



RETIREMENT SYSTEMS DIVISION

STEVEN C. TOOLE
EXECUTIVE DIRECTOR

To: Supplemental Retirement Board of Trustees

From: Reid Chisholm, Assistant General Counsel

Date: December 6, 2017

Re: New NC 457 Plan Document

At its December 14th meeting, the Supplemental Retirement Board of Trustees (the “Board”) will consider a new NC 457 Plan Document, which is, in effect, an amended and restated version of the current Plan Document. Currently, the Board utilizes a specimen (or “off-the-shelf”) base plan document and adoption agreement provided by Prudential to its governmental 457(b) plan clients. The plan document is maintained and revised by Prudential. In contrast, the NC 401(k) Plan Document is customized document tailored to the NC 401(k) Plan, and changes to the Plan Document are made by the Board. Creation of a customized NC 457 Plan Document would provide the Board the same control and flexibility to address NC 457 Plan compliance, policy, and plan design issues as it holds with the NC 401(k) Plan.

The resource (“starting point”) for the creation of the new NC 457 Plan Document was the current base plan document and adoption agreement, which were drafted for Prudential by Groom Law Group. Most of the plan-specific items in the adoption agreement were then incorporated into the base plan document.

The document was reviewed and amended, as appropriate, in several respects.

1. The new NC 457 Plan Document incorporates the specific structure of the NC 457 Plan. The Plan is established by state statute and administered by the Board and the Department. Eligible employers are set by state statute and, with the approval of the Board, may elect to participate in the plan. The Board serves as the Plan’s trustee, and the assets of the NC 401(k) and NC 457 Plans are commingled in the Group Trust for investment purposes.
2. The new Plan Document includes clarifications and other amendments to reflect more clearly the intent and administration of the plan. For example, the new NC 457 Plan Document permits distributions (a) pursuant to the Heroes Earnings Assistance and Relief Tax (HEART) Act (related to military service); and (b) for paying the qualified health insurance premiums of eligible retired



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public safety officers. In addition, the previous term “Deferred Compensation” is separated into three terms – “Deferred Compensation,” “Annual Deferral Amount,” and “Employee Deferral Amount.” There is also greater clarity and precision related to the application of certain provisions to participants, beneficiaries, and alternate payees, such as the application of the distribution provisions in Sections 5.2 and 5.3 to an alternate payee as if the alternate payee were the participant.

3. The NC 457 Plan Document was compared to, and made more consistent with, the NC 401(k) Plan document, as appropriate.
4. The NC 457 Plan Document was reviewed against the applicable Internal Revenue Code provisions, IRS regulations, and IRS model amendments and revisions were made, as appropriate.
5. The NC 457 Plan Document was sent to Prudential for confirmation that Prudential can administer it as written.

Some of the main revisions to the NC 457 Plan Document are summarized in the attachment.



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Attachment – Some of the Main Revisions to the NC 457 Plan Document

The previous term “Deferred Compensation” is divided into three terms – “Deferred Compensation,” “Annual Deferral Amount,” and “Employee Deferral Amount” – clarifying, and providing more precision to, the terms.

There is greater clarity and precision related to the application of certain provisions to participants, beneficiaries, and alternate payees, such as the application of the distribution provisions in Sections 5.2 and 5.3 to an alternate payee as if the alternate payee were the participant.

Revised Section 3.4: The Enrollment Agreement shall require the Participant to agree to be bound by the provisions of the Plan.

New Section 3.7(a), deleted Section 3.6(b), and revised Section 7: The default investment option, as selected by the Board, applies in all default situations, not just in the case of automatic enrollment.

New Section 3.7(b): The Board can require participants to re-designate their investment options and place non-responders into a default investment option.

Revised Section 4.3: The document is clarified to acknowledge that a Participating Employer may make Additional Employer Contributions “only for Participants who are current Employees of the Participating Employer.”

New Section 4.6: Qualified military service is addressed in greater detail.

New Section 4.8: Mistaken contributions (adjusted for investment gains or losses) can be returned to a participant.

New Section 5.6: IRS-permitted relief is implemented for certain events, including Hurricanes Matthew, Harvey, and Irma.

Revised Section 5.8: HEART Act distributions (related to military service) are now permitted.

Revised Section 5.9: Distributions are now permitted for qualified health insurance premiums for eligible retired public safety officers.

Revised Section 6.1: The regulatory details regarding transfers were generally removed in favor of references to the statute and regulations.



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Revised Section 9.1(b): The loan policy is incorporated into the plan document by reference and is required to be posted on the Department's website or otherwise made available to participants.

Revised Section 10.2: An Alternate Payee shall receive his or her amount of the Participant's Account as soon as administratively feasible or as otherwise provided in the Domestic Relations Order. Current provision requires payment "at the earliest date that benefits may be paid to the Participant, unless the order directs a different time or form of payment."

Revised Section 12.1: The North Carolina General Assembly and the Board, not the employer, can amend the plan, including retroactively.

Revised Section 12.2: The North Carolina General Assembly, not the employer or plan administrator, can terminate the plan. The discontinuance of contributions is also included as an event of termination. Upon termination, accounts can be distributed in a lump sum or transferred to another governmental 457(b) plan as provided in Section 6.1.

**North Carolina Public Employee Deferred Compensation Plan
(NC 457 Plan)**

Revised December 14, 2017

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Article I The Plan and the Trust

Section 1.1 Establishment of the Plan

Pursuant to N.C.G.S. § 143B-426.24, the State of North Carolina has established the Plan for the primary purpose of providing retirement income and other deferred benefits to the Employees (and their Beneficiaries) of Participating Employers in accordance with the provisions of Code § 457. The Plan consists of the provisions set forth in this amended and restated Plan document and N.C.G.S. § 143B-426.24. The Plan is intended to be a Code § 457(b) plan for employees of governmental entities described in Code § 457(e)(1)(A).

Section 1.2 Effective Date

The Plan was originally effective on November 12, 1974. This amended and restated Plan document is effective as of January 1, 2017.

Section 1.3 Plan Trust

The assets and income of the Plan shall be held by the Board in its separate capacity as trustee under a trust agreement in the form the North Carolina General Statutes as adopted, or as amended, by the General Assembly of North Carolina for use in providing the benefits of the Plan and paying its expenses not paid directly by the Employer. The Employer shall have no liability for the payment of benefits under the Plan or for the administration of the funds paid over to the Plan.

Section 1.4 Exclusive Benefit Rule

Except as otherwise provided in the Plan, no part of the corpus or income of the assets of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Beneficiaries, and Alternate Payees. No person shall have any interest in or right to any part of the earnings of the assets of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan and not in conflict with the North Carolina General Statutes as adopted, or as amended, by the General Assembly of North Carolina.

Section 1.5 Group Trust

Notwithstanding any provision of this Plan document to the contrary, the Plan's assets may be invested in a group trust described in IRS Revenue Ruling 81-100 or a successor thereto, and the terms of such group trust shall be deemed incorporated into this Plan document.

Section 1.6 Vesting

Each Participant is immediately 100% vested in all of the Deferred Compensation in his or her Account, including Additional Employer Contributions, unless otherwise provided by the North Carolina General Statutes.

Article II Definitions

For purposes of this Plan document, the following terms shall have the meanings set forth below in this Article II.

Section 2.1 Account

The bookkeeping account maintained for each Participant that reflects the cumulative amount of the Participant's Deferred Compensation. Each Participant's Account shall be adjusted to reflect any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and shall also be adjusted to reflect any distributions and any fees or expenses charged against such Participant's Deferred Compensation.

Section 2.2 Annual Deferral Amount

The sum of (a) the Employee Deferral Amount; (b) Additional Employer Contributions pursuant to Section 4.3; and (c) any contribution of accumulated sick pay, accumulated vacation pay, or accumulated back pay under Section 3.3 contributed to the Plan during a taxable year.

Section 2.3 Applicable Law

Provisions of the North Carolina General Statutes, Code, Treasury Regulations, and IRS guidance that are applicable to the Plan.

