

**BOROUGH OF BRENTWOOD
ORDINANCE NO. 2014-1230**

AN ORDINANCE OF THE BOROUGH OF BRENTWOOD RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF BOROUGH EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE EMPLOYEES OF SAID BOROUGH AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Brentwood ("Borough") and it is HEREBY ORDAINED AND ENACTED by authority of the same:

The Borough of Brentwood Police Pension Plan ("Plan"), which was previously established under Ordinance No. 875, dated May 5, 1978, under the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq., (referred to as Act 600) for the benefit of the Borough's police employees, and which has been amended and restated by ordinances and/or resolutions of the Borough thereafter, shall be, and hereby is, amended and supplemented in the following respects:

Any Ordinances, Resolutions or parts of Ordinances or Resolutions conflicting with the provisions of this Ordinance be, and the same hereby are repealed so far as the same affect this Ordinance; however, such repeal shall not affect any act done or any right or liability accrued under such Ordinance or Resolution herein repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the extent otherwise permitted under the laws of the Commonwealth of Pennsylvania.

Effective January 1, 2014, for Participants who are employed as full-time police officers of the Borough as of January 1, 2014 (Participants who terminated employment as a full-time police officer with the Borough prior to January 1, 2014 shall have their pension benefits determined pursuant to the pension arrangement in place at the time they terminated employment) the Plan shall be amended by entirely deleting the provisions of said Plan and substituting the following in its place:

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PREAMBLE

WHEREAS, the Borough of Brentwood, Allegheny County, Pennsylvania, established a retirement program effective December 31, 1954, and under the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq., (commonly referred to as Act 600) thereby establishing the Borough of Brentwood Police Pension Plan (the "Plan") for the benefit of the Borough's police officers and their beneficiaries; and

WHEREAS, the Plan has been and shall be amended and restated thereafter from time to time pursuant to various Ordinances and/or Resolutions: including but not limited to:

Ordinance No. 1042	March 16, 1993
Ordinance No. 1043	March 16, 1993
Ordinance No. 1048	December 7, 1993
Ordinance No. 1151	December 21, 2006
Ordinance No. 1198	September 27, 2011

WHEREAS, the Borough Council intends that the Plan shall meet the requirements for government plans pursuant to the Internal Revenue Code of 1986, as amended, and the applicable laws of the Commonwealth of Pennsylvania;

NOW, THEREFORE, the Plan now known as the "Borough of Brentwood Police Pension Plan" effective January 1, 2014 for Participants who are employed as full-time police officers of the Borough as of January 1, 2014 (Participants who terminated employment as a full-time police officer with the Borough prior to January 1, 2014 shall have their pension benefits determined pursuant to the pension arrangement in place at the time they terminated employment)is hereby amended and restated in its entirety, effective January 1, 2014, as follows:

ARTICLE I

DEFINITIONS

The following words and phrases as used in this Plan shall have the meaning set forth in this Article, unless a different meaning is otherwise clearly required by the context:

- 1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under section 4.02, calculated on the basis of Final Monthly Average Salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the projected Aggregate Service of the Participant as if the Participant continues in Employment until attainment of Normal Retirement Age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0). In no event, however, shall the Accrued Benefit exceed the maximum limitation, determined as of the date of computation, provided under section 4.07. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments

provided pursuant to the terms of the Plan prior to the actual payment thereof. The Accrued Benefit shall include any Service Increment determined pursuant to section 4.06 attributable to the Participant's Aggregate Service as of the date of determination.

- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at four percent (4%) per annum. Interest shall be credited in the form of a simple interest rate from the midpoint of the Plan Year for which the contributions were made to the first day of the month preceding the date that a distribution of accumulated Contributions under sections 6.05 and 7.02 shall be paid or payment of benefits shall commence.
- 1.03 "Act" shall mean the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. Sec. 895.101 et seq.
- 1.04 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and seven percent (7%) interest unless otherwise specifically provided herein.
- 1.05 "Actuary" shall mean the person, partnership, association or corporation which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- 1.06 "Aggregate Service" shall mean the total period or periods of the Participant's Employment which is defined below at section 1.18 with the Employer whether or not interrupted. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment, such period of Employment shall not be included in Aggregate Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the Fund the amount of such distribution with interest. For purposes of this section 1.06, interest shall accrue as of the date the Employee receives a distribution of Accumulated Contributions and shall be computed at the same rate and in the same manner as described in section 1.02. Aggregate Service shall be calculated in whole years and completed months.
- 1.07 "Attending College" shall mean the eligible dependent children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven (7) credit hours per semester.
- 1.08 "Beneficiary" shall mean the person or entity designated by the Participant to receive a distribution of the Participant's Accumulated Contributions should the Participant die prior to becoming entitled to a retirement benefit. In the event that a Participant does not designate a Beneficiary or the Beneficiary does not survive the Participant, the Beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy

laws of the Commonwealth of Pennsylvania if the Participant had died intestate and a resident of Pennsylvania.

- 1.09 "Chief Administrative Officer" shall mean the person designated by the Borough who has the primary responsibility for the execution of the administrative affairs for the Plan.
- 1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.11 "Committee" shall mean the Police Pension Committee as determined pursuant to section 8.02.
- 1.12 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.13 "Compensation" shall mean the total remuneration of the Employee as reported on Internal Revenue Service Form W-2, whether salary or hourly wages, including overtime pay, holiday pay, longevity pay and any other form of remuneration paid by the Employer for police services rendered. Compensation shall be limited on an annual basis for purposes of the Plan to the amount specified pursuant to Code Section 401(a)(17).
- 1.14 "Council" shall mean the Borough Council of the Borough of Brentwood.
- 1.15 "Disability Date" shall mean the date when a Participant is determined by Council or by a physician appointed by the Plan Administrator to be incapacitated due to Total and Permanent Disability, or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.16 "Employee" shall mean any individual employed by the Employer on a regular, full-time basis as a member of the Employer's police force.
- 1.17 "Employer" shall mean the Borough of Brentwood, Allegheny County, Pennsylvania.
- 1.18 "Employment" shall mean for the purpose of determining Aggregate Service:
 - (a) The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a police officer;
 - (b) Any period of time not to exceed six (6) months for which an Employee is granted an authorized leave of absence provided that the Participant shall pay Participant Contributions to the Plan in an amount equal to the amount which would have been paid if the Participant continued in active employment. Such an authorized leave of absence may be granted for a period of time for which an Employee is paid a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws), either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee; or a period during which an Employee is entitled to disability benefits under this Plan, provided that

the Employee returns to Employment within three (3) months of the date on which it is determined that the Employee is no longer Totally and Permanently Disabled if such determination occurs prior to the date a Participant attains Normal Retirement Age; or for any other reason acceptable to the Council; Employment will include any period of time that the Participant receives Heart and Lung Act payments to the extent required by law, provided that the Participant makes applicable Participant contributions; and

