall not be subject to assignment (except under a disclaimer permitted by Provision 15.13 ["Disclaimer by

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Beneficiary"), alienation, garnishment, attachment, transfer, anticipation, sale, mortgage, pledge, hypothecation, commutation, transfer by operation of law, execution, or levy (except according to Provision 17.8 ["IRS levy"]), or other encumbrance of any kind, whether by the voluntary or involuntary act of any interested person, for any reason (including but not limited to, divorce, marital separation, alimony, child support, bankruptcy, insolvency), or any other order of any court at law or equity.

The Participant or Beneficiary has no right to commute, sell, assign, pledge, transfer, or otherwise convey, use, or encumber any right or future interest to receive any payments under the Plan, and each such right or interest is expressly declared to be non-assignable and non-transferable. Any attempted alienation or encumbrance is void.

Any right of the Participant or Beneficiary is personal and, except as provided below, cannot be exercised by any personal representative, attorney, trustee, guardian, conservator, trustee in bankruptcy, court of law or equity, or other person or entity seeking to act in the name of or by the right of the Participant or Beneficiary. However, the Plan Sponsor may accept instructions given by a personal representative if the Participant or Beneficiary is determined to be incompetent or incapacitated by a court of competent jurisdiction or by written expert opinion acceptable to the Plan Sponsor.

This Provision shall not be construed to preclude the payment of any Fees or any expenses (including taxes) of the Master Trustee. Deferred Compensation (and any right or future interest of the Participant or Beneficiary) is not subject to the rights of creditors of the Participant or Beneficiary.

### **17.2 Litigation**

Each of the Participating Employers and the Master Trustee and the Plan Administrator and the Agent and each Issuer and any person serving under contract or otherwise with respect to the Plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of or levy upon the Participant's Plan Account or any Distribution, including (but not limited to) any order in any bankruptcy proceeding of any kind. Notwithstanding the foregoing, if any such person is joined in any proceeding, the party may take such action as it considers necessary or appropriate to protect any and all of its legal rights, and the Participant (or Beneficiary) shall reimburse all actual fees of lawyers and legal assistants and expenses reasonably incurred by such party.

### **17.3 Claims procedure**

By the terms of the Plan, the claimant (or other aggrieved person) shall not be entitled to take any legal action (including but not limited to instituting any arbitration procedure) or otherwise seek to enforce a claim to benefits or rights under the Plan until he or she or it has exhausted all claims and appeals procedures provided by the Plan.

In considering claims under the Plan, the Plan Sponsor has full power and discretionary authority to construe and interpret the provisions of the Plan, and of any law governing or applying to or relating to the Plan.

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Notwithstanding any statement to the contrary in any collective bargaining agreement, any determination under or arising out of the Plan is not subject to any arbitration procedure of any kind.

#### **17.4 Expenses**

Unless the Participating Employer specifically provides otherwise, the Participating Employer shall not incur any expense in the operation and administration of the Plan other than for its obligations to make deferrals of compensation and to pay the Deferred Compensation as provided by the Plan. The Plan shall make reasonable charges against and from the Accounts of Participants for any expenses for the administration of the Plan. Upon the Plan Sponsor's written instruction, the Plan Sponsor (or any party acting for it or under contract to the Plan) shall be reimbursed from the Plan assets, except to the extent inconsistent with the Enabling Statute, for any expense (including actual fees of lawyers and legal assistants) reasonably incurred in performing services with respect to the Plan. Except as otherwise provided or permitted by the Plan, the reimbursement shall be effected by deducting a charge against all Accounts according to an equitable method determined by the Plan Sponsor.

If any kind of legal action or other proceeding regarding the Plan to which the Participating Employer or the Plan Administrator or the Master Trustee or any Issuer or any Agent (or any other person acting for or at the request of any of them) [each an "indemnified party"] may be a party is brought by a Participant or Beneficiary (or by a person or entity claiming through a Participant or Beneficiary), and the legal action is resolved in favor of the indemnified party, each indemnified party participating in or contributing to the defense of the legal action shall be entitled to be reimbursed from the Participant's Account for any and all actual fees of lawyers and legal assistants and other expenses reasonably incurred in the defense of the legal action or proceeding.

If the IRS determines, and the determination is not contested, or if contested, is finally upheld (or otherwise finally determined), or if a final court order (that is not appealed) decides that any payment of expenses is a violation of IRC § 457(g), each person who received a payment that was determined to be a violation of IRC § 457(g) shall pay full restoration into the Plan to the extent of the improperly paid expense (including fair interest from the date the expense was improperly paid to the date that restoration is made).

