

**AGREEMENT AND DECLARATION OF TRUST**

**DELRAY BEACH POLICE, FIRE FIGHTERS & PARAMEDICS**

**RETIREE BENEFIT FUND**

January 1, 2006

**WHEREAS**, the Trustees, designated and in office as such, by executing this Agreement and Declaration of Trust indicate acceptance of their respective duties imposed upon them as Trustees under the terms of this Trust Agreement; and

**WHEREAS**, the City of Delray Beach, as the Employer, entered into a collective bargaining agreements with the Professional Fire Fighters & Paramedics of Delray Beach, Local 1842, IAFF (hereinafter referred to as "Local 1842"), and the Police Benevolent Association (hereinafter referred to as "the PBA"), as the Unions, on behalf of Employees represented by the Unions, which among other things provides for the payment of contributions by the Employer to this Plan, known as the Delray Beach Police, Fire Fighters & Paramedics Retiree Benefit Fund, as set forth in said collective bargaining agreements; and

**WHEREAS**, the sums payable to the Plan are for the purpose of providing full or partial health insurance premiums, medical expense reimbursements, and related benefits, as now are or may hereafter be established by the Trust Fund's Board of Trustees and authorized or permitted by law for eligible Employees, as determined hereunder;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants and agreements herein contained, it is hereby agreed as follows:

**ARTICLE I**

**DEFINITIONS**

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**Section 1.1 Administrative Manager.** The term "Administrative Manager" shall mean that person or company defined in Section 5.9 of the Agreement and Declaration of Trust.

**Section 1.2 Administrator.** The term "Administrator" shall mean the Board of Trustees of the Trust Fund.

**Section 1.3 Beneficiary.** The term "Beneficiary" shall mean a Participant who, by the terms of the Plan created pursuant to this Agreement and Declaration of Trust, is or may become entitled to a benefit thereunder.

**Section 1.4 Board of Trustees.** The term "Board of Trustees" shall mean the Trustees designated in this Agreement and Declaration of Trust, together with their successors, designated and appointed in accordance with the terms of this Agreement and Declaration of Trust.

**Section 1.5 Collective Bargaining Agreement.** The term "collective bargaining agreement" shall mean any collective bargaining agreement to which Local 1842 or the PBA are a party, and any extension, amendment, modification, renewal, or successor thereof, which requires the Employer to make payments to this Trust.

**Section 1.6 Consultant.** The term "consultant" shall mean any person or entity who, for compensation, advises, represents, or provides other assistance to the Board of Trustees concerning the establishment or operation of the Plan.

**Section 1.7 Contributions.** The term "contributions" shall mean the payments required of the Employer to this Trust Fund, or payment made by or on behalf of Participants.

**Section 1.8 Custodian.** The term "custodian" shall mean one who is officially entrusted with guarding and keeping records and documents of this Trust Fund.

**Section 1.9 Employee.** The term "Employee" shall mean:

(a) Any employee working for an Employer and with respect to whose employment an Employer is required to make contributions into the Trust Fund in accordance with a collective bargaining agreement.

(b) Any officer, salaried or hourly employee of an Employer, elected or appointed officers or hourly or salaried employees of the Union, its state affiliate or International parent body, provided that the Board of Trustees agrees to accept such officers or employees.

(c) A person, represented by or under the jurisdiction of the Unions, either Local 1842 or the PBA, employed by a governmental unit or agency, and on whose behalf payment of contributions are made at the times and at the rate of payment equal to that paid by an Employer, in accordance with a written agreement, ordinance or resolution.

**Section 1.10 Employer.** The term "Employer" shall mean:

The City of Delray Beach, or any other employer, which is bound by a collective bargaining agreement with the Union providing for payments to the Trust Fund with respect to Employees represented by the Union.

**Section 1.11 Named Fiduciary.** The term "named fiduciary" shall mean the Board of Trustees.

**Section 1.12 Participant.** The term "Participant" shall mean any Employee or former Employee of an Employer who is or may become eligible to receive a benefit of any type from this Trust Fund.

