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# BLUE LINE 457 DEFERRED COMPENSATION PLAN & TRUST

As Amended and Restated Effective January 1, 2002

## Article I. Purpose

The Employer hereby establishes and maintains the Blue Line 457 Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer who are members of the Fraternal Order of Police ("FOP") and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code") and Revenue Ruling 2004-57.

The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

## Article II. Definitions

**2.01 Account:** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

**2.02 Accounting Date:** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

**2.03 Administrator:** The NFOP Local Lodge, ICMA-RC or such other person or persons named in writing by the Employer to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Administrator may resign upon 60 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

**2.04 Automatic Distribution Date:** April 1 of the calendar year after the Plan Year the Participant attains age 70-1/2 or, if later, has a Severance Event.

**2.05 Beneficiary:** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the Designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary.

**2.06 Deferred Compensation:** The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.08 or 6.09, a rollover under Section 6.10, or any other amount which the Employer agrees to credit to a Participant's Account.

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**2.07 Dollar Limitation:** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

**2.08 Eligible Employee:** An employee of the Employer who is a member of the NFOP.

**2.09 Employee:** Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

**2.10 Employer:** \_\_\_\_\_, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of \_\_\_\_\_, described in Section 457(e)(1)(A) of the Code.

**2.11 457 Catch-Up Dollar Limitation:** Twice the Dollar Limitation.

**2.12 Includible Compensation:** Includible Compensation of a Participant means the “compensation,” as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. Includible Compensation shall include any pre-tax contributions to an integral part trust of the employer providing retiree health care benefits.

**2.13 Joinder Agreement:** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee’s Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

**2.14 Local Lodge:** Any state or local lodge that is a member lodge of the National Fraternal Order of Police with full power and authority to perform its obligations under this plan.

**2.15 Normal Limitation:** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.08, 6.09, and 6.10).

**2.16 Normal Retirement Age:** Age 70-1/2, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant’s Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant’s alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer’s basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70-1/2. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant’s alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70-1/2. In no event will a Participant’s normal retirement age be different than the normal retirement age under the Employer’s other 457(b) plans.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or

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firefighters that is not earlier than age 40 or later than age 70-1/2. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70-1/2.

**2.17 Participant:** Any Eligible Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.10 of the Plan, the term Participant includes a former Employee of the Employer.

**2.18 Percentage Limitation:** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

**2.19 Plan Year:** The calendar year.

**2.20 Retirement:** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.

**2.21 Severance Event:** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

**2.22 Trust:** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

### **Article III. Administration**

**3.01 Duties of the Employer:** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

**3.02 Duties of Administrator:** The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

**3.03 Coordination of Tax Return Information:** The Employer, Administrator and Local Lodge will provide all information necessary to administer the Plan and all other 457(b) plans maintained by the Employer. The Employer will forward all elective deferrals made under the Plan and will disclose the amount of deferrals made under the Employer's other 457(b) plans.

### **Article IV. Participation in the Plan**

**4.01 Initial Participation:** An Eligible Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer

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compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

**4.02 Amendment of Joinder Agreement:** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

## **Article V. Limitations on Deferrals**

**5.01 Normal Limitation:** Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

### **5.02 Catch-Up Limitations:**

- (a) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code, or (2) the excess (if any) of (i) the Participant's compensation (as defined in Section 415(c)(3) of the Code) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a). An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.
- (b) **Last Three Years Catch-up Contribution:** For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) the 457 Catch-Up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

**5.03 Sick, Vacation and Back Pay:** If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

**5.04 Other Plans:** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a

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Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

**5.05 Excess Deferrals:** Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations.

**5.06 Protection of Person Who Serve in a Uniformed Service:** An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includable Compensation) without the interruption or leave, reduced by the Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

## **Article VI. Trust and Investment of Accounts**

**6.01 Investment of Deferred Compensation:** A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.

**6.02 Investment Powers:** The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05; or to the extent that such powers are restricted by applicable law.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial

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institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

**6.03 Taxes and Expenses:** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

**6.04 Payment of Benefits:** The payment of benefits from the Trust in accordance with the terms of the Plan may

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be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

