

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING AND RESTATING ORDINANCE NO. 94-40, CONCERNING THE POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR EXPANDED PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR AN ACTUARIAL DISPUTES RESOLUTION PROCEDURE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Davie has previously adopted by Ordinance 76-13 a pension benefit for sworn Police Officers; and

WHEREAS, Ordinance 94-40 amended and restated the Police Officers' Retirement System plan; and

WHEREAS, the Town Council has requested that certain changes to the Plan now be made; and

WHEREAS, the Town Council has adopted by Resolution an actuarial impact statement detailing the cost of this pension plan change.

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

SECTION 1. Ordinance 94-40 is hereby amended and the plan restated in accordance with the new plan document.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

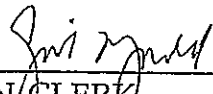
SECTION 3. This Ordinance shall become effective upon its adoption.

PASSED ON FIRST READING THIS 5th DAY OF MAY, 1999.

PASSED ON SECOND READING THIS 2nd DAY OF JUNE, 1999.


MAYOR / COUNCILMEMBER

Attest:


TOWN CLERK

APPROVED THIS 2nd DAY OF JUNE, 1999.

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TOWN OF DAVIE
POLICE PENSION PLAN

Amended and Restated

TOWN OF DAVIE
POLICE PENSION PLAN

Introduction

The Town of Davie Police Pension Plan (the Plan) was initially adopted effective May 1, 1971 by Ordinance No. 71-21, as part of a Plan that covered all eligible employees of the Town of Davie (the Town). The Plan was amended and restated effective May 1, 1976 by Ordinance No. 76-13. The Plan was subsequently amended from time to time by Ordinance Nos. 76-18, 77-6, 78-13, 80-11, 81-41, 82-64, 83-63, 83-70, 83-72, 85-47, 86-5, 87-100, 87-102, 94-40, and 98-11.

Ordinance 87-102 separated the Police Pension Plan from the General Employees' Pension Plan effective December 29, 1987, and established a separate Pension Board to administer the Police Plan.

Effective as of June 2, 1999, the Town and the Union that currently represents participants negotiated certain increases in benefits and other improvements which are in this amended and restated Plan.

From the Plan's inception, the Town has intended that the Plan qualify as a governmental plan within the meaning of Code Section 414(d) and ERISA Section 3(32). Every provision of the Plan is to be construed accordingly. The Plan's qualification as a governmental plan exempts the Plan from ERISA Titles I and IV and from the Code Sections and Subsections listed from time to time in the last sentence of Code Section 401(a), currently Subsections 11, 12, 13, 14, 15, 19, and 20 of Code Section 401(a), and from Code Section 410 (except as provided in Subsection (c)(2)), Code Section 411 (except as provided in Subsection (e)(2)), Code Section 412 (except as provided in the flush language following Subsection (h)(6)), and Code Section 417. However, the Town has voluntarily included in the Plan certain employee protections that are not required to be included in governmental plans. Notwithstanding any other provision of the Plan, the Board's voluntarily provision of such benefits and protections is not to be interpreted as a relinquishment of any exemption available to the Plan under ERISA or the Code, or any of the discretion afforded sponsors of governmental plans under ERISA and the Code.

The Plan as amended from time to time has complied with the Internal Revenue Code of 1986 (the Code), as that statute was amended to comply with the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, the Retirement Equity Act of 1984, and applicable Treasury Regulations and other publications issued under the Code.

The Plan is again amended and restated, effective June 2, 1999, except that certain amendments are effective as of other dates stated within various sections of the Plan to comply with the Employee Retirement Income Security Act of 1974 (ERISA) and the Code as amended by the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Unemployment Compensation Act of 1992, the Omnibus Budget Reconciliation Act of 1993, and by Department of Labor and Treasury Regulations and other publications issued under those statutes.

The rights of any employee who terminated before the effective dates of the various amended provisions set forth in this document will be determined under those provisions as in effect on the date the employee terminated.

ARTICLE 1

Definitions

As used in the Plan, the following words and phrases and any derivatives thereof will have the meanings set forth below unless the context clearly indicates otherwise. Definitions of other words and phrases are set forth throughout the Plan. Section references indicate sections of the Plan unless otherwise stated. The masculine pronoun includes the feminine, and the singular number includes the plural and the plural the singular, whenever applicable.

- 1.1 **Accrued Benefit.** The monthly retirement benefit which the Participant has earned as of the date of determination, calculated under Subsection 3.1(b) on the basis of his Final Average Earnings and his whole and partial Years of Benefit Service, which is payable as of his Normal Retirement Date in the form of a single life annuity.
- 1.2 **Actuarial Equivalent.** A benefit of equal value computed on the basis of (a) the 1965 Projected Annuity Mortality Table (as projected by Scale C), and (b) interest at seven percent compounded annually for forms of payment other than lump sum; the interest rate used to determine equivalent lump sum values will be the PBGC schedule of immediate and graded deferred rates in effect on the first day of the Plan Year in which the benefit is paid.
- 1.3 **Benefit Commencement Date.** The first day of the first month for which a retirement benefit is payable as an annuity to the Participant under Articles 3 and 4, or a preretirement death benefit is payable to the surviving Spouse under Article 5. If the benefit is payable in a lump sum, the Benefit Commencement Date is the date when payment is issued. If the Participant dies before his Benefit Commencement Date, the only benefit payable will be the preretirement death benefit to the surviving Spouse, or the refund of his Employee Contributions.
- 1.4 **Benefit Service.** See Section 1.30.
- 1.5 **Board.** The Pension Board consists of five members, which has primary responsibility for administering the Plan as described in Article 9.
- 1.6 **Code.** The Internal Revenue Code of 1986 as amended from time to time, and regulations and rulings issued under the Code.
- 1.7 **Compensation.**
 - (a) **For Accrued Benefit and Nondiscrimination Testing.** The Participant's base and longevity pay received from the Town for each Plan Year. It includes any elective deferrals under any Code Section 457 Plan and excludes all other forms of direct or indirect compensation. Longevity pay is earned uniformly throughout the Plan Year and will be credited for the payroll period in which it is earned regardless of the date when it is paid.
 - (b) **Statutory Cap.** Beginning as of the first day of the 1994 Plan Year, each Participant's Compensation taken into account for all purposes under the Plan will be limited to \$150,000 (as indexed under Code Section 401(a)(17)). The Board will apply the \$150,000 (indexed) limitation to Compensation earned in all calendar years, including years before

1994, but will not apply indexing retroactively. For purposes of the statutory cap, the Plan will aggregate the Compensation of (A) each Employee who is among the 10 highest paid Employees, and (B) his Spouse and/or his lineal descendants who have not reached age 19 as of the last day of the Plan Year. The Board will allocate the statutory cap among the members of any such family unit in proportion to each member's actual Compensation.

