

BOROUGH OF AVALON
ORDINANCE NO. 1232

AN ORDINANCE OF THE BOROUGH OF AVALON RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF BOROUGH EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE OF SAID BOROUGH AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Avalon ("Borough") and it is HEREBY ORDAINED AND ENACTED by authority of the same:

The Borough of Avalon Police Pension Plan ("Plan"), which was previously established under the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq., (sometimes referred to as Act 600) for the benefit of the Borough's police employees and which has been amended and restated by ordinances of the Borough Council thereafter, shall be, and hereby is, amended and supplemented in the following respects:

Effective January 1, 1992, the Plan shall be amended by entirely deleting the provisions of said Plan and substituting the following in its place:

BOROUGH OF AVALON
POLICE PENSION PLAN

Amended and Restated
Effective as of: January 1, 1992

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PREAMBLE

WHEREAS, the Borough of Avalon, Allegheny County, Pennsylvania, established a retirement program under the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq., (commonly referred to as Act 600) (the "Plan") for the benefit of the Borough's police officers and their beneficiaries pursuant to Ordinance No. 931, effective March 7, 1958; and

WHEREAS, the Plan has been amended thereafter from time to time pursuant to various Ordinances, including but not limited to Ordinance No. 1085 January 10, 1975; and

WHEREAS, the Borough Council wants to facilitate the administration of the Plan by completely amending and restating the Plan to set forth the provisions thereof in a single document for purposes of Ordinance consolidation; and

WHEREAS, the Borough Council intends that the Plan shall meet the requirements for government plans pursuant to the Internal Revenue Code of 1986, as amended, and the applicable laws of the Commonwealth of Pennsylvania;

NOW, THEREFORE, the Plan now known as "Borough of Avalon Police Pension Plan" is hereby amended and restated in its entirety, effective January 1, 1992, as follows:

ARTICLE I

DEFINITIONS

The following words and phrases as used in this Plan shall have the meaning set forth in this Article, unless a different meaning is otherwise clearly required by the context:

- 1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under section 4.02, calculated on the basis of Final Monthly Average Salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the projected Aggregate Service of the Participant as if the Participant continues in Employment until attainment of Normal Retirement Age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0).

In no event, however, shall the Accrued Benefit exceed the maximum limitation, determined as of the date of computation, provided under section 4.06. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.

- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at three percent (3%) per annum. Interest shall be credited in the form of a compound interest rate from the midpoint of the Plan Year during which the contributions were paid, to the first day of the month preceding the date that a distribution of Accumulated Contributions under sections 6.02 and 7.02 shall be paid or payment of benefits shall commence.
- 1.03 "Act" shall mean the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. Sec. 895.101 et seq.
- 1.04 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and seven percent (7%) interest unless otherwise specifically provided herein.
- 1.05 "Actuary" shall mean the person, partnership, association or corporation which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- 1.06 "Aggregate Service" shall mean the total period or periods of the Participant's Employment (1.17) with the Employer whether or not interrupted. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment, such period of Employment shall not be included in Aggregate Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the Fund the amount of such distribution with interest. For purposes of this section 1.06, interest shall accrue as of the date the Employee receives a distribution of Accumulated Contributions and shall be computed at the same rate and in the same manner as described in section 1.02. Aggregate Service shall be calculated in whole years and completed months.
- 1.07 "Beneficiary" shall mean the person or entity designated by the Participant to receive a distribution of the Participant's Accumulated Contributions should the Participant die prior to becoming entitled to a retirement benefit. In the event that a Participant does not designate a Beneficiary or the Beneficiary does not survive the Participant, the Beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the Participant had died intestate and a resident of Pennsylvania.
- 1.08 "Chief Administrative Officer" shall mean the person designated by the Borough who has the primary responsibility for the execution of the administrative affairs for the Plan.
- 1.09 "Code" shall mean the Internal Revenue Code of 1986, as amended.

