

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Council Members

FROM/PHONE: William (Bill) F. Underwood, II, Director/797-1050

PREPARED BY: William (Bill) F. Underwood, II, Director/797-1050

SUBJECT: Resolution

AFFECTED DISTRICT: Town Wide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING AN AMENDMENT AND THE CREATION OF THE TOWN OF DAVIE MONEY PURCHASE PLAN - B AND AUTHORIZING THE TRUSTEE TO TAKE ALL ACTIONS NECESSARY TO CONSUMMATE THE CLOSURE OF THIS PLAN, AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town Council approved a new Retirement Plan and Trust for Town of Davie Management and General Employees. The Town employees who entered the new plan and former Town employees who remain in the existing 401(a) Money Purchase Plan requires an amendment and a new plan in order to allow the current inactive participants to transition completely out of the 401(a) Money Purchase Plan. This resolution authorizes the creation of a new 401(a) Money Purchase Plan - B, appoints trustees to the new 401(a) Money Purchase Plan - B, and authorizes the trustee to take all actions necessary to consummate the closure of this new plan.

Additionally, the elimination of this new plan may provide a potential annual savings of about \$11,250 to the Town due to a reduction in cost to administer the plan.

PREVIOUS ACTIONS: Ordinance 2004-002

CONCURRENCES: Town Administrator's Office

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost:

Additional Comments:

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING AN AMENDMENT AND THE CREATION OF THE TOWN OF DAVIE MONEY PURCHASE PLAN - B AND AUTHORIZING THE TRUSTEE TO TAKE ALL ACTIONS NECESSARY TO CONSUMMATE THE CLOSURE OF THIS PLAN, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town established a new Retirement Plan and Trust for the Town of Davie Management and General Employees; and

WHEREAS, certain employees authorized to participate in the defined benefit pension are currently inactive members of the Town of Davie Money Purchase Plan; and

WHEREAS, certain members of the Town of Davie Money Purchase Plan require a new plan in order to allow for a complete transition for the eligible employees who elected to join the defined benefit pension plan;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Town Council of the Town of Davie hereby authorizes the Trustee of the Town of Davie Money Purchase Plan (Plan) to execute an amendment to the Plan, attached hereto as Exhibit A.

SECTION 2. That the Town Council of the Town of Davie hereby authorizes the establishment of the Town of Davie Money Purchase Plan - B in order to allow for a smooth transition for the eligible employees who elected to join the defined benefit pension plan, attached hereto as Exhibit B.

SECTION 3. The Town Council of the Town of Davie hereby appoints the Town Administrator, and the Director of Budget and Finance as the Trustees to the Town of Davie Money Purchase Plan - B.

SECTION 4. The Town Council of the Town of Davie hereby authorizes the Trustee to take all actions necessary to consummate the closure of this plan.

SECTION 5. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005.

Exhibit A

**AMENDMENT
TO
TOWN OF DAVIE, FLORIDA
MONEY PURCHASE PLAN**

WHEREAS, the Town of Davie, Florida (the "Town") sponsors the Town of Davie, Florida Money Purchase Plan (the "Plan"); and

WHEREAS, the Plan was restated as of January 1, 2002; and

WHEREAS, Section 16.1 permits the Plan to be amended from time to time by the Administrator.

NOW, THEREFORE, BE IT RESOLVED that the Plan be amended effective March 14, 2005 as follows:

1. Section 2.42 of the Plan is amended in its entirety and shall now read as follows;

"2.42 Transfer Election Participant shall mean a Participant who made an election to transfer to a defined benefit pension plan as of January 31, 2004 pursuant to an election under Section 14.10 of the Plan. For purposes of Section 14.11 of the Plan, Transfer Election Participant shall have the same meaning as the previous sentence except that if a Participant has an outstanding loan on March 1, 2005 in this Plan, such Participant must elect to have his Account transferred to the Town of Davie, Florida Money Purchase Plan- B by making an election between March 15, 2005 and April 15, 2005. Such election shall be subject to the rules as promulgated by the Administrator."

2. Article 11 of the Plan is amended to add a new Section which shall be titled Section 2.43 and shall now read as follows:

"2.43 Prior Plan Terminated Vested Participant shall mean a Participant in this Plan who terminated employment with the Employer and who elects to transfer his vested account balance in this Plan to the Town of Davie, Florida Money Purchase Plan- B by making an election between March 15, 2005 and April 15, 2005. Such election shall be subject to the regulations as promulgated by the Administrator."

3. Article XIV of the Plan is amended to add a new Section which shall be titled Section 14.11 and shall now read as follows:

"14.11 Transfer of Accounts - As soon as administratively feasible after April 15, 2005, the Accounts of all Transfer Election Participants and all Prior Plan Terminated Vested Participants will be transferred to the Town of Davie, Florida Money Purchase Plan- B."

Executed at Town of Davie, Florida on _____, 2005.

TOWN OF DAVIE

By: _____
Administrator

Exhibit B

**TOWN OF DAVIE, FLORIDA
MONEY PURCHASE PLAN - B**

Effective March 1, 2005

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ARTICLE I
NAME AND PURPOSE OF THE PLAN

- 1.1 History. The Town of Davie, Florida adopted the Town of Davie, Florida Money Purchase Plan (the "Prior Plan") for the benefit of eligible salaried employees, effective as of January 1, 1984 and was subsequently amended on different occasions.

The Town of Davie, Florida Money Purchase Plan – B (“Plan”) is hereby created to receive, hold, and distribute assets spun out from the Prior Plan. It is not intended that any Employer or Employee contributions will be made to the Plan.