- 1.8 Disability. A physical or mental incapacity which has permanently disabled the Participant from engaging as a sworn police officer, which has been certified in writing by one or more physicians selected by the Board, and which certification the Board has accepted, without regard to any determination made by the Social Security Administration; provided that Disability will not include any incapacity which results from (a) the Participant's current abuse of drugs or alcohol; (b) the Participant's willful participation in a fight, riot, civil insurrection or crime; (c) the Participant's service in any armed forces; (d) the Participant's employment by any employer other than the Town; (e) any injury or disease sustained after the Participant's Termination Date; (f) any act of war whether or not formally declared; or (g) any condition which existed at the time the Participant was hired as a sworn police officer.
- 1.9 Earliest Retirement Date. See Subsection 3.3(a).
- 1.10 Early Retirement Date. See Subsection 3.3(a).
- 1.11 Effective Date. The initial Effective Date of the Plan was May 1, 1971, and the Effective Date of this amendment and restatement is June 2, 1999.
- 1.12 Employee. A sworn officer regularly employed full-time by the Town. The group of eligible Employees will exclude (a) members of a unit of employees covered by a collective bargaining agreement between an employee representative and the Town, unless otherwise provided in the agreement or agreed to by the Town and the union, (b) independent contractors, (c) leased employees and (d) the Chief of Police.
- 1.13 Employee Contributions. The amount each Participant must contribute each payroll period. The amount is five percent of pretax compensation (base pay plus longevity) effective May 18, 1994. Before that date, the amount was 6-1/4 percent of after-tax compensation (base pay plus overtime).
- 1.14 Employment. The period of regular full-time employment as a sworn police officer. However, each Employee will receive credit for purposes of Benefit Service and Vesting Service for the period when employed as a firefighter by the Town.
- 1.15 Employment Date. The date on which the Employee first performed service in the Police Department as a sworn police officer.
- 1.16 ERISA. The Employee Retirement Income Security Act of 1974 as amended from time to time, and regulations and rulings issued under ERISA.

- 1.17 Final Average Earnings. Each Participant's Final Average Earnings will be the monthly average of his Compensation for the last 36 consecutive calendar months' period (or actual number if fewer than 36). The Plan will include in the averaging period any months when the Participant's Compensation is zero.
- 1.18 Normal Retirement Date. See Subsection 3.1(b).
- 1.19 Participant. An Employee who participates in the Plan under Section 2.1. The term Participant can include active, vested terminated and/or retired Participants. Where the context indicates, the term Participant includes persons claiming benefits accrued by a Participant.
- 1.20 Plan. The Town of Davie Police Pension Plan as amended from time to time.
- 1.21 Plan Administrator. The Board.
- 1.22 Plan Year. The period of 12 months beginning October 1 of each year and ending September 30 of the following year; the Plan Year will be referenced by the calendar year in which it begins.
- 1.23 Required Beginning Date.
- (a) Participant. The Required Beginning Date for the active and inactive Participant is April 1 following the calendar year in which he retires.
 - (b) Beneficiaries. The Required Beginning Date for the surviving Spouse is the end of the calendar year in which the Participant would have reached age 70-1/2. The Required Beginning Date for the non-Spouse beneficiary is the end of the calendar year following the calendar year in which the Participant's death occurs (or the end of the calendar year following the calendar year in which the surviving Spouse's death occurs if the Spouse was the primary beneficiary); provided that if payment has not begun by that date, the Required Beginning Date will be extended until the last day of the fifth calendar year following the year in which the Participant (or surviving Spouse) died and the entire Accrued Benefit must be distributed no later than that date.
- 1.24 Spouse. For purposes of postretirement benefit, the Spouse must be legally married to the Participant on his Benefit Commencement Date. For purposes of preretirement death benefits, the Spouse must be legally married to the Participant for at least one year. In the event of a dispute, Florida laws of descent and distribution govern.
- 1.25 Termination Date. The date the Employee terminates Employment for any reason, including resignation, discharge, retirement, Disability or death.
- 1.26 Town. The Town of Davie, Florida.
- 1.27 Vesting Service. See Section 1.30.

1.28 Years of Service (Benefit Service and Vesting Service). The period beginning on the Participant's Employment Date and ending on his Termination Date, subject to the following rules:

- (a) Computation. Years of Vesting Service are computed in whole and partial years by measuring months from the Employment Date through the Termination Date, counting each whole completed month as 1/12 year and ignoring any partial months.
- (b) Exclusions. The following periods will be excluded from Years of Service for purposes of vesting and benefit accrual:
 - (1) Periods of Non-Participation. Periods during which an Employee is not a Participant in this Plan. Credit is given for periods when an Employee worked as a firefighter for the Town.
 - (2) No Dual Participation. Periods during which the Participant accrued vested benefits under another qualified retirement plan to which the Town contributed.
 - (3) Leaves of Absence. Periods of leave for which the Participant fails to pay the make-up Employee Contributions within two years after the date when he resumes active Employment.
- (c) Approved Leaves of Absence. Except as provided in this Subsection, each Participant who makes the make-up Employee Contribution required under Section 1.13 will receive Years of Service credit as if his status as an active Employee had continued during his leave of absence granted under the Town's standard, uniformly-applied personnel policies. He must resume active Employment promptly upon the expiration of his approved leave.
 - (1) Military Leave. Each Participant will receive Years of Service credit as if his active full-time Employment had continued during his military duty with the Armed Forces of the United States of America. He must retain statutory reemployment rights and resume Employment within 90 days after honorable discharge from active military duty, or during any other period prescribed by law.
 - (2) Parental Leave. Each Participant will receive Years of Service credit during a parental leave period. The credit will not exceed 12 weeks. A parental leave is the Employee's absence by reason of pregnancy, child birth, child adoption, and/or child care immediately following birth or adoption. The Employee must timely provide to the Board all information reasonably required to establish (A) that the absence is for a reason described in this Subsection, and (B) the number of weeks of absence attributable to such reason.
- (d) Equal Credit for Benefit Service and Vesting Service. Each Participant's credit for Benefit Service and Vesting Service will be equal; he will not receive credit for one purpose without receiving equal credit for both purposes, except as otherwise provided for in this plan.

