

RESOLUTION NO. 2204

WHEREAS, the City of Albany, Oregon, has in its employ certain personnel; and

WHEREAS, said employees are and will be rendering valuable services to the City of Albany; and

WHEREAS, the City of Albany has considered the establishment of a Deferred Compensation Plan for the said employees made available to the City and to said employees by the International City Management Association Retirement Corporation; and

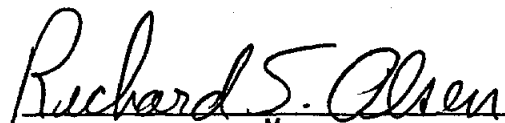
WHEREAS, said employees often are unable to acquire retirement security under other existing and available retirement plans due to the contingencies of employment mobility; and

WHEREAS, the City receives benefits under said plans by being able to assure reasonable retirement security to said employees, by being more able to attract competent personnel to its service, and by increasing its flexibility in personnel management through elimination of the need for continued employment for the sole purpose of allowing an employee to qualify for retirement benefits.

NOW, THEREFORE, BE IT RESOLVED that the City of Albany establish said Deferred Compensation Plan for said employees and hereby authorizes its Mayor to execute the Deferred Compensation Plan with the International City Management Association Retirement Corporation, attached hereto as Appendix A; and

BE IT FURTHER RESOLVED that the City Recorder may, on behalf of the City, execute all Joinder Agreements with said employees and other eligible officials which are necessary for said persons participation in the Plan, an example of which appears as Appendix B, except that any Joinder Agreement for said designated official shall be executed by the Mayor.

DATED THIS 8TH DAY OF OCTOBER, 1980.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

**INTERNATIONAL CITY MANAGEMENT ASSOCIATION  
RETIREMENT CORPORATION  
DEFERRED COMPENSATION PLAN**

Amended as of June 28, 1974 and March 23, 1979

It is hereby agreed that this DEFERRED COMPENSATION PLAN shall be in effect on the date upon which the Employer has caused it to be executed by an official affixing his signature on behalf of the Governing Body in the space provided below. However, the DEFERRED COMPENSATION PLAN will not be legally binding upon the International City Management Association Retirement Corporation until a Notice of Plan Acceptance has been supplied by it.

CITY OF ALBANY, OREGON

Legal Name of the Employer

Attest for the Employer:

*[Signature]*  
Signature of Authorized Official

For the Employer:

By: *Richard S. Olsen*  
Signature of Authorized Official

October 9, 1980

Date of Signature

Richard S. Olsen, Mayor

Print Name and Title

**SEE INSTRUCTIONS FOR IMPLEMENTATION PRIOR TO COMPLETING THIS SECTION**

Complete the following prior to mailing this Agreement to the Retirement Corporation.

Full Name (City of, County of, etc.) City of Albany, Oregon

Title of Official to whom correspondence and reports are to be mailed:

(not name) City Recorder

Address: (include zipcode) P.O. Box 490, Albany, OR 97321

Employers' Federal Tax Identification Number: 93-6002114

How often will you make contributions? monthly

What is the date of your first contribution? December 15, 1980

Total Number of Employees: 185 Number of employees eligible to participate: 52

**PRELIMINARY STATEMENT  
ESTABLISHMENT OF THE PLAN  
AMENDMENTS**

The International City Management Association Retirement Corporation, hereinafter the Retirement Corporation or ICMA-RC, is a nonprofit Delaware Corporation. It has been classified as a tax-exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code. As an aid in the improvement of state and municipal administration in general, the Retirement Corporation is organized for the purpose of receiving and investing deferred compensation funds of state and local governments and their related and controlled public interest organizations which are tax-exempt under Section 501 of the Internal Revenue Code, hereinafter referred to as "Employers"; to act as trustee and/or agent for the collection and reinvestment of the income therefrom; and to act as agent for such Employers and at their explicit direction for the distribution of the funds and assets of their accounts to their participating Employees (including independent contractors) in accordance with options provided in this International City Management Association Retirement Corporation Deferred Compensation Plan, hereinafter referred to as the "Plan," or the "ICMA-RC Plan."