#### **17.5 Forfeiture**

To the extent required by applicable State law and not precluded by Provision 1.6, if the Participant pleads guilty or is convicted of a crime or offense relating to his or her government office or government employment and a court order provides for restitution relating to such crime or offense, the Participant (or, after the Participant's death, each Beneficiary) shall forfeit his or her or its Deferred Compensation to the extent that the Participant has not timely paid the restitution required by the court order.

#### **17.6 Governing law**

This Plan shall be governed by and construed and enforced according to the internal laws (without regard to the law of conflicts) of the State of Florida, except to the extent pre-empted by federal law.

### **17.7 Insurance**

The Plan Sponsor may purchase, with Plan assets or with other amounts, insurance protecting the Plan and the Plan Sponsor and the Plan Administrator and the Master Trustee and any person who is or may be an indemnified party and any other person acting or providing services regarding this Plan (whether or not the Plan has or may have the power to indemnify such persons) from liability or loss occurring by reason of the act or omission of the insured person or entity.

### **17.8 IRS levy**

Notwithstanding any other provision of the Plan, the Plan Sponsor may pay to the IRS from a Participant's (or Beneficiary's) Account the amount that the Plan Sponsor finds is lawfully demanded under a levy issued by the IRS with respect to that Participant (or Beneficiary) or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant (or Beneficiary).

### **17.9 Mistaken contributions**

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Employee or, to the extent required or permitted by the Plan Administrator, to the Participating Employer.

If a court or agency having jurisdiction determines or if the Participating Employer or the Plan Administrator receives written legal advice (other than under a suit or proceeding initiated by the Participant) that any Participant was not an Employee at the relevant time or otherwise was not eligible to become a Participant, the Plan Administrator shall treat the mistakenly accepted Participant's Contributions and Plan Account, to the extent that the Participant was not eligible to make or receive the Contributions, as mistaken contributions.

### **17.10 Necessary information**

The Participant (or Beneficiary or Alternate Payee) shall provide upon any request of the Plan Sponsor or the Agent any information that may be needed for the proper and lawful operation and administration of the Plan, including (but not limited to) the Participant's legal name, the Participant's Social Security Number [SSN] or other Taxpayer Identifying Number [TIN], the Participant's date of birth, each Beneficiary's legal name, each Beneficiary's Social Security Number [SSN] or other Taxpayer Identifying Number [TIN], each Beneficiary's date of birth. The Participant (or Beneficiary or Alternate Payee) shall promptly respond to and fully answer any reasonable inquiry related to these purposes. A failure to provide any information described above or which otherwise may be necessary or appropriate for the lawful operation of the Plan may result in a delay of eligibility for participation, in a delay of the payment of Contributions, or in a delay or refusal by the Plan Sponsor, in its discretion, to authorize or permit any Distribution or payment. The Plan Sponsor or Plan Administrator (and any party acting for it) has the right to rely on any information or representation given by any Participant or Beneficiary or other party interested in the Plan. The Plan Sponsor or Plan Administrator has no duty to inquire into the accuracy or

adequacy or truth of any such information or representation. Any such representation is binding upon any party seeking to claim through the Participant.

The Plan Sponsor may provide that any statement to be made or any information to be furnished must be made or furnished under penalties of perjury. Any notice to that effect may include a statement of the penalties for a violation of 18 U.S.C. § 1027, IRC § 7206, or other law. The absence of any such provision or notice shall not be construed to create or suggest any inference concerning the application of any law.

**17.11 No contract of employment**

Under no circumstances shall this Plan constitute a contract of employment or modify a contract of employment or in any way obligate the Participating Employer to continue the services of any Employee.

**17.12 No right other than provided by the Plan**

The existence of the Plan and the Participating Employer's or Master Trustee's purchase of any Investment(s) for the purposes of the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against the Participating Employer or any Issuer or any other person or organization, except as expressly provided by the Plan.

**17.13 Notices**

Each Participant or Beneficiary shall be responsible for furnishing the Plan Sponsor (and the Agent and the applicable Issuer(s)) with his or her or its current address at all times. Any notice to a Participant or Beneficiary or Alternate Payee required or permitted to be given under this Plan shall be deemed given if directed to the proper person at the current address in any Plan (or Investment) record and mailed or otherwise delivered to that address. This Provision shall not be construed to require the mailing or delivery of any notice otherwise permitted to be given by posting or by publication.

