

**BOROUGH OF BRENTWOOD  
ORDINANCE NO. 2015-1231**

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 EMPLOYEES OF SAID BOROUGH AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

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

The Borough of Brentwood Non-Police Employees Pension Plan ("Plan"), which was established pursuant to Ordinance for the benefit of the employees of the Borough of Brentwood and which has been amended and restated by ordinances and resolutions of the Borough Council thereafter, shall be, and hereby is, amended and supplemented in the following respects.

Any Ordinances or Resolutions or parts of Ordinances or Resolutions conflicting with the provisions of this Ordinance shall be, and hereby are repealed so far as the same affect this Ordinance; however, such repeal shall not affect any act done or any right or liability accrued under such Ordinance or Resolution herein repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the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, the Plan shall be amended by entirely deleting the provisions of said Plan and substituting the following in its place:

**BOROUGH OF BRENTWOOD**

**NON-POLICE EMPLOYEES**

**PENSION PLAN**

Amended and Restated  
Effective as of: January 1, 2014

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## PREAMBLE

WHEREAS, the Borough of Brentwood, Allegheny County, Pennsylvania, established a retirement program effective February 15, 1958, pursuant to Ordinance for the benefit of the Borough's non-police employees and their beneficiaries; and

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

Ordinance No. 876	May 2, 1978
Ordinance No. 890	January 15, 1980
Ordinance No. 955	September 1, 1987
Resolution No. 88-3	February 16, 1988
Ordinance No. 993	March 20, 1990
Resolution No. 96-10	May 21, 1996
Resolution No. 2000-04	February 19, 2002
Ordinance 1199-2011	September 27, 2011
Ordinance 1152	February 26, 2012

WHEREAS, the Council retained the right to amend the Plan; and

WHEREAS, the Council wants to facilitate the administration of the Plan by completely amending and restating the Plan to set forth the provisions thereof in a single document for purposes of incorporating certain changes as a result of ordinance consolidation and clarity; and

WHEREAS, the 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 Non-Police Employees Pension Plan" (Plan) is hereby amended and restated in its entirety, effective January 1, 2014. The benefits of any participant terminating employment on or after January 1, 2014 shall be determined by the terms of this restatement, and the benefits of any participant who terminated employment prior to January 1, 2014 shall be determined according to the terms of the Plan in place on their date of employment termination. The Plan shall provide, 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 the benefit to which a Participant is entitled as of any given date of reference, which shall be expressed as a single life annuity, starting as of a Participant's Normal (or Late) Retirement Date, that is the Actuarial Equivalent of the Participant's Account Balance (as of the reference date) projected forward to his Normal Retirement Date.

The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under Article XIV. 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.

- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Plan by way of payroll deduction or otherwise, plus interest credited thereon at the rate equal to the greater of: (i) six and one-half percent (6.5%), or (ii) the actual earnings in the trust fund (expressed as a percentage of assets) minus one percent (1%), per annum, compounded annually, from the first of the year following date of deposit to the first day of the month in which the Participant's employment terminates. For purposes of this section, Participant contributions shall include contributions "picked up" by the Employer in accordance with Code Section 414(h)(2).

- 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 six percent (6%) interest unless otherwise specifically provided herein.

If a Participant's Account Balance is converted to an annuity or a lump sum for purposes of making a distribution, the Account Balance shall not be projected forward to the Participant's Normal Retirement Date and then discounted back to the date of conversion in order to make the conversion. Therefore, the lump sum Actuarial Equivalent of the Account Balance is the amount of the Account Balance.

- 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 "Authorized Leave of Absence" shall mean any leave of absence granted in writing by the Employer for reasons including, but not limited to, accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active Employment.1.06
- 1.07 "Beneficiary" shall mean the person or entity designated in writing by the Participant to receive any benefits which may be due 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, then the Participant's 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.
- 1.08 "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 Borough.
- 1.09 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.10 "Committee" shall mean the Pension Plan Committee as determined pursuant to Section 9.02.
- 1.11 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.12 "Compensation" shall mean the total pay subject to income tax paid to a Participant by the Employer for personal services during the Plan Year and shall include the amount of any Participant contributions picked up under Code Section 414(h)(2). Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code Section 401(a)(17).
- 1.13 "Continuous Employment" shall mean an Employee's period of continuous, uninterrupted employment with the Employer. For purposes of this section, an Employee's employment shall not be deemed to have been interrupted by any periods of Authorized Leave of Absence expressly granted by the Employer; nor shall it be deemed interrupted by any period of absence during which he served in the Armed Forces of the United States of America, provided the Employee returns to his employment with the Employer at the time and under the circumstances required to give him re-employment rights under any federal or state law. In the event an Employee does not return to employment within the specified period or at the end of an Authorized Leave of Absence, he shall be deemed to have terminated his employment when he originally left the service of the Employer.