The ICMA-RC Plan is set out below in two parts: I. The Deferred Compensation Employment Agreement; and II. The Master Trust Agreement. As set out below, the Employer adopts this Plan as its Agreement with the participating Employees and ICMA-RC, and the Employees shall participate in the Plan through the execution of a Joinder Agreement, which by its terms incorporates all of the provisions of the Plan. A copy of the Plan shall be supplied to each Employee for his study and understanding prior to his execution of the Joinder Agreement. The Employers, through their participation in the Plan, express their desire to have the benefit of the continued loyalty, service and counsel of their Employees and to assist them in providing for the contingencies of old age dependency, disability, and death.

This Plan may be amended from time to time for purposes of assuring its conformance to the requirements of any applicable law or rule or regulation pursuant thereto, and to preserve the tax-exempt status of the Plan and the Retirement Corporation. No amendment may either directly or indirectly operate to derive any participating Employer of its beneficial interest in the Trust as it is then constituted. The Retirement Corporation will notify the participating Employers of any amendment to this Plan no later than sixty days prior to its effective date. Any such amendment will become effective after the expiration of that period of time, except as to those Employers as may file an objection. No amendment proposed by participating Employers shall be effective unless agreed to by the ICMA Retirement Corporation over the signature of an Officer.

**PART I. DEFERRED COMPENSATION  
EMPLOYMENT AGREEMENT**

**1. Deferred Compensation—Initial Decision—Future Changes—Limits**

- 1.1 For the purpose of this Plan the following definitions apply:
- a. "Total compensation" is the total of compensation to be paid by the Employer for the services of the Employee, regardless of the terms used for its components, as, for example, "base pay," "in addition to base pay," "employer's contributions," etc.;
  - b. "Deferred compensation" is that amount or percentage of the total compensation of the Employee which the Employer currently defers from the payment to the Employee, and, instead, deposits same into a Deferred Compensation Account with the Retirement Corporation under the terms of this Plan. Deferred compensation may include amounts from or percentages of both "base pay" and "employer's contributions" or it may include amounts from or percentages of only one of these components;
  - c. "Current compensation" is that portion of the Employee's total compensation which is not deferred compensation as deferred compensation is defined herein; and
  - d. "Base pay" is the stated salary of the Employee.

- 1.2 Compensation may be deferred for any calendar month only if a Joinder Agreement for such deferral has been entered into before the beginning of such month. The determination of the initial amount or percentage and of any future change in amount or percentage of deferred compensation must be made before the beginning of the calendar month for which the compensation is payable. Such future changes may be made more frequently than once per calendar year only at the express direction of the Employer.
- 1.3 The amount of total compensation may be adjusted from time to time without altering the terms of this Plan. However, the percentage or amount of deferred compensation may be adjusted only in accordance with 1.2 above. Any such adjustment of the percentage or amount of deferred compensation shall be communicated to the Employer's agent, the Retirement Corporation, and the deposits in the adjusted percentages or amounts, if changed from the prior existing percentages or amounts, shall thereafter be made by the Employer into its Retirement Corporation Account.
- 1.4 Compensation deferred under the Plan for any Employee's taxable year beginning after December 31, 1978, shall not exceed the lesser of (1) \$7,500, or (2) 33-1/3 percent of the difference between an Employee's total compensation and his deferred compensation, except as provided in 1.5 below.
- 1.5 For one or more of the Employee's last three taxable years ending before he attains normal retirement age under the Plan, the ceiling set forth in Paragraph 1.4 above shall be the lesser of —
  - a. \$15,000, or
  - b. the sum of —
    - (1) the Plan ceiling established for purposes of Paragraph 1.4 for the taxable year (determined without regard to this Paragraph), plus
    - (2) so much of the Plan ceiling established for purposes of Paragraph 1.4 for taxable years before the taxable year as has not theretofore been used under Paragraph 1.4 or this Paragraph.

The amount of compensation deferred under this Paragraph shall not exceed an Employee's total compensation. The words "normal retirement age," as used in this Paragraph, shall mean the "designated age," as defined in Paragraph 6 below.

2. **Deferred Compensation Account.** Under this Plan, deferred compensation shall be credited and paid into the Trust established and maintained with the International City Management Association Retirement Corporation as Trustee. The Retirement Corporation is a nonprofit corporation formed for the specific purpose of investing and otherwise administering the funds of said Trust. The Trust may be revoked at any time by the Employer, and upon revocation of said Trust, all of the assets thereof shall return to and revert to the Employer. The Employer shall keep accurate books and records with respect to the Employee's total compensation or other earned income and with respect to amounts paid into said Trust.