Section 2.4 Beneficiary

The person or persons designated by the Participant, according to the procedures required by the Plan Administrator and/or Third-party Administrator, to receive any benefits payable under the Plan in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares (per capita) of the benefits payable at the Participant's death, unless otherwise provided by the Participant according to the procedures required by the Plan Administrator and/or Third-party Administrator. If no Beneficiary is designated, or if the designated Beneficiary predeceases the Participant, then the estate of the Participant shall be the Beneficiary. A Participant may change his or her Beneficiary at any time according to the procedures required by the Plan Administrator and/or Third-party Administrator, and such change shall become effective upon acceptance by the Plan Administrator or Third-party Administrator. An Alternate Payee may designate a Beneficiary according to the terms of this provision following the establishment of the Alternate Payee's Account.

Section 2.5 Board

The North Carolina Supplemental Retirement Board of Trustees.

Section 2.6 Catch-Up Dollar Limitation

“Catch-Up Dollar Limitation” means twice the Dollar Limitation.

Section 2.7 Code

The Internal Revenue Code of 1986, as it may be amended from time to time, or any successor thereto.

Section 2.8 Deferred Compensation

The total amount in a Participant’s Account, including Annual Deferral Amounts and any amounts credited to a Participant’s Account by reason of transfers under Section 6.1 and rollovers under Section 6.2.

Section 2.9 Dollar Limitation

The applicable dollar amount within the meaning of Code § 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code § 457(e)(15)(B). For Plan Year 2017, the Dollar Limitation is \$18,000.

Section 2.10 Employee

Any part-time or full-time employee of an Employer, including elected and appointed officials and re-employed retired employees. The term “Employee” as of any date shall not include any person who is not so recorded as such on the payroll records of the Employer as of such date, including any such person who is retroactively reclassified by a court of law, administrative agency, or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the first sentence of this definition would otherwise cover such person, the term “Employee” does not include any individual who performs services for the Employer as a leased employee or under any other non-employee classification.

Section 2.11 Employee Deferral Amount

The amount of Includible Compensation otherwise payable to the Participant that the Participant and the Participating Employer mutually agree to defer into the Plan pursuant to the provisions of this Plan document and Applicable Law, excluding any contribution of accumulated sick pay, accumulated vacation pay, or accumulated back pay under Section 3.3.

Section 2.12 Employer

The State of North Carolina, the North Carolina Community College System, or any county, municipality, political subdivision of the State of North Carolina, and any other entity whose Employees are or may become eligible to participate in the Plan pursuant to the North Carolina General Statutes and the Code.

Section 2.13 Enrollment Agreement

An agreement or agreements entered into between an Employee and the Plan Administrator or Third-party Administrator, including any amendments or modifications thereof, for the purpose of allowing an Employee to become a Participant in the Plan.

Section 2.14 Entry Date

The first day of each calendar month during the Plan Year.

Section 2.15 Includible Compensation

The information required to be reported under Code §§ 6041, 6051, and 6052 (*i.e.*, “Wages, Tips and other Compensation” on Form W-2), as modified by Code § 415(c)(3) and the Treasury Regulations and IRS guidance thereunder, and to include post-severance payments as defined by the final Treasury Regulations under Code § 415 and as may be deferred and treated as deemed compensation under Code § 415. Pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008, amounts paid as differential military pay are included in the Code definition of includible compensation. Includible Compensation does not include amounts treated as “deemed 125 compensation” because of an Employer’s requirement that its Employees participate in an Employer-sponsored health insurance program unless they state that they are provided health care coverage elsewhere.

Section 2.16 Maximum Deferral Amount

The maximum Annual Deferral Amount for a Participant during a Plan Year, equal to the amount in effect under Code § 457(b)(2) for the applicable Plan Year. The Maximum Deferral Amount is the lesser of the Dollar Limitation and the Percentage Limitation, as increased (if applicable) by the catch-up contributions in Section 4.2.

Section 2.17 Normal Limitation

As defined in Section 4.1, the maximum Annual Deferral Amount for a Participant during any taxable year, other than the catch-up limitations described in Section 4.2.

Section 2.18 Normal Retirement Age

(a) **General Rule.** The Normal Retirement Age is the date that the Participant would be eligible to retire with an unreduced service retirement from the defined benefit or money purchase retirement system in which the Participant currently participates (“Age of Unreduced Benefit”), but not later than age 70½. If a Participant does not participate in a defined benefit or money purchase retirement system, then the Participant’s Normal Retirement Age is 65. Once a Participant has to any extent utilized the catch-up limitation of Section 4.2(b), his or her Normal Retirement Age may not be changed.

(b) **Election by Participant.** Notwithstanding subsection (a), a Participant may designate his or her Normal Retirement Age, provided that such age is between 65 (or Age of Unreduced Benefit, if younger than 65) and 70½.

(c) **Qualified Police and Firefighters.** Notwithstanding subsection (a), a Participant that is a qualified police or firefighter (as defined in Code § 415(b)(2)(H)(ii)(I)) may designate his or her Normal Retirement Age, provided that such age is between 40 and 70½.

(d) **Limitation.** Notwithstanding subsection (a)-(c), the Normal Retirement Age may not be earlier than the earliest age or later than the latest age permitted under Code § 457(b) and Treasury Regulations.

Section 2.19 Participant

Any person who joined the Plan while an Employee, pursuant to the requirements of Article III.

Section 2.20 Participating Employer

An Employer that has elected, according to the procedures required by the Plan Administrator and/or Third-party Administrator, to permit its Employees to participate in the Plan.

Section 2.21 Percentage Limitation

The Percentage Limitation means 100 percent of the Participant's Includible Compensation for the taxable year.

Section 2.22 Plan

The North Carolina Public Employee Deferred Compensation Plan (NC 457 Plan), as set forth in N.C.G.S. § 143B-426.24 and this document.

Section 2.23 Plan Administrator

The North Carolina Department of State Treasurer and the Board.

Section 2.24 Plan Year

The twelve-month period from January 1 through December 31.

Section 2.25 Severance Event

Severance Event means the severance of a Participant's employment with a Participating Employer within the meaning of Code § 457(d)(1)(A)(ii) and any Treasury Regulations

thereunder.

Section 2.26 Third-party Administrator

The third-party administrator retained by the Plan Administrator to carry out the provisions of the Plan.

Section 2.27 Treasury Regulations

The temporary and final regulations published by the United States Department of the Treasury under the Code.

Section 2.28 Trust

The trust established by the trust agreement in the form adopted by the North Carolina General Assembly in the North Carolina General Statutes, as amended, for use in holding the assets of the Plan, providing the benefits of the Plan, and paying the expenses of the Plan that are not paid directly by the Adopting Employer.

Section 2.29 Trustee

The North Carolina Supplemental Retirement Board of Trustees, as trustee of the Trust.

Section 2.30 Valuation Date

Each business day that the New York Stock Exchange is open for regular (not “after-hours” or “extended hours”) trading or as otherwise determined according to procedures established by the Plan Administrator.

Article III Participation in the Plan

Section 3.1 Initial Participation

An Employee of a Participating Employer becomes a Participant by entering into an Enrollment Agreement prior to (a) the beginning of the calendar month in which the Enrollment Agreement is to become effective to defer compensation not yet earned; or (b) such other date as may be permitted under the Code. An Enrollment Agreement may be entered into effective as of any Entry Date.

Section 3.2 Amendment of Enrollment Agreement

A Participant may amend an Enrollment Agreement to change the amount of Includible Compensation not yet earned which is to be deferred or to change his or her investment preference, subject to policies and procedures of the Plan Administrator and Third-party Administrator and any restrictions of the Investment Options (as described in Section 7.3). Such amendment shall become effective as soon as administratively practicable but in no event sooner than (a) the beginning of the calendar month commencing after the date that the amendment is executed; or (b) such other date as may be permitted under the Code.

Section 3.3 Special Rule for Accumulated Sick, Vacation, and Back Pay

A Participant may enter into a separate Enrollment Agreement with respect to his or her accumulated sick, vacation, or back pay if such election is made consistent with the requirements set forth in Treasury Regulation § 1.457-4(d) and other Applicable Law. If a separate Enrollment Agreement is not completed before the beginning of the month in which the amounts would otherwise be paid or made available, no amounts will be deferred with respect to such pay.

