

**BOROUGH OF AVALON**  
**ORDINANCE NO. 1293**

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 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 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 and resolutions of the Borough Council thereafter, shall be, and hereby is, amended and supplemented in the following respects.

Any Ordinances or Resolutions or parts of Ordinances or Resolutions conflicting with the provisions of this Ordinance shall be, and hereby are repealed so far as the same affect this Ordinance; however, such repeal shall not affect any act done or any right or liability accrued under such Ordinance or Resolution herein repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the extent otherwise permitted under the laws of the Commonwealth of Pennsylvania.

Effective January 1, 2005, 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, 2005

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**PREAMBLE**

WHEREAS, the Borough of Avalon, Allegheny County, Pennsylvania, established a retirement program effective March 7, 1958, pursuant to Ordinance and 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; and

WHEREAS, the Plan has been amended thereafter from time to time pursuant to various Ordinances and Resolutions, including but not limited to:

Ordinance No. 932	March 7, 1958
Ordinance No. 1232	September 6, 1996
Ordinance No. 1249	March 16, 1999
Ordinance No. 1250	March 16, 1999
Ordinance No. 1252	March 16, 1999
Ordinance No. 1254	June 15, 1999

WHEREAS, the Council retained the right to amend the Plan; and

WHEREAS, the 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 incorporating certain changes as a result of collective bargaining negotiations and, ordinance consolidation and clarity; and

WHEREAS, the 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 the "Borough of Avalon Police Pension Plan" is hereby amended and restated in its entirety, effective January 1, 2005, 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).

The Accrued Benefit shall include any Service Increment determined pursuant to Section 4.06 attributable to the Participant's Aggregate Service as of the determination date. The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under section 4.10. 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 6.05 or 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 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 for which Employee Contributions are required, 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, and shall not include any period of a voluntary leave of absence without pay.
- 1.07 "Attending College" shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven (7) credit hours per semester.

- 1.08 "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.
- 1.09 "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.
- 1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.11 "Committee" shall mean the Police Pension Review Committee as determined pursuant to section 8.02.
- 1.12 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.13 "Compensation" shall mean the total remuneration 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 on an annual basis to the amount specified for government plans pursuant to Code section 401(a)(17), as adjusted under Code section 415(d).
- 1.14 "Council" shall mean the Council of the Borough of Avalon.
- 1.15 "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.
- 1.16 "Early Retirement Age" shall mean the date on which the Participant has completed twenty (20) years of Aggregate Service with the Employer.
- 1.17 "Early Retirement Date" shall mean the first day of the month coincident with or next following the date on which a Participant who has attained Early Retirement Age ceases Employment and chooses to commence receipt of retirement benefits prior to the Normal Retirement Date.
- 1.18 "Employee" shall mean any individual employed by the Employer on a regular, full-time basis as a police officer of the Employer's police force.
- 1.19 "Employer" shall mean Borough of Avalon, Allegheny County, Pennsylvania.

1.20 "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, either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee, 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);
- (c) Any period during which an Employee is entitled to disability benefits under this Plan, provided that the Employee returns to Employment within three (3) months of the date on which it is determined that the Employee is no longer Totally and Permanently Disabled if such determination occurs prior to the date a Participant attains Normal Retirement Age; and
- (d) 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 (6) months immediately prior to the period of military service; and the Participant returns to Employment within six (6) 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; and
- (e) Any period of qualified military service as determined under the requirements of chapter 43 of title 38, United States Code, provided that the Participant returns to Employment following such period of qualified military service, and the Participant makes payment to the Plan in an amount equal to the Participant Contributions that would otherwise have been paid to the Plan during such period of qualified military service. The amount of Participant Contributions shall be based upon an estimate of the Compensation that would have been paid to the Participant during such period of qualified military service as determined by the average Compensation paid to the Participant during the twelve (12) months immediately preceding the period of qualified military service. The amount of Participant Contributions calculated must be paid into the Plan before the end of the period that begins on the date of reemployment and ends on the earlier of the date that ends the period that has a duration of three (3) times the period of qualified military service or the date that is five (5) years after the date of reemployment.

"Employment" shall not mean for the purpose of determining Aggregate Service:

- (f) Any period of disability for a Participant who was disabled as a result of a non-service related disability.

1.21 "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 regular gross pay of the Employee, whether salary or hourly wages including, overtime pay, holiday pay, longevity pay and any other types of additions to compensation by the Employer for police services rendered.