- (c) Any period of four years or less of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular, full-time member of the Employer's police force for a period of at least six months immediately prior to the period of military service; and the Participant returns to Employment within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the Employer.
- (d) In the case of a Participant who is deemed to be Totally and Permanently Disabled, any period of voluntary or involuntary military service with the armed forces of the United States of America not to exceed a total of five (5) years which occurred prior to the date on which a Participant first became employed as an Employee of the Employer, provided that the Participant shall purchase such credit and that such Participant is not entitled to receive, eligible to receive or is receiving retirement benefits for such military service under a retirement system administered and wholly or partially paid for by any other governmental agency except military retirement pay earned by a combination of active and nonactive duty with a reserve or national guard component of the armed forces which is payable upon the attainment of a specified age and period of service under 10 U.S.C. Ch. 67 (relating to retired pay for non-regular service). The purchase price for such service shall be computed by multiplying the average normal cost rate for the Plan as certified by the Public Employee Retirement Commission and not to exceed ten percent (10%) times the Participant's average annual rate of Compensation during the first three (3) years of Employment and multiplying the result times the number of years and fractions thereof being purchased. Interest shall be paid at a rate of four and three quarters percent (4.75%) compounded annually from the first date of Employment to the date of payment.
- (e) Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the Participant returns to Employment following such period of qualified military service, and the Participant makes payment to the Plan in an amount equal to the Participant Contributions that would otherwise have been paid to the Plan during such period of qualified military service. The amount of Participant Contributions shall be based upon an estimate of the Compensation that would have been paid to the Participant during such period of qualified military service as determined by the average Compensation paid to the Participant during the twelve (12) months immediately preceding the period of qualified military service. The amount of Participant Contributions so calculated must be paid into the Plan before the end

of the period that begins on the date of re-employment and ends on the earlier of the date that ends the period that has a duration of three (3) times the period of qualified military service, or the date that is five (5) years after the date of re-employment.

Employment shall not mean for the purpose of determining Aggregate Service:

(f) Any period of disability for a Participant who was disabled as a result of a non-service related disability.

1.19 "Final Monthly Average Salary" shall mean the average monthly salary earned by the Participant and paid by the Employer during the final thirty-six (36) months immediately preceding termination of active Employment and upon which the Participant made Participant Contributions pursuant to Article III if Participant Contributions were required pursuant to that Article. Salary shall include all compensation for services performed for Brentwood Borough as a Brentwood Borough Police Officer and reported and included on that Police Officer's Federal Internal Revenue Service W-2, annual wage and tax statement but shall exclude for this purpose any single sum or extraordinary payments made which are not directly attributable to active Employment during the averaging period, including but not limited to payment for accumulated sick leave, payment of a longevity bonus, or payment of a back pay damage award.

Final Monthly Average Salary shall be calculated by taking into account only those periods during which an Employee receives salary, as that term is defined in this section 1.19. Therefore, for example, the Final Monthly Average Salary for a Participant who receives disability benefits from this Plan or who is voluntarily or involuntarily serving in the United States armed forces during the final thirty-six (36) months of Aggregate Service shall be based on the period during which the Employee last received salary (as defined in the preceding paragraph) from the Employer.

Salary used to determine Final Monthly Average Salary shall be limited on an annual basis for the purpose of the Plan to the amount specified in accordance with Code Section 401(a)(17).

1.20 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

1.21 "[Reserved]"

1.22 "Member's Salary at the Time the Disability was Incurred" shall mean the last month of basis salary or basic rate of pay as applicable under any then current collective bargaining agreement before the Disability Date.

1.23 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.

- 1.24 "Normal Retirement Age" shall mean the date on which the Participant has completed twenty-five (25) years of Aggregate Service with the Employer and has attained age fifty-five (55).
- 1.25 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator and delivered as follows: if such notice or election is to be provided by the Employer or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period; or, if such notice or election is to be provided to the Employer or the Plan administrator, it must be received by the recipient on or before the last day of the specified notice or election period.
- 1.26 "Participant" shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in section 2.01 and who has not for any reason ceased to be a Participant hereunder.
- 1.27 "Pension Fund" or "Fund" shall mean the police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan.
- 1.28 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the Borough of Brentwood Police Pension Plan.
- 1.29 "Plan Administrator" shall be the Borough Manager or the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that there is no Borough Manager so serving and no such appointment is made, the Plan Administrator shall be the Council.
- 1.30 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.31 "Policy" or "Contract" shall mean a retirement annuity or retirement income endowment Policy (or a combination of both) or any other form of insurance Contract or Policy which shall be deemed appropriate in accordance with the provisions of applicable law.
- 1.32 "Restatement Date" shall mean January 1, 2014, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.33 "Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment or the first day of any month thereafter on which the payment of retirement benefits pursuant to this Plan shall commence.
- 1.34 "Service Increment" shall mean the amount calculated per month pursuant to section 4.06 on behalf of a Participant for each completed year of service in excess of twenty-five (25) years, not to exceed one hundred dollars (\$100) per month.

1.35 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment, which condition continues for at least six (6) months and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime. For purposes of this section 1.35 and Article V, a condition shall not be treated as a Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty as an Employee. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty is not entitled to receive disability benefits under the Plan.

1.36 "Trustee" shall mean the initial and any successor trustee or trustees of the Trust.

ARTICLE II

PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements - Each Employee who was a Participant in the Plan on the day prior to the Restatement Date shall continue to be a Participant on and after the Restatement Date subject to the terms and conditions of the Plan as set forth herein. Each Employee who is employed as a regular, full-time member of the police department of the Employer shall participate herein as of the date on which such Employee's Employment first commences or recommences provided all prerequisites to participation under this Plan shall have been fulfilled, including but not limited to, completion of all forms required by the Plan Administrator. Full-time members of the police department serving their probationary period are required to participate.
- 2.02 Notification of Plan Administrator - The Council shall furnish the Plan Administrator with written notification of the appointment of any new full-time Employee who is eligible for participation hereunder.
- 2.03 Designation of Beneficiary - Any new, full-time Employee who becomes a Participant hereunder shall provide a written notice in the manner prescribed by the Plan Administrator which designates a Beneficiary at the time participation commences. The Participant's election of any such Beneficiary may be rescinded or changed, without the consent of the Beneficiary, at any time provided the Participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.