**Section 1.13 Plan.** The term "Plan" shall mean the plan, program, method, rules, and procedures for the payment of benefits from the Trust Fund to Participants, as determined by the Board of Trustees.

**Section 1.14 Trust Agreement.** The term "Trust Agreement" or "Agreement and Declaration of Trust" shall mean this instrument, including all amendments and modifications as may from time to time be made.

**Section 1.15 Trust Fund.** The term "Trust Fund" "Trust" and "Fund" as used herein shall mean the entire trust estate of the Delray Beach Police, Fire Fighters & Paramedics Retiree Benefit Fund as it may, from time to time be constituted, including, but not limited to, all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds, and other sums payable to the Board of Trustees on account of such contracts), all investments made and held by the Board of Trustees, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the Board of Trustees by reason of their acceptance of this Agreement and Declaration of Trust.

**Section 1.16 Trustees.** The term "Trustees" shall mean the Trustees designated in this Trust Agreement, together with their successors, designated and appointed in accordance with the terms of this Trust Agreement.

**Section 1.17 Unions.** The term "Unions" shall mean the Professional Fire Fighters & Paramedics of Delray Beach, Local 1842, IAFF, its successors and assigns, and the Police Benevolent Association, its successors and assigns, and such other union or unions as may from time to time be accepted for participation hereunder under such terms and conditions as may be required by the Board of Trustees.

## **ARTICLE II**

### **CREATION AND PURPOSES OF FUND**

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**Section 2.1 Creation and Purpose.** The Trust Fund is created, established, and maintained, and the Board of Trustees agrees to receive, hold, and administer the Trust Fund, for the purpose of providing such benefits as now are, or hereafter may be authorized or permitted by law for Participants and in accordance with the provisions set forth herein and in the Plan.

**Section 2.2 Effective Date.** This Agreement and Declaration of Trust shall be in full force and effect as of May 14, 2002.

**ARTICLE III**

**BOARD OF TRUSTEES**

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**Section 3.1 Number, Appointment, Term.**

(a) The Trust Fund shall be administered by seven (7) Trustees. The Trustees on the date of this Agreement and Declaration of Trust are:

1. James H. Tabeek (designee of the President of Local 1842)
2. Mark E. Dagnan (initial term through March 31, 2008)
3. David Brassard (initial term through March 31, 2007)
4. Richard M. Murphy (initial term through March 31, 2007)
5. Charles Jeroloman (initial term through March 31, 2007)
6. Vincent Gray (initial term through March 31, 2007)
7. Salvatore Arena (initial term through March 31, 2007)

(b) The President of Local 1842, or his or her designee, shall serve as a Trustee, and shall so serve as long as he or she is President of Local 1842, or is the designee of the President. The President of Local 1842 shall serve as Chairperson of the Board of Trustees except as provided for in Section 3.8.

(c) Five Trustees shall serve a term of three years. Three of these five Trustees shall be elected from the membership of the PBA, with the remaining two Trustees being elected from the membership of Local 1842. The initial term of these trustees shall be as follows: One of the PBA trustees shall serve from the effective date of this Agreement and Declaration of Trust through March 31, 2007. One of the PBA trustees shall serve from the effective date of this

Agreement and Declaration of Trust through March 31, 2008. One of the PBA Trustees shall serve from the effective date of this Agreement and Declaration of Trust through March 31, 2009. The Local 1842 trustees shall fulfill the duties and obligations of their current terms.

(d) One Trustee shall be a non-bargaining unit firefighter, actively employed by the City of Delray Beach, elected by non-bargaining unit participants. This Trustee shall serve a term of three years. However, the initial term of this trustee shall be from be May 14, 2002, through March 31, 2004.

(e) Appointment and election of Trustees shall take place in March 2002, and, thereafter, as determined by the Board of Trustees.

(f) A vacancy shall occur whenever a Trustee resigns, or is removed as provided in Section 3.2, or by reason of death or incapacity.

(g) Successor Trustees shall be named as provided in Section 3.3.