- 1.2 Intent. It is the intention of the Employer that this Plan and Trust will meet the requirements of ERISA and shall qualify under Section 401(a) as a governmental plan and be exempt from federal income taxation under Section 501(a) of the Code, as amended from time to time.

ARTICLE II
DEFINITIONS

As used in this Plan and Trust, the following words will have the meanings indicated unless the context clearly indicates otherwise.

- 2.1 Accounts shall mean the separate Employer Contributions, Employee Contributions, Deductible Employee Contribution and Rollover Accounts maintained to record the value of a Participant's or former Participant's interest in the assets of the Trust at any time under the Plan.
- 2.2 Administrator shall mean those individuals serving in the positions of Town Administrator and Director of Budget and Finance, and charged with the administration of the Plan.
- 2.3 Code shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 2.4 Compensation shall mean a Participant's total cash compensation paid by the Employer for a Plan Year as reflected on federal income tax form W-2, plus any pretax contributions made pursuant to Section 403(b) or 457 of the Code and any pretax contributions made to plans described in Sections 125, 132(f), and 129 of the Code. Compensation for any Plan Year shall not exceed \$200,000 (as adjusted in accordance with Section 401(a)(17)(B) of the Code.
- 2.5 Date of Employment shall mean the first date on which an Employee performs an Hour of Service for the Employer.
- 2.6 Disabled or Disability shall mean a condition which prevents a Participant from performing his duties with the Employer as evidenced by certification of total and permanent disability rendered by a qualified physician agreeable to the Administrator.
- 2.7 Effective Date shall mean March 1, 2005.

- 2.8 Employee shall mean any person who renders services to the Employer in the status of an employee as the term is defined in Section 3121(d) of the Code and shall include leased employees as defined in Section 414(n)(2) of the Code. Notwithstanding the foregoing, Employee shall not include such leased employees if (a) such employees do not constitute more than twenty percent of the Participating Employer's and Affiliated Employers' nonhighly compensated work force, and (b) they are covered by a plan described in Section 414(n)(5) of the Code. Employees must be eligible to participate under the Town's Personnel Rules and Collective Bargaining Agreements.
- 2.9 Employer shall mean the Town of Davie, Florida.
- 2.10 Employee Contributions Account shall mean the Account held under the Trust Fund on a Participant's behalf to which his Employee contributions were made on an after-tax basis are credited.
- 2.11 Employee Deductible Contributions Account shall mean the Account held under the Trust Fund on a Participant's behalf to which his deductible contributions were made.
- 2.12 Employer Contributions Account shall mean the Account held under the Trust Fund on an Employee's behalf to which his Employer contributions were made are credited.
- 2.13 ERISA shall mean the Employee Retirement Income Security Act of 1974, any amendments thereto, and any regulations issued pursuant thereto, as such Act affects this Plan.
- 2.14 Fiduciary shall mean any person who exercises discretionary authority or control over the management of the Plan, assets held under the Plan or disposition of Plan assets; who renders investment advice for direct or indirect compensation as to assets held under the Plan or has any authority or responsibility to do so; or who has any discretionary authority or responsibility in the administration of the Plan of the nature described above or in Title I, Part 4 of ERISA. For purposes of this Plan, the following are deemed to be Fiduciaries:
- (a) the Administrator;

- (b) the Trustee; and
- (c) the Employer.

2.15 Highly Compensated Employee shall mean an Employee who is (a) a five percent (5%) owner (as described in Section 416(i)(1)(B) of the Code) in either the current Plan Year or prior Plan Year, or (b) received Compensation from the Employer in excess of \$80,000, as indexed pursuant to Section 414(q)(1)(B) of the Code, in the prior Plan Year. The Employer elects that the group of Employees determined to be Highly Compensated Employees as a result of receiving Compensation in excess of \$80,000 be limited to the top paid group.

For purposes of this section, the top paid group shall mean the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of Compensation received from the Employer during such year. For purposes of determining the top paid group, if applicable, the following Employees should be excluded:

- (a) Employees with less than six (6) months of service as of the end of the Plan Year;
- (b) Employees who normally work less than seventeen and one-half (17½) hours per week;
- (c) Employees who normally work during less than six (6) months during any year;
- (d) Employees who have not yet attained age twenty-one (21) as of the end of the Plan Year; and
- (e) Employees who are non-resident aliens and who received no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer constituting United States source income within the meaning of Section 861(a)(3) of the Code.

2.16 Hour of Service shall mean:

- (a) An Hour of Service is each hour for which an Employee is paid or entitled to payment by the Employer for the performance or non-performance of duties during an applicable computation period or each hour for which back pay, regardless of mitigation of damages, is either awarded or agreed to by the Employer. An Employee shall receive credit for such service in the computation period in which it was rendered regardless of the time of payment. In the case of payroll periods which overlap

computation periods or Plan Years by no more than thirty-one (31) days, the Administrator, in a non-discriminatory and consistent manner, may credit all of such service to the earlier or the later computation period or Plan Year.