ARTICLE III
CONTRIBUTIONS

- 3.01 Participant Contributions - Each Participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to five percent (5%) of the Participant's Compensation that is includible in the calculation of Final Average Monthly Salary. Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deductions. The Participant Contributions required under this section 3.01 shall be “picked up” by the Employer and shall be treated as Employer Contributions pursuant to Code section 414(h)(2).
- 3.02 Reduction of Participant Contributions - Notwithstanding the preceding section 3.01, if an actuarial study performed by the Actuary shows that the condition of the Pension Fund is such that payments into the Pension Fund by Participants may be reduced below the minimum percentages prescribed in section 3.01, or may be eliminated, and that if such payments are reduced or eliminated, contributions by the Employer will not be required to keep the Pension Fund actuarially sound, the Employer may, subject to such limitations and conditions set forth in the applicable collective bargaining agreement, by Ordinance, reduce or eliminate payments into the Pension Fund by Participants on an annual basis.
- 3.03 Employer Contributions - The Actuary, in accordance with the Act, shall determine the Minimum Municipal Obligation of the Employer. The Employer shall pay into the Pension Fund, by annual appropriations or otherwise, the contributions necessary to satisfy the Minimum Municipal Obligation.
- 3.04 State Aid - General municipal pension system State Aid, or any other amount of State Aid received by the Employer from the Commonwealth in accordance with the Act and designated by the Employer to be applied to this Plan, may be deposited into the Pension Fund governed by this Plan and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.05 Gifts - The Council is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Council or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.
- 3.06 Leased Employees - Leased employees (as defined in IRC '414(n)) shall not be eligible to participate. As of the effective date of this restatement, a leased employee is any person who is not an employee of the Employer and who provides services to the Employer if:
- (a) the services are provided pursuant to an agreement between the Employer and any other person (the “leasing organization”),

- (b) the person has performed services for the Employer on a substantially full time basis for a period of at least one year, and
- (c) such services are performed under the primary direction or control by the Employer.

3.07 Independent Contractors - Notwithstanding the other sections of this Article, no individual whom the Employer regards as not being an Employee shall be eligible to participate even if it is later determined by a court of law, the Internal Revenue Service, the Social Security Administration, or any other government agency that he should have been an Employee.

ARTICLE IV

RETIREMENT BENEFITS

- 4.01 Normal Retirement - Each Participant shall be entitled to normal retirement benefits after retirement on or after the Participant has attained Normal Retirement Age.
- 4.02 Normal Retirement Benefit - Each Participant who shall become entitled to a benefit pursuant to Section 4.01 shall receive a benefit paid monthly in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary as determined herein.
- 4.03 Late Retirement - A Participant may continue to work beyond the attainment of Normal Retirement Age subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 4.01 continues to work beyond Normal Retirement Age, there shall be no retirement benefits paid until Employment ceases and retirement begins. The retirement benefit of a Participant who retires after attainment of Normal Retirement Age shall be calculated in accordance with section 4.02 on the basis of the Final Monthly Average Salary as of such Participant's actual Retirement Date.
- 4.04 Payment of Benefits - Retirement benefit payments shall be made in a form, known as the Normal Form, which shall be payable as of the first day of the month coincident with or next following the Participant's Retirement Date and the first day of each month thereafter during the Participant's lifetime. A Participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the first day of the month coincident with or next following the date that is thirty (30) days after the date the Plan Administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the Participant.
- 4.05 Normal Form – The Normal Form for payment of retirement benefits shall be a monthly annuity payable for the life of the Participant.
- 4.06 Service Increment - A Participant who shall retire after completion of at least twenty-six (26) years of Aggregate Service may be eligible to receive a Service Increment in addition to the Normal Retirement Benefit under section 4.02. Such service increment shall only be available to a Participant who shall retire on a Retirement Date after attainment of Normal Retirement Age and whose Aggregate Service for purposes of this section 4.06 shall only include periods of time when the Participant actively renders service in Employment and shall not include any period of time during which the Participant received a Disability Benefit under the terms of this Plan or was not otherwise in active Employment. The monthly amount of the Service Increment shall be equal to twenty-five dollars (\$25.00) for each year of Aggregate Service in excess of twenty-five (25) years, up to a maximum Service Increment of one hundred dollars (\$100.00) per month.

- 4.07 [Reserved]
- 4.08 [Reserved]
- 4.09 [Reserved]
- 4.10 Assignment - The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the Participant or designated Beneficiary and shall not be subject to assignment or transfer. However, all rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to State law support provisions or as a "qualified domestic relations order". For purposes of this section, "alternate payee" and "qualified domestic relations order" shall be determined by the Plan Administrator in accordance with applicable law.
- 4.11 Retired Participants - Any Participant who shall have terminated employment prior to the Restatement Date shall not have the benefit altered in any way by the provisions of this amended and restated Plan, except where otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect on the day of the Participant's termination of employment.
- 4.12 Personal Right of Participant – The right to receive any benefits under this Plan is a personal right of the Participant and shall expire upon the death of the Participant. No heir, legatee, devisee, Beneficiary, assignee or other person claiming by or through a Participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.
- 4.13 Nonduplication of Benefit – To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under the Plan and who shall resume Employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Upon resumption of benefit payments, such Participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon Final Monthly Average Salary and Aggregate Service as of the date that such period of resumed Employment shall cease.
- 4.14 Limitation of Liability – Nothing contained herein shall obligate the Employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any Participant or Beneficiary which cannot be provided from the assets available in the Pension Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The Council retains the right to amend or terminate this Plan consistent with applicable law at any time with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.