**17.14 Plan is binding**

This Plan, and all acts and decisions taken under it, is binding and conclusive, for all purposes, upon all interested persons, and upon the heirs, executors, administrators, successors and assigns of any and all such persons.

The Plan shall not affect contracts or other dealings with a person who is not an interested person, unless a written agreement executed by that person expressly so provides.

**17.15 Power-of-attorney**

A power-of-attorney cannot be effective for any purpose with respect to the Plan unless the Plan Sponsor determines that the power-of-attorney is acceptable

The Plan Sponsor shall not accept a power-of-attorney until the Plan Sponsor determines that the power-of-attorney appears on its face to meet all of the following requirements:

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- The power-of-attorney was made in a form and manner that is legally enforceable under applicable law.
- The power-of-attorney indemnifies the Plan Sponsor and the Agent and every person who may rely on the power-of-attorney against any liability that may arise out of the Plan Sponsor's acceptance of the power-of-attorney or any person's acts or omissions in reliance upon the power-of-attorney, even if revoked (including revocation by reason of the maker's death).
- The power-of-attorney expressly refers to this Plan with sufficient clarity so that the Plan Sponsor, in its sole discretion, believes that there is no confusion or ambiguity concerning whether an express power to act regarding this Plan was intended.
- The power-of-attorney unambiguously provides one or more powers to act regarding this Plan.
- The power-of-attorney meets any further requirements stated below in this Provision or otherwise under the Plan, and meets any other requirements reasonably requested by the Plan Sponsor.

Without limiting the comprehensive effect of the above, any power-of-attorney, including even a general power-of-attorney, cannot be effective to make or change the Participant's Beneficiary designation under the Plan unless the document, in the Plan Sponsor's sole opinion, expressly grants power to make or change Beneficiary designations under this Plan and refers to this Plan with sufficient clarity so that the Plan Sponsor, in its sole discretion, believes that there is no confusion or ambiguity concerning whether an express power to act regarding Beneficiary designations under this Plan was intended.

Without limiting the comprehensive effect of the above, any power-of-attorney, including even a general power-of-attorney, cannot be effective to exercise any right or privilege of investment direction under the Plan unless the document, in the sole opinion of the person that is requested to give effect to an investment instruction, expressly grants power to act regarding investment direction under this Plan and expresses the principal's (Participant's or Beneficiary's or Alternate Payee's) knowledge as to whether the attorney-in-fact is or is not a Registered Investment Adviser and refers to this Plan with sufficient clarity so that the Issuer determines that there is no confusion or ambiguity concerning whether an express power to act regarding investment direction under this Plan was intended. For the purpose of the preceding sentence, an investment advisory agreement that conforms to the disclosure and investment advisory contract requirements of § 204 and § 205 of the federal *Investment Advisers Act of 1940*, as amended [15 U.S.C. § 80b-4, 15 U.S.C. § 80b-5] is deemed to constitute an acceptable power-of-attorney if it refers to the Plan or to the Investment held for the Participant's Plan Account.

**17.16 Privacy**

The Participating Employer may (but is not required to) take reasonable steps to protect Participants' privacy concerning participation under the Plan.



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However, the Participating Employer and the Plan Administrator and any Agent and any service provider (and any other person acting for or at the request of any of them) may disclose information concerning the Participant's (or Beneficiary's) Account:

- when requested by the attorney-in-fact who is currently acting under a power-of-attorney that was accepted by the Plan Sponsor under Provision 17.15 ["Power-of-attorney"].
- when required by any court order or legal process.
- without a court order or legal process when reasonably requested by the IRS or the SEC or the NASD.
- when reasonably requested by a public accountant engaged by the Plan Administrator or by the Participating Employer or by the Master Trustee or by an Agent or by an Issuer.
- when, in the course of any proceeding relating to divorce, separation, or child support, an attorney-at-law states in writing that he or she represents the Participant's (or, after the Participant's death, the Beneficiary's) spouse or former spouse or child and that the information is reasonably related to such proceeding.
- when, in the course of the administration of any estate or succession, the personal representative (or an attorney-at-law who represents the personal representative) states in writing that he or she or it needs the requested information for the purpose of preparing a return of any estate tax, transfer tax, gift tax, inheritance tax, death tax, or similar tax, whether of the United States or any State or any foreign nation.

If a person presents himself or herself as an attorney-at-law and states that he or she has authority to act for a person or entity, the Plan Sponsor, Plan Administrator and the Agent shall be entitled without inquiry to assume, unless it has actual knowledge to the contrary, that the person so presenting himself or herself has the authority stated.