**Section 3.2 Resignation and Removal.**

(a) A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days notice in writing to the remaining Trustees and the Union. Shorter notice may be given as the remaining Trustees may accept as sufficient. In the notice there shall be stated a date on which such resignation shall take effect; and such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee.

(b) A bargaining unit Trustee shall be removed automatically if the Trustee ceases to be a member of his or her union. A Trustee shall also be removed automatically if the Trustee

fails to attend three (3) consecutive meetings of the Board of Trustees unless the Board of Trustees excuses an absence in its sole discretion.

**Section 3.3 Successor Trustees, Appointment.**

(a) If the President of Local 1842, or his or her designee, serving as a Trustee shall die, become incapable of acting hereunder, resign, or be removed during his or her term, the person serving as President of Local 1842 shall serve as a trustee. If any other Trustee shall die, become incapable of acting hereunder, resign, or be removed during his or her term, a successor trustee shall be appointed by the remaining Trustees as soon as possible for the remainder of the term.

(b) The Board of Trustees shall give notice to the bank of the appointment of a successor Trustee and the bank may rely upon such notice as notice of a valid appointment and need not inquire further as to the validity of such appointment.

**Section 3.4 Successor Trustees, Assumption of Office.** Any successor Trustee shall immediately upon appointment and acceptance of the Trusteeship, become vested with all the property rights, powers, and duties of a Trustee hereunder with like effect as if originally named a Trustee, without the necessity of any formal conveyance or other instrument of title.

**Section 3.5 Acceptance of the Trust by Trustees.** A Trustee shall indicate acceptance in a form satisfactory to the Board of Trustees. By executing such written acceptance, a Trustee shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein.

**Section 3.6 Limitation of Liability of Trustees.** No successor Trustee shall in any way be liable or responsible for anything done or committed in the administration of the Trust Fund prior to the date of becoming a Trustee. No Trustee shall be liable for the acts or omissions of another Trustee to whom certain responsibilities, obligations, or duties have been delegated



pursuant to this Trust Agreement, nor shall any Trustee be liable for the acts or omissions of any investment manager, attorney, administrative manager, agent, or assistant employed by them pursuant to this Trust Agreement, if such person's performance was periodically reviewed by the Board of Trustees who found such performance to be satisfactory.

**Section 3.7 Office of the Fund.** The principal office of the Trust Fund shall be located and maintained in Palm Beach County, in the State of Florida, or at such other locations in the State of Florida as the Board of Trustees may determine.

**Section 3.8 Officers.**

(a) The President of Local 1842, or his or her designee, shall serve as Chairperson of the Board of Trustees. The Board of Trustees shall elect from among themselves a Secretary.

(b) The Secretary, or such other person as the Board of Trustees may designate, shall keep minutes and records of all meetings, proceedings, and acts of the Board of Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees and legal counsel. The Chairperson, and in the Chairperson's absence the Secretary, shall preside at all meetings of the Board of Trustees.

**Section 3.9 Power to Act in Case of Vacancy.** No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund, notwithstanding the existence of such vacancy or vacancies.

**Section 3.10 Meetings; Notices.** The Board of Trustees shall meet at such times as it deems necessary to transact business provided public notice is given. The Chairman or the Secretary of the Board of Trustees may, and upon the written request of any three (3) Trustees

shall, call a meeting of the Board of Trustees by providing public notice of the time and place thereof.

**Section 3.11 Attendance at Meetings; Minutes.** Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee and legal counsel, shall be kept of all business transacted and of all matters upon which voting shall have occurred, and the vote shall be recorded. Such minutes shall bear the signature of the Secretary and shall be approved at the succeeding meeting.

**Section 3.12 Quorum; Voting; Action Without Meeting.**

(a) A quorum shall consist of at least four (4) Trustees.

(b) A quorum of a committee or subcommittee of the Board of Trustees, established in accordance with this Trust Agreement or otherwise, shall be at least two (2) Trustees, except as provided otherwise in this Trust Agreement or by law.