ARTICLE V

DISABILITY RETIREMENT

- 5.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability shall be entitled to a Disability Retirement Benefit as of the Disability Date.
- 5.02 Disability Retirement Benefit - A Participant who shall be entitled to a Disability Retirement Benefit under Section 5.01, whose Total and Permanent Disability is the direct result of injuries incurred in the line of duty as an Employee shall be entitled to an Employment related Disability Benefit which shall be a monthly benefit in an amount equal to fifty percent (50%) of the Member's Salary at the Time the Disability was Incurred, determined pursuant to section 1.22, provided that any member who receives benefits for the same injuries under Social Security Disability shall have the Participant's disability benefits offset or reduced by the amount of such benefits.
- 5.03 Payment of Disability Benefits - Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the Participant's Disability Date and continuing until the earliest of the death of the Participant, the attainment of Normal Retirement Age, or cessation of Total and Permanent Disability. If a Totally and Permanently Disabled Participant attains Normal Retirement Age, any Disability Retirement Benefits shall cease, and such Participant shall be entitled to his Normal Retirement Benefit determined under section 4.02. The Normal Retirement Benefit of a Totally and Permanently Disabled Participant shall be determined using Final Monthly Average Salary, as defined in Section 1.19, and such benefit shall be multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service as of the Disability Date and the denominator of which shall be the projected Aggregate Service as if the Participant would have continued in Employment until the attainment of his Normal Retirement Age.
- A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, and shall not be entitled to any distribution of Accumulated Contributions pursuant to section 7.02 to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date.
- 5.04 Verification of Disability - The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is totally and permanently disabled has recovered sufficiently to resume active employment as a police officer or if a Participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently

than once in any given twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

- 5.05 Cessation of Disability - A Participant who is receiving payment of Disability Retirement Benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.
- 5.06 Reduction in Benefits - All disability retirement benefit payments made to an eligible Participant shall be reduced by the amount of any payments for which the Participant is eligible under any workers' compensation or similar laws, whether or not the Participant collects such compensation payments; and shall be reduced further by any other disability compensation payment for which the Participant is eligible, provided by the Borough or by any other federal, state or local government entity, whether or not the Participant collects such compensation payment.

ARTICLE VI

DEATH BENEFITS

- 6.01 Death Benefit - Except as hereinafter set forth, no benefit shall be payable hereunder upon or by reason of the death of any Participant.
- 6.02 Survivor Benefit - If a Participant shall die after commencement of retirement or disability benefit payments or after the Participant is eligible to retire under section 4.01 and before retirement benefit payments commence, a Survivor Benefit shall be paid to the surviving spouse of the Participant, or, if no spouse survives or the spouse survives and subsequently dies, then the child or children of the Participant under the age of eighteen (18), or if Attending College, under or attaining the age of twenty-three (23) in an amount equal to fifty percent (50%) of the Participant's retirement benefit which the Participant was receiving or would have been receiving had the Participant been retired at the time of death.

Such Survivor Benefit shall be paid in lieu of any distribution of Accumulated Contributions to which the deceased Participant may have been entitled; provided, however, that in the event the amount of Participant's Accumulated Contributions exceeds the amount of Survivor Benefit payable in accordance with the preceding, then such Participant's death benefit shall be equal to the amount of the Participant's Accumulated Contributions.

- 6.03 [Reserved]
- 6.04 Payment of Survivor Benefit - The Survivor Benefit commences as of the first day of the month coincident with or immediately following the date of death of the Participant. The Survivor Benefit shall be paid monthly to the surviving spouse of the Participant, if any, until the date of death of the surviving spouse. Upon the death of the surviving spouse or if there is no surviving spouse, the Survivor Benefit shall be paid monthly in equal shares to the surviving dependent children of the deceased Participant until the death or attainment of age eighteen (18) of each child, or if Attending College, under or attaining the age of twenty-three (23). The shares payable to the surviving children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.
- 6.05 Death of Participant Prior to Retirement - The surviving spouse of a Participant who dies on or after April 17, 2002 before his pension has vested, and whose survivors are entitled to no benefits under any other provisions of this Plan, or if no spouse survives or if he or she survives and subsequently dies, the child or children under the age of 18 years, or if attending college, under or attaining the age of 23 years, of a Participant shall be entitled to receive a refund of Accumulated Contributions (which includes interest at 4% per annum) unless the Participant has designated another beneficiary. If the Participant has received Disability Retirement Benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits, which have been paid hereunder.

ARTICLE VII

TERMINATION OF EMPLOYMENT

- 7.01 Rights of Terminated Employees - A Participant who shall cease to be an Employee except as otherwise herein before provided shall have all interest and rights under this Plan limited to those contained in the following sections of this Article.
- 7.02 Distribution of Accumulated Contributions - A Participant whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, said Participant and Beneficiary shall not be entitled to any further payments from the Plan.
- 7.03 Deferred Vested Benefit - A Participant who has completed at least twelve (12) years of Aggregate Service and whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to elect to receive a deferred vested benefit in lieu of a distribution of Accumulated Contributions under section 7.02. The Election hereunder shall be made within ninety (90) days of the date on which the Participant's Employment shall cease or shall be forever waived and a distribution pursuant to section 7.02 shall occur. Such a deferred vested benefit shall be in an amount equal to the Participant's Accrued Benefit as of the date Employment terminates and shall commence after application pursuant to section 4.04 as of the first day of the month coincident with or next following the date on which the Participant's Normal Retirement Age would be attained if the Participant continued in Employment until such date.

ARTICLE VIII

ADMINISTRATION

- 8.01 Plan Administrator - The Plan Administrator shall be the individual appointed by the Council who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Borough Manager shall be the Plan Administrator and if there is no Borough Manager serving it shall be Council.
- 8.02 Police Pension Board – If the Council shall appoint a Police Pension Board, it shall be for the purpose of advising the Council regarding the operation, administration, and the investment of assets of the Plan. The Board shall consist of not more than five (5) members, including the Mayor, Plan Administrator, Finance Director, one member of Council, appointed by Council President, and one member (as well as an alternate to serve should the regular police member not be available) who shall be active police officers of the Borough selected by the police officers. Each member of the Board shall serve in that capacity until the earlier of resignation, death, removal, or otherwise. Each member may resign by delivering written notice to the Council and other members of the Board. The Board shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
- 8.03 Authority and Duties of the Plan Administrator - The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Council's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:
- (a) to construe this Plan;
 - (b) to determine all questions affecting the eligibility of any Employee to participate herein;
 - (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
 - (d) to authorize any and all disbursements;
 - (e) to prescribe any procedure to be followed by any Participant and/or other person in filing any application or Election;

- (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
- (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and
- (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws; and
- (i) to select an individual retirement plan provider (either the state or a federally regulated financial institution) and invest funds in connection with the rollover of mandatory distributions as described in section 4.09(b).