Continuous Employment shall also include 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 with the Borough 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 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.

- 1.14 "Council" shall mean the Council of the Borough of Brentwood.
- 1.15 "Disability Date" shall mean the date when a Participant is determined 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 "Early Retirement Age" shall mean the later of age fifty-five (55) or the completion of twenty-five (25) years of service for Participants covered by a collective bargaining agreement and for all other Participants, the date on which the Participant has attained a minimum age of sixty-two (62).
- 1.17 "Early Retirement Date" shall mean the first day of the month coincident with or next following the date on which a Participant who has attained Early Retirement Age ceases employment with the Borough and chooses to commence receipt of retirement benefits prior to the Normal Retirement Date.
- 1.18 "Employee" shall mean any individual employed by the Employer on a full time basis, with the exclusion of any uniformed Employee.
- 1.19 "Employer" or "Borough" shall mean Borough of Brentwood, Allegheny County, Pennsylvania.
- 1.20 "Employment Commencement Date" shall mean the date on which an Employee first completes an hour of service for the Employer.
- 1.21 "Entry Date" shall mean the first day of January or July, which coincides with or immediately follows an Employee's completion of the eligibility requirements in Article II.
- 1.22 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.
- 1.23 "Late Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from employment with the Borough on which the payment of retirement benefits pursuant to this Plan shall commence.

- 1.24 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.25 "Normal Retirement Age" shall mean age sixty-two (62) for Employees of the Public Works Department or age sixty-five (65) for all other Employees.
- 1.26 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant attains Normal Retirement Age.
- 1.27 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator. 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. If such notice or election is to be provided to the Employer or the Plan Administrator, it must be received by the intended recipient on or before the last day of the specified notice or election period.
- 1.28 "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.
- 1.29 "Pension Fund" shall mean the employee 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.
- 1.30 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the Brentwood Non-Police Employees Pension Plan.
- 1.31 "Plan Administrator" or "Administrator" shall mean the committee or the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Borough Manager.
- 1.32 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.33 "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.
- 1.34 "Restatement Date" shall mean January 1, 2013, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.35 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform any customary duties of his employment with the Employer, provided the Participant is certified by the Social Security Administration as being eligible for Social Security disability benefits, provided,

however, that no Participant shall be deemed to be Totally and Permanently Disabled for the purpose of this Plan if his incapacity results from chronic alcoholism or addiction to narcotics, or was engaged in felonious criminal enterprise or resulted therefrom, or resulted from an intentionally self-inflicted injury, or if such disability was incurred while in the armed forces of the country

- 1.36 "Trustee" shall mean the initial and any successor trustee or trustees of the Trust.
- 1.37 "Year of Service" shall mean for determining the amount of benefits, such completed twelve (12) month period of Continuous Employment with the Employer. Such twelve (12) month periods shall be measured beginning on the Employee's Employment Commencement Date and anniversaries thereof. Years of Service shall be expressed in completed years only and shall not take into account any partial years of fewer than twelve (12) completed months with respect to any Employee.

## 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 other Employee shall be eligible to participate in the Plan on his Entry Date, provided he has attained age twenty-one (21) and is an Employee of the Employer on such date.
- 2.02 Participation Requirements - The Employer shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder and shall execute and complete any enrollment or application forms as required by the Plan Administrator.
- 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.
- 2.04 Change in Status - A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a Participant hereunder eligible to resume such accrual of benefits.
- 2.05 Leave of Absence - During any leave of absence that is not an Authorized Leave of Absence, a Participant shall be deemed an inactive Participant and shall not be given credit for Years of Credited Service nor continue to accrue any benefits hereunder. If the Employee is not re-employed by the expiration of such leave of absence, participation in the Plan shall cease on the date on which such leave of absence commenced. During any Authorized Leave of Absence, a Participant shall continue to receive credit for Years of Credited Service to the extent such credit is specifically granted in writing by Council and is permitted pursuant to applicable law provided that all required contributions are paid to the Plan.
- 2.06 Recordkeeping - The Employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on Employees for purposes of determining their eligibility to participate in this Plan.