**17.17 Protection of Issuers**

Any Issuer shall not be liable in acting according to any instruction, if in writing or otherwise reasonably believed to be genuine, of its contract owner or other person that has the right to give instructions under the terms of the Investment, and shall not be required to question (unless otherwise provided by the applicable Investment) any action or inaction so instructed. The Issuer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Investment which it may issue regarding the Plan.

**17.18 Relationship to other plans**

This Plan is in addition to any other retirement, pension, or benefit plan presently in existence or later established (if any), and participation under the Plan shall not affect benefits or obligations of any person under any other plan, unless the plan is a deferred compensation plan subject to IRC § 457.

**17.19 Restitution and restoration**

In addition to (and not by limitation upon) any other remedy, including (but not limited to) any legal, equitable, remedial, or other relief, to the extent that any person breaches Provision 1.6 ["Exclusive benefit"], such person shall be personally liable to make good to the Plan (or, in an

appropriate case, to the applicable Participant or Beneficiary or Alternate Payee) any losses to the Plan resulting from or arising out of each such breach, and to restore to the Plan any profits of such person which have been made through the breaching person's improper use of Plan assets.

**17.20 Service of legal process**

Requests for information, claims or demands, legal process, and court orders are properly delivered when delivered to the Plan Sponsor at the principal place of business listed on the Adoption Agreement.

**17.21 Severability**

If a court finds that any provision of the Plan is invalid, the Plan shall be construed and enforced as if the invalid provision was not a provision of the Plan, unless the court finds that such a construction of the Plan would be clearly contrary to the intent of the Plan or would be contrary to IRC § 457(b) or would violate the Enabling Statute.

**17.22 Signature**

If a Participant or Beneficiary or Alternate Payee (or other person claiming through a Participant or Beneficiary or Alternate Payee) must submit any writing of any kind required or permitted under the Plan, the maker's signature must be complete and formal, except as expressly provided by Provision 17.23. However, if the maker has a disability that precludes him or her from making a complete and formal signature and the Plan Sponsor finds that an accommodation may be required by the *Americans with Disabilities Act*, a writing is signed if it bears or includes or incorporates any symbol executed or adopted by or on behalf of the maker with a present intention to authenticate the writing, or it is otherwise demonstrated to the satisfaction of the Plan Sponsor that the maker had (at the relevant time) a present intention to adopt the writing.

In addition to and not by limitation upon Provision 17.23, any writing of any kind required or permitted as to an Investment may be signed in any manner provided by the Investment, including, to the extent consistent with the Investment, applicable Investment Law.

**17.23 Signatures and broad acceptance of writings**

An instruction (but not a claim for any kind of Distribution) is considered to be written or in writing and signed according to the following broad provisions, except as otherwise specified by a uniform written procedure adopted by the Plan Sponsor.

"Written" or "writing" or "in writing" includes any intentional reduction to tangible form. Without limiting the comprehensive effect of the first sentence of this paragraph, any of the following is a writing and all of the following rules of construction apply in determining what is a writing and who made the writing. "Written" or "writing" or "in writing" includes handwriting, typewriting, printing. "Writing" includes any copy or reproduction, including (but not limited to) a photocopy, of an original writing. "Writing" includes a telefacsimile transmission. "Writing" includes a videotape or audiotape recording, including a recording of a telephone conversation; and a person's commencement or continuation of a conversation after the person is informed that the conversation is or may be recorded shall be deemed such person's intent to reduce the conversation to writing. Anything that is the subject of a written confirmation is deemed to be in writing. "Writing" or

"written" includes anything that is recognized as such by the *Restatement of Contracts* or the *Uniform Commercial Code* as then-currently published or adopted by the American Law Institute or the National Conference of Commissioners on Uniform State Laws. "Writing" or "written" includes anything that is recognized as such under § 2(9) of the federal *Securities Act of 1933*, as amended [15 U.S.C. § 77b(9)] or any rule or regulation thereunder. A writing made by a person who appears to be an agent or attorney-in-fact is the writing of the apparent principal, unless the Plan Sponsor has actual knowledge that no agency exists. The Plan Sponsor in its sole discretion may construe any writing(s), and may combine separate writings, including writings that are not contemporaneous, so as to establish one integrated writing or instruction.