- 1.10 "Committee" shall mean the Police Pension Committee as determined pursuant to section 8.02.
- 1.11 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.12 "Compensation" shall mean the total compensation of the Employee, whether salary or hourly wages, including overtime pay, holiday pay, longevity pay and any other form of compensation paid by the Employer for police services rendered. Compensation shall be limited to the amount specified pursuant to Code Section 401(a)(17), as adjusted under Code Section 415(d), which amount shall be \$228,860.00 as of the Restatement Date.
- 1.13 "Council" shall mean the Borough Council of the Borough of Avalon.
- 1.14 "Disability Date" shall mean the date when a Participant is determined by the Plan Administrator to be incapacitated due to Total and Permanent Disability, or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.15 "Employee" shall mean any individual employed by the Employer on a regular, full-time basis as a member of the Employer's police force.
- 1.16 "Employer" shall mean the Borough of Avalon, Allegheny County, Pennsylvania.
- 1.17 "Employment" shall mean for the purpose of determining Aggregate Service:
- (a) The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a police officer;
 - (b) Any period of time for which an Employee is paid a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws), either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee;
 - (c) Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular, full-time member of the Employer's police force for a period of at least six months immediately prior to the period of military service; and the Participant returns to Employment within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the Employer.

1.18 "Final Monthly Average Salary" shall mean the average monthly salary earned by the Participant and paid by the Employer during the final thirty-six (36) months immediately preceding termination of active Employment. Salary shall include the Employee's Compensation to which the Employee is entitled for the rendering of services in Employment but shall exclude for this purpose any single sum or extraordinary payments made which are not directly attributable to active Employment during the averaging period, including but not limited to payment for accumulated sick leave, payment of a longevity bonus, or payment of a back pay damage award.

Final Monthly Average Salary shall be calculated by taking into account only those periods during which an Employee receives salary, as that term is defined in this section 1.18. Therefore, for example, the Final Monthly Average Salary for a Participant who is voluntarily or involuntarily serving in the United States armed forces during the final thirty-six (36) months of Aggregate Service shall be based on the period during which the Employee last received salary (as defined in the preceding paragraph) from the Employer.

Salary used to determine Final Monthly Average Salary shall be limited to the amount specified in accordance with Code Section 401(a)(17), as adjusted under Code Section 415(d), which amount shall be \$228,860.00 as of the Restatement Date.

- 1.19 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.
- 1.20 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.21 "Normal Retirement Age" shall mean the date on which the Participant has completed twenty-five (25) years of Aggregate Service with the Employer and has attained age fifty-five (55).
- 1.22 "Participant" shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in section 2.01 and who has not for any reason ceased to be a Participant hereunder.
- 1.23 "Pension Fund" or "Fund" shall mean the police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan.
- 1.24 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the Borough of Avalon Police Pension Plan.
- 1.25 "Plan Administrator" shall mean the Committee or the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Council.

- 1.26 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.27 "Policy" or "Contract" shall mean a retirement annuity or retirement income endowment Policy (or a combination of both) or any other form of insurance Contract or Policy which shall be deemed appropriate in accordance with the provisions of applicable law.
- 1.28 "Restatement Date" shall mean January 1, 1992, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.29 "Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment or the first day of any month thereafter on which the payment of retirement benefits pursuant to this Plan shall commence.
- 1.30 "Service Increment" shall mean the amount calculated pursuant to section 4.04 on behalf of a Participant for each completed year of Aggregate Service accumulated in excess of twenty-five (25) years.
- 1.31 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment, which condition continues for at least six (6) months and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime. For purposes of this section 1.31 and Article V, a condition shall not be treated as a Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty of Employment. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty is not entitled to receive disability benefits under the Plan.

ARTICLE II

PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements - Each Employee who is employed as a regular, full-time permanent member of the police department of the Employer shall participate herein as of the date on which such Employee's Employment first commences or recommences provided all prerequisites to participation under this Plan shall have been fulfilled, including but not limited to, completion of all forms required by the Plan Administrator.
- 2.02 Notification of Plan Administrator - The Council shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder.