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 1.21. Therefore, for example, the Final Monthly Average Salary for a Participant who receives disability benefits from this Plan or 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 on an annual basis to the amount specified for government plans in accordance with Code section 401(a)(17), as adjusted under Code section 415(d).

- 1.22 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.
- 1.23 "Late Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment on which the payment of retirement benefits pursuant to this Plan shall commence
- 1.24 "Member's Salary at the Time of Death" shall mean the last month of basic salary before the date of death.
- 1.25 "Member's Salary at the Time the Disability was Incurred" shall mean the last month of basic salary or basic rate of pay as applicable under any then current collective bargaining agreement before the Disability Date.
- 1.26 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.27 "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).
- 1.28 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment which is subsequent to the date on which the Participant attains Normal Retirement Age.
- 1.29 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator. If such notice or election is to be provided by the Employer or

the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the Employer or the Plan Administrator, it must be received by the intended recipient on or before the last day of the specified notice or election period.

- 1.30 "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.
- 1.31 "Pension 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.
- 1.32 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the Borough of Avalon Police Pension Plan.
- 1.33 "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.
- 1.34 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.35 "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.
- 1.36 "Restatement Date" shall mean January 1, 2005, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.37 "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.
- 1.38 "Service Increment" shall mean the amount calculated pursuant to section 4.06 on behalf of a Participant for each completed year of service in excess of twenty-five (25) years, not to exceed one hundred dollars (\$100).
- 1.39 "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 and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime. For purposes of this section 1.39 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 or

which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self-inflicted, 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. Each Employee who was a Participant in the Plan on the day prior to the Restatement Date shall continue to be a Participant on and after the Restatement Date subject to the terms and conditions of the Plan as set forth herein.
- 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. Each Participant hereunder shall be required to make contributions to the Plan, as provided in section 3.01 hereof, and shall execute and complete any enrollment or application forms as required by the Plan Administrator.
- 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.
- 2.04 Change in Status - A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a Participant hereunder eligible to resume such accrual of benefits.
- 2.05 Recordkeeping - The Employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on Employees for purposes of determining their eligibility to participate in 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, 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 on an annual basis.
- 3.03 Employer Contributions - The Chief Administrative Officer, 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. Notwithstanding the foregoing, nothing contained herein shall preclude the Employer from contributing an amount in excess of 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 in amounts determined by the Council, 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.
- 3.06 Employer Reversion - At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, including payment of any reasonable Plan expenses. Notwithstanding the foregoing, any contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake and the contribution is returned within one (1) year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or the Plan is terminated, as provided in Article X.

## ARTICLE IV

### RETIREMENT BENEFITS

- 4.01 Normal Retirement - Each Participant shall be entitled to a Normal Retirement Benefit 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 in Employment 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 in Employment beyond Normal Retirement Age, there shall be no retirement benefits paid until Employment ceases and the Participant's retirement actually begins. The retirement benefit of a Participant who continues Employment 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 and shall commence on the Participant's Late Retirement Date.
- 4.04 Early Retirement - A Participant shall be entitled to an Early Retirement Benefit after retirement on or after attainment of Early Retirement Age.
- 4.05 Early Retirement Benefit - Each Participant who shall become entitled to a benefit pursuant to section 4.04 and who shall make written application to commence such Early Retirement Benefit shall receive a benefit paid monthly in an amount equal to the actuarial equivalent of the Participant's Accrued Benefit. The actuarial equivalent calculation shall be completed using the applicable factors contained in the last actuarial valuation report filed with the Public Employee Retirement Commission under the Act and for the purpose of adjusting the amount of benefit to recognize the early commencement of benefit payments prior to attainment of Normal Retirement Age.
- 4.06 Service Increment - A Participant who shall retire after completion of at least twenty-six (26) years of Aggregate Service may be eligible to receive a Service Increment in addition to the Normal Retirement Benefit under section 4.02. Such Service Increment shall only be available to a Participant who shall retire after attainment of Normal Retirement Age and whose Aggregate Service for purposes of this section 4.06 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 under the terms of this Plan 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.
- 4.07 Normal Form - The Normal Form for payment of retirement benefits shall be a monthly annuity payable for the life of the Participant.