3. **Ownership of Funds.** Neither the Employee nor any beneficiary thereof shall have any interest whatsoever in the funds paid into the Deferred Compensation Account, in the property or rights purchased with such funds, or in the income attributable to such funds, property, or rights, which shall at all times remain as assets of the Employer, subject to its absolute dominion, control, and right of withdrawal until such time as the funds or assets of the Account are distributed to the Employee in accordance with the provisions of this Plan. The obligation of the Employer to pay deferred compensation is contractual only, the Employee having no preferred or special interest or claim, by way of trust, annuity, or otherwise, in and to the specific funds and assets held in the Deferred Compensation Account. The contractual obligation of the Employer to pay the funds and assets in its Deferred Compensation Account to the Employee or his beneficiary on the applicable distribution

date shall be a continuing obligation upon the Employer, and shall not be relieved by any agreement between the Employer and any other party, except as provided in Section 2 of Paragraph 13 of this Plan, and shall not be affected in any manner by amendment or revocation of the Trust referred to in Paragraph 2 herein or by reversion of the Trust Funds to the Employer. The provisions of this Paragraph shall supersede and control any other provision of this Plan which could be interpreted to be in conflict therewith.

4. Administration of Funds. The funds deposited in the Deferred Compensation Account shall be invested and reinvested by the Retirement Corporation, as provided for in the Trust Fund described in Part II of this Plan, in any manner which in its sole discretion it deems desirable, without regard at any time to any legal limitation governing the investment of such funds. The Account shall also reflect the gain or loss resulting from the investment and reinvestment thereof. This Trust Fund may be commingled with others established by the Trustee with other Employers under this Plan.

5. Designation of Investments. Each participating Employer, being advised of the preferences of, and for the benefit of each of its participating Employees, shall designate the percentage of the deferred compensation involved which shall be invested in the respective types of investment funds (accounts) of the Retirement Corporation, such as the Equity (Variable) Fund or the Fixed-Income Fund, unless the laws of the applicable state or local government require otherwise, in which case those laws shall govern. Future elections to change the percentage to be invested in each type of Fund may only be made prior to and for the next succeeding annual period of service for which the compensation is payable by filing written notice thereof with the Retirement Corporation. Such notice will not be effective until received by the Retirement Corporation.

6. Payment of Deferred Compensation. The words "designated age," as used in this Paragraph and in Paragraph 10 of this Plan, shall mean the designated age which appears in the Joinder Agreement executed by the participating Employee. These words, as used in this Paragraph, in Paragraph 10, and in the Joinder Agreement, shall also include the following, without repetition therein: "or later, in the sole discretion of the Employer, at the end of his employment agreement, if Employee continues in the employ of the Employer after he attains the designated age." Except as provided in Paragraph 9 (unforeseeable emergency), no payments of deferred compensation shall be made prior to an Employee's separation from service with the Employer. At such time as the Employee reaches the designated age, becomes permanently disabled, or dies, whichever occurs first, he, or his beneficiary or beneficiaries, nominee or estate is/are entitled to receive payment from the Deferred Compensation Account outstanding on the date on which one of the foregoing occurs. Payments occasioned by the Employee having reached the designated age, becoming permanently disabled, or by his death shall be made in accordance with the provisions of Paragraph 7 hereof as follows:

a. Payments in monthly, quarterly, semi-annual, or annual payments over the period of life expectancy of the Employee in accordance with the following procedure:

Upon reaching the designated age, or becoming permanently disabled from permanent full-time employment, whichever first occurs, the Employee's life expectancy shall be determined by reference to Standard U.S. Mortality Tables; the amounts of assets and accumulations in the Deferred Compensation Account shall be computed together with a reasonable rate of return on said assets, less the amount of expected monthly distribution, over the life expectancy of the Employee; and a monthly amount shall then be mathematically determined, the payment of which, in equal monthly installments over the period of the life expectancy of the Employee, shall completely deplete the said Account at the end of the last year of life expectancy; or

b. Payments in monthly, quarterly, semi-annual, or annual payments in accordance with the following procedure:

Unless the Employee's employment terminates prior to the time he

attains the designated age, amounts equal to the benefits received by the Employer, under retirement annuity policies, shall be paid to the Employee, at such time as he attains the designated age; or, in the case of death, payment to his beneficiary or beneficiaries, nominee or estate pursuant to the procedures provided in said policies and Paragraphs 7 and 8 of this Plan; or

c. Payments in monthly, quarterly, semi-annual, or annual installments over a period of not exceeding ten (10) years, said payments to include a reasonable return on the funds, assets and accumulations in the Deferred Compensation Account, less the amount of expected monthly, quarterly, semi-annual, or annual distribution, over the said ten (10) year period; or

d. One lump-sum payment.