2.07 Leased Employees - Leased employees (as defined in Code Section 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.

2.08 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 III

### CONTRIBUTIONS

- 3.01 Participant Contributions - As a condition of participation hereunder, each Participant shall be required to file a written designation with the Plan Administrator authorizing that contributions equal to three percent (3%) of his monthly Compensation be deducted from his pay and contributed to the Plan. Such contributions shall be maintained in an Employee Contribution Account, which shall set forth the amount of the Participant's contributions, and any earnings attributable thereto, as of any given date.

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 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. Notwithstanding the foregoing, nothing contained herein shall preclude the Employer from contributing an amount in excess of the Minimum Municipal Obligation.
- 3.03 State Aid - General Municipal Pension System State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Pension Fund governed by this Plan in amounts determined by the Council and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.04 Employer Reversion - Any contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake and the contribution is returned within one (1) year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made.

## ARTICLE IV

### RETIREMENT BENEFITS

4.01 Normal Retirement – A Participant may retire on his Normal Retirement Date and receive, payable as of his Normal Retirement Date, a single life annuity that is the Actuarial Equivalent of his Account Balance.

4.02 Account Balance – A Participant's Account Balance consists of his Employee Contribution Account, his Employer Contribution Account, and his Past Service Account (if any).

(a) Employee Contribution Account – A Participant's Employee Contribution Account consists of his Accumulated Contributions.

(b) Employer Contribution Account – Benefits under this Plan are accrued in the form of an account balance. A Participant's Employer Contribution Account consists of his Employer Contributions plus all accumulated interest. As of the effective date of this amended and restated document, Employer Contributions are credited monthly at the rate of four (4%) percent of the Participant's monthly Compensation, and interest on the Employer Contribution Account is credited at a rate equal to the greater of: (i) five and one-half percent (5.5%), or (ii) one percentage point less than the actual rate of return earned by the Trust Fund, compounded annually.

The terms "Employer Contribution" and "interest" do not represent actual contributions or interest. The terms are used solely for the purpose of calculating a Participant's benefit accruals. A Participant's Account Balance for any period prior to the effective date of this document was determined under the provisions of the prior plan documents.

(c) Past Service Account – Participants who entered the Plan on an Entry Date occurring prior to May 2, 1978 have a separate account referred to as the "Past Service Account". The balance of a Past Service Account is the actuarial equivalent as of January 1, 1987 of a monthly annuity of fifteen dollars (\$15.00) multiplied by years of Service (under the terms of the Plan as of December 31, 1977) from a Participant's Employment Commencement Date through December 31, 1977, plus interest credited thereon at a rate equal to the greater of: (i) six and one-half percent (6.5%); or (ii) one percentage point less than the rate of return actually earned in the Trust Fund, compounded annually.

(d) Account Balance for Bookkeeping Purposes Only – Notwithstanding any other provisions of this Plan, the account balances described under subsections (a), (b), and (c) shall be based upon hypothetical account balances maintained as a bookkeeping entry only. Such amounts shall not be maintained as actual individual accounts, and neither the Plan Administrator nor the Trustee shall be

under any obligation to establish such accounts; moreover, there shall be no requirement that the credited interest equal the actual earnings of the Trust Fund for any given period, nor shall there be any requirement that the sum of individual accounts correspond to the value of Trust assets as of any given point of reference. The account balance formula shall be solely a mathematical formula used to derive the amount of a Participant's Accrued Benefit under this defined benefit pension plan.

- 4.03 Late Retirement - If a Participant continues in Employment beyond Normal Retirement Age, there shall be no retirement benefits paid until the Participant's retirement actually begins. The retirement benefit of a Participant who continues employment after attainment of Normal Retirement Age shall be based on his Account Balance as of his Late Retirement Date.
- 4.04 Early Retirement - A Participant shall be entitled to an Early Retirement Benefit after retirement on or after attainment of Early Retirement Age.
- 4.05 Early Retirement Benefit - If a Participant shall retire on an Early Retirement Date, he shall be entitled to receive an immediate single life annuity commencing on his Early Retirement Date equal to the Actuarial Equivalent of the Participant's Account Balance. A Participant may elect as of his Early Retirement Date to receive his benefit in the form of a lump sum, in accordance with the provisions of Section 5.02, provided he has terminated his employment on such date.