(c) Any action taken by the Trustees, except as herein otherwise provided, shall be by affirmative vote of four (4) votes cast at a meeting. The Trustees must cast their votes in person.

**Section 3.13 Removal of Trustees.** The Board of Trustees shall be empowered to initiate action to cause the removal of any fellow Trustee who may be serving as a Trustee in violation of this Trust Agreement, or applicable law. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.2 and Section 3.3 of this Trust Agreement.

**ARTICLE IV**

**CONTRIBUTIONS**

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**Section 4.1 Employer Contributions.**

(a) An Employer shall make prompt contributions or payment to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement

in effect from time to time between the Employer and the Unions. An Employer may also be required to make contributions in such amount and under such terms as agreed to by such Employer, provided that such contributions shall be subject to acceptance by the Board of Trustees.

**Section 4.2 Employee Contributions.**

(a) Participants may make periodic contributions or payments to the Trust Fund for such benefits as may not be funded by Employer contributions.

(b) Such contributions shall be made subject to such conditions, requirements, limitations and rules as the Board of Trustees, in its sole discretion, may establish and impose.

**Section 4.3 Receipt of Payment and Other Property of Trust.** The Board of Trustees, or such other person or entity designated by the Board of Trustees, is hereby designated to receive the payments heretofore or hereafter made to the Trust Fund by the Employers and Employees. The Board of Trustees is hereby vested with all right, title and interest in and to such monies and all interest which may be accrued thereon, and is authorized to receive and be paid the same.

**Section 4.4 Collection and Enforcement of Payments.** The Board of Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the administrative manager, if one has been appointed and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect, and receive Employer and Employee payments and all other money and property to which the Board of Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. The Board of Trustees shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as it, in its sole discretion, determines to be in the best interest of the Trust Fund for the purpose of collecting such payments, money, and property, without prejudice,

however, to the right of the Unions to take whatever steps the Unions deem necessary and wishes to undertake for such purposes.

## ARTICLE V

### POWERS AND DUTIES OF TRUSTEES

Section 5.1 Conduct of Trust Business. The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage, and protect the Trust Fund and collect the income therefrom and contributions thereto. The Trustees may in the course of conducting the business of the Trust, execute all instruments in the name of the Trust Fund. Such instruments shall be signed by at least two (2) Trustees, one of whom shall be the Chairperson or Secretary.

Section 5.2 Use of Fund for Expenses. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the Employer contributions and payments and other monies and property to which they may be entitled and (ii) of administering the affairs of this Trust Fund, including the employment of such administrative, legal, expert, and clerical assistance, the purchase or lease of such premises, materials, supplies, and equipment and the performance of such other acts, as the Trustees, in their sole discretion, find necessary or appropriate.

Section 5.3 Use of Fund to Provide Benefits. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide full or partial health insurance premiums and medical expense reimbursements, and related benefits to eligible Participants through policies of insurance or other programs and facilities. Such benefits shall be limited to

those which can be financed from the Trust Fund after payment of authorized and accrued expenses.

**Section 5.4 Procurement of Insurance; Self-Insurance.**

(a) The Trustees are expressly authorized to negotiate for, obtain and maintain policies of group insurance, or such other insurance coverage as may be determined by the Trustees, for the payment to eligible Participants, by an insurance company or companies licensed to transact business in the State of Florida, of such benefits as now or hereafter may be authorized or permitted by law and as the Trustees may, from time to time, determine. Such policies of insurance shall be in such forms and in such amounts and may contain such provisions and be subject to such limitations and conditions as the Trustees, in their sole discretion, may from time to time determine and shall cover such Participants as the Trustees, shall from time to time determine to be eligible for benefits as herein provided. The Trustees may exercise all rights and privileges granted to the policyholder by the provisions of each contract or policy of insurance, modification or amendment of such contract or policy, and the insurance provided thereunder, which the Board of Trustees, in its sole discretion, may deem necessary or advisable and such insurance carrier shall not be required to inquire into the authority of the Trustees with regard to any dealings in connection with such contract or policy.