Section 3.4 Content of Enrollment Agreement

An Enrollment Agreement shall fix the amount of the Employee Deferral Amount and shall specify a preference among the Investment Options (as defined in Section 7.3). In no event shall the amount of the Employee Deferral Amount under an Enrollment Agreement be more than the Maximum Deferral Amount. The Enrollment Agreement shall require the Participant to agree to be bound by the provisions of the Plan.

Section 3.5 Automatic Enrollment

(a) **General Rule.** If automatic enrollment is authorized by the North Carolina General Assembly, and except as provided in Section 3.5(b) below, if an Employee of a Participating Employer has not affirmatively elected either to make or not to defer Includible Compensation (either pre-tax or Roth Employee Deferral Amount), such Employee is deemed to have elected to become a Participant and have an Enrollment Agreement filed on his or her behalf. Such Participant will be deemed to have elected to defer a set percentage of Includible Compensation to the Plan on a pre-tax basis, in the percentage established by the North Carolina

General Assembly and as set forth in the procedures of the Plan Administrator and/or Third-party Administrator. An Employee will have a reasonable period of time, as established by the Plan Administrator, after receipt of any notice required by Applicable Law, to make an affirmative election regarding the Employee Deferral Amount before the deemed election to make such deferrals shall become effective.

(b) **Employee Election.** This Section 3.5 shall not apply, or shall cease to apply, to the extent a Participant or Employee of a Participating Employer files an Enrollment Agreement or elects to have no Employee Deferral Amount contributed to the Plan.

Section 3.6 Automatic Escalation

In accordance with procedures established by the Plan Administrator and/or Third-party Administrator, and if elected by a Participating Employer, a Participant may elect to automatically increase his or her rate of Includible Compensation deferred under the Plan (whether pre-tax or Roth Employee Deferral Amount) annually in one percentage point increments of Includible Compensation until the rate of the automatically increased deferral type (pre-tax or Roth Employee Deferral Amount) made to the Plan on the Participant's behalf equals eight percent (8%) of his or her Includible Compensation. If the Participant fails to specify in his or her election which deferral type is to be increased, the increase is limited to pre-tax Employee Deferral Amount. Each annual increase is effective as soon as administratively practicable on or after the first day of the month of each Plan Year elected by the Participant. If the Participant fails to elect an annual increase month, then the annual increase will begin as soon as administratively practicable on or after August 1 of each Plan Year.

Section 3.7 Default, Re-designated, and Eliminated Investment Options

(a) **Default Investment Option.** When an Investment Option (as defined in Section 7.3) has not been affirmatively selected by the Participant, contributions, including contributions made under the deemed election of Section 3.5(a), shall be invested in a default Investment Option determined by the Board (the "Default Investment Option").

(b) **Re-designated Investment Options.** The Board may from time to time request Participants, or a particular group of Participants, to re-designate their Investment Options for receipt of their contributions and/or investment of their Accounts. If a Participant fails to re-designate his or her Investment Option(s), then the Participant's contributions and/or Account may be invested in the Default Investment Option or other Investment Option determined by the Board; provided that, the Board provides notice to Participants of the Default Investment Option or other Investment Option in which Participants' contributions and/or Accounts will be invested.

(c) **Eliminated Investment Option.** If the Board eliminates a particular Investment Option from the Plan, it shall provide notice of such elimination to Participants, and any amounts remaining in, or scheduled to be contributed to, such Investment Option at the time of elimination shall be invested in the substitute Investment Option designated by the Board. The substitute Investment Option may be (but need not be) a replacement with investment characteristics similar

to the eliminated Investment Option.

(d) **Applicability.** For purposes of this Section 3.7, the term “Participants” includes Beneficiaries and Alternate Payees.

Article IV Deferrals and Limitations

Section 4.1 Normal Limitation

Except as provided in Section 4.2, the maximum Annual Deferral Amount for a Participant during any taxable year shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

Section 4.2 Catch-Up Limitation

(a) **Catch-up Contributions for Participants Age 50 and Over.** For a Participant who will attain the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 4.1, the Maximum Deferral Amount is increased above the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Code § 414(v)(2)(B), as adjusted for the cost-of-living in accordance with Code § 414(v)(2)(C) (\$6,000 for Plan Year 2017); or (2) the excess (if any) of the Participant's compensation (as defined in Code § 415(c)(3)) for the year over any other elective deferrals of the Participant for such year that are made without regard to this Section 4.2(a). An additional contribution made pursuant to this Section 4.2(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Code § 457(e)(15), or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. Notwithstanding the foregoing, for purposes of applying the limitations set forth in Code § 414(v)(2), all plans maintained by the Employer that are described in Code § 414(v)(6)(A)(iii) shall be treated as a single plan. This Section 4.2(a) shall not apply in any taxable year in which the contribution amount permitted by Section 4.2(b) exceeds the contribution amount permitted by this Section 4.2(a).

(b) **Last Three Years Catch-up Contribution.** As provided in Code § 457(b)(3) and the Treasury Regulations and IRS guidance thereunder, for each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the Maximum Deferral Amount shall be the lesser of (1) the Catch-up Dollar Limitation; or (2) the sum of (i) the Normal Limitation for the taxable year; and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Annual Deferral Amount for such prior taxable years. With respect to taxable years beginning on or before December 31, 2001, each such taxable year's Normal Limitation described in subsection (ii) of the preceding sentence shall be reduced pursuant to the provisions of Code § 457(c) applicable to such taxable year. A prior taxable year shall be taken into account under subsection (ii) of the first sentence only if (I) the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Code § 457(b) which is properly taken into account pursuant to Treasury Regulations under Code § 457); and (II) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation. This Section 4.2(b) shall not apply in any taxable year in which the contribution amount permitted by Section 4.2(a) exceeds the contribution amount permitted by this Section 4.2(b).

(c) **No Deferrals in Excess of Includible Compensation Limit.** Notwithstanding the

above, in no event can the Annual Deferral Amount be more than the Participant's Includible Compensation for the calendar year.

(d) **Roth elective deferrals.** Roth catch-up contributions are permitted and are treated as pre-tax catch-up contributions for all purposes under the Plan.

Section 4.3 Additional Employer Contributions

Notwithstanding any provision of the Plan to the contrary and to the extent permitted by Applicable Law, a Participating Employer may make discretionary matching or other contributions to a Participant's Account in addition to the amounts deferred by the Participant from his or her Includible Compensation ("Additional Employer Contributions"). Additional Employer Contributions shall be included in the Annual Deferral Amount of the Participant whose Account receives such contributions and shall be subject to the limitations set forth in this Article IV. A Participating Employer may make Additional Employer Contributions only for Participants who are current Employees of the Participating Employer. A Participating Employer may make matching Additional Employer Contributions for a Participant who dies or becomes disabled in qualified military service pursuant to and in a manner consistent with Code § 414(u)(9).

Section 4.4 Other Plans

Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan and any other eligible deferred compensation plan under Code § 457(b) shall not exceed the limits set forth in Code §§ 457(b) and 414(v).

Section 4.5 Correction of Excess Deferrals

Notwithstanding any provision of the Plan to the contrary, the Plan shall distribute any Annual Deferral Amount in excess of the limits described in this Article IV or Code §§ 457(b) and 414(v) in a manner consistent with Code § 457(b) and any Treasury Regulations and IRS guidance thereunder. In the case of a distribution of excess Annual Deferral Amount, an employee may designate the extent to which the excess amount is composed of pre-tax Deferred Compensation and Roth elective deferrals but only to the extent such types of deferrals were made for the Plan Year. If the employee does not designate which type of Deferred Compensation is to be distributed, the Plan will distribute pre-tax Deferred Compensation first.

Section 4.6 Qualified Military Service

(a) Notwithstanding any provision of this Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with Code § 414(u). Without regard to any limitations on contributions set forth in this Article IV, a Participant who has a period of service in the uniformed services of the United States beginning on or after August 1, 1990 and who returns to service with the Employer having applied to return while his or her reemployment rights were protected by law may elect to contribute to the Plan the Employee Deferral Amounts, including catch-up contributions in Section 4.2, that could have been contributed to the

Plan in accordance with the provisions of the Plan had he or she remained continuously employed by the Participating Employer throughout such period of absence (“make-up contributions”).