The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Council.

- 8.04 Plan Administrator Costs - The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Council in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the Plan, may be paid from the Pension Fund upon approval by the Council to the extent permitted under applicable law and not otherwise paid by the Employer.
- 8.05 Hold Harmless - No member of the Council, the Plan Administrator if the Plan Administrator is an employee or official of the Borough, nor any other person involved in the administration of the Plan that is an employee of the Employer shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator if the Plan Administrator is an employee or official of the Borough and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
- 8.06 Approval of Benefits - The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or

within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.

- 8.07 Appeal Procedure - Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.
 - (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.
 - (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Council of the initial determination. Such request for review must be made by Notice to the Council within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Council shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Council in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
 - (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.

- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S. section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 8.08 of the Plan has been exhausted.

ARTICLE IX

THE PENSION FUND

- 9.01 Operation of the Pension Fund - The Council is hereby authorized to hold and supervise the investment of the assets of the Pension Fund, subject to the provisions of the laws of the Commonwealth and of this Plan and any amendment thereto.

The Pension Fund shall be used to pay benefits as provided in the Plan and, to the extent not paid directly by the Employer, to pay the expenses of administering the Plan pursuant to authorization by the Employer.

The Employer intends the Plan to be permanent and for the exclusive benefit of its Employees. It expects to make the contributions to the Pension Fund required under the Plan. The Employer shall not be liable in any manner for any insufficiency in the Pension Fund; benefits are payable only from the Pension Fund, and only to the extent that there are monies available therein.

The Pension Fund will consist of all funds held by the Employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Pension Fund shall be held, managed, and administered pursuant to the terms of the Plan. Except as otherwise expressly provided in the Plan, the Employer has exclusive authority and discretion to manage and control the Pension Fund assets. However, the Employer may at its sole discretion, appoint a custodian, investment manager. The Council shall be the trustee, to the extent a trustee is required and none has been appointed.

If all Plan assets are held in one or more custodial accounts or annuity contracts issued by an insurance company licensed to do business in Pennsylvania, then the Council does not need to appoint a Trustee, and plan assets shall be administered in accordance with the other provisions of this Plan and the terms of the agreement with the insurance company. If there is a separate trust document, then the terms of that document shall supersede the provisions of this Article IX. If the Council fails to name a Trustee, the Borough shall be the Trustee.

- 9.02 Powers and Duties of the Employer - With respect to the Pension Fund, the Employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.

- (a) To retain in cash so much of the Pension Fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which

are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.

- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- (g) To place money at any time in a deposit bank deemed to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- (h) In addition to the foregoing powers, the Employer shall also have all of the powers, rights, and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Employer may deem necessary to administer the Pension Fund.
- (i) To maintain and invest the assets of this Plan on a collective and commingled basis with the assets of other pension plans maintained by the Employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- (j) To invest the assets of the Pension Fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.

- (k) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that if a trustee is appointed by the Employer, such trustee shall make such distribution only at the direction of the Employer.
- (l) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (m) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (n) To pay, and to deduct from and charge against the Pension Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Pension Fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (o) To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Fund; to the extent not prohibited by applicable law, the Employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the Employer, taking into account the interests of the Participants and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.
- (p) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Employer shall follow the directions of such Investment Manager or Managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any Fund assets which are subject to the management of such Investment Manager or Managers. If the Employer appoints a trustee, the trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the Employer.

- 9.03 Common Investments - The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account, but may invest contributions and any profits or gains therefrom in common investments.
- 9.04 Compensation and Expenses of Appointed Trustee - If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the Employer or the Pension Fund, which may be executed at any time after 30 days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Pension Fund.
- 9.05 Periodic Accounting - If a trustee is appointed, the Pension Fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the Employer, showing the condition of the Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
- 9.06 Value of the Pension Fund - All determinations as to the value of the assets of the Pension Fund, and as to the amount of the liabilities thereof, shall be made by the Employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

ARTICLE X

AMENDMENT AND TERMINATION OF PENSION PLAN OR PENSION FUND

- 10.01 Amendment of the Plan - The Employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the Employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Council provided, however:
- (a) that no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which he is entitled under this Plan with respect to contributions previously made;
 - (b) that no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in section 10.05, ever revert to or be used or enjoyed by the Employer; and
 - (c) that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 11.03 has been prepared and presented to the Council in accordance with the Act.
- 10.02 Termination of the Plan - The Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 10.03 Automatic Termination of Contributions - Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 10.04 Distribution Upon Termination - In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the Employer shall direct either (a) that the Plan Administrator continue to hold the vested Accrued Benefits of Participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or (b) that the Plan Administrator immediately distribute to each Participant an amount equal to the vested Accrued Benefit to the date.

If there are insufficient assets in the Pension Fund to provide for all vested Accrued Benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before

assets are applied to the distribution of any vested benefits attributable to other sources hereunder.

All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which effects such termination.

- 10.05 Residual Assets - If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 10.06 Exclusive Benefit Rule - In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

ARTICLE XI

FUNDING STANDARD REQUIREMENTS

- 11.01 Actuarial Valuations - The Plan's Actuary shall perform an actuarial valuation at least biennially.

Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985.

Such actuarial valuation shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Pension Fund. Such allowable expenses shall include but not be limited to the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;
 - (b) accounting expenses;
 - (c) premiums for insurance coverage on Fund assets;
 - (d) reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
 - (e) legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the Employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.
- 11.02 Duties of Chief Administrative Officer - Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer.

The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal Obligation of the Employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the Minimum Municipal Obligation of the Employer to the Council annually and shall certify the accuracy of such calculations and their conformance with the Act.

- 11.03 Benefit Plan Modifications - Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to the Council the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation of the Employer with respect to the Plan.

ARTICLE XII

MISCELLANEOUS PROVISIONS

- 12.01 Plan Not a Contract of Employment - No police officer of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted to them hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, nor shall interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect such treatment might have upon participation in the Plan.
- 12.02 Meaning of Certain Words - For purposes of this Plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Articles and Sections are included solely for convenience of reference and are not to be considered in the construction of the Plan.
- 12.03 Construction of Document - This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.
- 12.04 Information to be Furnished by the Employer - The Employer shall furnish to the Plan Administrator (and where applicable, the trustee) information in the Employer's possession as the Plan Administrator and the trustee shall require from time to time to perform their duties under the Plan.
- 12.05 Severability of Provisions - In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.
- 12.06 Incapacity of Participant - If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such Participant is so incapacitated and that another person or institution is maintaining the Participant, and that no guardian or committee has been appointed for the Participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.07 Liability of Officers of the Plan Administrator and/or Employer - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the Employer shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.