- 4.08 Payment of Benefits - Retirement benefit payments shall be payable as of 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 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.
- 4.09 Cost-of-Living Adjustments – Each Participant who shall retire and receive a retirement benefit determined pursuant to section 4.02 hereunder shall be entitled to receive annual cost-of-living increases to the amount of benefit payable to such Participant under section 4.02. Such cost-of-living increases shall be determined by Council and shall not exceed the following limits: (1) the percentage increase in the Consumer Price Index from the year in which the Participant was last employed as an Employee of the Employer; (2) the total retirement benefits payable under this Plan shall not exceed seventy-five percent (75%) of the Participant's Final Monthly Average Salary; (3) the total cost-of-living increase shall not exceed thirty percent (30%) of the Participant's retirement benefit under this Plan; and (4) the cost-of-living increases shall not impair the actuarial soundness of the Pension Fund.
- 4.10 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 amount specified in Code section 415(b)(1)(A) as adjusted pursuant to Code section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this section 4.10 shall be governed by the following conditions and definitions:
- (a) 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 in accordance with applicable regulations to determine the limitation contained herein;
  - (b) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this section commencing at age sixty-two (62); 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 apply;
  - (c) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent

basis in accordance with applicable regulations to the amount determined commencing at age sixty-five (65);

- (d) benefits paid to a Participant which total less than ten thousand dollars (\$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 who is not receiving a Disability Retirement Benefit pursuant to section 5.02 or a Survivor Benefit pursuant to section 6.02 or 6.03, with fewer than ten (10) years of participation the limitation expressed in this subsection (d) 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 one thousand dollars (\$1,000.00);
- (e) 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; and
- (f) in the case of a Survivor Benefit under section 6.02 or 6.03 or a Disability Retirement Benefit under section 5.02, the adjustment under subsection (b) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.

#### 4.11 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to 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 the entire interest has been distributed after distribution of the 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 the death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of the 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 (70½) 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 (70½), 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.

4.12 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.

4.13 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. Any Participant who shall have terminated Employment and elected to receive a deferred retirement benefit under section

7.03 shall have such benefit determined based upon the provisions of the Plan in effect as of the date of such termination of Employment and shall not have the benefit altered by the provisions of this amended and restated Plan.

- 4.14 Limitation of Liability - Nothing contained herein shall obligate the Employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any Participant or Beneficiary which cannot be provided from the assets available in the Pension Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The Council retains the right to amend or terminate this Plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.
- 4.15 Personal Right of Participant - The right to receive any benefits under this Plan is a personal right of the Participant and shall expire upon the death of the Participant. No heir, legatee, devisee, Beneficiary, assignee or other person claiming by or through a Participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.
- 4.16 Nonduplication of Benefit - To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under the Plan and who shall resume Employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such Employment shall cease. Upon resumption of benefit payments, such Participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon Final Monthly Average Salary and Aggregate Service as of the date that such period of resumed Employment shall cease.
- 4.17 Direct Rollovers
- (a) This section 4.17(a) applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution that is equal to at least five-hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) This section 4.17(b) shall apply to distributions made on or after January 1, 2006. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, if a distribution in excess of one-thousand dollars (\$1,000.00) is made and the distributee does not make an election under section 4.17(a) and does not elect to receive the distribution directly, the Plan Administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer pursuant to section 8.03(i). The Plan Administrator shall notify the distributee in writing, within a

reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.

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

- (1) "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or (life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

For purposes of the direct rollover provisions in this section of the Plan, a portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may only be paid to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion which is not includible.

- (2) "Eligible Retirement Plan" is a qualified trust described in Code section 401(a), an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an eligible deferred compensation plan described in Code section 457(b), which is maintained by a state, political subdivision of a state, and any agency or instrumentality of a state or a political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.
- (3) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (4) "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee or the Plan Administrator, if the distributee does not make an election.