The determination of Hours of Service during paid periods of absence shall be based upon a forty (40) hour week or pro rata portion, except that:

- (i) no credit shall be given for more Hours of Service than an Employee would regularly be scheduled to work;
 - (ii) no credit shall be given for more than five hundred and one (501) Hours of Service during any one continuous period of paid absence;
 - (iii) no credit shall be given for a payment which reimburses an Employee solely for medical or medically related expenses incurred by an Employee; and
 - (iv) no credit shall be given for a paid absence if such payment is made or due under a program maintained solely for the purposes of complying with applicable unemployment compensation or disability insurance laws. Credit shall be given for absences during which an Employee is receiving worker's compensation benefits.
- (b) As an alternative to ascertaining the exact Hours of Service from the records of the Employer, an Employee may be credited with one hundred and ninety (190) Hours of Service per month for each month in which the Employee would be credited with an Hour of Service. If this alternative is used for any period for any Employee, then it must be used for all periods for that Employee.
- (c) If accessible records for any years prior to the Effective Date of this Plan are insufficient to make an approximation of the number of Hours of Service for a particular Employee or group of Employees, the Employer may make a reasonable estimate of the Hours of Service completed by such Employee or Employees during the particular period.

- (d) An Employee shall not receive credit for the same period of service more than once under the provisions of this subsection.

- (e) In the case of each individual who is absent from work for any period beginning on or after the Effective Date,
 - (i) by reason of the pregnancy of the individual,
 - (ii) by reason of the birth of a child of the individual,
 - (iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
 - (v) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the Plan shall credit the following Hours of Service, solely for purposes of determining under this paragraph whether a Break in Service Year has occurred. The Plan shall credit:

- (i) the Hours of Service which otherwise would normally have been credited to such individual but for such absence; or
- (ii) in any case in which the Plan is unable to determine the hours described in subparagraph (i), eight (8) Hours of Service per day of absence, except that the total number of hours treated as Hours of Service by reason of such pregnancy or placement shall not exceed five hundred and one (501) hours.

The hours described herein shall be treated as Hours of service as provided in this paragraph (e), in the Plan Year in which the absence from work begins, if the Participant would be prevented from incurring a Break in Service Year in such year solely because the period of absence is treated as Hours of Service or, in any other case, in the immediately following Plan Year.

No credit will be given pursuant to this paragraph (e) unless the individual furnishes to the Administrator such timely information as the Plan may reasonably require to establish that the

absence from work is for reasons referred to herein, and the number of days for which there was such an absence.

- 2.17 Normal Retirement Date shall mean a Participant's fifty-fifth (55th) birthday.
- 2.18 One-Year Period of Severance shall mean a twelve (12) consecutive month period beginning on a Severance From Service Date and ending on the first anniversary of such date, provided the Employee is not credited with an Hour of Service for the performance of duties for an Employer during such period.
- 2.19 Participant shall mean an Employee who is or becomes eligible to participate in the Plan pursuant to Article III.
- 2.20 Plan shall mean the Town of Davie, Florida Money Purchase Plan - B, the terms and conditions of which are herein set forth and as it may be amended from time to time.
- 2.21 Plan Year shall mean the calendar year. The first year is a "short" Plan Year commencing March 1, 2005 and ending December 31, 2005.
- 2.22 Period of Service shall mean a Period of Service commencing on an Employee's Date of Employment or Reemployment Commencement Date, whichever is applicable, and ending on his Severance From Service Date. All Periods of Service shall be aggregated on a uniform and consistent basis.

If an Employee severs from service by reason of a quit, discharge, or retirement and the Employee then performs an Hour of Service within twelve (12) months of the Severance From Service Date, then such period of severance shall be taken into account for purposes of vesting.

Notwithstanding the preceding paragraph of this section, if an Employee severs from service by reason of a quit, discharge, or retirement during an absence from service of twelve (12) months or less (such absence being for any reason other than a quit, discharge, retirement, or

death), and if such Employee then performs an Hour of Service within twelve months (12) of the date on which the Employee was first absent from service, then such Period of Severance shall be taken into account for purposes of vesting.

- 2.23 Period of Severance Shall mean the period of time commencing on an Employee's Severance From Service Date and ending on the date on which the Employee again perform an Hour of Service for an Employer.
- 2.24 Postponed Retirement Date shall mean the first day of any month selected by the Participant which follows his Normal Retirement Date.
- 2.25 Prior Plan shall mean the Town of Davie, Florida Money Purchase Plan.
- 2.26 Prior Plan Terminated Vested Participant shall mean a Participant in the Prior Plan who terminated employment with the Employer and who has had a vested account balance in the Prior Plan and elects to participate in this Plan by making an election between March 15, 2005 and April 15, 2005. Such election shall be subject to the rules as promulgated by the Administrator.
- 2.27 Reemployment Commencement Date shall mean the first day following a One-Year Period of Severance in which an Employee is credited with an Hour of Service for the performance of duties for an Employer.
- 2.28 Rollover Account shall mean the Account held under the Trust Fund on an Employee's behalf to which his Rollover Contributions were credited in accordance with this Plan.
- 2.29 Rollover Contributions shall mean the funds transferred to an Employee's Rollover Account in accordance with Article IV.
- 2.30 Severance From Service Date shall mean the earlier of:
- (a) The date on which an Employee quits, retires, is discharged, or dies; or

(b) (1) The first anniversary of the first day of a period in which an Employee remains absent from service (with or without pay) with the Employer for any reason other than quit, retirement, discharge or death, such as vacation, holiday, sickness, disability, leave of absence or lay-off;

(2) The second anniversary of the first day of a period in which an Employee remains absent from service (with or without pay) with an Employer by reason of pregnancy, the birth of the Employee's child, the placement of a child with the Employee in connection with the adoption of such child by such Employee, or the need to care for such Employee's child during the period immediately following such child's birth or placement.