Each Participant who shall become entitled to a benefit pursuant to Section 4.04 must make application in writing to the Plan Administrator to receive such a benefit. The early retirement benefit shall become effective as of the date the application is approved by Plan Administrator or the date designated on the application, whichever is later.

4.06 [Reserved]

4.07 [Reserved]

4.08 Retired Participants - Any Participant who shall have retired 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 preceding the Restatement Date. Any Participant who shall have terminated Employment and elected to receive a deferred vested benefit under Section 8.03 shall have such benefit determined based upon the provisions of the Plan in effect as of the date of such termination of Employment and shall not have the benefit altered by the provisions of this amended and restated Plan.

4.09 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.

- 4.10 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.

## ARTICLE V

### PAYMENT OF BENEFITS

5.01 Normal Form of Benefit Payment – The Normal Form for payment of retirement benefits shall be a monthly annuity for the life of the Participant.

5.02 Optional Forms of Benefit Payment – The automatic form of payment of retirement benefits shall be the Normal Form specified in Section 5.01 unless a Participant elects to receive benefits in some other form as provided herein. A Participant who retires under Section 4.02, 4.03, or 4.04 may elect, by giving written Notice to the Plan Administrator at least thirty (30) days prior to the date retirement benefits payments shall commence, to receive payment in one of the optional forms of payment, which shall be the Actuarial Equivalent of the Normal Form. The available optional forms of benefit payment shall be as follows:

(a) Life Annuity with Period Certain Option – In lieu of receiving a retirement benefit under the Normal Form, a Participant may elect to convert the benefit to this option which provides for a retirement benefit payable monthly to the Participant until the death of the Participant occurs or for a period certain, whichever is longer. The period certain which may be elected shall be sixty (60) months, one hundred twenty (120) months or one hundred eighty (180) months. If the Participant shall die before receiving payment of benefits at least equal to the period certain then the remainder of the period certain payments shall be paid as they become due to a designated Beneficiary. The total number of payments made to the Participant and Beneficiary shall equal to the number of period certain payments selected. If the Participant shall die after receiving payment of benefits equal to or greater than the period certain, there shall be no additional payments due hereunder after the Participant's death.

(b) Joint and Survivor Annuity Option – In lieu of receiving the retirement benefit under the Normal Form, a Participant may elect the Joint and Survivor Annuity, which provides for a retirement benefit payable to the retired Participant until death and for the continuation of benefit payments in an amount equal to fifty percent (50%), seventy-five percent (75%) or one hundred percent (100%) of the Participant's reduced pension benefit to a surviving spouse until the death of the surviving spouse shall occur.

If the death of the spouse occurs before the Participant's actual retirement date, any election of this option shall be deemed null and void and the retirement benefit shall be payable in the Normal Form, the same as if the Joint and Survivor Annuity option had not been elected. If the spouse predeceases the retired Participant after actual retirement, retirement benefit payments shall terminate upon the retired Participant's death.

- (c) Lump Sum Payment Option - In lieu of receiving a retirement benefit under the Normal Form, a Participant may elect to receive a single lump sum payment equal to the vested portion of his Account Balance, and upon the death of the Participant there shall be no additional payments due or payable hereunder.
- 5.03 Commencement of Benefits – A Participant may elect to commence receiving distribution of retirement benefit payments as of his Early, Normal or Late Retirement Date. A Participant must complete an application for benefits 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 date that is thirty (30) days after the date the Plan Administrator receives the application for benefits.
- 5.04 [Reserved]
- 5.05 [Reserved]
- 5.06 Small Amounts - In its sole discretion, the Employer may direct the Administrator to distribute the vested portion of the Account Balance of a Participant who is terminating his participation in the Plan in the form of a lump sum payment if the value of such benefit is \$5,000 or less. Any distribution made pursuant to this section shall be made within one year after a Participant terminates service with the Employer. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, if a distribution of a Participant's Account Balance in excess of one-thousand dollars (\$1,000) is to be made and the distributee does not elect to receive the distribution directly, the Plan Administrator shall transfer the Account Balance to an individual retirement plan of a designated trustee or issuer pursuant to Subsection Article XIV. The Plan Administrator shall notify the distributee in writing, within a reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.
- 5.07 Assignment – To the maximum extent permitted by law, 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.
- 5.08 Non-duplication of Benefits - To avoid any duplication of benefits, if any Participant ceases to be employed for any reason and is re-employed, any benefit payments then being paid pursuant to the terms of this Plan shall be suspended and future retirement benefits shall be coordinated in such a manner as to preclude any duplication hereunder.