## ARTICLE V

### DISABILITY RETIREMENT

- 5.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability before attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit as of the Disability Date.
- 5.02 Disability Retirement Benefit – A Participant who retires due to a Total and Permanent Disability, pursuant to section 5.01 shall be eligible for a disability retirement benefit in an amount equal to fifty percent (50%) of the Member’s Salary at the Time the Disability was Incurred as defined pursuant to section 1.25 determined as of the Disability Date. Any member who receives benefits for the same injuries under social security disability shall have the Participant’s disability benefits offset or reduced by the amount of such benefits.
- 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 Survivor Benefit – If a Participant shall die after commencement of retirement or disability benefit payments or after becoming eligible to receive retirement benefit payments under section 4.01 and before retirement benefit payments commence, a Survivor Benefit shall be paid to the surviving spouse or dependent child(ren), if any, of the Participant pursuant to section 6.04 in an amount equal to fifty percent (50%) of the benefit the Participant was receiving or was eligible to receive as of the date of death.
- 6.03 Killed in Service Survivor Benefit – A Survivor Benefit shall be payable in the event of the death of a Participant who is killed in service. In the event such a benefit becomes payable, the surviving spouse or dependent child(ren), if any, of the Participant shall receive a benefit pursuant to section 6.04 in an amount equal to one-hundred percent (100%) of the Member's Salary at the Time of Death defined pursuant to section 1.24.
- 6.04 Payment of Survivor Benefit - The Survivor Benefit commences as of the first day of the month coincident with or immediately following the date of death of the Participant. The Survivor Benefit shall be paid monthly to the surviving spouse of the Participant, if any, until the date of death of the surviving spouse. Upon the death of the surviving spouse or if there is no surviving spouse, the Survivor Benefit shall be paid monthly in equal shares to the surviving dependent child(ren) of the deceased Participant under the age of eighteen (18) or if Attending College, under or attaining the age of twenty-three (23). The shares payable to the surviving dependent children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.
- 6.05 Death of Participant Prior to Retirement - If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a Survivor Benefit under section 6.02 or 6.03, 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. If the Participant has received Disability Retirement Benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits, which have been paid hereunder.

## ARTICLE VII

### TERMINATION OF EMPLOYMENT

- 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 sections 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.
- 7.03 Deferred Retirement Benefit - A Participant who shall have completed at least twelve (12) years of Aggregate Service and whose Employment shall terminate for any reason other than due to death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to elect to receive a deferred retirement benefit in lieu of a distribution of Accumulated Contributions under section 7.02. Such a deferred retirement benefit shall be equal to the Participant's Accrued Benefit as of the date Employment terminates and shall commence after application pursuant to section 4.08 and not earlier than the date which would be the Participant's Normal Retirement Date or Early Retirement Date under the Plan if the Participant remained in Employment until such date.

## 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 - The Council may 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, if one is appointed, shall consist of not more than five (5) members, one of which, shall be a representative of the Avalon Police Association. Each member of the Committee shall serve in that capacity until death, resignation, removal or otherwise. Each member may resign by delivering written notice to the Council and other members of the Committee. Vacancies on the Committee shall be filled in the same manner as the position was originally filled by the Council; provided, however, that the remaining members of the Committee shall have full power to act pending the filling of such vacancies.

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 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;
- (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; and
- (i) to select an individual retirement plan provider (either the state or a federally regulated financial institution) and invest funds in connection with the rollover of mandatory distributions as described in section 4.17(b).

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 such 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 President 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 President 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 but only to the extent that the Council shall delegate such duties and responsibilities to the Committee.

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.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 8.08 of the Plan has been exhausted.

## 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 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 thirty (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

- 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 each 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 non-forfeitable 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 affects 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

### FUNDING STANDARD REQUIREMENTS

- 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

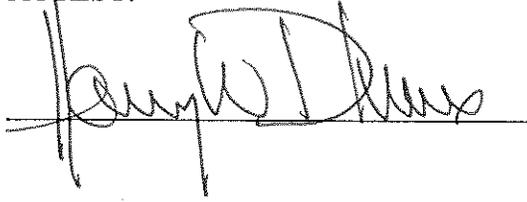
### MISCELLANEOUS PROVISIONS

- 12.01 Employment Rights - No Employee 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 hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, nor shall interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect such treatment might have upon participation in this Plan.
- 12.02 Meaning of Certain Words - For purposes of this Plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Articles and Sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.
- 12.03 Information to Be Furnished By the Employer - The Employer shall furnish to the Plan Administrator (and where applicable, the trustee) information in the Employer's possession as the Plan Administrator and the trustee shall require from time to time to perform their duties under the Plan.
- 12.04 Severability of Provisions - Should any provisions of this Plan 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 herein.

- 12.05 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 the Participant and that no guardian or committee has been appointed for the Participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the Participant, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.06 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.
- 12.07 Benefits for a Deceased Participant - If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, if the Plan provides that the payment of such benefits shall be made to the Participant's estate, and if no administration of such Participant's estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there is no surviving spouse, to such Participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.
- 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 Personal Liability - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the Employer or Plan Administrator shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.
- 12.10 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.

ORDAINED AND ENACTED this 18<sup>th</sup> day of May, A.D., 2005

ATTEST:



A handwritten signature in cursive script, appearing to read "Joseph D. [unclear]", is written over a horizontal line.

**BOROUGH OF AVALON**



A handwritten signature in cursive script, appearing to read "M. R. [unclear]", is written over a horizontal line.

Borough Council