7. Selection of Method of Payment. The method of payment shall be selected by the Employer, acting through the Retirement Corporation, as its duly authorized agent, due consideration being given to health, financial circumstances and family obligations of the Employee. In this regard, the Employee may be consulted; however, he shall have no voice in the decision reached.

8. Payments in the Event of Death.

a. During the Period of Distribution. In the event of the Employee's death during the period of distribution, the Employee's beneficiary shall be entitled to receive payments in accordance with the payment method being employed at the time of the Employee's death. With the consent of the Employer, acting through the Retirement Corporation as its duly authorized agent, said beneficiary may elect to receive a lump sum in lieu of installment payments.

b. Prior to Distribution. In the event of the death of the Employee prior to the distribution, the funds and assets of the Deferred Compensation Account shall be paid in accordance with one of the methods described in Subparagraphs a, b, c, or d of Paragraph 6 hereof. The selection of said method shall be made by the Employer acting through the Retirement Corporation as its duly authorized agent.

9. Payments in the Event of Unforeseeable Emergency. In the event that a participating Employee is faced with an unforeseeable emergency (determined in the manner prescribed by Federal regulation), the Employer may direct the Retirement Corporation as agent to make disbursements from the Deferred Compensation Account of amounts reasonably necessary to satisfy the emergency needs of the Employee.

10. Payment Dates. Payments shall commence on the first day of the month, following the attainment of the designated age, or later, on the first day of the month after the end of his employment agreement, if Employee continues in the employ of the Employer after he attains the designated age, or likewise following permanent disability, or death; and, in the case of installment payments, shall be made continuously thereafter on the first day of each succeeding month, or, in the event quarterly, semi-annual, or annual payment installment periods are applied, then continuously thereafter on the first day of each succeeding month which begins the time period (quarterly, etc.) involved until such time as the Deferred Compensation Account is depleted in its entirety.

11. Disbursing Agent. The Retirement Corporation shall act as agent of the Employer for purposes of disbursing payments. The ultimate obligation for making such payments, however, shall remain with the Employer.

12. Accumulation During the Distribution Period. During the period of distribution, the Employee or his beneficiary or beneficiaries, nominee or estate, as the case may be, shall continue to be credited with all the interest, accumulations, and increments on the undistributed funds and assets in the Deferred Compensation Account, until such Account is depleted in its entirety.

13. Section 1. Termination of Employment. Upon termination of the Employee's services, for any reason other than death, the funds, assets, and accumulations in the Deferred Compensation Account shall not be transferred to an account with a new employer of the Employee, and, instead, they shall remain in the original Account as assets of the old

Employer until such time as they are distributed in accordance with the provisions of this Plan, except as provided in Section 2 of this Paragraph.

**Section 2. Transfer of Employment with Consideration Between Employers—Tripartite Agreement.** In the event the Employee accepts employment with a new employer participating in the ICMA-RC Deferred Compensation Plan, then, if the past Employer finds that it has no present or future need of the funds, assets, and accumulations in the said Account for the payment of its general creditors or for any other purpose whatsoever, in consideration of its desire to avoid the continuing expense of maintaining records, and receiving, examining, verifying and filing annual reports of the Retirement Corporation, and in consideration of avoiding the possible future expenses of litigation of Employee's continuing contractual rights to payment of deferred compensation on his retirement as herein provided in the event of any possible future revocation and withdrawal by the past Employer of the funds, assets, and accumulations in the said Account, the past Employer may, at its discretion, authorize the Retirement Corporation, as its agent, to propose to the new Employer that the funds, assets, and accumulations of the said Account be transferred to the ownership, control, and right of withdrawal of the new Employer, and to do so in the event the new Employer, in consideration of the increased value of the Employee's services by reason of the experience gained while in past employment, agrees to accept same, and the respective Employers and the Employee sign an appropriate form of Agreement in which the new Employer also agrees to assume the continuing contractual liability to pay deferred compensation so transferred upon retirement of the Employee and the Employee releases the past Employer from said continuing obligation to do same.