(b) Effective on and after June 1, 2006, a Participant who elects to make pre-tax Employee Deferral Amounts, including catch-up contributions under Section 4.2, and who would have been able to make Roth contributions during the period of applicable period of military leave had he or she been an active Participant in the Plan during such period, may further elect, pursuant to the provisions of Article XIV, whether those amounts shall be designated as pre-tax or Roth Employee Deferral Amounts.

(c) For purposes of determining the amount of make-up contributions a Participant may make, his or her Includible Compensation for the period of the absence shall be deemed to be the rate of the Participant’s Includible Compensation (up to the Maximum Deferral Amount) he or she would have received had he or she remained employed as an Employee for that period or, if such rate is not reasonably certain, on the basis of the Participant’s rate of annual Compensation during the 12-month period immediately prior to such period of absence (or if shorter, the period of employment immediately preceding such period).

(d) Any payment to the Plan described in this Section shall be made during the applicable repayment period. The repayment period shall equal three times the period of military leave, but not longer than five years and shall begin on the later of: (i) the Participant’s date of reemployment; or (ii) the date the Participating Employer notifies the Employee of his or her rights under this Section.

(e) With respect to a Participant who makes the election described in paragraph (a) above, the Participating Employer shall make Additional Employer Contributions under Section 4.3 on the make-up contributions in the amount in effect for the Plan Year to which such make-up contributions relate and as if he or she had remained continuously employed by the Participating Employer throughout the period of absence during which he or she was in the uniformed services of the United States.

(f) For the Employee Deferral Amounts, including catch-up contributions under Section 4.2, and Additional Employer Contributions covered by this Section, any limitations shall apply as provided in this Article IV with respect to the Plan Year or Years to which such contributions relate rather than the Plan Year in which payment is made.

(g) The earnings (or losses) on make-up contributions and Additional Employer Contributions covered by this Section shall be credited commencing with the date the make-up contributions and Additional Employer Contributions are made in accordance with the provisions of this Section.

Section 4.7 Eligibility to Contribute

A Participant’s contributions to the Plan are limited to deferrals of Includible Compensation and transfers and rollovers pursuant to Article VI.

Section 4.8 Mistaken Contributions

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

Article V Benefits

Section 5.1 Retirement Benefits and Election

(a) **Post-Severance Event Distribution.** Following a Severance Event, a Participant is entitled to the distribution of the Participant's Account, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 5.2. Subject to the following paragraphs of this Section 5.1, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date, but not later than April 1 of the year following the year of the Participant's Severance Event or attainment of age 70½, whichever is later. A Participant may elect to receive a distribution of the Participant's Account in accordance with one of the payment options described in Section 5.2. Notwithstanding the foregoing, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

(b) **In-Service Distributions after Age 70½.** A Participant may elect to receive in-service distributions of Deferred Compensation from his or her Account on or after the calendar year in which the Participant attains age 70½ to the extent permitted by Applicable Law.

(c) **Loans.** Notwithstanding the foregoing provisions of this Section 5.1, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount required to be distributed from a Participant's Account pursuant to the Plan Administrator's procedures in the event of a default of the Participant's loan.

Section 5.2 Payment Options

As provided in Sections 5.1, 5.4 and 5.5, a Participant or Beneficiary may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 5.3:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment or a partial lump-sum payment of at least \$500;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant or Beneficiary;

(d) Annual payments equal to the life-expectancy-based minimum distributions required under Code § 401(a)(9), including the incidental death benefit requirements of Code § 401(a)(9)(G);

(e) Payments equal to payments made by the issuer of a retirement annuity policy

acquired by the Employer, provided that such payments shall comply with the requirements of Code § 401(a)(9), including the incidental death benefit requirements of Code § 401(a)(9)(G);

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 5.1, provided that all payments commence (or are made) by the latest benefit commencement date under Section 5.1;

(g) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at different times, as elected by the Participant or Beneficiary, as applicable, provided that all payments commence (or are made) by the latest benefit commencement date required under the Plan; and

(h) Subject to Section 5.3, any payment option elected by the Participant or Beneficiary, as applicable, and agreed to by the Plan Administrator and Third-party Administrator.

If a Participant or Beneficiary fails to make a timely election of a payment option, benefits shall be paid (1) in a lump sum or as otherwise permitted by the Plan, as selected by the Plan Administrator; or (2) as required by Applicable Law.

Section 5.3 Limitation on Options

Notwithstanding any other provision of this Article V, all distributions from the Plan shall conform to the requirements of Code § 401(a)(9) and applicable Treasury Regulations and IRS guidance thereunder (collectively, the “Distribution Rules”), including the incidental death benefit provisions of Code § 401(a)(9)(G), and no payment option may be selected by a Participant or Beneficiary under Section 5.2, 5.4, or 5.5 unless it satisfies the Distribution Rules. The Distribution Rules shall override any Plan provision that is inconsistent with the Distribution Rules.

Section 5.4 Post-Retirement Death Benefits

If (1) the Participant has begun receiving benefits on an installment basis but dies before all installments have been paid; and (2) his or her surviving Beneficiary is a sole person, then such installments shall continue to be paid to the Beneficiary, unless the Beneficiary elects otherwise. Otherwise, if the Participant has begun receiving benefits but dies before the entire Account has been paid, then the remaining amount of the Participant’s Account shall be paid the Beneficiary in a lump sum. Any different payment option elected by a Beneficiary under this Section 5.4 must provide for payments at a rate that is at least as rapid under the payment option under which benefits were paid to the Participant. In no event shall the Plan Administrator be responsible for paying any amount to the Beneficiary in the name of the Participant before the Plan Administrator receives proof of death of the Participant. If the Beneficiary begins receiving payments pursuant to this section but dies prior to a full distribution of the Participant’s account, the remaining amount of the Participant’s account shall be paid in a lump sum to the Beneficiary’s

estate.

Section 5.5 Pre-Retirement Death Benefits

If the Participant dies before he or she has begun to receive the benefits provided by Section 5.1, the value of the Participant's Account shall be payable to the Beneficiary according to the provisions of Sections 5.2 and 5.3. Notwithstanding the foregoing, in the event that the Beneficiary is other than a sole person (including a trust that qualifies as a sole "designated beneficiary" under Treasury Regulation § 1.401(a)(9)), payment shall be made in a lump sum. The benefit commencement date under this Section 5.5 shall not be later than the latest of (i) December 31 of the year following the year of the Participant's death; (ii) for non-installment distributions, the December 31 of the fifth year following the year of the Participant's death; or (iii) if the Beneficiary is the Participant's spouse, December 31 of the year in which the Participant would have attained age 70½. If the Beneficiary begins receiving payments pursuant to this section but dies prior to a full distribution of the Participant's account, the remaining amount of the Participant's account shall be paid in a lump sum to the Beneficiary's estate.

Section 5.6 Unforeseeable Emergencies

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Third-party Administrator (or Plan Administrator, if no Third-party Administrator), the Participant shall be paid only such amount as the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance, or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden unexpected illness or accident of the Participant, his or her spouse, or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant, loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, *e.g.*, as a result of a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. Imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an unforeseeable emergency. However, the need to send a Participant's child to college or to purchase a new home shall not, of itself, be considered an unforeseeable emergency. The determination as to whether such an unforeseeable emergency exists shall be

based on the merits of each individual case. Unforeseeable emergency distributions may be made from pre-tax or Roth Deferred Compensation (including rollover contributions).

(c) IRS Relief Events

(1) This Section 5.6(c) is intended to implement the relief granted to Relief Participants pursuant to the IRS Announcements for the Relief Events as described in Section 5.6(c)(6).