(b) The Trustees are expressly authorized to establish and maintain a Plan or Plans to provide any and all of the benefits, as the Trustees in their sole discretion may determine, directly out of the Trust Fund, provided, however, that such payments can be legally made and that the same are in full compliance with all statutory and legal requirements. Such Plan may be established and maintained in lieu of, or in combination with, coverage provided by an insurance carrier or carriers.

**Section 5.5 Investments.**

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, not constrained by any limitation restricting investments in common stocks to a percentage of the Trust Fund, or to a percentage of the total market value of the Trust Fund, provided however, that:

(1) The Trustees shall diversify the investments of the Trust Fund so as to minimize the risk of large losses (unless under the circumstances it is clearly prudent not to do so); and

(2) The Trustees shall only make such investments which are permitted under applicable laws relating to the investments of employee benefit plans.

(b) The Trustees may sell, exchange, or otherwise dispose of investments of the Trust Fund at any time and from time to time. The Trustees shall have power and authority (in addition to, and not in limitation to, common law and statutory authority) to invest in any stocks, bonds or other property, real or personal, including improved real estate and equity interests in real estate, where such an investment appears to the Trustees, in their sole discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants, judged by then prevailing business conditions and standards. The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his or her own right.

(c) Delegation and Allocation of Investment Functions.

(1) The Trustees are authorized, in their sole discretion, to allocate such duties and responsibilities to invest and reinvest such Trust Fund assets as shall be specified in such allocation to a committee or subcommittee of the Board of Trustees.

(2) The Trustees shall have the power and authority to appoint one or more investment managers who shall be responsible for the management, acquisition, disposition, investment and reinvestment of such of the assets of the Trust Fund as the Trustees shall specify. Any such appointment may be terminated by the Trustees upon written notice. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund. The Trustees shall require that the investment manager acknowledge, in writing, that the investment manager is a fiduciary with respect to the Trust Fund.

(3) In connection with any allocation or delegation of investment functions under paragraphs (1) and (2) of this subsection, the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

**Section 5.6 Deposits and Disbursements.** All Trust Fund monies not invested shall be deposited by the Trustees in such appropriate depository or depositories as the Trustees shall, from time to time, select and any such deposit or deposits, or disbursement therefrom, shall be made in the manner designated and authorized by the Trustees or by the investment manager appointed in accordance with Section 5.5(c)(2) of this Trust Agreement.

**Section 5.7 Allocation and Delegation of Non-Investment Responsibilities.** The Trustees may allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees. In addition, the Trustees may delegate such

responsibilities and duties to other individuals as they may deem appropriate or necessary, in their sole discretion.

**Section 5.8 Committees of the Board of Trustees.** Each committee or subcommittee shall consist of at least two (2) Trustees. A quorum of a committee shall be as provided in Section 3.12(b) of this Trust Agreement.

**Section 5.9 Administrative Manager.** The Trustees may employ or contract for the services of an individual, firm, or corporation, to be known as "administrative manager", who shall, under the direction of the Board of Trustees or under the direction of any appropriate committee of the Trustees, be ministerially responsible to:

- (a) Administer the office or offices of the Trust Fund and the Trustees;
- (b) Coordinate and administer the accounting, bookkeeping and clerical services;
- (c) Prepare (in cooperation with other professionals such as the consulting actuary and independent auditor) all reports and other documents to be prepared, filed, or disseminated by or on behalf of the Trust in accordance with law;
- (d) Assist in the collection of contributions required to be paid to the Trust Fund by Employers;
- (e) Be the custodian of all documents and other records of the Trustees and of the Trust Fund; and
- (f) Perform such other duties and furnish such other services as may be assigned, delegated, or directed or as may be contracted by or on behalf of the Trustees.