"Signed" or "signature" includes any symbol executed or adopted by a person with present intention to authenticate a writing. Without limiting the comprehensive effect of the first sentence of this paragraph, any of the following is a signature and all of the following rules of construction apply in determining what is a signature and who signed. Authentication may be handwritten, typed, printed, stamped, or otherwise written. A signature need not consist of the person's legal name. A signature need not consist of the person's entire name. A signature may be on any part of a writing (except as expressly limited below). A person who fills-out a form in his or her own handwriting or typewriting has signed that form or writing. Anything that is the subject of a written confirmation is deemed to be signed if the recipient of the confirmation does not promptly object to the confirmation. For a conversation, a person's use of his or her voice is a signature. For a conversation, a person's compliance with the authentication procedure specified by the Plan Sponsor or its agent is a signature. "Signed" or "signature" includes anything that is recognized as such for any purposes by the *Restatement of Contracts* or the *Uniform Commercial Code* as then-currently published or adopted by the American Law Institute or the National Conference of Commissioners on Uniform State Laws. A signature need not be contemporaneous to the writing that it authenticates. A signature made by a person who appears to be an agent or attorney-in-fact is the signature of the apparent principal, unless the Plan Sponsor has actual knowledge that no agency exists. A writing that includes a forgery at the place where a signature customarily would be made is not signed by any person other than the forger.

Upon receiving anything that appears to be a writing, or anything that appears to be a signature or signed, the Plan Sponsor or Plan Administrator shall not be liable or responsible to anyone to the extent that it acted without actual knowledge that the writing was false or that the signature was a forgery.

#### **17.24 Signature Guarantee**

In addition to (and not by limitation of) any other provision of the Plan, for any claim or instruction of any kind the Plan Sponsor may require the person submitting the claim or instruction to include on the written claim or instruction a Signature Guarantee when required under a uniform written procedure of the Plan Sponsor.

#### **17.25 Statute of limitations**

As to any action at law or in equity under or with respect to this Plan (other than as described by the other sentence of this paragraph), the action shall be governed by (or precluded by) the relevant statute of limitations or statute of repose for actions upon a written contract according to the

internal laws (without regard to the law of conflicts) of the State in which the Participating Employer is incorporated or organized. For any dispute that was resolved by arbitration, to the extent that the statute of limitations or statute of repose relating to any arbitration proceeding or arbitration award is not governed by the federal *Arbitration Act*, any arbitration proceeding or arbitration award or any other matter relating to arbitration shall be governed by the internal laws (without regard to the law of conflicts) of the State in which the arbitration was conducted.

#### **17.26 Translations**

This Plan or any part of it may be translated (at the sole discretion of the Plan Sponsor) into or summarized in another language(s) for the convenience of certain Employees. However, the original English language text of the Plan shall control, and the translation of the Plan has no effect in the construction of the Plan.

#### **17.27 Unclaimed property**

For the purposes of any unclaimed property statute, if a Distribution has not commenced, any Deferred Compensation does not become distributable until such time as a Distribution is mandatory under the terms of the Plan.

#### **17.28 Uniformity**

To the extent required by applicable State law, provisions of the Plan shall be construed and applied in a uniform or non-discriminatory manner.

#### **17.29 Venue**

If any person, including, without limitation, any Participant or Beneficiary or Alternate Payee or Distributee (or any person claiming through a Participant or Beneficiary or Alternate Payee or Distributee) brings or maintains any suit or action (other than as described by the other sentence of this paragraph) against the Plan Administrator or the Master Trustee or to which the Plan Administrator or the Master Trustee is or becomes a party, each such person hereby submits to exclusive jurisdiction and exclusive venue in the courts sitting in Leon County, Florida or in which the Plan Administrator has its principal place of business. However, any suit or action upon an arbitration award or relating to an arbitration shall be governed by the internal laws (without regard to the law of conflicts) of the State in which the arbitration was conducted, and each such person who is or was a party to an arbitration hereby submits to exclusive jurisdiction and exclusive venue in the courts sitting in and for the district in which the city or place of the arbitration is located.

### **18. Amendment**

#### **18.1 Master Trustee's right to amend the Plan**

The Master Trustee has the right to amend the Plan at any time. The Participating Employer has the right to discontinue the Plan at any time, subject to the limitations set forth in the Trust Joinder Agreement and Master Trust Agreement. Any amendment of the Plan has no effect on the Master Trust Agreement. The Plan Sponsor may not amend the Plan in any way.

### **18.2 Exclusive Benefit Remains**

To the extent required by Provision 1.6 ["Exclusive benefit"], any amendment of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Participating Employer, or to be used for any purpose other than providing Deferred Compensation to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

### **18.3 Anti-cutback**

Any amendment shall not reduce the amount of Deferred Compensation credited to any Account before the date of the amendment, and shall not impair the rights of any person to the Deferred Compensation so credited.