- 2.03 Designation of Beneficiary - Any new, full-time Employee who becomes a Participant hereunder shall provide a written notice in the manner prescribed by the Plan Administrator which designates a Beneficiary at the time participation commences. The Participant's election of any such Beneficiary may be rescinded or changed, without the consent of the Beneficiary, at any time provided the Participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.

ARTICLE III CONTRIBUTIONS

- 3.01 Participant Contributions - Each Participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to five percent (5%) of the Participant's Compensation. Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deduction.
- 3.02 Reduction of Participant Contributions - Notwithstanding the preceding section 3.01, if an actuarial study performed by the Actuary shows that the condition of the Pension Fund is such that payments into the Pension Fund by Participants may be reduced below the minimum percentages prescribed in section 3.01, or may be eliminated, and that if such payments are reduced or eliminated, contributions by the Employer will not be required to keep the Pension Fund actuarially sound, the Employer may, by Ordinance or Resolution, reduce or eliminate payments into the Pension Fund by Participants.
- 3.03 Employer Contributions - The Actuary, in accordance with the Act, shall determine the Minimum Municipal Obligation of the Employer. The Employer shall pay into the Pension Fund, by annual appropriations or otherwise, the contributions necessary to satisfy the Minimum Municipal Obligation.
- 3.04 State Aid - General municipal pension system State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Pension Fund governed by this Plan and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.05 Gifts - The Council is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Council or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.

ARTICLE IV
RETIREMENT BENEFITS

- 4.01 Normal Retirement - Each Participant shall be entitled to normal retirement benefits after retirement on or after the Participant has attained Normal Retirement Age.
- 4.02 Normal Retirement Benefit - Each Participant who shall become entitled to a benefit pursuant to section 4.01 shall receive a benefit paid monthly in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary as determined herein.
- 4.03 Late Retirement - A Participant may continue to work beyond the attainment of Normal Retirement Age subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 4.01 continues to work beyond Normal Retirement Age, there shall be no retirement benefits paid until Employment ceases and retirement begins. The retirement benefit of a Participant who retires after attainment of Normal Retirement Age shall be calculated in accordance with section 4.02 on the basis of the Final Monthly Average Salary as of such Participant's actual Retirement Date.
- 4.04 Service Increment - Notwithstanding anything contained herein to the contrary, a Participant who shall retire after completion of at least twenty-six (26) years of Aggregate Service may be entitled to receive a monthly service increment benefit provided, however, that the Participant shall have accrued sufficient service credit pursuant to this section 4.04. Such service increment shall only be available to a Participant who shall retire on a Retirement Date after attainment of Normal Retirement Age and whose Aggregate Service for purposes of this section 4.04 shall only include periods of time when the Participant actively renders service in Employment and shall not include any period of time during which the Participant received a disability benefit or was not otherwise in active Employment. Such service increment shall be an amount equal to one hundred dollars (\$100.00), and shall be paid monthly in addition to the amount of Normal Retirement Benefit calculated pursuant to section 4.02 hereof.
- 4.05 Payment of Benefits - Retirement benefit payments shall be made in the Normal Form which shall be payable as of the first day of the month coincident with or next following the Participant's Retirement Date and the first day of each month thereafter during the Participant's lifetime. A Participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior

to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the first day of the month coincident with or next following the date that is thirty (30) days after the date the Plan Administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the Participant.