**Section 5.10 By-Laws, Rules and Regulations.**

(a) The Trustees are hereby empowered and authorized to adopt by-laws and to promulgate any and all necessary rules and regulations which they deem necessary or desirable



to facilitate the proper administration of the Trust Fund, provided they are not inconsistent with the terms of this Trust Agreement. All by-laws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No by-law, regulation, rule, action, or determination made or adopted by the Trustees shall in any manner conflict or be inconsistent with any provision of the applicable current collective bargaining agreement, with this Trust Agreement, or any applicable federal, state, or local law.

**Section 5.11 Additional Authority.** The Trustees are hereby empowered in addition to such other powers as are set forth herein or conferred by law:

(a) To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their sole discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) To keep property and securities registered in the name of the Trustees or of the Trust Fund;

(c) To establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) To pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) To sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, forming a part of the Trust Fund upon such terms as they may deem proper; and to execute and deliver at any time, any and all instruments of conveyance, lease, mortgage and transfer in connection therewith, and

(f) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

**Section 5.12 Bonds.** The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their sole discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

**Section 5.13 Insurance.** The Trustees may, in their sole discretion, obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as Employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund, (i) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, Employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law, and (ii) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

**Section 5.14 Information to Participants.** The Trustees shall provide Participants such information as may be required by law.

**Section 5.15 Accountants.** The Trustees shall engage one or more independent qualified public accountants to perform all services as may be required by applicable law and such other

services as the Trustees may deem necessary. The costs incurred under this Section shall be paid out of the Trust Fund.

**Section 5.16 Trustee Reimbursement.** The Trustees shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund in accordance with any reasonable schedule for reimbursement which may be established by the Board of Trustees.

**Section 5.17 Reports.** The Board of Trustees shall make reports to, and file such information with, appropriate public authorities as may be required by applicable law.

**Section 5.18 Records of Trustee Transactions.** The Trustees shall keep true and accurate books of account and a record of all transactions and meetings, which records and books shall be audited by a certified public accountant as determined by the Board of Trustees. A copy of each audit report shall be furnished to the Union and to legal counsel, and shall be made available for inspection by interested persons at the principal office of the Trustees and the office of the administrative manager at reasonable times and after reasonable notice.

**Section 5.19 Construction and Determination by Trustees.** Subject to the stated purposes of the Trust Fund and the provisions of this Trust Agreement, the Board of Trustees shall have the full and exclusive power and authority in its sole discretion, to determine all questions of coverage and eligibility for benefits, methods of providing or arranging for benefits, and all other related matters. The Board of Trustees shall have the full power and authority in its sole discretion, to construe and interpret the provisions and terms of this Trust Agreement, the Plan, and all other written documents. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and the beneficiaries hereof. No questions or disputes arising under this Trust Agreement shall be subject to the grievance or

arbitration procedure established in any collective bargaining agreement between the Employer and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

**Section 5.20 Liability.** The Trustees individually, and the Board of Trustees collectively, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine, to contain a true statement of facts, and to be signed by the proper person.

**Section 5.21 Reliance on Written Instruments.**

(a) **By Trustees.** Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been approved by a majority vote of the Trustees, and signed in accordance with Section 5.1 of this Trust Agreement, as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument. In any controversy, claim, demand, suit at law or other proceeding between any Participant or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Unions, or with any Employer, and any facts certified to the Trustees, by the Unions, or by any Employer, any facts which are of public record, and any other evidence pertinent to the issue involved.

(b) **By Others.**

(1) No party dealing with the Trustees shall be obligated:

(A) To see the application to the stated Trust Fund purposes of any funds or property of the Trust Fund; or

(B) To see that the terms of this Trust Agreement have been complied with; or

(C) To inquire into the necessity or expediency of any act of the Trustees.

(2) Every instrument executed by two or more Trustees shall be conclusive evidence in favor of every person relying thereon:

(A) That at the time of execution of said instrument the Trust was in full force and effect; and

(B) That the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and

(C) That the signing Trustees were duly authorized and empowered to execute the instrument.

(c) Reliance on Counsel's Opinion. The Trustees may consult with legal counsel concerning any question which may arise with reference to their duties and powers, or with reference to any other matter pertaining to this Trust Agreement, or the Trust Fund hereby established. The opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Trustees hereunder, in good faith, in accordance with the opinion of such counsel. The Trustees shall not be liable therefore to the extent permitted by or other applicable law.