ARTICLE 2

Eligibility

- 2.1 Eligibility. Each Employee who was an active Participant in the Plan on May 18, 1994 will continue to participate after that date. Each other Employee will become a Participant as of the date when he reaches age 18, and beginning with the first payroll period after he becomes a Participant. The Town will automatically deduct ("pick-up") his mandatory Employee contributions from his regular pay.
- 2.2 Participation upon Reemployment.
- (a) Employee Contributions not Withdrawn. If an Employee terminates Employment, leaves his Employee Contributions in the Plan and then resumes Employment at any time, he will receive credit for his prior Benefit Service and Vesting Service.
 - (b) Employee Contributions Withdrawn. If an Employee terminates Employment, withdraws his Employee Contributions and then resumes Employment at any time, he will receive credit for his prior Benefit Service and Vesting Service if he repays the full actuarially determined amount required to equal the amount withdrawn. This must be done no later than two years after the date when he resumes Employment. Credit will not be given if he fails to timely repay that amount.

ARTICLE 3
Retirement Dates and Benefits

3.1 Normal Retirement.

- (a) Normal Retirement Date. The Participant's Normal Retirement Date is the first day of the month on or next following the earlier of the date when he has reached age 55 or has completed at least 20 Years of Service.
- (b) Amount of Normal Retirement Benefit. Beginning May 18, 1994, the Participant who retires on his Normal Retirement Date will receive a monthly benefit in an amount equaling (1) plus (2) as follows:
 - (1) Three percent of his Final Average Earnings multiplied by his whole and partial Years of Service not in excess of 20 years.
 - (2) Two percent of his Final Average Earnings multiplied by his whole and partial Years of Service in excess of 20 years but not in excess of 30 years.

No Participant will receive a monthly benefit greater than 80 percent of his Final Average Earnings.

The Board will apply this formula using the definition of Final Average Earnings as defined in Section 1.17, which is based on the definition of Compensation in Section 1.7, which definitions are effective as of May 18, 1994. Under no circumstance will this formula be applied using those definitions as in effect before that date.

- (c) Benefit Commencement Date. The normal retirement benefit will be payable the first day each month beginning on the Participant's Normal Retirement Date (if he has retired).
- (d) Adjustment for Form of Payment. The benefit payable to the Participant receiving a form of payment other than the single life annuity will be adjusted as described in Section 4.3.
- (e) Minimum Benefit. No Participant will receive a benefit less than his Accrued Benefit calculated and frozen May 18, 1994.

3.2 Delayed Retirement. The following provisions will be effective for any Participant who earns any Hours of Service after the 1987 Plan Year.

- (a) Delayed Retirement Date. The delayed retirement date of the Participant who continues Employment after his Normal Retirement Date will be the first day of the month in which he actually retires.
- (b) Amount of Delayed Retirement Benefit. The Participant who retires on his delayed retirement date will receive a monthly delayed retirement benefit calculated under Subsection 3.1(b) on the basis of his Years of Service as of his delayed retirement date.
- (c) Benefit Commencement Date. The delayed retirement benefit will be paid the first day of each month beginning on the Participant's delayed retirement date.
- (d) Adjustment for Form of Payment. The benefit payable to the Participant who receives a form of payment other than the single life annuity will be adjusted as described in Section 4.3.

3.3 Early Retirement.

- (a) **Early Retirement Date.** The Participant's Earliest Retirement Date is the first day of the month he has both reached his 50th birthday and completed 15 Years of Service. The Participant's Early Retirement Date will be the first day of the month on or after his Earliest Retirement Date and before his Normal Retirement Date, when he actually retires.
- (b) **Amount of Early Retirement Benefit.** The eligible Participant who retires before his Normal Retirement Date and elects to begin receiving his benefits early will receive a monthly retirement benefit in the amount he could have received as a normal retirement benefit under Section 3.1 but reduced for early payment so that it is the Actuarial Equivalent of the normal retirement benefit.
- (c) **Benefit Commencement Date.** The early retirement benefit will be payable on the first day of each month beginning in the month following the month when the Participant actually retires.
- (d) **Adjustment for Form of Payment.** The benefit payable to the Participant who receives a form of payment other than the single life annuity will be adjusted as described in Section 4.3.

3.4 Termination of Employment.

- (a) **Eligibility for Benefits.** Each Participant will become fully vested in his Accrued Benefit under the following schedule:

Years of Service	Vested Percentage
10	100%
- (1) **Nonvested Termination.** The Participant who terminates Employment before he completes Ten Years of Service will not receive any benefits under this Plan, except for the refund of his Employee Contributions, unless he resumes Employment and earns at least Ten Years of Vesting Service.
- (2) **Vested Termination.** The Participant who terminates Employment after he has completed Ten Years of Service, for any reason other than retirement, Disability or death, will be entitled to the monthly vested termination benefit described in Subsection (b).
- (b) **Amount of Vested Termination Benefit.** The vested Participant who terminates Employment will receive a vested termination benefit beginning on his Normal Retirement Date in the amount described in Subsection 3.1(b); provided that if he has completed at least 15 Years of Service, he may elect to receive a monthly vested termination benefit beginning as of the first day of any month after he reaches age 50 and before his Normal Retirement Date, which will be reduced for early payment so that it is the Actuarial Equivalent of the normal retirement benefit.
- (c) **Benefit Commencement Date.** The vested termination benefit will be payable on the first day of each month beginning as of the Participant's Normal Retirement Date, unless he is eligible and elects to begin receiving his benefit on an Early Retirement Date.
- (d) **Adjustment for Form of Payment.** The benefit payable to the Participant who receives a form of payment other than the single life annuity will be adjusted as described in Section 4.3.

3.5 Disability Retirement.

- (a) **Eligibility.** The Participant who incurs a Disability will be entitled to the retirement benefit described in this Section. The Disabled Participant must submit to a physical examination by one or more physicians selected by the Board at six month intervals or more frequently if requested by the Board.