Retirement Benefit payments may be paid in an optional form which is the Actuarial Equivalent of the Normal Form described above if written application is made on a form acceptable to the Plan Administrator at least thirty (30) days prior to the date retirement benefit payments hereunder shall commence. The optional forms of Retirement Benefit payments shall include:

- (a) Life Annuity with Period Certain - The Participant shall receive Retirement Benefit payments on a monthly basis until death. If the death of the Participant shall occur before the guaranteed number of monthly benefit payments have been paid then the remaining monthly payments shall be paid to the Beneficiary until the total number of monthly payments paid to the Participant and Beneficiary combined shall be equal to the guaranteed number of monthly payments. The participant may elect to have the guaranteed number of monthly payments at sixty (60), one hundred twenty (120) or one hundred eighty (180) monthly payments. If the Participant shall die after the guaranteed number of monthly payments shall have been paid then no additional payments shall be payable hereunder.
- (b) Joint and Survivor Annuity - The Participant shall receive a reduced monthly benefit payment until death; thereafter, the surviving spouse, if any, of the Participant shall receive monthly payments in a amount equal to fifty percent (50%), sixty-six and two-thirds percent (66 2/3%), seventy five percent (75%) or one hundred percent (100%) of the amount of monthly payments that the Participant received until death, whichever the Participant shall have elected. If the spouse of the Participant shall die before the Participant, there shall be no additional payments due hereunder upon the occurrence of the death of the Participant. The Joint and Survivor Annuity form of Benefit payment described herein shall only be available to a Participant who is married as of the date payment of Retirement Benefits hereunder shall commence.

4.06 Maximum Benefit Limitations - Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the Employer shall exceed, as an annual amount, the lesser of:

- (a) the amount specified in Code Section 415(b)(1)(A) as adjusted pursuant to Code Section 415(d) which amount shall be \$112,221.00 as of the Restatement Date of this Plan, assuming the form of benefit shall be a straight life annuity (with no ancillary enefits); or
- (b) one hundred percent (100%) of the Participant's average compensation for the Participant's high three (3) years.

The limitations described in this section 4.06 shall be governed by the following conditions and definitions:

- (c) "compensation" shall include the Participant's wages, salaries, fees for personal services actually rendered in Employment to the extent the amounts are includable in gross income and shall exclude contributions made by the Employer to a plan of deferred compensation to the extent that, before the application of Code Section 415 limitations to that plan, the contributions are not includable in the gross income of the Employee for the taxable year in which contributed; exclude distributions from a qualified plan of deferred compensation; and exclude other amounts which receive special tax benefits, such as premiums for group term life insurance to the extent not includable in the gross income of the Employee or contributions made by the Employer (whether made under a salary reduction agreement or not) to the purchase of an annuity contract pursuant to Code Section 403(b);
- (d) benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the Employee contributes to the Plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis to determine the limitation contained herein;
- (e) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant, the limitation of subsection (a) shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to subsection (a) commencing at age sixty-two (62); however, the reduction shall not reduce the limitation below \$75,000 for a benefit commencing at or after age fifty-five (55), or if the benefit commences prior to attainment of age fifty-five (55) the amount which is actuarially equivalent to a benefit of \$75,000.00 commencing at age fifty-five (55); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) years of service, including applicable military service, as a full-time Employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not reduce the limitation of subsection (a) to an amount less than \$62,345.00 as of the Restatement Date of this Plan and such amount shall be adjusted pursuant to Code Section 415(d);
- (f) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant, the limitation of subsection (a) shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to subsection (a) commencing at age sixty-five (65);

- (g) benefits paid to a Participant which total less than \$10,000.00 from all defined benefit plans maintained by the Employer expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the Employer has not at any time maintained a defined contribution plan in which the Participant has participated; however, in the case of a Participant with fewer than ten (10) years of participation the limitation expressed in this subsection (g) shall be reduced by one-tenth (1/10) for each year of participation less than ten (10) but in no event shall this limitation be less than \$1,000.00; and
- (h) the limitations expressed herein shall be based upon Plan Years for calculation purposes, shall be applied to all defined benefit plans maintained by the Employer as one (1) defined benefit plan and to all defined contribution plans maintained by the Employer as one (1) defined contribution plan, and shall be applied and interpreted consistent with Code Section 415 and regulations thereunder as applicable to government plans in general and this Plan in particular.