(2) To the extent that an unforeseeable emergency withdrawal described in Section 5.6(a) is elected by a Relief Participant, as defined below, because of a unforeseeable emergency resulting from the applicable Relief Event (a “Relief Withdrawal”), the unforeseeable emergency withdrawal provisions of the Plan set forth in Sections 5.6(a) and (b) are modified to adopt the liberalized unforeseeable emergency withdrawal standards and procedural requirements set forth in the applicable IRS Announcement. For purposes of clarity, a Relief Participant electing a Relief Withdrawal shall not be required to take a loan prior to taking a Relief Withdrawal and shall not be restricted in making contributions based on a Relief Withdrawal. Also, for purposes of clarity, a Relief Withdrawal shall otherwise continue to be subject to the requirements of Sections 5.6(a) and (b). A Relief Withdrawal will be treated as an unforeseeable emergency withdrawal for all purposes under the Code except as otherwise provided herein or by law.

(3) A “Relief Participant” is a Participant whose:

(A) Principal residence on the Applicable Date was located in one of the counties that have been identified for individual assistance by the Federal Emergency Management Agency (“FEMA”) because of the devastation caused by the applicable Relief Event (“Covered Areas”);

(B) Place of employment was located in one of the Covered Areas on the Applicable Date; or

(C) Lineal ascendant or descendant, dependent or spouse had a principal residence or place of employment in one of the Covered Areas on the Applicable Date.

(4) The Third-party Administrator (or Plan Administrator, if no Third-party Administrator) will (i) make a good faith effort to comply with the Plan's procedural requirements for unforeseeable emergency withdrawals made by Relief Participants; (ii) make a reasonable attempt to assemble any missing documentation as soon as practicable; and (iii) otherwise act consistent with the applicable IRS Announcement.

(5) This Section 5.6 applies to unforeseeable emergency distributions made to Relief Participants on or after the Applicable Date and no later than the Ending Date.

(6) Relief Events and Definitions.

- (A) Hurricane Matthew
Relief Event: Hurricane Matthew
IRS Announcement: Internal Revenue Service Announcement 2016-39
Applicable Date: October 4, 2016 (or October 3, 2016 for Florida or the incident date as specified by FEMA, as applicable)
Ending Date: March 15, 2017
- (B) Hurricane Harvey
Relief Event: Hurricane Harvey
IRS Announcement: Internal Revenue Service Announcement 2017-11
Applicable Date: August 23, 2017 (or the incident date as specified by FEMA)
Ending Date: January 31, 2018
- (C) Hurricane Irma
Relief Event: Hurricane Irma
IRS Announcement: Internal Revenue Service Announcement 2017-13
Applicable Date: September 4, 2017 (or the incident date as specified by FEMA)
Ending Date: January 31, 2018

Section 5.7 Voluntary and Involuntary Distribution of De Minimis Accounts

Notwithstanding the foregoing provisions of this Article, if:

- (a) The value of a Participant's Account, does not exceed the lesser of \$5,000 or the dollar limit under Code § 411(a)(11)(A);
- (b) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution; and
- (c) There has been no prior distribution under the Plan to the Participant pursuant to this Section 5.7,

then the Participant may elect to receive or the Plan Administrator may involuntarily distribute the Participant's entire Account. Such distribution shall be made in a lump sum.

Section 5.8 HEART Act Distributions

A distribution may be made in accordance with the Heroes Earnings Assistance and Relief Tax Act of 2008, Code § 414(u)(12)(B), IRS Notice 2010-15, and any other applicable IRS

guidance. A Participant is not permitted to make an elective deferral of Includible Compensation for a period of six months following a distribution pursuant to the preceding sentence.

Section 5.9 Mandatory Rollovers

In the event of an involuntary distribution to a Participant greater than \$1,000 in accordance with Section 5.2 or Section 5.7 and subject to the mandatory rollover rules in Code § 401(a)(31), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan (as defined in Section 6.1(c)(2)) specified by the participant in a Direct Rollover (as defined in Section 6.1(c)(4)) or to receive the distribution directly in accordance with the provisions of the Plan, then the Plan Administrator or Third-party Administrator will pay the distribution in a “direct rollover” (as defined in Section 6.1(c)(4)) to an individual retirement plan designated by the Plan Administrator. For purposes of this Section 5.9, a Participant’s Roth elective deferrals and/or Roth rollover contributions, as separately accounted for under Section 14.2, shall be treated as held under a separate plan from a Participant’s other contributions to the extent required by the Code and applicable Treasury Regulations.

Section 5.10 Pre-Tax Payment of Health Care Expenses of Eligible Retired Public Safety Officers

A Participant who is an “eligible retired public safety officer” (as defined in Code § 402(l)(4)(B)) may elect to have up to \$3,000 per taxable year paid by the Plan to an insurance contract provider for “qualified health insurance premiums” (as defined in Code § 402(l)(4)(D)) for the Participant, his or her spouse, or his or her dependents. This provision shall be interpreted consistent with Code §§ 402(l) and 457(a)(3), applicable Treasury Regulations thereunder, IRS Notices 2007-7 and 2007-99, and other applicable guidance.

Section 5.11 2009 RMD Suspension

(a) Notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in a manner consistent with Code section 401(a)(9)(H), Notice IRS 2009-82 and any other applicable guidance.

(b) Participants and Beneficiaries who have a required beginning date under Code section 401(a)(9) prior to April 1, 2010 shall continue receiving required minimum distributions as required by Code section 401(a)(9) prior to amendment by Code section 401(a)(9)(H) unless they affirmatively elect to suspend such distributions for the 2009 calendar year in a manner consistent with procedures established by the Plan Administrator and/or Third-party Administrator.

(c) Participants and Beneficiaries who have a required beginning date under Code section 401(a)(9) of April 1, 2010 shall not receive a required minimum distributions for the 2009 calendar year as required by Code section 401(a)(9) prior to amendment by Code section 401(a)(9)(H) unless they affirmatively elect to begin such distributions in a manner consistent with procedures established by the Plan Administrator and/or Third-party Administrator.

Article VI Transfers, Rollovers and Permissive Service Credit

Section 6.1 Transfers

(a) **Incoming Transfers.** Subject to the procedures established by the Plan Administrator and/or Third-party Administrator, the Plan may accept the transfer of a Participant's account from another governmental Code § 457(b) plan according to Code § 457(e)(10) and Treasury Regulation § 1.457-10. The Plan Administrator and/or Third-party Administrator may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Code § 457(e)(10) and Treasury Regulation § 1.457-10, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code § 457(b), and to assure that transfers are provided for under such plan. The Plan Administrator may refuse to accept a transfer in the form of assets other than cash. Any such transferred amount shall not be treated as a deferral subject to the limitations of Article IV.

(b) **Outgoing Transfers.** Subject to the procedures established by the Plan Administrator and/or Third-party Administrator, an Account may be transferred to another governmental Code § 457(b) plan according to Code § 457(e)(10) and Treasury Regulation § 1.457-10. No transfer shall occur unless the transferee plan signs such agreements as are necessary to assure that the Plan Administrator's and Participating Employer's liability to pay benefits to the Participant has been discharged and assumed by the transferee plan. The Plan Administrator and/or Third-party Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code § 457(e)(10) and Treasury Regulation § 1.457-10, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code § 457(b), and to assure that transfers are provided for under such plan.

Section 6.2 Eligible Rollover Distributions

(a) **Incoming Rollovers.** An Eligible Rollover Distribution may be accepted by the Plan from an Eligible Retirement Plan maintained by another employer and credited to a Participant's Account under the Plan. The Plan Administrator and/or Third-party Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code § 402 and to confirm that such plan is an Eligible Retirement Plan within the meaning of Code § 402(c)(8)(B). The Plan shall separately account for Eligible Rollover Distributions from any Eligible Retirement Plan that is not an eligible deferred compensation plan described in Code § 457(b) maintained by an eligible governmental employer described in Code § 457(e)(1)(A). Any incoming rollovers shall not be treated as a deferral subject to the limitations of Article IV. Only Participants are permitted to roll an Eligible Rollover Distribution from an Eligible Retirement Plan into the Plan.

(b) **Outgoing Rollovers.** A Distributee may elect, at the time and in the manner prescribed by the Plan Administrator and/or Third-party Administrator, to have all or part of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(c) **Definitions.**

(1) **Eligible Rollover Distribution.** An “Eligible Rollover Distribution” is any distribution of all or any portion of the balance to the credit of the Distributee, whether such distribution is from a pre-tax or a Roth account, except that an eligible rollover distribution does not include (A) 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; (B) any distribution to the extent such distribution is required minimum distribution under Code §§ 401(a)(9) and 457(d)(2); (C) any distribution for an unforeseeable emergency pursuant to Section 5.6 of this Plan document; and (D) any distribution that is excluded pursuant to Treasury Regulation § 1-402(c)-2 or other Applicable Law.