**6.05 Investment Funds:** In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

**6.06 Valuation of Accounts:** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

**6.07 Crediting of Accounts:** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

**6.08 Post-Severance Transfers Among Eligible Deferred Compensation Plans:**

- (a) **Incoming Transfers:** A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) in the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and became an Eligible Employee of the Employer; (ii) the other employer's plan provides that such transfer will be made; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.
- (b) **Outgoing Transfers:** An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if: (i) in the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer; (ii) the other employer's plan provides that such transfer will be accepted; (iii) the Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and (iv) the Participant or Beneficiary

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whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

#### **6.09 Transfers Among Eligible Deferred Compensation Plans of the Employer:**

- (a) **Incoming Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be made; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) **Outgoing Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be accepted; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

#### **6.10 Eligible Rollover Distributions:**

- (a) **Incoming Rollovers:** An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the Code maintained by an eligible governmental employer described in Section 457(e)(1)(A) of Code.
- (b) **Outgoing Rollovers:** 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.
- (c) **Definitions:**
  - (1) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, 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 distributee 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 Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include 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).

- (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 Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (3) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 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.

**6.11 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit:** All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

**6.12 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs.** For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

**6.13 Employer Liability:** In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

## **Article VII. Benefits**

### **7.01 Retirement Benefits and Election on Severance Event:**

- (a) **General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date

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other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70-1/2, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

**7.02 Payment Options:** As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03.

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted.
- (b) One lump-sum payment.
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer.
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01.
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option made after December 31, 1995, under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

**7.03 Limitation on Options:** No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G).

**7.04 Minimum Required Distributions:** Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefits requirements of Section 401(a)(9)(G) of the Code.

**7.05 Post-Retirement Death Benefits:**

- (a) Should the Participant die after he/she has begun to receive benefits under a payment option, the remaining

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payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

#### **7.06 Pre-Retirement Death Benefits:**

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

#### **7.07 Unforeseeable Emergencies:**

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Administrator to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Administrator, the Participant or Beneficiary shall be paid only such amount as is deemed necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant or Beneficiary resulting from a sudden unexpected illness, accident, or disability of the Participant, Beneficiary, or of the spouse or dependent (as defined in Section 152(a) of the Code) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152(a)) of the Code may also constitute an unforeseeable emergency. Absent extraordinary circumstances, the need to send a Participant's or Beneficiary's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

**7.08 De Minimis Accounts:** Notwithstanding the foregoing provisions of this Article, if the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution,

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provided that (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

**7.09 In-Service Distributions From Rollover Account:** A Participant that has a separate account attributable to rollover contributions to the plan, may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account, provided that no more than two (2) such distributions may be made during any calendar year.

**7.10 In-Service Distributions for Age 70 ½ Participants:** A Participant who has reached age 70 ½ and has not yet had a Severance Event, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

### **Article VIII. Non-Assignability**

**8.01 General:** Except as provided in Section 8.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

#### **8.02 Domestic Relations Orders:**

- (a) Allowance of Transfers: To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, and (iii) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) Release from Liability to Participant: The Plan's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer, and the Administrator, and/or Local Lodge from any claim with respect to such amounts.
- (c) Participation in Legal Proceedings: The Employer, Administrator, and/or Local Lodge shall not be obligated to defend against or set aside any judgement, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of

such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer, Administrator, and/or Local Lodge to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Plan's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer, Administrator, and/or Local Lodge shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

- (d) Determination of Validity of Domestic Relations Orders: The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. Determinations made by the Administrator or other person designated by the Employer under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

#### **Article IX. Relationship to Other Plans and Employment Agreements**

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

#### **Article X. Amendment or Termination of Plan**

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (i) all assets held by the Plan are transferred; (ii) the receiving plan provides for the receipt of transfers; (iii) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iv) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

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### **Article XI. Applicable Law**

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

### **Article XII. Gender and Number**

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

## DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by
  - (b) the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
  - (c) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
2. Compliance with Revenue Procedure 81-100. The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
    - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment

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in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

- (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
  - (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
  - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
3. Governing Law. Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
4. Judicial Proceedings. The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: Paul F. Gallagher

Name: Paul F. Gallagher

Title: Assistant Secretary







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AC: 1105-325