- (b) Disability Retirement Date. The Disability retirement benefit will be payable to the Disabled Participant on the first day of each month beginning in the month following the later of (1) the date when the Disability has existed for six months, and (2) the date when the Board makes its determination that the Participant has incurred a Disability.
- (c) Amount of Retirement Benefit.
- (1) Disability not Resulting from Employment. The Participant who retires because of a Disability that has not resulted from his Employment will receive a monthly benefit in an amount equal to 1-1/2 percent of his Final Average Earnings multiplied by his whole and partial Years of Service, or \$100 if greater, minus any monthly amounts received under either (A) the Social Security Act; (B) any State of Florida or County of Broward disability, age or unemployment law; or (C) any workers' compensation law to the extent permitted by applicable law, or if such offset is not permitted by law the offset will equal the amount by which the sum of the Plan benefit plus the workers' compensation benefit exceeds the Participant's monthly Compensation at the level in effect as of his Disability date; provided that any such payment received in a nonperiodic form will be annuitized to the equivalent of a monthly benefit and that amount will be offset.
- (2) Disability Resulting from Employment. The Participant who retires because of a Disability that the Board determines has resulted from his Employment will receive a monthly benefit in an amount equal to 66-2/3 percent of his base pay at the rate in effect as of his Disability date, minus the offsets described above in Subsection (c)(1); provided that the benefit will not be less than the amount described above in Subsection (c)(1).
- (d) Forfeiture of Disability Retirement Benefits. The Participant's Disability retirement benefit payments will cease immediately if he either (1) resumes any police related employment for direct or indirect compensation; (2) dies; (3) recovers before reaching his Normal Retirement Date; or (4) at any time before he reaches his Normal Retirement Date he refuses to submit to a medical examination requested by the Board to determine whether his Disability has continued; provided that the Board will not require medical examinations more frequently than every six months unless it has reason to do so, and the Trust will pay the costs of each such medical examination.
- (e) Recovered Participant Who Timely Resumes Employment. The Disabled Participant who recovers and resumes Employment within 90 days after his recovery will be treated as if his Employment had continued for purposes of Vesting Service and Benefit Service, except that he will not receive such credit for the period between the first month for which he received a Disability benefit and the date he resumed Employment, nor will that duration count for purposes of the 20-year minimum retirement election.
- (f) Recovered Participant Who Fails to Timely Apply to Resume Employment. The Disabled Participant who recovers and fails to resume Employment will be treated as if his Termination Date occurred on his Disability Retirement Date, and his subsequent benefit payments will be reduced by the Actuarial Equivalent of the Disability benefits he received. If the Participant who is not rehired has earned at least One Year of Service, he will be entitled to receive the vested termination benefit described in Section 3.4 based on his Final Average Earnings and Years of Service as of his Disability date. The Participant who becomes Disabled, recovers before One Year of Vesting Service and does not resume Employment will not receive any benefit under the Plan.
- (g) Limitation of Offsets. The minimum retirement should not be less than that which is required under governing Florida laws.

3.6 Reemployment.

- (a) Reemployment before Receipt of Benefits. The retirement benefit payable to the vested Participant who terminates or retires and resumes Employment before he receives any benefit payments will be based on all his Years of Service and will begin after his subsequent termination or retirement in accordance with applicable provisions of the Plan.
- (b) Reemployment after Receipt of Monthly Payments. As of the date he resumes Employment, monthly benefit payments will be suspended for the Participant who (A) terminated or retired; (B) began to receive monthly benefit payments; (C) resumed Employment; and (D) earned additional Service. His benefit payments will resume after his subsequent retirement under applicable provisions of the Plan. His resumed benefit will be determined on the basis of his Final Average Earnings and Years of Benefit Service as of his subsequent Benefit Commencement Date, and will be reduced by the Actuarial Equivalent of the benefits he received before he resumed Employment; provided that the dollar amount of his monthly benefit payments will not be less than the dollar amount he received before he resumed Employment.

3.7 Transfers

- (a) Transfers. This Plan will give credit for Years of Service for any period when a Participant worked as a firefighter in the Town's Fire Department as if he had been an Employee during that period.
- (b) Coordination of Benefits. In the event that a participant has worked as a firefighter in the Town of Davie Fire Department, and has accrued service credits in that plan, the participant shall be eligible for a coordination of benefits. In the event that a participant in this plan shall accrue sufficient credited service to achieve a vested benefit, the member shall be deemed vested in both retirement plans. Upon the commencement of a service retirement, the member shall receive payment from this plan an amount equal to the credited service accrued. In addition, the member shall also be eligible for payment from the fire plan of a benefit equal to the years of credited service in that plan based upon the salary in effect at the time the member terminated service in the fire plan and at a rate in effect when the member terminated service. The benefit in the fire plan shall be available even though the member shall not have vested under the terms of the fire plan. In the event a member of this plan shall transfer prior to vesting to the fire plan, then the member shall accrue sufficient credited service to achieve a vested benefit in the fire plan, and the participant shall, upon retirement from the fire plan, be deemed vested in this plan and eligible to receive benefits accrued in this plan up to the date of termination, based on the salary and in an amount in effect on the date of transfer. This benefit shall be available even though the participant shall not have achieved a vested benefit in this plan; provided, however, that the member, upon termination in this plan, kept his/her contributions on deposit in this plan.
- (c) Connected Service. In the event that a member who becomes vested in this plan has credited service in the fire retirement plan of the Town, the member may, for the purposes of fulfilling the twenty- year service requirement for normal service retirement, combine the sum of all years in this plan plus the fire plan. In calculating the benefits, however, the members shall receive economic credit only for years of service within this plan.

ARTICLE 4
Payment of Benefits

4.1 Normal Form of Payment.

- (a) Unmarried Participant. The normal form of benefit payable to the unmarried Participant will be the single life annuity described in Subsection 4.3(a). The Participant may elect any optional form described in Section 4.3.
- (b) Married Participant. The normal form of benefit payable to the married Participant will be the 60 percent joint and survivor annuity described in Subsection (b)(1). When required by law, his Spouse's written consent must be obtained under the procedures described in this Section.
 - (1) 60 Percent Joint and Survivor Annuity. The 60 percent joint and survivor annuity is a reduced monthly benefit beginning on the Participant's Benefit Commencement Date and payable throughout his lifetime, with 100 percent of that monthly amount continuing to his surviving Spouse for 12 months following the Participant's death and then 60 percent of that amount continuing to the Spouse for life. No Participant can elect this form of payment for any beneficiary other than his surviving Spouse.

In the event the Participant's benefit had been subject to the Code Section 415 limitation described in Section 6.1, the Plan will calculate the amount payable to the surviving Spouse on the basis of the amount the Participant would have received if his benefit had not been subject to that limitation; provided that the Spouse's benefit will not exceed 100 percent of the amount the Participant had received.

- (2) Explanation of 60 Percent Joint and Survivor Annuity. The Committee will provide to each married Participant a written explanation of the 60 percent joint and survivor annuity, no more than 90 nor less than 30 days before his intended retirement date. The written communication will explain (A) the terms and conditions of the annuity; (B) the Participant's right to waive, and the effect of an election to waive the annuity; (C) the right of the Participant's Spouse to refuse to consent to a waiver of the annuity; and (D) the right to revoke and the effect of a revocation of an election to waive the annuity.
- (3) Waiver of the 60 Percent Joint and Survivor Annuity. The Participant may elect to waive the 60 percent joint and survivor annuity, and may revoke any such election, during the election period. Each election must be in writing and (A) must be signed by the Participant and, when required, his Spouse; (B) when required, the Spouse's consent must acknowledge the effect of the election and that he/she cannot later revoke the waiver; (C) when required, the Spouse's consent must either specifically approve each named beneficiary and each elected optional form of payment, or must permit the Participant to name any beneficiary and elect any optional form of payment; and (D) when required, the Spouse's consent must be witnessed by a notary public.
- (4) Election Period. The election period for waiving the 60 percent joint and survivor annuity will be the period between 30 and 90 days beginning on the date the Participant receives the written explanation required under Subsection (b)(2) and ending on his Benefit Commencement Date.