For a Participant who is absent from service on account of pregnancy, the birth of the Employee's child, child placement or child care, the period between the first anniversary of the first day of the absence and the second anniversary of the first day of the absence is neither a Period of Service nor a Period of Severance.

2.31 Spouse shall mean the legal Spouse of a married Participant.

2.32 Termination Date shall mean the date on which the Participant ceases Employment.

2.33 Transfer Election Participant shall mean a Participant in the Prior Plan who made an election to transfer to a defined benefit pension plan as of January 31, 2004 pursuant to an election under Section 14.10 of the Prior Plan and who either (a) does not have an outstanding loan from the Prior Plan as of the Effective date, or (b) has an outstanding loan from the Prior Plan as of the Effective Date and elects to participate in this Plan by making an election between March 15, 2005 and April 15, 2005. Such election shall be subject to the rules as promulgated by the Administrator.

2.34 Trust Agreement shall mean the agreement entered into between the Employer and the Trustee as described in Article XII.

- 2.35 Trust Fund (Trust) shall mean the total of the amounts held in the Employer Contributions Accounts and Rollover Accounts for all Participants.
- 2.36 Trustee shall mean the entity or any individuals, or the successors thereto, who shall accept the appointment of the Board to execute the duties of Trustee as stated in Article XII.
- 2.37 Valuation Date shall mean each day the New York Stock Exchange is open for business.
- 2.38 Vesting Service shall mean the sum of the Employee's Periods of Service and any Period of Severance of a duration of less than (12) months. For this purpose, twelve (12) months shall equal one (1) Year of Vesting Service and any remainder of less than twelve (12) months shall be disregarded for determining Vesting Service.

ARTICLE III
ELIGIBILITY AND PARTICIPATION

3.1 Eligibility. Transfer Election Participants and Prior Plan Terminated Vested Participants are the only individuals eligible to participate in the Plan. As soon as administratively feasible after April 15, 2005, the Accounts of all Transfer Election Participants and all Prior Plan Terminated Participants will be transferred to this Plan.

3.2 Employees Ineligible to Participate

The following Employees shall not be eligible to participate in the Plan:

- (a) Employees who are nonresident aliens who receive no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States;
- (b) Individuals who have employment contracts which exclude participation in the Plan;
- (c) Individuals who are classified as "Independent Contractors" or "Consultants" by the Employer, regardless of such individuals' classification by the Internal Revenue Service for tax withholding purposes; and
- (d) Individuals other than Transfer Election Participants and Prior Plan Terminated Vested Participants.

3.3 Leased Employees. Leased employees will be treated as Employees but will not be eligible to participate in this Plan. A leased employee is an individual who is not an Employee but who performs services for the Employer under an agreement with a leasing organization on a substantially full-time basis for one (1) year, which services are performed under the primary direction or control of the Employer. The performance of services on a substantially full-time basis means that the individual has either performed at least one thousand and five hundred (1,500) Hours of Service for an Employer for one (1) Plan Year, or has performed a number

of Hours of Service for an Employer at least equal to seventy-five percent (75%) of the median number of Hours of Service credited to Employees who performed similar services during the Plan Year.

- 3.4 Reemployment. If a Participant terminates his employment with the Employer and subsequently returns to active employment, he will be eligible to resume participation in this Plan on his date of reemployment. His Year of Vesting Service completed prior to his date of reemployment shall be credited for vesting purposes.

ARTICLE IV
ROLLOVER CONTRIBUTIONS

4.1 With the approval of the Administrator, and subject to the further limitations of this Article, the Plan will accept a direct rollover of an eligible distribution from:

- (a) a qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions; or
- (b) an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions.

The Plan will accept a participant contribution of an eligible rollover distribution from:

- (a) a qualified plan described in section 401(a) or 403(a) of the Code; or
- (b) an annuity contract described in section 403(b) of the Code.

The Plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. The transfer described in this section shall be called a Rollover Contribution.

4.2 The Employer, the Administrator and the Trustee have no responsibility for determining the propriety of, proper amount or time of, or status as a tax-free transaction of any Rollover Contribution.

4.3 A rollover contribution will be credited to a separate rollover account in the name of the Participant making such Rollover Contribution.

4.4 The Administrator in its discretion may direct the return to the Participant (or the retransfer to another trustee or custodian designated by the Participant) of any Rollover Contributions to

the extent the Administrator determines that such return is necessary to insure the continued qualification of this Plan under Section 401(a) of the Code.

- 4.5 Rollover Contributions shall be credited to a Participant's Rollover Account. Rollover Contributions shall be aggregated with all other contributions in the Fund and invested by the Trustee in accordance with the Trust Agreement.

ARTICLE V
CONTRIBUTIONS OF PARTICIPANTS

5.1 Contributions. Participant contributions are not permitted to the Plan.

ARTICLE VI
EMPLOYER CONTRIBUTIONS

- 6.1 Contributions. There are currently no Employer Contributions to the Plan.
- 6.2 Participating Employer Contributions Irrevocable. Subject to Section 6.3, all Employer contributions to the Trust Fund shall be irrevocable and shall be used in accordance with the provisions of the Plan.
- 6.3 Conditions for Return of Employer Contributions. If all or part of any Employer contribution is made because of a mistake of fact, the amount contributed because of a mistake of fact will be returned to the Employer if demand therefore is made within the time allowed by law.