(2) **Eligible Retirement Plan.** An “Eligible Retirement Plan” is a plan that accepts the Distributee’s Eligible Rollover Distribution (in the case of an outgoing rollover) and that is (A) an individual retirement account described in Code § 408(a); (B) an individual retirement annuity described in Code § 408(b); (C) an annuity plan or contract described in Code §§ 403(a) and 403(b), respectively; (D) a qualified trust described in Code § 401(a); or (E) an eligible deferred compensation plan described in Code § 457(b) that is maintained by an eligible governmental employer described in Code § 457(e)(1)(A) and that agrees to account separately for amounts rolled into such plan from other Eligible Retirement Plans.

(3) **Distributee.** A “Distributee” is (A) a Participant or a spousal Beneficiary who is otherwise permitted to take an Eligible Rollover Distribution pursuant to the provisions of this Plan document; or (B) a Participant’s spouse or former spouse who is an alternate payee pursuant to the provisions of this Plan document and a qualified domestic relations order, as defined in Code § 414(p).

(4) **Direct Rollover.** A direct rollover is a payment by the Plan to an Eligible Retirement Plan or by an Eligible Retirement Plan to the Plan.

(d) **Direct Rollover to Roth IRA.** Notwithstanding the foregoing, amounts may be directly rolled over to a Roth IRA if such rollover complies with Code section 408A(c)(3)(B) and any applicable Treasury Regulations thereunder.

Section 6.3 Non-Spousal Beneficiary Rollovers

Notwithstanding Section 6.2 of this Plan document, a Participant’s “designated beneficiary” (as defined in Code § 401(a)(9)(E)) may elect a direct trustee-to-trustee transfer of any portion of a distribution to an individual retirement account described in Code § 408(a) or an individual retirement annuity described in Code § 408(b) (collectively, an “IRA” for purposes of this section), in which case (a) such Beneficiary shall be treated as a Distributee; (b) the distribution shall be treated as an Eligible Rollover Distribution; and (c) the IRA shall be treated as an inherited IRA within the meaning of Code § 408(d)(3)(C). This section applies on and after December 19, 2008.

Section 6.4 Transfers and Permissive Service Credit

To the extent permitted by Code § 457(e)(17) and other Applicable Law, a Participant may elect to have all or a portion of the pre-tax Participant's Account transferred directly to the trustee of a defined benefit governmental plan (as defined in Code § 414(d)) if such transfer is (1) for the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under such plan; or (2) a repayment to which Code § 415 does not apply by reason of subsection (k)(3) thereof.

Section 6.5 Distribution of Certain Previously Rolled Over Amounts

(a) **Availability for Distribution.** Amounts previously rolled over to the Plan shall be distributable in accordance with procedures adopted by the Plan Administrator and/or Third-party Administrator; provided, however, that distributions under this Section shall only be permitted to the extent that each distribution satisfies the requirements of the Code and any Treasury Regulations and IRS guidance thereunder.

(b) **Application of Code Section 72(t).** For purposes of Code section 72(t), a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Code section 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Code section 4974(c)).

Article VII Trust and Investment of Accounts

Section 7.1 Investment of Deferred Compensation

The assets of the Plan shall be held by the Board in its separate capacity as trustee of the Trust for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 8.5. The Trustee may keep such amounts of cash as it, in its sole discretion, shall deem necessary or advisable as part of the Plan's Investment Options in Section 7.3, all within the limitations specified in the Trust Agreement. Dividends, interest, and other distributions received on the assets held by the Trustee in respect to each of the Investment Options shall be reinvested in the respective Investment Option. Deferred Compensation shall be transferred to the Trust as soon as administratively practicable but in no event later than 15 business days following the month in which the Deferred Compensation would otherwise have been paid to the Participant.

Section 7.2 Payment of Benefits

The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, Third-party Administrator, or by any custodian or other person so authorized by the Plan Administrator to make such disbursement.

Section 7.3 Investment Options

(a) In accordance with uniform and nondiscriminatory policies and procures established by the Plan Administrator and the Third-party Administrator (including without limitation notice and market timing), a Participant may (1) direct his or her Account to be invested in one or more investment options available under the Plan ("Investment Options"); (2) change his or her Investment Options for future Annual Deferral Amounts; and (3) reallocate or transfer all or a portion of his or her Account among the Investment Options. The investment of Deferred Compensation and the reallocation/transfer among Investment Options must be in multiples of one percent, subject to (1) any minimum percentage requirement established by the Investment Option; and (2) such other percentage as the Plan Administrator may permit. Elections and changes of future Annual Deferral Amounts by Participants shall be effective as soon as administratively practicable but not sooner than the first day of the month following the election or change.

(b) Each Participant is solely responsible for the selection of his or her Investment Options. Neither the Plan Administrator, Third-party Administrator, Participating Employer, Trustee, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any administrative delay in implementing such directions.

(c) Notwithstanding anything in this Article to the contrary, any amounts invested in a guaranteed investment contract, collective investment trust, mutual fund, limited partnership/limited liability corporation, or any other Investment Option covered in whole or in part by a prospectus, trust agreement, limited partnership agreement, or other document of similar

import or effect (collectively, “Investment Document”) shall be subject to any and all terms of such Investment Document, including without limitation any restrictions placed on withdrawals or the exercise of any rights otherwise granted to a Participant under any other provisions of this Plan with respect to such amounts.

(d) The Board shall select the Investment Options in the Plan and may, from time to time, add eliminate, or replace one or more Investment Options.

Section 7.4 Valuation of Accounts

Each Participant’s Account shall be adjusted to reflect any income, gains, losses, or increases or decreases in market value attributable to the Employer’s investment of the Participant’s Deferred Compensation, and shall also be adjusted to reflect any distributions to the Participant and any fees or expenses charged against such Participant’s Deferred Compensation.

As of each Valuation Date, a Participant’s Account shall be valued by adjusting the value of Account to reflect the fair market value of the investment option(s) credited to the Participant’s Account. Each Participant’s gains and losses shall be allocated only to his or her Account and shall not be allocated to the Account of any other Participant.

Section 7.5 Crediting of Accounts

A Participant’s Account shall reflect the amount and value of the investments or other property obtained through the investment of the Participant’s Deferred Compensation pursuant to Sections 7.3 and 7.4. In the event that the Plan receives an amount attributable to a particular past period of investment in a particular Investment Option, the Plan Administrator may allocate such amount among current and/or former Participants in the manner that it determines to be fair and equitable, taking into account the expense of allocating a distribution to former Participants. Thus, after considering facts and circumstances relating to the received amount, the Plan Administrator may elect to (i) credit such amount to all current Participants in proportion to the size of their account or as a per capita amount; (ii) credit such amount to the present and former Participants who actually invested in the Investment Option generating the payment; or (iii) credit such amount to the expenses of plan administration.

Section 7.6 Limitation on Liability

In no event shall the Employer’s liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant’s Account. Neither the Participating Employers, Plan Administrator, Trustee, Third-party Administrator, nor any other party shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan. The Plan Administrator shall not be liable for amounts of compensation deferred by Participants or for other amounts payable under the Plan.

Section 7.7 Applicability

For purposes of this Article VII, the term “Participants” includes Beneficiaries and Alternate Payees.

Article VIII Administration

Section 8.1 Plan Administrator

The Plan shall be administered by the Plan Administrator pursuant to the provisions of this Plan document and, notwithstanding any provision of this Plan document to the contrary, the applicable provisions of the North Carolina General Statutes, Code, Treasury Regulations, and IRS guidance.