- (5) Election of 66-2/3 Percent or 100 Percent Joint and Survivor Annuity. The Participant may elect to receive either the 66-2/3 percent or 100 percent joint and survivor annuity with his Spouse as his joint annuitant, and he will not be required to have his Spouse's consent to make the election.

4.2 Election of Optional Form of Payment. Subject to the restrictions described in Section 4.1, the Participant who is entitled to elect an optional form of payment may elect, or revoke a previous election and make a new election, within the 90 day period ending on his Benefit Commencement Date to receive his benefits in one of the forms described in Section 4.3. Each election must be in writing on a form prescribed by the Board. Unless the beneficiary is the Participant's Spouse, the Participant may not elect any option unless the present value of the payments expected to be made to him complies with the incidental benefit rule under Code Section 401(a)(9).

4.3 Deferred Retirement Option Plan. Subject to Federal and State Laws, participants may elect a Deferred Retirement Option Plan as described below. This option is made part of the plan.

4.3.1 Eligibility.

- (a) Any active member of the Retirement System may retire and participate in the DROP upon the completion of twenty (20) years of credited service, regardless of age. Except as provided in Section 1(c), below, the employee must make a written election to participate in the DROP before reaching twenty (20) years of credited service. If not, the employee will not be eligible to participate in the DROP.
- (b) The maximum DROP participation period shall be five (5) years commencing at the earliest date of eligibility. The available DROP participation period shall decline by one month until the expiration of a sixty (60) month period beginning at eligibility date.
- (c) Effective for a period of ninety (90) days from the effective date of this plan, any member who is eligible for normal retirement may elect to participate in the DROP for the remainder of the five (5) year period. Within ninety (90) days from the effective date of this Ordinance, any member who is already eligible for normal retirement as of the effective date of this Ordinance may file the written election to participate in the DROP. In this event, the member will be eligible to participate in the DROP for the five (5) year period. The commencement date of DROP participation for these members will be October 1, 1997. Any such member who does not make such written election within ninety (90) day period will not be eligible to participate in the DROP. If the remaining period of DROP participation is less than twenty-four (24) months, the member will be permitted to participate in the DROP for a full twenty-four (24) months.

4.3.2 Written Election to Participate.

A member electing DROP participation shall execute such forms as the Board of Trustees shall require. The DROP election shall be effective on the first day of the month following the date of election. Applications must be filed with the Board (with a copy being provided to the Town) not less than five (5) business days prior to the effective date.

4.3.3 Limitations on Participation And Disqualification For Other Benefit.

- (a) DROP election shall be irrevocable at the time the member executes the applicable forms.

- (b) A member may participate in the DROP only once. After DROP participation commences, a member may not rejoin the Retirement System as an active member nor shall the member be eligible to receive disability or preretirement death benefits from the System.

4.3.4 Cessation of Contributions.

Upon DROP commencement, both the member and the Town contributions to the System for the normal cost of benefits shall cease.

4.3.5 Benefit Calculation.

- (a) For all Retirement System purposes, the average monthly earnings and continuous service of a member participating in the DROP shall remain as they existed on the effective date of commencement of participation in the DROP. Service, earnings or increases in earnings thereafter shall not be recognized by the Retirement System or be used for the calculation or determination of any benefits payable by the Retirement System.
- (b) Upon commencement of DROP participation, the member will continue to accrue or be paid for sick leave, holiday leave and annual leave in accordance with the terms of the applicable provisions of a collective bargaining agreement or the Town Code if the member is not covered by a collective bargaining agreement. At the conclusion of DROP participation, the member will receive a payout for accrued leave pursuant to applicable provisions in a collective bargaining agreement or Town Code, if the member is not covered by a collective bargaining agreement.

4.3.6 Payments to DROP Account.

Payments shall be made monthly by the Retirement System to a member's DROP account in the amount which would be paid had the member separated from the Town and commenced normal retirement.

4.3.7 DROP Earnings.

- (a) Member accounts shall be credited or debited, as appropriate, with the investment earned/lost at a rate equal to the Fund's actual investment return, net of investment expenses. Accounts may be credited monthly or quarterly at the discretion of the Board of Trustees. Investment earnings/losses will be posted up to the last date of the members' DROP period. DROP participants by virtue of their participation authorize the Retirement Board to invest their DROP assets in the same manner as other assets of the Pension Fund. By participation in the DROP, DROP participants agree to hold the Board of Trustees, the Retirement Fund and the Town of Davie free from any liability claims associated with investment losses which may occur in the ordinary course of the investment of assets of the Retirement System.
- (b) The Town and the Board of Trustees shall seek a favorable determination letter from the IRS concerning the Retirement Plan, including all provisions of the DROP. In the event that the IRS should hold that this Section does not meet the "definitely determinable benefit" rule, participant accounts will be credited at a fixed rate based upon the actuarially assumed rate of return as determined by the Board of Trustees during the period of DROP participation. This rate of interest shall continue to apply unless and until the Town and the FOP negotiate a different rate of return.
- (c) No member shall receive a DROP payment until actually separated from the Town.

4.3.8 Expenses.

To compensate the system for the expenses of operating and administering the DROP, each member's DROP account shall be charged an administrative fee of \$10.00 per month, which amount shall be deducted from the member's DROP account. Deductions may be made monthly, quarterly or annually at the discretion of the Board of Trustees.

4.3.9 DROP Payout.

- (a) Upon termination of employment for any reason, DROP participation shall cease and any future retirement benefits shall be paid directly to the member, or in the case of death to the designated beneficiary.
- (b) Payment shall be made from the DROP account no more than ninety (90) days after separation from the Town. The form of payment may be altered upon written notice to the Board to take effect not more than ninety (90) days from the date of the notice. Payment shall be made:
 - i. in a single lump sum;
 - ii. in annual installments;
 - iii. in equal monthly installments;
 - iv. any combination of lump sum and periodic payments;
 - v. by rollover to another qualified retirement plan.
- (c) The Board of Trustees may accelerate or alter any payment schedule as may be required to comply with the provisions of Internal Revenue Code Sections 401(a)(9) and 415.
- (d) No DROP payment may be made in a manner inconsistent with state or federal law.
- (e) DROP balances shall continue to be credited or debited with earnings until fully paid to the member.