### **18.4 Retroactive effect**

Any amendment of the Plan may be given immediate or retroactive effect; provided that such immediate or retroactive effect does not cause the Plan to fail to meet the requirements of an eligible deferred compensation plan within the meaning of IRC § 457(b).

### **18.5 Merger or consolidation**

To the extent that Accounts that are funded by a Master Trustee or other exclusive benefit arrangement in compliance with IRC § 457(g), this Plan may be merged or consolidated with, and such assets and liabilities may be transferred to, another eligible deferred compensation plan under IRC § 457(b) but only if the transferee plan meets the requirements of IRC § 457(g) and under the successor plan the Deferred Compensation with respect to each Participant is at least equal to the Deferred Compensation the Participant would have received if he or she had received a lump-sum distribution under the transfer or Plan immediately before the transfer, merger, or consolidation.

## **19. Termination**

### **19.1 Plan Termination by Participating Employer**

A Participating Employer may terminate its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

- a) The Governing Authority of the Participating Employer must adopt an ordinance or resolution terminating its participation in the Plan.
- b) The ordinance or resolution must specify when the Plan will be closed to any additional participation by eligible Employees, which must be a date at least sixty (60) days after the adoption of the ordinance or resolution.
- c) The ordinance or resolution must be submitted to the Master Trustee, or its designee.

The Master Trustee, or its designee, shall determine whether the ordinance or resolution complies with this provision, and all applicable federal and state laws, and shall determine an appropriate effective date for the termination of Employer participation, which shall be no later than twelve (12) months from the Master Trustee's receipt of the ordinance or resolution. The Plan Administrator shall provide appropriate forms to the Participating Employer to terminate ongoing

participation. Distributions under the Plan of existing accounts to the Participants and Beneficiaries affected by the termination are subject to the distribution provisions in this document.

### **19.2 Effect of Termination by Participating Employer**

In the case of the complete or partial termination of the Plan as to one (1) or more Participating Employers, including a termination arising from the discontinuance and/or delinquency of contributions, the affected portion of the Master Trust shall continue to be held pursuant to the direction of the Master Trustee, for the benefit of affected Participants pursuant to the benefit provisions of this Plan. The Plan shall remain in full effect with respect to each Participating Employer that does not terminate its participation in the Plan on behalf of its Employees, or whose participation is not terminated by the Master Trustee.

### **19.3 Termination of Entire Plan**

This Plan in its entirety may be terminated at any time by official action of the Master Trustee, with notice to all Participating Employers and Participants. The last date for contributions and earnings to be credited to Participants Accounts must be specified in the Master Trustee's official action and must be no sooner than ninety (90) days after the adoption of the official action. All actions associated with the termination of the Plan, including a final accounting, must be completed within twelve (12) months after the adoption of official action. In the event of a complete Plan termination, the Master Trustee must take all steps reasonable to avoid a distribution to the Participants and Beneficiaries, except pursuant to benefit options under the provisions of this Plan, including identifying successor plan(s). However, if distributions must be made, the Plan Administrator shall be responsible for directing distribution of all assets of the Master Trust to Participants and Beneficiaries.

## **20. Plan Loans**

### **20.1 Loans**

If specifically allowed by the Plan Sponsor in the Adoption Agreement, a Participant who is an Employee may apply for and receive a loan from his or her Account as provided in this Part. Any such loan may not be for an amount less than the minimum amount specified herein. No Participant may have more than two outstanding loans at a time, but may be limited by the Plan Sponsor to one outstanding loan at a time, as specified in the Adoption Agreement. All loans must be evidenced by a legally enforceable agreement, the terms of which comply with the requirements of this Part 20. The Agent may perform the duties described in this Part 20.

### **20.2 Maximum Loan Amount.**

No loan to a Participant hereunder may exceed the lesser of:

- (1) Fifty Thousand Dollars (\$50,000), reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during

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the one-year period ending on the day before the date the loan is approved by the Plan Sponsor (not taking into account any payments made during such one-year period), or

(2) one-half (1/2) or a lesser percentage as determined by the Plan Sponsor of the value of the Participant's Account (as of the valuation date immediately preceding the date on which such loan is approved by the Plan Sponsor).

For purposes of this Provision, any loan from any other qualified retirement plan, as defined by IRC § 72(p)(4)(A) and (B), maintained by the Employer or a related employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Provision to exceed the amount that would otherwise be permitted in the absence of this paragraph.