## ARTICLE VI

### DISABILITY RETIREMENT

- 6.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability before attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit as of the Disability Date.
- 6.02 Disability Retirement Benefit - A Participant who shall be entitled to a Disability Retirement Benefit under Section 6.01 shall receive a disability retirement benefit equal to the Actuarial Equivalent of the Participant's entire Account Balance as of his Disability Retirement Date . The Participant may elect to take his benefit in any form permitted under Section 5.02.
- 6.03 Cessation of Disability – If a Participant recovers from his Disability and returns to work, payment of his benefit shall cease, and he shall be entitled to an additional benefit when he again terminates employment. His Accrued Benefit shall be reduced by the Actuarial Equivalent of any Disability Benefits paid.
- 6.04 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.

## ARTICLE VII

### DEATH BENEFITS

- 7.01 Death of Participant - Upon the occurrence of the death of a Participant, there shall be benefits payable in accordance with the following sections of this Article VII.
- 7.02 Pre-Retirement Death Benefit - If a Participant shall die prior to the date when payment of his vested benefit begins, the vested portion (determined in accordance with Section 8.03) of his Account Balance shall be payable to the Participant's Beneficiary in a lump-sum payment. If the Participant is an active employee of the Borough at his death, his Account Balance becomes 100% vested upon his death.
- 7.03 Post-Retirement Death Benefit - If a terminated Participant shall die after benefit payments have commenced, no death benefits shall be payable under this article, and the death benefit payable, if any, shall be limited to that which is specified pursuant to the form of benefit payment in force for the benefit of such person at the time of his death.

**ARTICLE VIII**

**TERMINATION OF EMPLOYMENT**

- 8.01 Rights of Terminated Employees - A Participant who shall cease to be an Employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following sections of this Article.
  
- 8.02 Refund of Accumulated Contributions - If a Participant whose employment with the Employer has been terminated for any reason other than death, Total and Permanent Disability or retirement prior to his Early Retirement Date, and he is neither eligible for a pension under the Plan, nor has he completed at least five (5) Years of Service, such Participant shall be entitled to receive a refund of his Accumulated Contributions to the Plan. Upon receipt of such Accumulated Contributions, said Participant and his or her Beneficiary shall not be entitled to any further payments from the Plan.
  
- 8.03 Vested Benefits - A Participant whose Employment shall terminate for any reason other than due to death or Total and Permanent Disability prior to attainment of Early or Normal Retirement Age shall be entitled to an immediate vested benefit or a deferred vested benefit which is the Actuarial Equivalent of the sum of: (a) his Employee Contributions Account, (b) his Past Service Account, and (c) his Vested Percentage multiplied by his Employer Contributions Account determined as of such date of termination and based upon the vesting schedule provided below:

<u>Years of Service</u>	<u>Vested Percentage</u>
0	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10	100%

All of an Employee's Years of Service with the Employer are counted to determine his Vested Percentage except Years of Service prior to age eighteen (18). A Participant shall always be one hundred percent (100%) vested in any portion of his Accrued Benefit attributable to Employee Contributions, whether mandatory or voluntary, or his Past Service Account.

- 8.04 Payment of Vested Benefits - Payment of vested benefits under Section 8.03 shall be in lieu of a refund of Accumulated Contributions under Section 8.02. Payments of a Participant's vested benefit shall be made by the Trustee, at the direction of the Administrator at the date which would have been such Participant's Normal Retirement Date had he continued his employment (or such earlier date as may be authorized by the

Plan Administrator on a uniform and non-discriminatory basis with respect to all Plan Participants). Notwithstanding the preceding, a Participant with an entitlement to a vested benefit may elect to commence receiving such benefit as of the first day of the month following the month of his termination of employment. A Participant eligible to receive his Vested Benefit may be permitted to receive such benefit in any form of payment authorized for payment of retirement benefits under the provisions of Article V. The Plan Administrator shall, after consulting with the Participant, and subject to the provisions of Article V, determine the time and form of any distribution of Vested Benefits hereunder in a non-discriminatory manner, and not contrary to any laws or regulations which may govern such distributions.