ARTICLE VII
LIMITS ON CONTRIBUTIONS

7.1 Annual Addition Limitation.

- (a) Notwithstanding any provisions of the Plan, the Annual Additions to which a Participant is entitled under the Plan shall not, in any Limitation Year, exceed the applicable limitations of Section 415 of the Code. Such Section is hereby incorporated by reference.
- (b) If the Annual Addition allocable under this Plan (but for this Section) would exceed the limitations of Section 415(f) of the Code, the Annual Additions under any other defined contribution plan shall be reduced prior to the reduction of any Annual Additions under this Plan.
- (c) If the Annual Addition allocable under this Plan (but for this Section) would exceed the limitations of Section 415(c) of the Code, the excess Annual Addition under this Plan shall be allocated pursuant to Treasury Regulation Section 1.415-6(b)(6)(iii).
- (d) For purposes of this Section, Annual Addition shall mean:
 - (1) Employer contributions;
 - (2) Employee contributions;
 - (3) Forfeitures;
 - (4) Amounts allocated to individual medical accounts as described in Section 415(1)(1) of the Code which is part of a defined benefit plan maintained by the Employer; and
 - (5) Amounts derived from contributions paid or accrued, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee under Section 419(A)(d)(2) of the Code in a welfare benefit plan maintained by the Employer.

ARTICLE VIII
ALLOCATIONS

- 8.1 Individual Accounts. The Administrator will cause to be maintained one or more separate Accounts for each Participant, including an Employer Contributions Account, an Employee Contributions Account, an Employee Deductible Contribution Account and a Rollover Account, as applicable. The maintenance of individual Accounts is for accounting purposes only and segregation of the Trust Fund assets to each Account will not be required. Contributions will be allocated to Participants' Accounts as soon as practicable after they are made.

ARTICLE IX

INVESTMENT OF THE TRUST FUND AND ACCOUNTS

- 9.1 Investment Funds. The Trustee shall maintain separate Investment Funds as set forth in guidelines adopted by the Administrator. Such Investment Funds may be changed from time to time by the Administrator as conditions may warrant.
- 9.2 Investment of Contributions. Each Participant may direct the investment of his Accounts in the Investment Funds in one percent increments. An election to change investment directions or to transfer money among the Investment Funds may be made on any Valuation Date in accordance with the guidelines adopted by the Administrator. An election shall remain in effect until revoked by the Participant.
- 9.3 Fund Investment If No Fund Election Made. If a Participant fails to direct the investment of any contributions made on his behalf, such contributions shall be invested in the Investment Fund designated as the "Default Fund" by the Administrator.
- 9.4 Determination of Values. As of each Valuation Date, the Trustee shall determine the fair market value of each asset in each Investment Fund in the Trust Fund. The fair market value shall be based upon information that is reasonably available, including data from newspapers and financial publications of general circulation, statistical and valuation services, records of securities exchanges, appraisals by qualified persons, transactions and bona fide offers in assets of the type in question. With respect to securities for which there is a generally recognized market, the published selling prices on or nearest to the Valuation Date shall establish the fair market value of such security.

9.5 Crediting Investment Experience. As of each Valuation Date, expenses (if any), investment income and gains and losses in asset values of each Investment Fund since the preceding Valuation Date shall be credited or charged to a Participant's Account invested in the Trust Fund.

ARTICLE X
RETIREMENT BENEFITS AND DISTRIBUTION

- 10.1 Vesting. All amounts allocated to a Participant's Accounts shall be one hundred percent (100%) vested and nonforfeitable as of the Effective Date.
- 10.2 Normal Retirement Benefits. A Participant shall be entitled to retire and receive the balance in his Accounts upon the attainment of his Normal Retirement Date. His Accounts shall be valued for distribution upon the Valuation Date coinciding with or following his Normal Retirement Date. Any Participant who elects to continue working beyond his Normal Retirement Date shall remain a Participant in the Plan until his actual retirement date. Distribution shall be made in the normal form designated under Section 10.4 unless the Participant elects an optional method of distribution with the consent of his Spouse.
- 10.3 Benefits Upon Termination of Employment.
- (a) If a Participant terminates his employment prior to his Normal Retirement Date, he shall be entitled to receive the balance in his Accounts payable at his Normal Retirement Date in the normal form designated under Section 10.4 or, if elected, under one of the optional methods.
 - (b) A Participant who elects to receive a lump sum cash payment can elect immediate payment or he can postpone the lump sum distribution to any date which precedes the April 1 following the calendar year in which he attains age seventy and one-half (70-1/2).
- 10.4 Normal Form of Payment.
- (a) The normal form of payment for a married Participant shall be a Joint and Survivor Annuity providing monthly payments for the life of the Participant and providing that, in the event of the Participant's death, payments in the same amount shall be continued to his or her surviving Spouse for life.

- (b) The normal form of payment for an unmarried Participant is the straight life annuity.

10.5 Optional Forms of Distribution. The optional forms of distribution shall include

- (a) a lump sum option,
- (b) substantially equal cash installments payable monthly, quarterly or annually over a period elected by the Participant but not to exceed his life expectancy. The amount of each periodic payment shall be determined by dividing the value of the Participant's Accounts by the number of months (quarters or years) remaining in the payment period. While the Participant's election of this option is deemed to be irrevocable, the Participant may request in writing to the Administrator that the Plan pay all or any part of the credit remaining to him in the event of financial hardship.
- (c) a straight life annuity,
- (d) Single life annuities with certain periods of five, ten or fifteen years or installment refund,
- (e) Survivorship life annuities with survivor percentages of 50%, 66-23% or 100% and installment refund, and
- (f) Fixed period annuities for any period of whole months which the Participant may elect provided that the period is not less than 60 months and does not exceed his life expectancy.