4.07 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to his death shall be distributed either:
 - (1) not later than the Required Beginning Date, or
 - (2) over a period beginning not later than the Required Beginning Date and extending over the life of such Participant or over the lives of such Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant, or the joint life expectancies of such Participant and a designated Beneficiary).

If a Participant who is entitled to benefits under this Plan dies prior to the date when his entire interest has been distributed to him after distribution of his benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of his death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of his benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee's interest is payable to (or for the benefit of) a designated Beneficiary, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary), and such distributions begin not later than

one (1) year after the date of the Employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the Beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated Beneficiary is the surviving spouse of the Participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the Employee would have attained age seventy and one-half (70 1/2) and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the Employee.

(c) For purposes of this section, the following definitions and procedures shall apply:

- (1) "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70 1/2), or the calendar year in which the Employee retires.
- (2) The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
- (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
- (4) For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

4.08 Assignment - The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the Participant or designated Beneficiary and shall not be subject to assignment or transfer.

4.09 Retired Participants - Any Participant who shall have retired prior to the Restatement Date shall not have the benefit altered in any way by the provisions of this amended and restated Plan, except where otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect on the day preceding the Restatement Date.

ARTICLE V

DISABILITY RETIREMENT

- 5.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability shall be entitled to a Disability Retirement Benefit as of the Disability Date.
- 5.02 Disability Retirement Benefit - A Participant who shall be entitled to a Disability Retirement Benefit under section 5.01 shall receive a benefit in an amount equal to the Participant's Accrued Benefit as determined herein as of the Disability Date, offset by social security disability benefits, workers' compensation and any other disability type benefit funded or sponsored in whole or in part by the Borough of Avalon.
- 5.03 Payment of Disability Benefits - Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the Participant's Disability Date and continuing until the earliest of the death of the Participant, cessation of Total and Permanent Disability, or attainment of Normal Retirement Age (such a Participant who attains Normal Retirement Age shall thereafter receive a Normal Retirement Benefit pursuant to section 4.02).

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, shall not be entitled to any distribution of Accumulated Contributions pursuant to section 7.02 to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the Disability Date.

- 5.04 Verification of Disability - The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is totally and permanently disabled has recovered sufficiently to resume active employment as a police officer or if a Participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently than once in any given twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

- 5.05 Cessation of Disability - A Participant who is receiving payment of Disability Retirement Benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

ARTICLE VI

DEATH BENEFITS

- 6.01 Death of Participant - Upon the occurrence of the death of a Participant, there shall be benefits payable in accord with the following sections of this Article VI.
- 6.02 Death of Participant Prior to Retirement - If a Participant shall die before payment of a benefit has commenced, the Beneficiary shall be eligible to receive a distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of death of the Participant.
- 6.03 Death of Retired Participant - Upon the occurrence of the death of a retired Participant, there shall be paid a benefit only in accord with the form of benefit being paid to the Participant at the time of death.

ARTICLE VII

TERMINATION OF EMPLOYEMENT

- 7.01 Rights of Terminated Employees - A Participant who shall cease to be an Employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following section of this Article.
- 7.02 Distribution of Accumulated Contributions - A Participant whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, said Participant and Beneficiary shall not be entitled to any further payments from the Plan.

ARTICLE VIII
ADMINISTRATION

- 8.01 Plan Administrator - The Plan Administrator shall be the Committee or the individual appointed by the Council who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Council shall be the Plan Administrator.
- 8.02 Police Pension Committee - If the Council shall appoint a Police Pension Committee to administer the affairs of the Plan, the Council shall delegate such authority as it shall deem appropriate to the Committee. The Committee shall consist of not more than five (5) members appointed by the Council. Each member of the Committee shall serve in that capacity until the earliest of resignation, death, removal or otherwise. Each member may be removed at any time, with or without cause, by the Council. Each member may resign by delivering written notice to the Council and other members of the Committee. Vacancies on the Committee shall be filled by the Council.
- 8.03 Authority and Duties of the Plan Administrator - The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Council's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:
- (a) to construe this Plan;
 - (b) to determine all questions affecting the eligibility of any Employee to participate herein;
 - (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
 - (d) to authorize any and all disbursements;
 - (e) to prescribe any procedure to be followed by any Participant and/or other person in filing any application or Election;

- (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
- (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and
- (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.