- 8.05 Application of Forfeitures -Amounts forfeited by any Participant may not be used to increase the benefits which other Participants would otherwise receive under the Plan; they shall be used only to reduce the Employer's contributions to the Plan.

## ARTICLE IX

### ADMINISTRATION

- 9.01 Plan Administrator - The Plan Administrator shall be the Committee or 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.
- 9.02 Pension Plan Committee - If Council shall appoint a Non-Police Plan 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 seven (7) members including the Mayor, Plan Administrator, Finance Director, one member of Council appointed by Council President, and one Member appointed by each of the two bargaining units from among their active membership of Borough employees. In addition, one of the members to be appointed by Council President shall be a non-bargained employee who participates in the Plan. Each member of the Board shall serve in that capacity until the earliest 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.
- 9.03 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 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 Subsection 5.05(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.

- 9.04 Powers and Duties of Committee - The Committee may organize itself in any manner deemed appropriate to effectuate its purposes hereunder provided that it shall operate and act by a majority of its members at the time in office either by vote at a meeting or in writing without a meeting.
- 9.05 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.
- 9.06 Hold Harmless - No member of the Council or the Plan Administrator if the Plan Administrator is an employee of the Borough 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 his 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 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.

- 9.07 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.
- 9.08 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 a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. 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 of the Plan has been exhausted.

## ARTICLE X

### THE PENSION FUND

- 10.01 Operation of the Pension Fund - The Trustee 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 trustee 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 Trustee has exclusive authority and discretion to manage and control the Pension Fund assets. However, the Employer may at its sole discretion, appoint a custodian or investment manager.

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 X. If the Council fails to name a Trustee, the Borough shall be the Trustee.

- 10.02 Powers and Duties of Employer - With respect to the Pension Fund, the Trustee 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 Trustee 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 Trustee 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 a 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.

10.03 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.

- 10.04 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 thirty (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.
- 10.05 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.
- 10.06 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 XI

### AMENDMENT AND TERMINATION

- 11.01 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 each 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 11.05, 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 12.03 has been prepared and presented to the Council in accordance with the Act.
- 11.02 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.
- 11.03 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.
- 11.04 Distribution Upon Termination - In the event of the termination of the Plan (or complete discontinuance of contributions within the meaning of pre-ERISA Code Section 401(a)(7)), all amounts of 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 the Plan Administrator to distribute to each Participant an amount equal to his vested Account Balance.

If there are insufficient assets in the Pension Fund to provide for all vested Account Balances 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.

- 11.05 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.
- 11.06 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 XII

### FUNDING STANDARD REQUIREMENTS

12.01 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.

12.02 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.

- 12.03 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 XIII

### MISCELLANEOUS PROVISIONS

- 13.01 Employment Rights - No Employee 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 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 this Plan.
- 13.02 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 inserted only for convenience of reference and are not to be considered in the construction of the Plan.
- 13.03 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.
- 13.04 Severability of Provisions - Should any provisions of this Plan 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 herein.
- 13.05 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 the Participant, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 13.06 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. Nevertheless, all rights and benefits, including elections, provided to a Participant shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order" as determined by state law.

- 13.07 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 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.
- 13.08 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.
- 13.09 Personal Liability - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the Employer or Plan Administrator shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.
- 13.10 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.

## ARTICLE XIV

### INTERNAL REVENUE CODE PROVISIONS

#### 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.

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 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.
- 14.13 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 \_\_\_\_ day of \_\_\_\_\_, A.D., 2014.

ATTEST:

**BOROUGH OF BRENTWOOD**

\_\_\_\_\_

\_\_\_\_\_  
President of Council

EXAMINED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, A.D., 2014.

ATTEST:

**BOROUGH OF BRENTWOOD**

\_\_\_\_\_

\_\_\_\_\_  
Mayor

DULY RECORDED in Ordinance Book Volume \_\_\_\_\_, page \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, A.D., 2014.