**20.3 Terms of Loan.** The terms of the loan shall:

(1) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of IRC § 414(u) or for the duration of a leave which is due to qualified military service;

(2) require that the loan be repaid within five (5) years; and

(3) provide for a reasonable interest rate established by the Plan Administrator in accordance with the applicable law.

**20.4 Security for Loan; Default.**

(a) **Security.** Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) **Default.** In the event that a Participant fails to make a loan payment under this Provision when such payment is due, the Participant will have the opportunity to make missed repayments during a cure period (the end of the calendar quarter following the calendar quarter in which the loan was last current). If the Participant fails to make missed payments by the end of the applicable cure period, the Participant's loan will be in default, and the outstanding balance of the Participant's loan, including interest, will be treated as a deemed distribution and reported as taxable income as of the end of the cure period. The amount of the deemed distribution will continue to be treated as if it is an outstanding loan, and interest will continue to accrue on the balance. As a result, the deemed distribution will count against the Participant's available number of outstanding loans under the Plan and will reduce any amount available for future loans. After the deemed distribution has been reported as taxable income, the Participant may choose to repay the deemed amount plus applicable interest, on an after-tax basis.

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If the Participant has a Severance from employment with an outstanding loan balance, the Participant is required to repay the loan in full. If the Participant fails to repay the loan as of the end of the applicable cure period, the Participant's outstanding loan balance will be treated as a deemed distribution and reported as taxable income as of the end of the cure period. If the Participant takes a distribution from the Plan after Severance from employment and while the Participant still has an outstanding loan balance that has not been reported as a deemed distribution, the Participant's distribution from the Plan will be reduced by the amount of the loan, and this amount will be reported as taxable income.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, any outstanding loan balance is due and payable at the end of the cure period. If the loan is not repaid by the end of the cure period, or a distribution is made to the Participant's Beneficiary(ies) before the end of the cure period, the outstanding loan balance will be offset against the Participant's Account, and the Beneficiary will receive the net Account balance as the death benefit.

**20.5 Repayment.**

Repayment of a loan may be made by payroll deduction, by direct payment to the Plan, or such other means as the Plan Administrator may permit. The Participant may be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Master Trustees in payment of such loan plus interest. Repayments of a loan shall be made in equal installments (comprised of both principal and interest) each due date, with the first such repayment to be made as soon as practicable after the loan funds are disbursed; provided, however, that a Participant may prepay the entire outstanding balance of his or her loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck.

**20.6 Special Relief for Loans.**

Notwithstanding any other Provisions of this Part, the Plan Administrator may observe the terms of any Internal Revenue Service guidance or Act of Congress regarding plan loans, which guidance or Act was issued or enacted in response to a natural disaster.

**21. Construction**

**21.1 Construction**

The provisions of this Part govern the construction or interpretation of this Plan. These rules of construction and interpretation shall apply for all provisions, and shall supersede any other construction or interpretation rules.

**21.2 Construction as an eligible deferred compensation plan**

The Plan is established and maintained with the intent that the Plan always be an "eligible deferred compensation plan" within the meaning of IRC § 457(b) and conform to the Internal Revenue



Code's requirements for treatment or recognition as such a plan. Therefore, the provisions of the Plan shall be interpreted whenever possible to state provisions that conform to the applicable requirements of the Internal Revenue Code. When the Internal Revenue Code is amended or interpreted through subsequent legislation or regulations or other guidance of general applicability, the Plan should be construed as stating provisions consistent with such amendment or interpretation of the applicable law.

### **21.3 Construction with Enabling Statute**

The Plan is established and maintained with the intent that the Plan conform to the applicable requirements of the Enabling Statute. The provisions of the Plan shall be interpreted whenever possible to state provisions that conform to the applicable requirements of the Enabling Statute. When the Enabling Statute is amended or interpreted through subsequent legislation or regulations, the Plan should be construed as stating provisions consistent with such amendment or interpretation of the applicable law.

### **21.4 Construction of statutes and regulations**

Any reference to a Section of the Internal Revenue Code shall be construed to also refer to any successor provision. Any reference to a Section of Treasury Regulations shall be construed to also refer to any successor provision of such regulations. Any reference to a Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement shall be construed to also refer to any guidance of general applicability that extends, amplifies, or modifies the Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement.

The Plan refers to relevant regulations, including (but not limited to) Treasury regulations under the Internal Revenue Code, without regard to whether the regulations are substantive or interpretive and without regard to whether the regulations are proposed or temporary or final; but it is intended that any provision that refers to a regulation shall be construed to refer to the regulation in the sense of the appropriate legal effect (under administrative procedure law and otherwise) that the regulation currently has at the time the construction is made.