All distribution options shall provide that (a) at least one-half of the Participant's interest in the Plan shall be payable during his life expectancy and (b) the entire interest of the Participant shall be distributed over a period which does not exceed the joint life and last survivor expectancies of the Participant and his beneficiary.

10.6 Commencement of Benefits.

- (a) Any other provision of the Plan notwithstanding, each Participant's entire interest in the Plan will be distributed, or distribution will begin, no later than sixty (60) days following the later of:
 - (i) the calendar year in which the Participant reaches age seventy and one-half (70-1/2); or
 - (ii) the calendar year in which the Participant retires.

For a Participant who terminates employment prior to age seventy and one-half (70-1/2) and does not elect to defer payment, the payment of his benefits will not begin later than the sixtieth (60th) day after the end of the Plan Year in which occurs the latest of the following dates: (1) his Normal Retirement Date; (2) the tenth (10th) anniversary of the date he commenced participation in the Plan; or (3) his Termination Date.

- (b) If the Participant dies after payments have begun, then his remaining interest in the Plan will be distributed at least as rapidly as before his death.
- (c) If a Participant dies before payments have begun, his interest in the Plan will be distributed or distribution will commence within one year of the date of the Participant's death, unless the Spouse or beneficiary requests a later distribution date.

Distributions from this Plan made on or after January 1, 2003 shall be made in accordance with the Code Section 401(a)(9) (which is hereby incorporated herein) and the regulations published on April 17, 2002. Any Plan provision reflecting Section 401(a)(9) of the Code shall override any Plan provision inconsistent with Section 401(a)(9) of the Code.

10.7 Benefits Upon Death. In the event of the death of a Participant prior to his retirement or termination of employment, the balance in his Accounts shall be payable as follows:

- (a) A married Participant shall have his Accounts paid to his Spouse in the form of a Pre-retirement Survivor Annuity. The Pre-retirement Survivor Annuity shall be a life annuity beginning on the first day of any month elected by the Spouse which follows the Participant's death and is prior to the date the Participant would have reached age seventy and one-half (70-1/2).
- (b) A Participant who does not have a Spouse shall have his Accounts payable to his beneficiary in one lump sum.
- (c) A Participant may waive the Pre-retirement Survivor Annuity and name another beneficiary to receive his interest in the Plan under any of the distribution options.
- (d) In lieu of receiving a Pre-retirement Survivor Annuity, the spouse may elect to have death benefits distributed under any of the optional distribution forms.

10.8 Eligible Rollover Distributions.

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) 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, except that an eligible rollover distribution does not include: 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 distributees and the distributee's designated beneficiary, or for a specified period of ten years or

more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any hardship distribution described in Section 401(k)(2)(B) (i)(IV).

- (2) Eligible retirement plan -- An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, or a plan described in Section 457(b) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) Distributee -- A distributee includes an employee or former employees. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) Direct rollover -- A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

10.9 Designation of Beneficiaries. Each Participant, with the written consent of his Spouse (if any), may designate one or more beneficiary(s) to receive any balance in his Accounts which may be payable in the event of his death. The Participant may change his designation from time to time by filing the proper form with the Administrator, and each change will revoke all his prior designations. To be effective, each designation or revocation must be made in writing on a form provided by the Administrator and must be signed and filed with the Administrator before the Participant's death. The Participant may name one or more primary beneficiaries

and one or more contingent beneficiaries. If no designated beneficiary survives the Participant, the Administrator will direct the payment of his benefits to his surviving Spouse, if any, or if none then to his heirs at law, or if none then to the Participant's estate.

10.10 Distribution of Accounts: \$5,000 or Less. Notwithstanding any other Plan provision, a Participant or beneficiary whose Account value is one thousand dollars (\$1,000) or less shall receive a lump sum distribution as soon as administratively practicable after the Participant's termination of employment. The distribution shall be valued as of the Valuation Date on which the Trustee issues a check for the balance of the Account. In determining the Account value for purposes of this Section, amounts attributable to the Participant's Rollover Account shall be disregarded. A Participant or beneficiary, whose Account value is greater than one thousand dollars (\$1,000) but not greater than five thousand dollars (\$5,000), can elect an immediate lump sum distribution under Section 10.3(b) or can postpone the distribution pursuant to that Section.

10.11 In-Service Withdrawals. A Participant may withdraw all or any part of the fair market value of his Employee Contributions Account, Employee Deductible Contributions Account or Rollover Account upon written request to the Administrator and in accordance with rules adopted by the Administrator. If at the time of a distribution from his Employee Deductible Contributions Account the Participant has not attained age fifty-nine and one-half (59-1/2) and is not disabled, as defined in Section 22(e)(3) of the Code, the Participant will be subject to a federal income tax penalty, unless the distribution is rolled over to a qualified plan or individual retirement plan within sixty (60) days of the date of distribution. A Participant may withdraw all or any part of the fair market value of his or her pre-1987 Employee Contributions Account with or without withdrawing the earnings attributable thereto. Post-1986 personal contributions may be withdrawn only along with a portion of the earnings thereon. A withdrawal under this Section shall not prohibit a Participant from sharing in any future Employer contributions.

ARTICLE XI

AMENDMENT, MERGER AND TERMINATION OF PLAN

11.1 Amendment. The Administrator, at any time and from time to time, may amend or modify any or all of the provisions of the Plan without the consent of any person, provided that no amendment will reduce any Participant's nonforfeitable interest in his Accounts as of the date such amendment is adopted (or its effective date if later), eliminate an optional form of distribution, or permit any part of the Trust Fund to revert to the Employer or be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries. No amendment which affects the rights, duties or responsibilities of the Trustee or the Administrator may be made without the consent of the affected Trustee or Administrator.