- 12.08 Assets of the Fund - Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.
- 12.09 Pension Fund for Sole Benefit of Participants - The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.
- 12.10 Benefits for a Deceased Participant – If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, if the Plan provides that the payment of such benefits shall be made to the Participant’s estate, and if no administration of such Participant’s estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there is no surviving spouse, to such of Participant’s then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.

ARTICLE XIII

DEFERRED RETIREMENT OPTION PLAN

13.01 Definitions

- (a) DROP – The Deferred Retirement Option Plan created as an optional form of benefit under the existing Borough of Brentwood Police Pension Plan.
- (b) DROP Account – A separate ledger account created to accumulate the DROP pension benefit for a DROP participant.
- (c) Member – A full-time Borough of Brentwood police officer covered by the Plan.
Participant – A member who satisfies the eligibility requirements set forth in Section 13.02 below and who has elected to participate in the DROP program.
- (d) Plan – The Borough of Brentwood Police Pension Plan adopted pursuant to Act 600.

13.02 Eligibility. Effective June 1, 2009, Members of the Borough of Brentwood Police Association bargaining unit that have not retired prior to the implementation of the DROP program, may enter into the DROP on the first day of any month following the attainment of age 55 and the completion of 25 or more years of credited service with the Borough of Brentwood.

13.03 Written Election. An eligible Member of the Plan electing to participate in the DROP program must complete and execute a “DROP Election Form” prepared by the Borough of Brentwood Manager and/or the Plan Administrator, which shall evidence the Member’s participation in the DROP program, and document the Participant’s rights and obligations under the DROP. The form must be signed by the Member and the Chief Administrative Officer of the Plan and submitted to the Borough of Brentwood, within 30 days of the date on which the Member wishes the DROP election be effective. The DROP Election Form shall include an irrevocable notice to the Borough of Brentwood by the Member, that the Member shall terminate from employment with Borough of Brentwood Police Department effective on a specific date no more than five (5) years from the effective date of the DROP election. In addition, all retirement documents required by the Borough of Brentwood Police Pension Plan Administrator must be filed and presented to the Borough of Brentwood Council for approval of retirement and commencement of the monthly pension benefit. Once the retirement application has been approved by the Council, it shall become irrevocable.

The Member shall also complete a Beneficiary Designation Form, naming the beneficiary that shall receive his DROP account in the event that he dies before his DROP Account has been paid out. If you do not name a beneficiary, your beneficiary will be deemed to be your survivor(s) as determined under Act 600's return of contributions provisions.

After a Member enters the DROP program, contributions to the pension plan by the Participant and the Borough will cease, and the amount of the monthly benefits will be

frozen except for any applicable cost-of-living adjustment (COLA) increases awarded to all pension recipients.

Members shall be advised to consult a Tax Advisor, of their choice, prior to considering the DROP program, as there may be serious tax implications and/or consequences to participating in the DROP program.

- 13.04 Limitation on Pension Accrual. After the effective date of the DROP election, the Participant shall no longer earn or accrue additional years of continuous service for pension purposes.
- 13.05 Benefit Calculation. For all Plan purposes, continuous service of a Member participating in the DROP program shall remain as it existed on the effective date of commencement of participation in the DROP program. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Borough of Brentwood Police Pension Plan. The average monthly pay of the Member for pension calculation purposes shall remain as it existed on the effective date of commencement of participation in the DROP program. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Plan. The pension benefit payable to the Participants shall increase only as a result of Cost-of-Living Adjustments (COLAs), if any, as provided in the Plan effective on or after the date of the Member's participation in the DROP program.
- 13.06 Payments to DROP Account. The monthly retirement benefits that would have been payable had the Member elected to cease employment and receive a normal retirement benefit shall, upon the Member commencing participation in the DROP program, be credited on the first day of each month into a separate ledger account established by the Plan Administrator to track and accumulate the Participant's monthly pension benefits. This account shall be designated the DROP Account. The DROP Account shall be credited with annual interest at a rate of 4.5% compounded and credited monthly. All interest credited to the DROP account will be included in the final cash settlement.
- 13.07 Early Termination. A Participant may withdraw from the DROP program at any time and effectuate a complete retirement from service. No penalty shall be imposed for early termination of DROP participation. However, the Participant shall not be permitted to make any withdrawals from the DROP Account until DROP participation has ended.
- 13.08 Payout. Upon the termination of employment (for any reason whether by resignation, discharge or death) the retirement benefits payable to the Participant or the Participant's beneficiary, if applicable, shall be paid directly to the Participant or beneficiary and shall no longer be credited to the DROP Account. Within thirty (30) days following the actual termination of a Participant's employment with Borough of Brentwood, the accumulated balance in the DROP Account shall be paid to the Participant or his surviving beneficiary in a single lump-sum payment. Alternatively, the Participant's DROP Account shall be paid within 30 days to an eligible retirement plan under the Internal Revenue Code including to the custodian of an eligible retirement plan as defined in Section 402(c)(8)(b) of the Internal Revenue Code, or in the case of an eligible rollover distribution to the deceased Participant's surviving spouse, an eligible retirement plan that

is an individual retirement account or an individual retirement annuity as described in Section 402(c)(9) of the Internal Revenue Code except that if Participant or beneficiary fails to elect a method of payment within 60 days of the Participant's employment termination date, the Plan shall pay the balance as a lump sum to the Participant or surviving beneficiary as set forth above. The form of payout selected by the DROP Participant or his beneficiary shall comply with the minimum distribution requirements of the Internal Revenue Code.

A distributee may elect to have an eligible rollover distribution paid directly to an eligible retirement plan by way of a direct rollover. For purposes of this paragraph, a "distributee includes a Participant, a Participant's beneficiary, and a Participant's former spouse who is an alternate payee under a qualified domestic relations order. For purposes of this paragraph "eligible rollover distribution" has the meaning given the term by Section 402(f)(2)(A) of the Internal Revenue Code except that a qualified trust shall be considered an eligible retirement plan only if it accepts the distributee's eligible rollover distribution, and, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan is an "individual retirement account: or an "individual retirement annuity" as those terms are defined in Sections 408(a) and (b) of the Internal Revenue Code.