**Section 3. Payment of Deferred Compensation after Termination of Employment.** In the event a participating Employee separates from service with the Employer prior to the designated age which appears in the Joinder Agreement, the Employer may direct the Retirement Corporation, as agent, to distribute the funds and assets of the Deferred Compensation Account to the Employee in one lump-sum payment.

**14. Losses.** The Employer shall not be responsible for any loss due to investment or failure of investment of funds and assets in said Deferred Compensation Account nor shall the Employer be required to replace any loss whatsoever which may result from said investments.

**15. Nonassignability of Deferred Compensation.** The Employee during his lifetime shall not be entitled to commute, encumber, sell or otherwise dispose of his rights to receive deferred compensation payments provided for herein, and the right thereto shall be nonassignable and nontransferable. In the event of any attempted assignment or transfer thereof, the Employer shall have no further liability under this Agreement.

**16. Participation in Other Employee Benefit Plans.** Nothing herein contained shall in any manner modify, impair, or affect the existing or future rights or interest of the Employee (a) to receive any employee benefits to which he would otherwise be entitled, or (b) as a participant in any future pension plan, it being understood that the rights and interests of the Employee to any employee benefits or as a participant or beneficiary in or under any or all such plans respectively shall continue in full force and effect unimpaired, and the Employee shall have the right at any time hereafter to become a beneficiary under or pursuant to any and all such plans.

**17. Definitions.** The meaning of any term or terms, phrase, clause, or sentence used in this Agreement, which is also used in the By-Laws of the Retirement Corporation, shall be defined as these are defined in ARTICLE II, Section 2 of the By-Laws. Masculine pronouns, whenever used herein, include the feminine pronouns, and the singular includes the plural unless the context requires another meaning.

**18. Validity of Agreement.** This Agreement shall not be valid or enforceable unless signed by an officer of Employer, authorized by the governing body of the Employer, as, for example, the City Council, and unless this Agreement is implemented by the execution of the Joinder Agreement.

## PART II. MASTER TRUST AGREEMENT

AGREEMENT made by and between the aforementioned Employer and the International City Management Association Retirement Corporation (hereinafter the "Trustee" or "Retirement Corporation"), a nonprofit corporation organized and existing under the laws of the State of Delaware, for the purpose of investing and otherwise administering the funds set aside by Employers in connection with Deferred Compensation Agreements with Employees.

WHEREAS, the Employer desires to enter into agreements with its Employees whereby its Employees agree to defer payments of specified percentages of or amounts from their total compensation as "deferred compensation" is defined in said agreements until the occurrence of certain events;

WHEREAS, in order that there will be sufficient funds available to discharge the foregoing contractual obligations, the Employer desires to set aside periodically amounts equal to the amount of compensation deferred;

WHEREAS, the funds set aside, together with any and all investments thereto, are to be exclusively within the dominion, control, and ownership of the Employer, and subject to the Employer's absolute right of withdrawal, the Employee having no interest whatsoever therein;

NOW, THEREFORE, this Agreement witnesseth that (a) the Employer will pay monies to the Trustee to be placed in Deferred Compensation Accounts for the Employer; (b) the Trustee covenants that it will hold said sums, and any other funds which it may receive hereunder, in trust for the uses and purposes and upon the terms and conditions hereinafter stated; and (c) the parties hereto agree as follows:

### ARTICLE I. General Duties of the Parties.

**Section 1.1. General Duty of the Employer.** The Employer shall make regular periodic payments equal to the amounts of its Employees' compensation which are deferred in accordance with the terms and conditions of Deferred Compensation Employment Agreements with such Employees, or with any subsequent modification thereof.

**Section 1.2. General Duties of the Trustee.** The Trustee shall hold all funds received by it hereunder, which, together with the income therefrom, shall constitute the Trust Funds. It shall administer the Trust Funds, collect the income thereof, and make payments therefrom, all as hereinafter provided. The Trustee shall also hold all Trust Funds which are transferred to it as successor Trustee by the Employer from existing deferred compensation arrangements with its Employees which meet the same Internal Revenue Code requirements which govern the ICMA-RC Deferred Compensation Plan. Such Trust Funds shall be subject to all of the terms and provisions of this Agreement.