The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Council.

8.04 Police Pension Committee Organization - If the Council appoints a Committee, it may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:

- (a) The Committee shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
- (b) The Committee shall, from time to time, appoint a Chairman, a Secretary who may, but need not, be a Committee member and such other agents as it may deem advisable.
- (c) The Committee may, from time to time, authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the Council, in writing, of the name or names of the member or members so authorized. In the absence of a designation, the Chairman shall be deemed to be so authorized. Any Trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated member or members (or the Chairman in the absence of a designation) as representing a valid action by the Committee until the Committee shall file with such fiduciary a written revocation of such designation.
- (d) The Committee or its delegate, shall maintain and keep such records as are necessary for the efficient operation of the Plan or as may be required by any applicable law, regulation or ruling and shall provide for the preparation and filing of such forms or reports as may be required to be filed with any governmental agency or department and with the Participants and/or other persons entitled to benefits under the Plan.

- 8.05 Plan Administrator Costs - The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Council in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the Plan, may be paid from the Pension Fund upon approval by the Council to the extent permitted under applicable law and not otherwise paid by the Employer.
- 8.06 Hold Harmless - No member of the Council, the Plan Administrator, the Enrolled Actuary, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
- 8.07 Approval of Benefits - The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
- 8.08 Appeal Procedure - Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.

- (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.
- (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Council of the initial determination. Such request for review must be made by Notice to the Council within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Council shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Council in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
- (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.
- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.

ARTICLE IX

THE PENSION FUND

- 9.01 Operation of the Pension Fund - The Council is hereby authorized to hold and supervise the investment of the assets of the Pension Fund, subject to the provisions of the laws of the Commonwealth and of this Plan and any amendment thereto.

The Pension Fund shall be used to pay benefits as provided in the Plan and, to the extent not paid directly by the Employer, to pay the expenses of administering the Plan pursuant to authorization by the Employer.

The Employer intends the Plan to be permanent and for the exclusive benefit of its Employees. It expects to make the contributions to the Pension Fund required under the Plan. The Employer shall not be liable in any manner for any insufficiency in the Pension Fund; benefits are payable only from the Pension Fund, and only to the extent that there are monies available therein.

The Pension Fund will consist of all funds held by the Employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Pension Fund shall be held, managed, and administered pursuant to the terms of the Plan. Except as otherwise expressly provided in the Plan, the Employer has exclusive authority and discretion to manage and control the Pension Fund assets. The Employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.

9.02 Powers and Duties of Employer - With respect to the Pension Fund, the Employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.

- (a) To retain in cash so much of the Pension Fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.
- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.

- (g) To place money at any time in a deposit bank deemed to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- (h) In addition to the foregoing powers, the Employer shall also have all of the powers, rights, and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Employer may deem necessary to administer the Pension Fund.
- (i) To maintain and invest the assets of this Plan on a collective and commingled basis with the assets of other pension plans maintained by the Employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- (j) To invest the assets of the Pension Fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.
- (k) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that if a trustee is appointed by the Employer, such trustee shall make such distribution only at the direction of the Employer.
- (l) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (m) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.

- (n) To pay, and to deduct from and charge against the Pension Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Pension Fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (o) To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Fund; to the extent not prohibited by applicable law, the Employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the Employer, taking into account the interests of the Participants and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.
- (p) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Employer shall follow the directions of such Investment Manager or Managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any Fund assets which are subject to the management of such Investment Manager or Managers. If the Employer appoints a trustee, the trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the Employer.