Any amendment which changes the vesting schedule shall provide that a Participant who has completed at least three (3) years of service on the date of the Plan amendment shall be permitted to have his vesting determined under the provisions of the prior vesting schedule without regard to the Plan amendment.

11.2 Merger or Consolidation. A merger of, consolidation with, or transfer of assets or liabilities to, any other plan will be permitted only if the benefit each Participant would receive if such plan were terminated immediately after the merger, consolidation or transfer is not less than the benefit he would have received if this Plan had terminated immediately before the merger, consolidation or transfer.

11.3 Termination. The Employer is under no obligation or liability whatsoever to continue to maintain the Plan and Trust for any particular length of time and such Plan may be terminated at will by the Administrator. In the event of termination of the Plan, the Accounts of all affected Participants shall vest in full.

11.4 Participant Accounts After Termination. Upon termination or partial termination of the Plan by the Employer, the Trustee will continue to hold the assets of the Trust Fund for distribution as directed by the Administrator. The Administrator will determine whether to disburse such assets as immediate benefit payments, to retain and disburse them in the future, to purchase

immediate or deferred annuity contracts, or to follow any other procedure which it deems advisable.

ARTICLE XII
FIDUCIARIES

- 12.1 Responsibilities and Authority of the Administrator. The Administrator will control and manage the operation and administration of the Plan except to the extent that such responsibilities are specifically assigned hereunder to the Employer or the Trustee. The responsibilities and authority of the Administrator are set forth in detail in various Articles of the Plan and primarily in Article XIII.
- 12.2 Responsibilities and Authority of the Trustee. The Trustee will manage and control the assets of the Plan except to the extent that such responsibilities (a) are specifically assigned hereunder to the Employer or the Administrator, or (b) are delegated to one (1) or more investment managers by the Employer. The responsibilities and authority of the Trustee are set forth in the Trust Agreement.
- 12.3 Responsibilities and Authority of the Employer. Subject to the right of the Employer to terminate the Plan for its Employees, the Employer will have the following responsibilities and authority with respect to control and management of the Plan and its assets:
- (a) to merge or consolidate the Plan with, or transfer all or part of the assets or liabilities to, any other plan;
 - (b) to select individuals to serve as Administrator and to monitor their performances;
 - (c) to appoint the Trustee;
 - (d) to appoint or remove one or more investment managers or to refrain from such appointments; and
 - (e) to perform such additional duties as are required by the Plan or by law.

The foregoing responsibilities and authority of the Employer are set forth in further detail in various Articles of the Plan and in the Trust Agreement.

- 12.4 Responsibilities Not Shared. Except as otherwise specified herein or required by law, each Fiduciary will have only those responsibilities that are specifically assigned to it hereunder, and no Fiduciary will incur liability because of improper performance or nonperformance of responsibilities specifically assigned to another Fiduciary or other person.
- 12.5 Procedure For Allocation and Delegation of Responsibilities. The individuals selected to serve as Administrator and any delegates of the Employer may allocate their responsibilities among themselves in any reasonable manner and may delegate any of their responsibilities to any other person or persons by so specifying in a written instrument. No person serving as Administrator will be liable for the improper discharge or nonperformance of any responsibility so allocated or delegated to another person, except to the extent liability is imposed by law.
- 12.6 Dual Fiduciary Capacity Permitted. Any person or group of persons may serve in more than one Fiduciary capacity.
- 12.7 Actions by Participating Employer. Wherever the Plan specifies that the Employer is required or permitted to take any action, such action will be taken by such Employer's duly authorized Employees.
- 12.8 Advice. A Fiduciary may employ or retain such attorneys, accountants, actuaries, investment advisors, consultants, specialists and other persons or firms as he deems necessary or desirable to advise or assist him in the performance of his duties. Unless otherwise provided by law, the Fiduciary will be fully protected with respect to any action taken or omitted by him in reliance upon any such person or firm.
- 12.9 Indemnification. To the extent permitted by law and not prohibited by their charters and by-laws, the Employer will indemnify and hold harmless every person serving as a Fiduciary and the estate of such a person if he is deceased, from and against all claims, loss, damages,

liability, and reasonable costs and expenses, incurred as a result of his service as a Fiduciary hereunder, unless due to the gross negligence or willful misconduct of such person; provided that counsel fees and amounts paid in settlement must be approved by the Employer, and provided further that this paragraph will apply only to the extent that any such claims, loss, damages, liability costs and expenses are not covered by a fiduciary liability insurance policy maintained by such Fiduciary, the Administrator, the Employer or the Plan. The preceding sentence will not apply to a corporate trustee or to an investment manager as defined in ERISA unless the Employer and such corporate trustee or investment manager otherwise agree in writing.