### ARTICLE II. Powers and Duties of the Trustee in Investment, Administration, and Disbursement of the Trust Funds.

**Section 2.1. Investment Powers and Duties of the Trustee.** The Trustee shall have the power in its discretion to invest and reinvest the principal and income of the Trust Funds and keep the Trust Funds invested, without distinction between principal and income, in such securities or in other property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, bonds, retirement annuity and insurance policies, mortgages, and other evidences of indebtedness or ownership, and in common trust funds of approved financial or investment institutions, with such institutions acting as Trustee of such common trust funds, or separate and different types of funds (accounts) including equity, fixed-income, and those which fulfill requirements of state and local governmental laws, established with such approved financial or investment institutions. For these purposes, these Trust Funds may be commingled with others established by the Trustee under this form of agreement with other Employers. In making such investments, the Trustee shall not be subject at any time to any legal limitation governing the investment of such funds. Investment powers and investment discretion vested in the Trustee

by this Section may be delegated by the Trustee to any bank, insurance or trust company, or any investment advisor, manager or agent selected by it.

**Section 2.2. Administrative Powers of the Trustee.** The Trustee shall have the power in its discretion:

(a) To purchase, or subscribe for, any securities or other property and to retain the same in trust.

(b) To sell, exchange, convey, transfer or otherwise dispose of any securities or other property held by it, by private contract, or at public auction. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes effecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Trust Funds.

(d) To cause any securities or other property held as part of the Trust Funds to be registered in its own name, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are a part of the Trust Funds.

(e) To borrow or raise money for the purpose of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and, for any sum so borrowed, to issue its promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Funds. No person lending money to the Trustee shall be bound to see the application of the money lent or to inquire into its validity, expediency or propriety of any such borrowing.

(f) To keep such portion of the Trust Funds in cash or cash balances as the Trustee, from time to time, may deem to be in the best interest of the Trust created hereby, without liability for interest thereon.

(g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder.

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

(i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Funds; to commence or defend suits or legal or administrative proceedings; and to represent the Trust Funds in all suits and legal and administrative proceedings.

(j) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Funds and to carry out the purposes of this Trust.

**Section 2.3. Distributions from the Trust Funds.** The Employer hereby appoints the Trustee as its agent for purposes of selecting the method by which distributions from the Trust Funds are to be made, as well as for purposes of making such distributions. In this regard the terms and conditions set forth in the Agreements to be executed between the Employer and its Employees, and any subsequent modifications thereof,

are to guide and control the Trustee's power.

**Section 2.4. Valuation of Trust Funds.** At least once a year as of Valuation Dates designated by the Trustee, the Trustee shall determine the value of the Trust Funds. Assets of the Trust Funds shall be valued at their market values at the close of business on the Valuation Date, or, in the absence of readily ascertainable market values as the Trustee shall determine, in accordance with methods consistently followed and uniformly applied.

#### **ARTICLE III. For Protection of Trustee.**

**Section 3.1. Evidence of Action by Employer.** The Trustee may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Trustee believes to have been signed by a duly designated official of the Employer. No communication shall be binding upon any of the Trust Funds or Trustee until they are received by the Trustee.

**Section 3.2. Advice of Counsel.** The Trustee may consult with any legal counsel with respect to the construction of this Agreement, its duties hereunder, or any act, which it proposes to take or omit, and shall not be liable for any action taken or omitted in good faith pursuant to such advice.

**Section 3.3. Miscellaneous.** The Trustee shall use ordinary care and reasonable diligence, but shall not be liable for any mistake of judgment or other action taken in good faith. The Trustee shall not be liable for any loss sustained by the Trust Funds by reason of any investment made in good faith and in accordance with the provisions of this Agreement.

The Trustee's duties and obligations shall be limited to those expressly imposed upon it by this Agreement, notwithstanding any reference of the Plan.

#### **ARTICLE IV. Taxes, Expenses and Compensation of Trustee.**

**Section 4.1. Taxes.** The Trustee shall deduct from and charge against the Trust Funds any taxes on the Trust Funds or the income thereof or which the Trustee is required to pay with respect to the interest of any person therein.

**Section 4.2. Expenses.** The Trustee shall deduct from and charge against the Trust Funds all reasonable expenses incurred by the Trustee in the administration of the Trust Funds, including counsel, agency and other necessary fees.