9.03 Common Investments - The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account, but may invest contributions and any profits or gains therefrom in common investments.

9.04 Compensation and Expenses of Appointed Trustee - If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by

the trustee in carrying out its functions, shall constitute a charge upon the Employer or the Pension Fund, which may be executed at any time after 30 days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Pension Fund.

9.05 Periodic Accounting - If a trustee is appointed, the Pension Fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the Employer, showing the condition of the Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.

9.06 Value of the Pension Fund - All determinations as to the value of the assets of the Pension Fund, and as to the amount of the liabilities thereof, shall be made by the Employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

ARTICLE X

AMENDMENT AND TERMINATION OF PENSION PLAN OR PENSION FUND

10.01 Amendment of the Plan - The Employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the Employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Council provided, however:

- (a) that no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which he is entitled under this Plan with respect to contributions previously made;
- (b) that no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in section 10.05, ever revert to or be used or enjoyed by the Employer; and
- (c) that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 11.03 has been prepared and presented to the Council in accordance with the Act.

- 10.02 Termination of the Plan - The Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 10.03 Automatic Termination of Contributions - Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 10.04 Distribution Upon Termination - In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the Employer shall direct either (a) that the Plan Administrator continue to hold the vested Accrued Benefits of Participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or (b) that the Plan Administrator immediately distribute to each Participant an amount equal to the vested Accrued Benefit to the date.

If there are insufficient assets in the Pension Fund to provide for all vested Accrued Benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.

All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which effects such termination.

- 10.05 Residual Assets - If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 10.06 Exclusive Benefit Rule - In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

ARTICLE XI

PROVISIONS TO COMPLY WITH THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT OF 1984

- 11.01 Actuarial Valuations - The Plan's Actuary shall perform an actuarial valuation at least biennially unless the Employer is applying or has applied for supplemental state assistance pursuant to section 603 of the Act, whereupon actuarial valuation reports shall be made annually.

Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985.

Such actuarial valuation shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Pension Fund. Such allowable expenses shall include but not be limited to the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;
- (b) accounting expenses;
- (c) premiums for insurance coverage on Fund assets;
- (d) reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
- (e) legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the Employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

- 11.02 Duties of Chief Administrative Officer - Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer.

The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal Obligation of the Employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the Minimum Municipal Obligation of the Employer to the Council annually and shall certify the accuracy of such calculations and their conformance with the Act.

- 11.03 Benefit Plan Modifications - Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to the Council the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation of the Employer with respect to the Plan.

ARTICLE XII

MISCELLANEOUS PROVISIONS

- 12.01 Plan Not a Contract of Employment - No police officer of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted to them hereunder. Nothing herein shall be construed to give any police officer the right to remain on the police force of the Employer.
- 12.02 Masculine/Feminine; Singular/Plural - For purposes of this Plan, the masculine shall be read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.
- 12.03 Construction of Document - This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.
- 12.04 Headings - The headings of articles are included solely for convenience of reference, and if there be any conflict between such headings and the text of the Plan, the text shall control.
- 12.05 Severability of Provisions - In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.

- 12.06 Incapacity of Participant - If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such Participant is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.07 Liability of Officers of the Plan Administrator and/or Employer - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the Employer shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.
- 12.08 Assets of the Fund - Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.
- 12.09 Pension Fund for Sole Benefit of Participants - The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.

ORDAINED AND ENACTED this 5th day of September, A.D., 1996.

ATTEST:

BOROUGH OF AVALON

Jean A. Welsh

Harold J. Moore
President of Council

EXAMINED AND APPROVED this 5th day of Sept, A.D., 1996.

ATTEST:

BOROUGH OF AVALON

Jean A. Welsh

David Biondi
Mayor

DULY RECORDED in Ordinance Book Volume 7, page 272, this 6th day of September, A.D., 1996.

Ethel M. Hawie