**Section 5.22 Discharge of Liability.** The receipt by the Trustees of any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same to the extent of such payment or transfer.

**Section 5.23 Establishment of Plan.**

(a) The Trustees shall adopt a written Plan and shall have the authority to control and manage the operation and administration of the Plan. Such Plan shall set forth the nature, amount, duration, and conditions of receiving benefits to be provided to Participants. Such Plan, including

any amendments thereto, shall be for the exclusive benefit of the Participants, shall be established and maintained on a sound fiscal basis, and shall qualify under the Internal Revenue Code.

(b) The Trustees shall, in their discretion, promulgate rules, regulations, and procedures for the operation of the Plan, including, by way of illustration and not limitation:

- (1) Conditions of eligibility for Participants;
- (2) Schedules of the type and amount of benefits to be paid;
- (3) Procedures for claiming benefits and for the distribution of benefits;
- (4) Procedures for establishing and carrying out a funding policy;
- (5) Procedures for the allocation of responsibilities for the operation and

administration of the Plan; and

- (6) The basis on which payments are made to and from the Plan.

(c) The Board of Trustees shall agree by a majority vote of their total number to the Plan. This Plan and any amendments thereto shall qualify under applicable provisions of the Internal Revenue Code so that the Employer can receive tax deductions for its contributions to the Trust Fund.

(d) A copy of each such Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trust Fund.

**Section 5.24 Amendment of Plan.** The Plan may be amended by the Trustees at any time, and from time to time, provided that such amendments comply with the then applicable Internal Revenue Code, provisions of the collective bargaining agreement between the Employer and the Union authorizing the Trust Fund, all other applicable laws, and the purposes as set forth in this Trust Agreement. Additionally, and not by way of limitation, the Trustees may amend the Plans, in the future or retroactively when deemed necessary, to maintain the continuation of the Trust

Fund's tax exempt status, or to preserve compliance with the then applicable Internal Revenue Code and all other applicable laws. A copy of each amendment to the Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trust Fund.

## ARTICLE VI

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### CONTROVERSIES AND DISPUTES

**Section 6.1 Submission to Trustees.** All questions or controversies of whatever character, arising in any manner or between any persons or entities in connection with the Trust Fund, Plan, or the operation thereof, which relate to a claim for benefits by any Participant or any other person, shall be submitted to the Trustees, a committee of the Trustees, or an arbitral body of the Trustees so provided pursuant to rules and regulations adopted by the Trustees. The decision of the Trustees, the committee, or arbitral body shall be final and binding upon all persons dealing with the Trust Fund or Plan, or claiming benefits thereunder.

**Section 6.2 Settling Disputes.** The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement shall be conclusive and binding on all parties involved.

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## ARTICLE VII

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### BENEFICIAL RIGHTS

**Section 7.1 No Right, Title or Interest in Trust Fund.** No Employer, Union, Employee, Participant or Beneficiary, shall have any right, title or interest in or to the Trust Fund or any part thereof other than a benefit for which a Participant is entitled under the terms and conditions set forth in the Plan. There shall be no pro-rata or other distribution of any of the assets of the Trust Fund as a result of any Union, Employer, or Participant, ceasing their participation in this Trust Fund for any purpose or reason, except as required by law.

**Section 7.2 Limitation Upon Beneficial Rights of Employees.**

(a) All benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable, or any other process. In the event that any claim or benefit shall, for any reason, become payable to any person other than the Participant, no benefit shall be payable under the Plan until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is cancelled or withdrawn, in such a manner as shall be satisfactory to the Board of Trustees unless payment is otherwise required by law. Until so cancelled or withdrawn, the Board of Trustees shall have the right to use and apply the benefits as the Board of Trustees may deem best for such Participant.

(b) Notwithstanding any provisions contained in this Section to the contrary, the Trustees may provide that a Participant may assign hospital, surgical and medical benefits to any hospital or physician rendering services to the Participant.