**ARTICLE V. Settlement of Accounts.** The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions hereunder.

Within ninety (90) days after the close of each fiscal year, the Trustee shall render in duplicate to the Employer an account of its acts and transactions as Trustee hereunder. If any part of the Trust Fund shall be invested through the medium of any common, collective or commingled Trust Funds, the last annual report of such Trust Funds shall be submitted with and incorporated in the account.

If within ninety (90) days after the mailing of the account or any amended account the Employer has not filed with the Trustee notice of any objection to any act or transaction of the Trustee, the account or amended account shall become an account stated. If any objection has been filed, and if the Employer is satisfied that it should be withdrawn or if the account is adjusted to the Employer's satisfaction, the Employer shall in writing filed with the Trustee signify approval of the account and it shall become an account stated.

When an account becomes an account stated, such account shall be finally settled, and the Trustee shall be completely discharged and released, as if such account had been settled and allowed by a judgment or decree of a court of competent jurisdiction in an action or proceeding in which the Trustee and the Employer were parties.

The Trustee shall have the right to apply at any time to a court of competent jurisdiction for the judicial settlement of its account.

#### **ARTICLE VI. Resignation and Removal of Trustee.**

**Section 6.1. Resignation of Trustee.** The Trustee may resign at any

time by filing with the Employer its written resignation. Such resignation shall take effect sixty (60) days from the date of such filing and upon appointment of a successor pursuant to Section 6.3., whichever shall first occur.

**Section 6.2. Removal of Trustee.** The Employer may remove the Trustee at any time by delivering to the Trustee a written notice of its removal and an appointment of a successor pursuant to Section 6.3. Such removal shall not take effect prior to sixty (60) days from such delivery unless the Trustee agrees to an earlier effective date.

**Section 6.3. Appointment of Successor Trustee.** The appointment of a successor to the Trustee shall take effect upon the delivery to the Trustee of (a) an instrument in writing executed by the Employer appointing such successor, and exonerating such successor from liability for the acts and omissions of its predecessor, and (b) an acceptance in writing, executed by such successor.

All of the provisions set forth herein with respect to the Trustee shall relate to each successor with the same force and effect as if such successor had been originally named as Trustee hereunder.

If a successor is not appointed within sixty (60) days after the Trustee gives notice of its resignation pursuant to Section 6.1., the Trustee may apply to any court of competent jurisdiction for appointment of a successor.

**Section 6.4. Transfer of Funds to Successor.** Upon the resignation or removal of the Trustee and appointment of a successor, and after the final account of the Trustee has been properly settled, the Trustee shall transfer and deliver any of the Trust Funds involved to such successor.

#### **ARTICLE VII. Duration and Revocation of Trust Agreement.**

**Section 7.1. Duration and Revocation.** This Trust shall continue for such time as may be necessary to accomplish the purpose for which it was

created but may be terminated or revoked at any time by the Employer as it relates to any and/or all related participating Employees. Written notice of such termination or revocation shall be given to the Trustee by the Employer. Upon termination or revocation of this Trust, all of the assets thereof shall return to and revert to the Employer. Termination of this Trust shall not, however, relieve the Employer of the Employer's continuing obligation to pay deferred compensation upon the applicable distribution date to any and/or each Employee with whom the Employer has entered into a Deferred Compensation Employment Agreement.

**Section 7.2. Amendment.** The Employer shall have the right to amend this Agreement in whole and in part but only with the Trustee's written consent. Any such amendment shall become effective upon (a) delivery to the Trustee of a written instrument of amendment, and (b) the endorsement by the Trustee on such instrument of its consent thereto.

#### **ARTICLE VIII. Miscellaneous.**

**Section 8.1. Laws of the State of Delaware to Govern.** This Agreement and the Trust hereby created shall be construed and regulated by the laws of the State of Delaware.

**Section 8.2. Successor Employers.** The term "Employer" shall include any person who succeeds the Employer and who adopts the Deferred Compensation Plan of the Retirement Corporation and becomes a party to this Agreement with the consent of the Trustee.

**Section 8.3. Withdrawals.** The Employer may, at any time, and from time to time, withdraw a portion or all of the Trust Funds created by this Agreement and related Deferred Compensation Employment Agreements.

**Section 8.4. Definitions.** Definitions in the By-Laws of terms, phrases, etc., used herein apply to the same herein. The masculine includes the feminine and the singular includes the plural unless the context requires another meaning.