Regardless of the option selected by the Participant, the Borough has the right to accelerate payment in order to comply with Section 401(a)(9) of the Internal Revenue Code. There shall be no loans, hardship withdrawals or other such distributions while the Participant is employed by the Borough.

- 13.09 Death. If a Participant dies before the DROP Account balance is paid, the Participant's named beneficiary shall have the same rights as the Participant to withdraw the DROP Account balance. The monthly benefit credited to the Participant's DROP Account during the month of the Participant's death shall be the final monthly benefit for DROP participation.
- 13.10 Killed in Service. Benefits are payable to survivors of a DROP participant killed in service as set forth in Act 51 of 2009.
- 13.11 Disability. If a Participant becomes eligible for a disability benefit from the Plan and terminates employment, the monthly normal retirement benefit of the DROP Participant shall terminate and his DROP Benefit will be payable as soon as administratively feasible after his termination of employment. Any disability pension payable from the Plan in the event Participant becomes disabled shall be based upon the Participant's compensation on the day before he commenced participation in the DROP.
- 13.12 Non-pension Benefits of Active Employees. A DROP Participant shall be eligible for pre-retirement benefits for employees including those benefits otherwise provided by law, including benefits under the Act of June 2, 1915 (P.L. 736, No.338), known as the Workers' Compensation Act; the Act of June 28, 1935 (P.L. 477, No.93), referred to as the Enforcement Officers Disability Benefits Law; the Act of December 5, 1936 (2nd Sp. Sess., 1937P.L. 2897, No. 1) known as the Unemployment Compensation Law; the Act of June 24, 1976 (P.L. 424, No. 101) referred to as the Emergency and Law Enforcement

Personnel Death Benefits Act; and the Public Safety Officers' Benefit Act of 1976 (Public Law 94-430, 42 U.S.C. § 90 stat. 1347.

- 13.13 Reenrollment Prohibited. A Participant shall be ineligible to reenroll in the DROP even if former DROP Participant is reemployed by the Borough and becomes an active member in the Plan.
- 13.14 Expenses. Expenses such as actuarial and legal expenses to establish, operate and administer the DROP shall, to the extent permitted under Pennsylvania law, be paid from the Plan and not the Participant's DROP account.
- 13.15 Participant Contributions. Participants will not be required to make Member Contributions during their DROP participation period at the same rate as is required of Members pursuant to the terms of the Plans except as may be agreed to pursuant to paragraph Q below.
- 13.16 Non-Assignment. None of the benefits, payments, proceeds, claims or rights of any Participant hereunder shall be subject to any claim of any creditor of the Participant nor shall any Participant have any right to transfer, assign, encumber or otherwise alienate, any of the benefits or proceeds which he may expect to receive, contingently or otherwise, under the DROP. Notwithstanding any restrictions on the time of distribution which would otherwise apply under the DROP, distributions may be made with respect to a domestic relations order recognized under state law.
- 13.17 No Guaranty of Employment. None of the rights, benefits or features of the DROP shall entitle a Participant to employment with the Borough.
- 13.18 Automatic Closure to New Participants. In no case shall the Borough be obligated to allow new entrants into the DROP in the event that the existence of the DROP requires the Borough to make any additional payments into the Plan at any time. Should it be determined that the existence of the DROP causes the Borough to make additional payments to the Plan the DROP will automatically be closed to new entrants and no Member shall be permitted to enter the DROP after the date of the determination. Any Participant at the time of the determination shall be allowed to complete his participation in the DROP until the DROP termination date he elected upon entering the DROP.

For the purposes of determining whether the existence of the DROP causes the Borough to make any additional payments into the Plan, the Borough at its sole discretion may at any time have an actuarial study performed that will compare actuarial studies of the Plan without a DROP to actuarial studies of the Plan with the DROP and compare the Borough's contribution to the Plan with the DROP to the Borough's contribution to the Plan without the DROP. For the actuarial studies of the Plan including the DROP, any actuarial experience gains or losses associated with the existence and participation in the DROP will be considered. Included in the cost of the DROP is any state aid lost by virtue of the existence of the DROP that is not replaced with Participant contributions to the Plan. In the event that actuarial studies show that the DROP is causing the Borough to contribute additional monies to the Plan, the Borough and the Bargaining Unit may agree to increase Member and Participant contributions to the Plan to the extent that the

DROP no longer requires the Borough to make increased contributions to the Plan, in which case the DROP will not be automatically closed to new entrants.

- 13.19 DROP Account Subject to Public Employees Forfeiture Act. A Participant's DROP Account is subject to forfeiture as provided in the Act of July 8, 1978 (P.L. 752, No. 140), as amended, known as the Public Employees Forfeiture Act. Forfeitures shall be applied to reduce future Employer contributions.
- 13.20 Amendment. Any amendments to the DROP Ordinance shall be consistent with the provisions covering deferred retirement option plans set forth in any applicable collective bargaining agreement or state or federal law, and shall be binding upon all future Participants and upon all Participants who have balances in their DROP Accounts.
- 13.21 Laws. The DROP shall be construed pursuant to the laws of the Commonwealth of Pennsylvania.
- 13.22 Severability. The provisions of this Article XIII shall be severable, and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of this Article XIII shall not be affected thereby. It is hereby expressly declared as the intent of the Borough of Brentwood that this Article XIII would have been adopted as if such unconstitutional or illegal provision or provisions had not been included herein.
- 13.23 Pending legislation and law changes. In the event of the passage of legislation or decisions of the courts of Pennsylvania which is binding on the Borough governing DROPs in the Commonwealth of Pennsylvania, this Article XIII shall be amended to comply with any new legal requirements set forth therein including immediate termination of the DROP. In the event that the DROP is terminated under this Section, any Participant in the DROP shall be treated as if he never elected to participate in the DROP and instead continued as an active employee and a Member of the Plan.

INTERNAL REVENUE CODE PROVISIONS

ARTICLE XIV

14.01 Limit on Annual Additions.

- (a) Annual Additions. Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009) or its successor.
- (b) Multiple Plans. If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(c), and if the annual additions would otherwise exceed the limit under Code Section 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
- (c) Effective Date. The limits under which Code Section 415(c) are adjusted periodically in accordance with changes in the law or cost of living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code Section 415(c), then the change shall be effective as of the earliest permissible effective date.
- (d) 415(c) Compensation. For the purposes of this Section, "compensation" includes only those items specified in Treas. Reg. §1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. §1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Tax Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in Compensation.