To the extent that a provision states a duty owed to any government (rather than a duty to a Participant or Beneficiary or other person or entity having an interest under the Plan), the provision shall be construed as directory and shall be enforced only by the government. However, a provision that is necessary for the Plan to meet the requirements of an eligible deferred compensation plan within the meaning of IRC § 457(b) includes a duty owed to Participants and Beneficiaries and is not directory.

To the extent that a construction or interpretation of the Plan involves a construction of a statute or regulation, the Plan Sponsor may (but is not required to) construe the statute or regulation according to the *Uniform Statutory Construction Act*.

### **21.5 Construction of words and phrases**

The headings and numbering of provisions in the Plan and text that is stated within brackets, excluding text in parenthesis, are included solely for convenience of reference and are not intended

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to limit or amplify or control the meaning or interpretation or construction of any provision of this Plan.

The phrase "under the Plan" or "under this Plan" refers to the entire Plan (and the Master Trust Agreement) as a whole and not merely to any part of any document or Provision in which the phrase appears. Any reference to a Part of the Plan refers to the whole Part. Any reference to a definition or Provision of the Plan refers to the whole definition or Provision, unless the reference specifies a particular portion or paragraph of the Provision.

The singular shall be construed to include the plural, unless the context clearly indicates otherwise.

The words "as" or "if" shall be construed to mean the phrase, "to the extent that", as appropriate in the context.

Any reference to the Plan Administrator shall be construed to refer also to the Agent and the Issuer(s) and any other party acting for or at the instruction of the Plan Administrator.

Unless the provision states otherwise, any reference to a person or party shall be construed to refer also to any non-natural person or any entity (including but not limited to, any trust or estate).

To the extent that a provision states a duty owed to any government (rather than a duty to a Participant or Beneficiary or other person or entity having an interest under the Plan), the provision shall be construed as directory and shall be enforced only by the government.

Any reference to a corporation or similar organization shall be construed to include any successor to the corporation or similar organization.

All provisions of the Master Trust Agreement that do not conflict with the Plan are incorporated by reference and are a part of the Plan as if fully set forth by this document.

All provisions of a prospectus and statement of additional information or statement of operation of a Fund that do not conflict with the Plan are incorporated by reference and are a part of the Plan as if fully set forth by this document.

If any provision concerning a benefit under the Plan is ambiguous, a construction or interpretation of the provision that would provide that such benefit is available in a non-discriminatory manner shall take precedence over a construction or interpretation that would not so provide.

#### **21.6 Construction by reference to model laws**

To the extent that any construction beyond the written provisions of the Plan is necessary, the Plan shall be construed (except as otherwise provided by the Plan) according to any then-current Restatement of law published or promulgated by the American Law Institute or any then-current Uniform Act or Model Act published or recommended by the National Conference of Commissioners on Uniform State Laws. For this purpose, the Plan Sponsor may rely on the text of any Uniform Act or Model Act as published in the current edition of Martindale-Hubbell Law Digest. The Plan Sponsor may consider a withdrawn Uniform Act or Model Act if no successor

has been promulgated. Among these sources, the Plan Sponsor in its sole discretion may select any order of reference and if more than one source is relevant may decide which source it considers controlling or appropriate.

**21.7 Investment Law**

Whenever, after applying the specific construction rules of any definition or Provision or Part and the general construction rules stated in this Part, the Plan may be susceptible to more than one construction or interpretation, a construction or interpretation that is consistent with or that is not inconsistent with applicable Investment Law is preferred over a construction or interpretation that is inconsistent with applicable Investment Law.

**21.8 USA Constitution and Florida Constitution**

When applying any of the preceding construction rules relating to the Internal Revenue Code or the Enabling Statute or Employment Laws or Government Contracts Laws, the Plan Sponsor or Plan Administrator need not consider any statute or regulation or order to the extent that its application is contrary to the Constitution of the USA or is contrary to the Constitution of Florida; however, the Plan Sponsor or Plan Administrator may presume that any statute or regulation or order is not unconstitutional until a published controlling court decision expressly holds that such law is contrary to a Constitution.

The Basic Plan Document is not signed here.

This Plan is not complete without the Participating Employer's Adoption Agreement, by which the Participating Employer must specify the conforming and elective provisions of the Plan.

The Participating Employer will sign the Adoption Agreement to indicate adoption of the Plan.