Section 8.2 Power and Authority

Subject to the provisions of this Plan Document and Applicable Law, the Plan Administrator has the authority and discretion to establish and modify rules for the administration of the Plan and the transaction of its business. The Plan Administrator shall have the sole and complete discretionary authority to construe and interpret the Plan, to make factual determinations, and to determine all questions arising in the administration, interpretation, and application of the Plan. Such discretionary authority includes without limitation the power to determine (a) an individual's eligibility for Plan participation; (b) the right to, and amount, form, and timing of, any benefit payable under the Plan; (c) the date on which any individual ceases to be a Participant or Beneficiary; (d) the existence of a domestic relations order and whether it can be administered; and (e) whether an alternate payee in a domestic relations order qualifies for benefits under the Plan. The Plan Administrator's discretionary authority also includes the power to make such adjustments that it deems necessary or desirable to correct any mathematical or accounting errors. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as it shall deem necessary to carry out the purposes of the Plan. The determination of the Plan Administrator as to the interpretation of the Plan or any disputed question shall be binding, conclusive, and final as to all parties to the extent permitted by Applicable Law.

Section 8.3 Standard of Care

The Plan Administrator and the Third-party Administrator shall use that degree of care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in his or her conduct of a similar situation, and the Plan Administrator and Third-party Administrator shall be presumed to have exercised such degree of care, skill, prudence, and diligence, unless the contrary be proven by affirmative evidence.

Section 8.4 Delegation of Duties

Subject to any Applicable Law, the Plan Administrator may, in its discretion:

(a) Delegate any or all of its powers and duties hereunder to the Third-party Administrator, or other third party, and pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid; and

(b) Appoint one or more investment managers to manage all or part of the assets of the Plan,

including without limitation the power to acquire and dispose of such assets. An appointed investment manager shall have sole responsibility for the management of the assets allocated to such manager.

Section 8.5 Expenses

(a) Administrative expenses of the Plan shall be paid from Accounts unless the Plan Administrator or Employer pays such expenses directly or the expenses are paid from some other legally permissible source.

(b) Administrative expenses shall include all reasonable expenses incurred in the administration of the Plan, including without limitation (1) all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan or in respect to the Trust or the income thereof; and (2) all commissions on acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust. In addition, reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder or the Trustee in performance of its duties under the Trust Agreement (including without limitation to fees for legal, accounting, investment, custodial, recordkeeping, and communications services) shall also be considered administrative expenses.

(c) Expenses paid from Accounts under this Section 8.5 shall be paid from the Accounts to which such expenses are allocable.

Article IX Loans to Participants

Section 9.1 Availability of Loans to Participants

(a) A Participant may apply for a loan from the Plan, subject to the limitations and other provisions of this Article and Applicable. Loans shall be made available to all Participants on a reasonably equivalent basis.

(b) The Plan Administrator shall establish written policies and procedures governing loans (“Loan Policy”); provided that (I) such Loan Policy is not inconsistent with the provisions of this Article IX and applicable provisions of the Code, Treasury Regulations, and IRS guidance; and (II) loans are made available to all Participants on a reasonably equivalent basis. The Loan Policy (1) shall be posted on the Plan Administrator’s website or otherwise made available to Participants; and (2) is hereby incorporated into the Plan by reference. The Plan Administrator is authorized to make such revisions to the Loan Policy as it deems necessary.

(c) Loans are limited only to Participants who are eligible to defer Includible Compensation into the Plan.

Section 9.2 Terms and Conditions of Loans to Participants

Any loan by the Plan to a Participant under Section 9.1 of the Plan shall satisfy the following requirements:

(a) **Interest Rate.** Loans from shall bear an interest rate reasonably determined by the Plan Administrator.

(b) **Promissory Note.** Each loan shall be evidenced by a promissory note payable to the Plan.

(c) **Security Interest.** The amount of the loan shall be secured by transferring the amount of the loan to a special “Loan Fund” for the Participant under the Plan. The Loan Fund consists solely of the amount of the Participant’s Accounts transferred to the Loan Fund and is invested solely in the loan made to the Participant. The amount of the Participant’s Account transferred to the Loan Fund shall be pledged as security for the loan. No such amount shall be available for withdrawal by the Participant under the Plan. Payments of principal on the loan shall reduce the amount held in the Participant’s Loan Fund. Payments of principal and interest shall be credited to the Participant’s Account and invested in the Investment Options (as defined in Section 7.3) in accordance with the Participant’s then effective investment election. If a loan is not repaid in accordance with the terms contained in the promissory note and a default occurs, the Plan may execute upon its security interest in the Participant’s Accounts under the Plan to satisfy the debt; however, the Plan shall not levy against any portion of the Loan Fund attributable to amounts held in the Participant’s Accounts until such time as a distribution of the Participant’s Accounts could otherwise be made under the Plan.

(d) **Number of Loans.** Only one loan from the Plan may be outstanding at any given time. For purposes of this limit, an “outstanding loan” includes a loan for which a “deemed distribution” has occurred, following the Participant’s default and pursuant to Treas. Reg. §1.72(p)-1, unless the Participant repays the outstanding balance of the defaulted loan (including accrued interest through the date of repayment).

(e) **Repayment.** Payments of principal and interest shall be made (1) by payroll deductions or in a manner agreed to by the Participant and the Plan Administrator or Third-party Administrator; and (2) in substantially level amounts, but no less frequently than quarterly, in an amount sufficient to amortize the loan over the repayment period

(f) **Amount of Loan.** At the time the loan is made, the principal amount of the loan from the Plan plus the outstanding balance (principal plus accrued interest) due on any outstanding loan to the Participant from the Supplemental Retirement Income Plan of North Carolina shall not exceed the limits in Code 72(p)(2)(A).

(g) **Application for Loan.** An application for a loan by a Participant shall be made with prior notice to the Plan Administrator or Third-party Administrator, whose action in approving or disapproving the application shall be final.

(h) **Length of Loan.**

(1) **In General.** The period of repayment for any loan shall be arrived at by mutual agreement between the Plan Administrator and the Participant, not to exceed five years; provided however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five-year limit shall not apply, and the term of the loan shall not exceed a reasonable period determined by the Plan Administrator.

(2) **Leave of Absence.** If a Participant with an outstanding loan takes an authorized leave of absence without pay or reduced pay that is less than the required loan payments, for reasons other than to enter the uniformed services of the United States, loan payments may be suspended at the request of the Participant for a period of up to 12 months or until the end of the term of the loan, if earlier. Upon a Participant's reemployment from the leave of absence, the Participant shall resume payments either in the same amount as before the leave with the full balance due upon the expiration of the repayment period or by re-amortizing the loan in substantially level installments over the remaining term of the loan.

(3) **Military Leave of Absence.** If a Participant takes a leave of absence to enter the uniformed services of the United States, loan repayments shall be suspended during the period of leave. Upon the Participant's reemployment from the uniformed services, the period of repayment shall be extended by the number of months of the period of service in the uniformed services or, if greater, the number of months that would remain if the original loan term were five years plus the number of months in the period of absence; provided, however, if the Participant incurs a termination of employment and requests a distribution pursuant to this Plan document, the

loan shall be canceled, and the outstanding loan balance shall be distributed pursuant to this Plan document. If a Participant enters the uniformed services of the United States, the interest rate applicable to the unpaid loan balance during the period of leave shall be reduced to 6%, in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940; provided that, the Participant provides the Plan Administrator with written notice and a copy of his or her military orders no later than 180 days after the date that the Participant completes such military service.

(4) Upon a Participant's reemployment from the leave of absence, the Participant shall resume payments either in the same amount as before the leave with the full balance due upon the expiration of the repayment period or by re-amortizing the loan in substantially level installments over the remaining term of the loan.

(i) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

Article X Non-assignability

Section 10.1 In General

Except as provided in Article IX or this Article X or as required by Applicable Law, no benefit or right to receive payment under the Plan shall be commuted, sold, assigned, pledged, transferred, or otherwise conveyed or encumbered, and any attempt to do so is void. Such benefits and rights are expressly declared to be non-assignable and non-transferable.

Section 10.2 Domestic Relations Orders

(a) An alternate payee as defined by Code § 414(p)(8) (“Alternate Payee”) may receive part or all of a Participant’s account pursuant to a domestic relations order as defined by Code § 414(p)(1)(A)(i) (“Domestic Relations Order”). The Plan Administrator or Third-party Administrator may establish a separate account for an Alternate Payee for the purpose of administering a Domestic Relations Order.