14.02 Maximum Benefit Limitations.

- (a) General Rule - Except as otherwise provided, this Plan shall at all times comply with the provisions of Code Section 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a Participant under this Plan would otherwise exceed the limit under Code Section 415, the benefit will be reduced to the maximum permissible benefit.
- (b) Effective Date. If there is more than one permitted effective date for any change, the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. For the purposes of Code Section 415(b)(1)(A), effective as of January 1, 2008 the "applicable mortality table" and "applicable

interest rate” are found in Rev. Rul. 2007-67. The “applicable mortality table” in Rev. Rul. 2001-62 was effective from December 31, 2002 through December 31, 2007. From January 1, 2009 through December 31, 2013 the "applicable mortality table" is found in IRS Notice 2008-85.

- (c) No Reduction in Accrued Benefits - Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any Participant.
- (d) Multiple Plans – If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(b), and if the aggregated benefits would otherwise exceed the limit under Code Section 415(b), then benefits shall be reduced first under this Plan. [Historical Note: Code Section 415(e) applied for Limitation Years beginning prior to 2000.]
- (e) Mandatory Contributions - Participant Contributions are annual additions subject to the limit of Code Section 415(c), and any benefit attributable to Participant Contributions is not included in the benefit subject to the limits of Code Section 415(b). This subsection does not apply to contributions “picked-up” in accordance with Code Section 414(h).
- (f) Permissive Service Credit - Effective as of January 1, 1998, if a Participant makes a purchase of permissive service credit (within the meaning of Code Section 415(n)) under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.

14.03 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to his death shall be distributed either:
 - (1) not later than the Required Beginning Date, or
 - (2) over a period beginning not later than the Required Beginning Date and extending over the life of such Participant or over the lives of such Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant, or the joint life expectancies of such Participant and a designated Beneficiary).

If a Participant who is entitled to benefits under this Plan dies prior to the date when his entire interest has been distributed to him after distribution of his benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of his death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of his benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee's interest is payable to (or for the benefit of) a designated Beneficiary, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary), and such distributions begin not later than one (1) year after the date of the Employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the Beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated Beneficiary is the surviving spouse of the Participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the Employee would have attained age seventy and one-half (70 1/2) and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this sub-paragraph shall be applied as if the surviving spouse were the Employee.
- (c) For purposes of this Section, the following definitions and procedures shall apply:
- (1) "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70 1/2), or the calendar year in which the Employee retires.
 - (2) The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
 - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
 - (4) For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003 and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.
- (d) This section does not authorize the payment of any benefit in any form not permitted under another provision of the plan.

14.04 Multiple Plan Reduction. Code Section 415(e) applied for Limitation Years beginning prior to 2000.

14.05 Limit on Compensation. Effective January 1, 1996, compensation is subject to the limitation under Code Section 401(a)(17), which is \$245,000 for the Plan Year beginning

in 2010. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code Section 401(a)(17).

14.06 Direct Rollover.

- (a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) For purposes of this Section, the following definitions shall apply:
 - (1) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (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 includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002 clause (iii) does not apply to any after-tax Participant contributions that are paid to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) or effective as of January 1, 2007, any 403(b) annuity contract that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
 - (2) An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an "eligible retirement plan" includes an annuity contract described in Code Section 403(b) and 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. Effective January 1, 2008, a Roth IRA is an "eligible retirement plan."

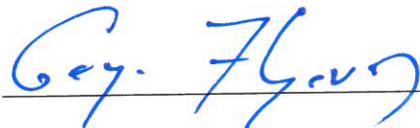
- (3) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
 - (4) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (c) Non-Spouse Beneficiaries - Effective as of January 1, 2007, if a Beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution", the Beneficiary may, in accordance with Code Section 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract); provided that:
- (1) the transfer is made not later than the end of the fourth year after the year of the Participant's death, and
 - (2) the account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code Section 408(d)(3)(C).
- 14.07 Credit for Qualified Military Service. Effective December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.
- 14.08 Heroes Earnings Assistance Relief Tax Act (HEART Act). Effective for deaths occurring after January 1, 2007, if a Participant dies while performing qualified military service (as defined in IRC §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.
- 14.09 Vesting at Normal Retirement Age. Effective September 1, 1974, upon attainment of Normal Retirement Age a Participant shall be 100% vested in his Normal Retirement Benefit.
- 14.10 Domestic Relations Order. Effective January 1, 1985, all rights and benefits, including elections, provided to a Participant in this Plan may be subject to the rights afforded to any "alternate payee" pursuant to a domestic relations order as provided by applicable state law.

- 14.11 Vesting Upon Plan Termination. Upon the termination of this Plan, or complete discontinuance of contributions (within the meaning of pre-ERISA Code Section 401(a)(7)) to this Plan, each Employee (who is not already 100% vested) as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.
- 14.12 Mandatory Lump Sum Distributions. Effective as of January 1, 2006, no lump-sum distribution in excess of \$1000 may be made to a Participant prior to the Participant's attainment of Normal Retirement Age unless the Participant consents to the distribution.
- 14.13 Governmental Plan. The Employer intends that this Plan shall meet all the pertinent requirements established for a governmental plan (as defined in Internal Revenue Code §414(d)) under Internal Revenue Code §401(a), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of said Code and all formal regulations and rulings pertinent to the Plan.
- 14.14 No Reversion to the Employer. At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, except that contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution, the Plan is terminated, or as otherwise permitted by the laws of the Commonwealth of Pennsylvania.

ORDAINED AND ENACTED this **27th** day of **October** A.D., 2014.

ATTEST:

BOROUGH OF BRENTWOOD



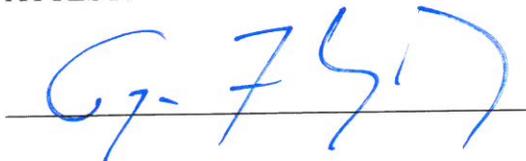


President of Council

EXAMINED AND APPROVED this 14th day of December, A.D., 2015

ATTEST:

BOROUGH OF BRENTWOOD





Mayor

DULY RECORDED in Ordinance Book Volume _____, page _____, this _____ day of _____, A.D., 20__.