4.3.10 Promotions.

Members shall be eligible for promotion during DROP participation; provided, however, that no such promotion shall affect the benefit rate calculated upon DROP commencement.

4.3.11 Death During DROP.

Should a member die during DROP participation or before the account balance is paid out in full, the member's designated beneficiary shall have the same rights as the member to elect and receive the payout options set forth above.

4.3.12 Benefit Amounts.

All benefits payable under this DROP program shall be paid solely from DROP assets. Neither the Town nor the Board of Trustees shall have any duty to pay the member, except as set forth in this program.

4.3.13 Injury/Disability During DROP Participation.

In the event an employee sustains an on-the-job injury during DROP participation and misses time from work, the employee will be subject to the applicable provisions of the FOP collective bargaining agreement or the Town Code if the member is not covered by a collective bargaining agreement. In the event an employee suffers non-job related injuries or illnesses during DROP participation and misses a substantial amount of work on account thereof, the employee may, in the sole and exclusive discretion of the Town Administrator (or designee) and the Police Chief be separated from employment.

4.3.14 Payment of Actuarially Determined Costs.

In the event, after using an actuarial method mutually agreed to by the Pension Board Actuary and the Town Actuary, it is determined by the Town Actuary that there is a cost to the plan of providing or offering DROP participation, the full actuarially determined costs of the DROP will be assessed to all DROP participants proportionate to their DROP benefits. (Cost will be deducted from each participant's DROP account by the end of the DROP period.)

4.3.15 Provisions of the Fraternal Order of Police Contract.

The provisions of the collective bargaining agreement between the Town and the FOP or the Town Code if the member is not covered by a collective bargaining agreement will be generally applicable to DROP participants. However, on-the-job injury provisions of the FOP contract are modified pursuant to Section 13, above. Also, the provisions of Article 28, Sections 1, 2, 3 and 5 shall not apply to DROP participants.

4.3.16 Termination upon Conclusion of DROP Participation.

Once a member reaches the end of their participation in the DROP, they shall be automatically separated from employment with the Town.

4.4 Description of Forms of Payment. The value of each of the following forms of payment will be the Actuarial Equivalent of the benefit that would be payable to the Participant as a single life annuity.

- (a) Single Life Annuity. The single life annuity is a monthly benefit in the amount determined under the applicable provision of Article 3, beginning on the Participant's Benefit Commencement Date and payable throughout his lifetime, ending with the last payment due on the first day of the month preceding the month in which his death occurs.
- (b) Other Joint and Survivor Annuity Forms. The joint and survivor annuity is a reduced monthly benefit beginning on the Participant's Benefit Commencement Date and payable throughout his lifetime, with either 50 percent, 66-2/3 percent or 100 percent of that monthly amount continuing for life to his surviving beneficiary, beginning on the first day of the month following the Participant's date of death.
- (c) 10 Years Certain and Life Annuity. The 10 years certain and life annuity is a reduced monthly benefit beginning on the Participant's Benefit Commencement Date and payable throughout his lifetime, ending with the last payment due on the first day of the month in which his death occurs; provided that if the Participant dies within the 10 year period following his Benefit Commencement Date, payments will continue to his beneficiary for the remainder of the 10 year period. If the beneficiary dies within the 10 year period and there is no surviving contingent beneficiary, then the Actuarial Equivalent of any remaining monthly payments will be paid in a lump sum to the Participant's estate.

4.5 Refund of Employee Contributions. If a Participant terminates Employment before he has earned any vested percentage, the Plan will refund his Employee Contributions. If the Participant, or his beneficiary who is receiving the survivor annuity form of payment, dies before the Plan has paid an aggregate amount at least equal to the amount of his Employee Contributions, the Plan will refund the difference between the total Employee Contributions made and the amount actually paid out in a lump sum to the Participant's named surviving beneficiary, or if none then to the Participant's estate. The Plan will make the refund as soon as practicable after the Termination Date or the date of death, as applicable. Further, at retirement or termination, the participant may elect to receive the total Employee Contributions made and forfeit any benefit to which they would have been entitled.

4.6 Cash-out.

- (a) Vested Participant. As soon as practicable after the Termination Date of the Participant whose Accrued Benefit has a present value not greater than \$3,500, the Board will pay his entire benefit in the form of a lump sum payment. In the event benefit payments have begun to a Participant or surviving Spouse, and the Accrued Benefit had a present value no greater than \$3,500 as of the Benefit Commencement Date, the Board will cash out the remaining benefit only if the Participant, or his surviving Spouse if he is deceased, consent in writing.
- (b) Nonvested Participant. Regardless of the present value of his Accrued Benefit, each nonvested Participant will be considered to have received a constructive cash-out of his entire Accrued Benefit as of his Termination Date. In the event such Participant resumes Employment and pays the make-up Employee Contributions required under Section 1.13, he will be considered to have repaid his constructive cash-out as of the date he resumes Employment.
- (c) Direct Plan Rollover of Lump Sum Payments. Beginning January 1, 1993, the retired or terminated vested Participant who receives a lump sum before his Required Beginning Date may instruct the Board to roll over all or part of his lump sum payment to another qualified retirement plan or to an individual retirement account (IRA). The Participant must timely provide in writing all information required to effect the rollover. If the lump sum payment is greater than \$3,500, the Spouse's consent will be required. A surviving Spouse who receives a lump sum payment before the Spouse's Required Beginning Date may instruct the Board to roll over all or part of the payment to an IRA, and must timely provide in writing all information required to effect the rollover. The Board will provide timely notice of the right to make a direct rollover.

4.7 Effect of Death on Forms of Payment.

- (a) Death of Spouse or Beneficiary before Benefits Begin. If the Participant's benefit is payable in a survivor annuity form and his Spouse or designated beneficiary dies before his Benefit Commencement Date, the survivor form of payment will not become effective, and he will instead receive his retirement benefit as a single life annuity unless he properly elects an optional form before his Benefit Commencement Date.
- (b) Death of Participant before Benefits Begin. If the Participant's benefit is payable in a survivor form and he dies before his Benefit Commencement Date, his Spouse or other beneficiary will not be entitled to any benefits under such form. His surviving Spouse or other beneficiary will be entitled only to the preretirement death benefit payable under Article 5.
- (c) Death of Spouse or Beneficiary after Benefits Begin. If the Participant's benefit has begun in a survivor form and his Spouse or other beneficiary dies before he does, he will continue to receive his benefit in the same form.
- (d) Death of Participant after Benefits Begin. If the Participant dies after his benefits have begun, no death benefit will be payable unless he was receiving a survivor form and his beneficiary survives him.