(b) Any payment made pursuant to a Domestic Relations Order shall be reduced by any required income tax withholding.

(c) The Plan Administrator, in its sole discretion, shall determine the validity of a proposed Domestic Relations Order and whether a Domestic Relations Order can be administered. The Plan Administrator’s determinations shall be conclusive and shall be afforded the maximum deference permitted by Applicable Law.

(d) An Alternate Payee shall receive his or her amount of the Participant’s Account as soon as administratively feasible or as otherwise provided in the Domestic Relations Order. Sections 5.2 and 5.3 apply to distributions to an Alternate Payee as if the Alternate Payee were the Participant; provided that, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

(e) Any expense incurred by the Plan Administrator may be charged against the Participant’s Account or as provided in a Domestic Relations Order, charged against the Accounts of the Participant and the alternate payee. In the course of reviewing, responding to, or administering a Domestic Relations Order (or a proposed Domestic Relations Order or similar proceeding or document), the Plan Administrator and Third-party Administrator shall be authorized to disclose information relating to the Participant’s Account to the Participant’s spouse, former spouse, dependent, or child (including the legal representatives of the spouse, former spouse, or child) or to a court. Following receipt of a (i) Domestic Relations Order; (ii) draft or purported Domestic Relations Order; (iii) or similar document, the Plan Administrator or Third-party Administrator may suspend distributions from an Account pending review of any documents and, if applicable, receipt and administration of a Domestic Relations Order.

(f) The Plan Administrator’s and Participating Employer’s liability to pay benefits to a

Participant or Beneficiary shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee pursuant to a Domestic Relations Order.

Section 10.3 Missing Participants and Beneficiaries

The Plan Administrator shall make reasonably diligent efforts to determine the identity and address of a Participant or a Beneficiary entitled to benefits under the Plan. If the Plan Administrator is unable to locate a Participant or a Beneficiary entitled to benefits under the Plan, or if there has been no claim made for such benefits, the Plan Administrator and/or Third-party Administrator shall manage the Account according to Applicable Law and the procedures established by the Plan Administrator, which may include (a) rolling funds into an individual retirement account; (b) designating funds as unclaimed property (escheat process); and/or (c) retaining funds in the Trust in one or more Investment Options.

Article XI Relationship to Other Plans and Employment Agreements

Section 11.1 Non-Exclusivity of Plan

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system.

Section 11.2 No Guarantee of Employment

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and any Employer or to give any Participant the right to be retained in the employ of any Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and his or her Employer.

Article XII Amendment or Termination of Plan

Section 12.1 Amendment

The North Carolina General Assembly or the Board may amend this Plan (including without limitation the methods or timing of distributions) at any time, including retroactively if deemed necessary or appropriate. However, no amendment shall make it possible for any part of the funds of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the Plan. No amendment shall be made which has the effect of decreasing the balance of the Account of any Participant or of reducing the nonforfeitable percentage of the balance of the Account of a Participant below the nonforfeitable percentage computed under the Plan as in effect on the date on which the amendment is adopted or, if later, the date on which the amendment becomes effective. Notwithstanding any provision of the Plan to the contrary, no amendment of this Plan shall become effective unless it complies with any Applicable Law.

Section 12.2 Termination

The North Carolina General Assembly may terminate the Plan or completely discontinue contributions under the Plan for any reason at any time. In case of termination or partial termination of the Plan, or complete discontinuance of contributions to the Plan, the rights of affected Participants to their Accounts under the Plan as of the date of the termination or discontinuance shall be nonforfeitable. In accordance with Applicable Law, the total amount in each Account shall be (a) distributed to the Participant in a lump sum payment as soon as administratively practicable; or (b) transferred to another governmental Code § 457(b) plan as provided in Section 6.1.

Section 12.3 Protection of Participant Benefits

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Code § 457(b) or to comply with other Applicable Law, no amendment or termination of the Plan, or the ceasing of an employer to be a Participating Employer, shall divest any Participant of any rights with respect to the amount of his or her benefits under the Plan determined immediately before the date of the amendment, termination, or cessation of participation.

Section 12.4 Applicability

For purposes of this Article XII, the term “Participants” includes Beneficiaries and Alternate Payees.

Article XIII Miscellaneous

Section 13.1 Application of State Law

This Plan document and the Trust shall be construed under the laws of the State of North Carolina.

Section 13.2 Gender Neutrality

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

Section 13.3 Military Service

Notwithstanding any provision of this Plan document to the contrary, the Plan shall be administered in compliance with the requirements of Code §§ 414(u) and 401(a)(37) and the Treasury Regulations and other IRS guidance thereunder.

Section 13.4 Electronic Writings

Notwithstanding any provision of the Plan to the contrary, commonly accepted means of electronic communication approved of by both the Plan Administrator and Third-party Administrator (if any) may be used for any activity under this Plan for which a writing is permitted or required to the extent that such use complies with Applicable Law.

Section 13.5 Titles and Subheadings

The titles and subheadings used in this document are for reference purposes only.

Section 13.6 Compliance with Code § 457(b)

Notwithstanding any provision of this Plan document to the contrary, the Plan shall be interpreted and administered in a manner consistent with Code § 457(b) and any applicable Treasury Regulations and IRS guidance thereunder (collectively, the “457 Rules”). In the event of a conflict between the terms of this Plan document and the 457 Rules, the Plan shall comply with the 457 Rules, notwithstanding any inconsistent Plan terms.

Article XIV Roth Elective Deferrals and Conversions

Section 14.1 General Application

(a) The Plan will accept Roth elective deferrals made on behalf of Participants and Roth rollover contributions. A Participant's Roth elective deferrals and Roth rollover contributions will each be allocated to a separate account maintained for such deferrals as described in Section 14.2.

(b) Unless specifically stated otherwise, Roth elective deferrals and Roth rollover contributions will be treated as Deferred Compensation for all purposes under the Plan, including eligibility for matching contributions; provided, however, that a Participant, Alternate Payee, or Beneficiary may elect, in the manner prescribed by the Plan Administrator, to override the default rules governing where in a Plan's distribution hierarchy Roth elective deferral contributions and/or Roth rollover contributions will fall.

Section 14.2 Separate Accounting

(a) Contributions and withdrawals of Roth elective deferrals and/or Roth rollover contributions will be credited and debited to the Roth elective deferral and/or Roth rollover contributions account maintained for each Participant.

(b) The Plan will maintain a record of the amount of Roth elective deferrals in each Participant's Roth elective deferral account. The Plan will maintain a record of the amount of Roth elective rollover contributions in each Participant's Roth rollover contributions account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth elective deferral account, Roth rollover contributions account, and the remainder of the Participant's Account under the Plan to the extent required by Code section 402A and the Treasury Regulations thereunder.

(d) Except as provided in Section 14.5 below, no contributions other than Roth elective deferrals and properly attributable earnings will be credited to each Participant's Roth elective deferral account and no contributions other than Roth rollover contributions and properly attributable earnings will be credited to each Participant's Roth rollover contributions account.

Section 14.3 Direct Rollovers

(a) Notwithstanding Section 6.2, a direct rollover of a distribution from a Roth elective deferral account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Code § 402A(e)(1) or to a Roth IRA described in Code § 408A, and only to the extent the rollover is permitted under the rules of Code § 402(c).

(b) Notwithstanding Section 6.2 and except as provided in Section 14.5 below, the Plan will accept a rollover contribution to a Roth rollover contribution account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code §

402A(e)(1) and only to the extent the rollover is permitted under the rules of Code § 402(c).

Section 14.4 In-plan Roth Rollovers

Notwithstanding anything in the Plan to the contrary, effective January 1, 2011, vested pre-tax amounts in a Participant's Account that are distributable under the Code may be directly rolled over to a Participant's Roth elective deferral account, if such rollover complies with Code §§ 402(c) and 402A(c)(4) and any other Applicable Law.

Section 14.5 Definition of Roth Elective Deferrals

A Roth elective deferral is an elective deferral that is:

(a) Designated irrevocably by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax Deferred Compensation the Participant is otherwise eligible to defer under the Plan; and

(b) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.