ARTICLE XIII
THE PLAN ADMINISTRATOR

- 13.1 Administration of Plan. The Administrator shall have the absolute power, authority, and discretion to administer and interpret the Plan and to adopt such rules and regulations as in the opinion of the Administrator are necessary or advisable to implement, administer, and interpret the Plan, or to transact its business. It may correct any defect, supply any omission or reconcile any inconsistency or ambiguity in such manner as it deems advisable. It will make all final determinations concerning eligibility, benefits and rights hereunder, and all other matters concerning Plan administration and interpretation. All determinations and actions of the Administrator will be conclusive and binding upon all persons, except as otherwise provided herein or by law, and except that the Administrator may revoke or modify a determination or action previously made in error. The Administrator will exercise all powers and authority given to it in a nondiscriminatory manner which does not favor Highly Compensated Employees, and will apply uniform administrative rules of general application to insure that persons in similar circumstances are treated alike.
- 13.2 Impossible or Difficult Performance. If performance or any act required hereunder is impossible or difficult, the Administrator in its discretion may perform or direct the performance of any other act which it determines will carry out the Plan's purposes. Such performance will discharge all liability with respect thereto.
- 13.3 Reporting and Disclosure. The Administrator will prepare, file, submit, distribute or make available any Plan descriptions, reports, statements, forms or other information to any government agency, Employee, former Employee, or Beneficiary as may be required by law or by the Plan.
- 13.4 Records. The Administrator will keep all data, records, books of account and instruments pertaining to Plan administration. The Employer will supply all information required by the Administrator to administer the Plan with respect to its Employees, and the Administrator may rely upon the accuracy of such information.

- 13.5 Compensation and Expenses. The Administrator will serve without compensation unless the Employer determines otherwise. All reasonable expenses of administering the Plan may be paid out of the Trust Fund or paid by the Employer (each bearing an equitable share of such expenses as determined by the Employer). Such expenses include the compensation of all persons employed or retained by the Administrator, premiums for bonds and insurance protecting the Plan or Trust Fund and required by law or deemed advisable by the Administrator, and all other costs of Plan administration.
- 13.6 Claims Review Procedure. Any request for benefits (the "Claim") by a Participant or his beneficiary (the "Claimant") will be filed in writing with the Administrator. Within ninety (90) days after receipt of a Claim, the Administrator will provide written notice to any Claimant whose Claim has been wholly or partly denied, including: (a) the specific reasons for the denial, (b) the specific Plan provisions on which the denial is based, (c) any additional material or information necessary to perfect the Claim and the reasons it is necessary, and (d) the Plan's Claims review procedure. A Claimant will be given a full and fair review by a person so designated by the Administrator (the "Review Official") of the denial of his Claim if he requests a review in writing within sixty (60) days after notification of the denial. The Claimant may review pertinent documents and may submit issues and comments orally, in writing, or both. The Review Official will render his written decision on review not later than sixty (60) days after receipt of the request for such review and will include specific reasons for the decision and references to the Plan provisions on which the decision is based.

The claims procedure shall be administered in a fair and uniform manner that does not discriminate in favor of Highly Compensated Employees.

ARTICLE XIV
MISCELLANEOUS

- 14.1 Payment to Minors and Incompetents. If the Administrator deems any person incapable of giving a binding receipt for benefit payments because of minority, illness, infirmity or other incapacity, it may direct payment directly for the benefit of such person, or to any person selected by the Administrator to disburse it. Such payment, to the extent thereof, will discharge all liability for such payment under the Plan.
- 14.2 Nonalienation of Benefits. No benefit, right or interest hereunder of any person will be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, or to seizure, attachment or other legal, equitable or other process, or be liable for, or subject to, the debts, liabilities or other obligations of such person except to the extent permitted by law, such as a qualified domestic relations order, as defined in Section 414(p) of the Code, entered after January 1, 1985 or pursuant to Section 401(a)(13)(c) or (D) of the Code.
- 14.3 Limitation on Rights of Employees. The Plan is strictly a voluntary undertaking on the part of the Employer and shall not constitute a contract between the Employer and any Employee, or consideration for, or an inducement or condition of, the employment of an Employee. Except as otherwise required by law, nothing contained in the Plan shall give any Employee the right to be retained in the service of a Participating Employer or to interfere with or restrict the right of the Employer, which is hereby expressly reserved, to discharge or retire any Employee at any time, without notice and with or without cause. Except as otherwise required by law, inclusion under the Plan will not give any Employee any right or claim to any benefit hereunder except to the extent such right has specifically become fixed under the terms of the Plan and there are funds available therefor in the hands of the Trustee. The doctrine of substantial performance shall have no application to Employees or Participants. Each condition and provision, including numerical items, has been carefully considered and constitutes the minimum limit on performance which will give rise to the applicable right.
- 14.4 Current Address of Payee. Any person entitled to benefits is responsible for keeping the Administrator informed of his current address at all times. The Administrator, Trustee and the

Employer have no obligation to locate such person, and will be fully protected if all payments and communications are mailed to his last known address, or are withheld pending receipt of proof of his current address and proof that he is alive.

- 14.5 Disputes Over Entitlement to Benefits. If two (2) or more persons claim entitlement to payment of the same benefit hereunder, the Administrator in its discretion may withhold payment of such benefit until the dispute has been determined by a court of competent jurisdiction or has been settled by the persons concerned.

- 14.6 Statutory Reference. A reference to any statute includes reference to any similar provision of any successor statute.

- 14.7 Applicable Law. To the extent that the state or local law applies, the provisions of the Plan will be construed, enforced and administered according to the laws of Broward County, Florida and the State of Florida.

- 14.8 USERRA. Notwithstanding any provision of this Plan to the contrary, to the extent required by law service credits and contributions with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

- 14.9 Gender and Number. The masculine pronoun wherever used herein shall mean or include the feminine pronoun where applicable and the singular shall be deemed to include the plural as the context shall indicate.

Executed at Town of Davie, Florida on _____, _____.

TOWN OF DAVIE

By: _____
Administrator

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