4.8 Required Beginning Date. The following provisions will be effective beginning as of the first day of the 1989 Plan Year.

- (a) Payment to the Participant. Any other provision of the Plan notwithstanding, the Plan will begin making payments to each Participant no later than April 1 following the calendar year in which he retires. However, unless the Participant elects otherwise, the Plan will begin payment of his Accrued Benefit no later than the 60th day after the end of the Plan Year in which occurs the latest of (1) his 65th birthday; (2) the 10th anniversary of the date he began participating in the Plan; or (3) his Termination Date.

The Plan will pay the Accrued Benefit over a period not extending beyond the Participant's lifetime or life expectancy, or over a period not extending beyond the joint and last survivor life expectancies of the Participant and his Spouse or other beneficiary, using age(s) attained as of the end of the calendar year in which the Participant retires, and the Accrued Benefit as of that date. However, if the beneficiary of a joint and survivor annuity form of payment is not the Spouse and is more than 10 years younger than the Participant, payments to the beneficiary will not exceed the applicable percentage of the Participant's benefit payments required by the incidental benefit rule. The Board will not recalculate the life expectancy(s).

- (b) Participant's Death after Benefits Begin. If the Participant dies after his payments have begun in a survivor annuity form, the Board will pay the survivor benefits at least as rapidly as under the form of annuity in effect before his death.
- (c) Participant's Death before Benefits Begin. If the Participant dies before his payments have begun, the Board will pay his entire Accrued Benefit no later than December 31 of the calendar year which contains the fifth anniversary of his death. However, this five year rule will not apply if circumstances permit the Board to use the exception described below.

- (1) Surviving Spouse as Primary Beneficiary. If the surviving Spouse is the beneficiary, the Board will begin payments not later than the end of the calendar year during which the Participant would have reached age 70-1/2, and will continue payments over a period not extending beyond the Spouse's life expectancy, using age attained as of that date and not recalculated.
- (2) Non-Spouse Primary Beneficiary. If the beneficiary is an individual other than the Spouse, the Board will begin payments not later than the end of the calendar year following the year in which the Participant's death occurs, and will continue payments over a period not extending beyond the beneficiary's life, or life expectancy determined as of that date and not recalculated. If the beneficiary dies before receiving 120 payments under the 10 years certain and life annuity described in Subsection 4.2(d), the Board will continue to use the primary beneficiary's life expectancy for purposes of making payments to an individual contingent beneficiary. However, if the primary or contingent beneficiary is not an individual, the Board will cash-out any remaining Accrued Benefit no later than the last day of the calendar year following the year in which the Participant or primary beneficiary, as applicable, dies.

- (d) Compliance with Code Section 401(a)(9). The intent of this Section is that the beginning dates and payment periods of benefits payable to each Participant and beneficiary will be within the limitations permitted under Code Section 401(a)(9). If there is any discrepancy between this Section and Code Section 401(a)(9), that Code Section will prevail.

- 4.9 Designation of Beneficiaries. Each Participant may designate one or more beneficiary(s) to receive any benefits which may be payable in the event of his death after his Benefit Commencement Date. The Participant may revoke or change his designation from time to time by filing the proper form with the Board, and each change will revoke all his prior designations. To be effective, each designation, revocation or change must be made in writing on a form provided by the Board and must be signed and filed with the Board before the Participant's Benefit Commencement Date. The Participant who elects a joint and survivor annuity form of payment may designate only a single primary beneficiary. The Participant who elects the 10 years certain and life annuity may name one or more primary beneficiaries and one or more contingent beneficiaries; provided that if he designates multiple contingent beneficiaries, he must state either the order of succession or

the percentage payable to each. If the Board considers it necessary, it will request a judicial determination as to whom payments should be made, in which event all expenses incurred in obtaining the determination may be charged against the payee. Any substituted beneficiary will receive no more than the actuarial equivalent of the benefit previously calculated.

- 4.10 Payment to Representative. If the Participant or beneficiary is incompetent to handle his affairs at any time while eligible to receive benefits, or is a minor, or cannot be located after reasonable effort, the Board will make payments to his court-appointed personal representative, or if none is appointed the Board may in its discretion make payments to his next-of-kin; provided that the Board may request a court of competent jurisdiction to determine the payee, in which event all expenses incurred in obtaining the determination may be charged against the payee. The Board will establish written procedures to guarantee a fair process for notice and appeal of decisions made regarding these payments.
- 4.11 Unclaimed Benefits. In the event the Board cannot locate any person entitled to receive the Participant's vested Accrued Benefit with reasonable effort and after a period of five years, his interest will be canceled but will be reinstated within 60 days after he is located, as required under Treasury Regulations Section 1.401(a)-14(d) or any other applicable law.
- 4.12 Correction of Mistakes. In the event the Board discovers that a mistake has been made in the calculation of the benefit amount payable to any Participant or beneficiary, it will correct the mistake as soon as practicable. If an overpayment in monthly payments has been made, the Board will reduce future monthly benefit payments to the extent necessary to recover the overpayment within a reasonable period of time. If an overpayment has been made in a lump sum, the Board will seek cash reimbursement. If an underpayment in monthly payments has been made, the Board either will pay the present value of the underpayment in a single sum, or will increase future monthly benefit payments to the extent necessary to pay present value of the underpayment within a reasonable period of time. If an underpayment has been made in a lump sum, the Board will pay the present value of the underpayment in a single sum. However, if the Board determines that the burden or expense of seeking recovery of any overpayment would be greater than the potential recovery warrants, it may in its discretion forego recovery efforts.

ARTICLE 5

Preretirement Death Benefits

- 5.1 Death of Participant not Resulting from Employment or not Married One Year. As soon as practicable after the date of death, the Board will refund the Employee Contributions to the named beneficiary of the Participant who dies before his Benefit Commencement Date, and either whose death the Board determines did not result from his Employment, or who does not have a surviving Spouse to whom he has been married for at least one year.
- 5.2 Death of Married Participant Resulting from Employment. The surviving Spouse of the Participant who has been married for at least one year, who dies before his Benefit Commencement Date, and whose death the Board determines has resulted from his Employment, will receive a monthly benefit in an amount equal to 50 percent of the Participant's compensation at the rate in effect on his date of death. The first payment will be made as of the first day of the month following the month in which the Participant's death occurs, and payments will continue until the earlier of the month in which the Spouse dies with the last payment made as of the first day of that month. For purposes of this death benefit, base pay will not include longevity pay, overtime, bonuses or any other form of direct or indirect compensation. In the event that the Spouse dies or remarries before receiving benefits in a total amount at least equal to the Participant's Employee Contributions, as soon as practicable after the Spouse's death the Board will refund an amount equal to the difference between the Employee Contributions and the total benefits paid to the Spouse to the Participant's named contingent beneficiary or, if none, then to the Participant's estate.