**Section 7.3 Optional Benefits Prohibited.** No Employee or Participant shall have the right, privilege or option to receive, instead of benefits provided hereunder:

(a) Any part of the contributions payable by an Employer under this Trust Agreement;  
or

(b) Cash consideration, either upon termination of the Plan, or upon such Participant's withdrawal from coverage under this Trust Fund, either voluntarily or involuntarily.

**ARTICLE VIII**

**TERMINATION OF TRUST**

**Section 8.1 Conditions of Termination.** This Trust Fund shall cease and terminate upon the happening of any one or more of the following events:



(a) In the event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of this Trust Agreement, or be inadequate to meet the payments due or to become due under this Agreement and under the Plan, to Participants already drawing benefits; or

(b) In the event there are no individuals living who can qualify as Employees hereunder; or

(c) In the event of termination as may be required by law.

**Section 8.2 Procedure in Event of Termination.**

In the event of termination, the Trustees shall:

(a) Make provision out of the Trust Fund for the payment of any and all obligations of the Trust Fund, including expenses incurred up to the date of termination of the Trust Fund and the expenses incidental to such termination;

(b) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;

(c) Apply the corpus of the Trust Fund to pay any and all obligations of the Trust Fund;

(d) Distribute and apply any remaining surplus in such manner as will best effectuate the purposes of the Trust Fund and the requirements of law; and

(e) In no event will any remaining Fund assets be distributed to the City of Delray Beach or any Employer.

(f) Give any notices and prepare and file any reports which may be required by law.

## ARTICLE IX

### MISCELLANEOUS

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**Section 9.1 Law Applicable.** This Trust is created and accepted in the State of Florida and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Florida, except as to matters governed by federal law.

**Section 9.2 Savings Clause.** Should any provision of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Trust Fund.

**Section 9.3 Other Employers and Their Employees May Join the Plan.** The Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Trustees shall determine, provided that the Trust will continue to qualify under Section 501(c)(9) of the Internal Revenue Code, such parties are required to conform to the terms and conditions of this Trust Agreement. Such other Employers and their Employees shall have no right to participate in the appointment or replacement of Trustees.

**Section 9.4 Reciprocity Agreements.** The Trustees may, in their sole discretion, enter into such reciprocity agreement or agreements with other employee benefit funds as they determine to be in the best interests of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement or with the collective bargaining agreement under which this Trust Agreement is maintained.

**Section 9.5 Merger.** The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund under terms and conditions mutually agreeable

to the respective Board of Trustees, provided that each Participant in the Plan will receive benefits after the merger which are equal to or greater than the benefits which would have been received prior to the merger.

**Section 9.6 Judicial Settlement.** The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or for instructions as to any action thereunder, and, further, as to any questions relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust Fund. Any such determination, decision, or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

**Section 9.7 Withholding Payment.** In the event any questions or disputes shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as the Trustees, in their sole judgment, determine to be adequate.

**Section 9.8 Vesting of Rights.** No Participant, Beneficiary or Employee or other person shall have any vested interest or right in the Trust Fund except as provided by the Trustees in conformance with the law.

**Section 9.9 Gender.** Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter genders in all situations where they would so apply; and whenever any words are used in the singular, they shall

also be construed to include the plural in all situations where they would so apply and wherever any words are used in the plural, they shall also be construed to include the singular.

**Section 9.10 Amendment to Declaration.** The provisions of this Trust Agreement may be amended at any time by an instrument executed by a majority of the Trustees provided, however, in no event shall the Trust Fund be used for any purpose other than the purposes set forth in Section 2.1 of this Trust Agreement.

**IN WITNESS WHEREOF**, the Trustees have caused this Agreement and Declaration of Trust to be executed this \_\_\_\_\_th day of \_\_\_\_\_, 2006, to signify their acceptance of the terms and conditions stated herein, to be effective January 1, 2006.

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WITNESSED BY: \_\_\_\_\_