ARTICLE 6
Limitations on Benefit Amounts

6.1 Code Section 415 Limits. The following provisions will be effective as of the first day of the 1987 Plan Year. In no event will the annual benefits payable to any Participant exceed the Code Section 415 Limit described in this Section.

- (a) Applicable Definitions. For purposes of this Section, the following terms will have the meanings set forth below.
 - (1) Adjusted Accrued Benefit. The Participant's Accrued Benefit after the adjustments described in Subsection (b), which is the amount to which the Code Section 415 Limit will be applied.
 - (2) Code Section 415 Limits. For each Participant, the lesser of:
 - (A) Dollar Limit. \$90,000 (as indexed to the CPI as of the first day of each Limitation Year beginning in 1988), with the indexed limit for each Limitation Year applied to benefits in pay status.
 - (B) Percentage Limit. 100 percent of his average Compensation as defined below for the three consecutive calendar years when his Compensation was highest.
 - (C) Other. Such other limitations as may be set forth in Treasury Regulations from time to time.
 - (3) Compensation. For purposes of his Code Section 415 Limit, the Participant's Compensation includes all amounts received from the Town for his performance of services and reported as taxable income on his Form W-2, within the meaning of Treasury Regulations Section 1.415-2(d), which amount excludes before-tax salary reduction amounts made under any tax-exempt plan maintained by the Town.
 - (4) Limitation Year. The Plan Year.
- (b) Calculation of the Adjusted Accrued Benefit. Before application of the Code Section 415 Limit, each Participant's Accrued Benefit will be adjusted as follows:
 - (1) Aggregation of Benefits. If the Participant has participated in any other qualified defined benefit plan maintained by the Town, his accrued benefit under each such plan will be aggregated with his Accrued Benefit under this Plan. If the Participant has participated in any qualified defined contribution plan maintained by the Town, his Accrued Benefit will be subject to the combined plan limits described in Subsection (d).
 - (2) Other Factors. The calculation of the Participant's Adjusted Accrued Benefit will include any other relevant provision in the Plan, or requirement of law, in effect from time to time.
 - (3) Adjusted Accrued Benefit. The result of the adjustments described in this Subsection (b) will be the Participant's Adjusted Accrued Benefit for purposes of applying the Code Section 415 Limit.
- (c) Adjustments to the Code Section 415 Limit. The Participant's Code Section 415 Limit, which will be applied to reduce his Adjusted Accrued Benefit if necessary, will be adjusted by any of the following circumstances which apply to him.
 - (1) Grandfathered Code Section 415 Limit. For benefits the Participant accrued under any qualified plan maintained by the Town before the 1987 Plan Year, his Section 415 Limit will not be less than the following amount(s):
 - (A) Pre-1983 Accrued Benefit. If before 1983 the Participant had participated in one or more qualified defined benefit plans to which the Town contributed, his Code Section 415 Limit will not be reduced to an amount less than his aggregate accrued benefit under such plan(s) as of the last day of the 1982 limitation year under such plan(s).

- (B) Pre-1987 Accrued Benefit. If before 1987 the Participant had participated in one or more qualified defined benefit plans to which the Town contributed, his Code Section 415 Limit will not be reduced to an amount less than his aggregate accrued benefit under such plan(s) as of the last day of the 1986 limitation year under such plan(s).
- (2) Form of Payment. The Code Section 415 Limit applies to benefits payable at when the Participant reaches age 62 in the form of the single life annuity or the spousal 50 percent joint and survivor annuity. If benefits are paid in any other form, the Participant's Code Section 415 Limit will be reduced by the Actuarial Equivalent factor for that form of payment, using the greater of the interest rate used to calculate forms of payment under Section 4.3, or five percent.
- (3) Reduced Limit for Early Retirement. If the Participant begins benefit payments before age 62, his Dollar Limit will be reduced using the Plan's interest rate set forth in Section 1.2 (but not less than five percent) to an amount equal to the Actuarial Equivalent of the Code Section 415 Limit that applies to his age 62 benefit; provided that the Code Section 415 Limit will not be reduced below (A) \$75,000 if his benefit payments begin at or after age 55, or (B) the Actuarial Equivalent of \$75,000 if his benefit payments begin before age 55.
- (4) Increased Limit for Late Retirement. If the Participant begins receiving his benefit payments after the month in which he reaches age 65, the Dollar Limit will be increased to an amount equal to the Actuarial Equivalent of the annual benefit he could have received at age 65; provided that the interest rate will not be greater than five percent.
- (5) Reduced Limit for Fewer than 10 Years of Participation.
- (A) Dollar Limit. The Dollar Limit for the Participant who has fewer than 10 years of participation in the Plan will be computed by multiplying \$90,000 (as adjusted) by a fraction, the numerator of which is the number of his whole and partial years of participation and the denominator of which is 10.
- (B) Percentage Limit. The Percentage Limit for the Participant who has earned fewer than 10 Years of Vesting Service will be computed by multiplying the amount of his average Compensation for his three highest years by a fraction, the numerator of which is the number of his whole and partial Years of Vesting Service and the denominator of which is 10.
- (6) Special Rules for an Adjusted Accrued Benefit not in Excess of \$10,000. If the Participant's Adjusted Accrued Benefit is not greater than \$10,000, the full amount may be paid whether or not that amount exceeds his Percentage Limit, but only if (A) his annual benefit has not exceeded \$10,000 in any previous Plan Year, and (B) he has never participated in a defined contribution plan maintained by the Town. However, if the Participant has fewer than 10 Years of Vesting Service, then his Adjusted Accrued Benefit will be multiplied by a fraction, the numerator of which is the number of his whole and partial Years of Vesting Service and the denominator of which is 10, and he will receive this reduced amount. If he elects a form of payment other than the single life annuity or spousal survivor annuity, his Adjusted Accrued Benefit will not be reduced by the Actuarial Equivalent factor for his elected form of payment.
- (d) Combined Plan Limits. If an Employee is a Participant at any time in both this Plan and any qualified defined contribution plan maintained by the Town, and the sum of his Defined Benefit Fraction and his Defined Contribution Fraction is greater than 1.0, his benefit under this Plan will be reduced so that the sum of the fractions does not exceed 1.0.

- (1) **Defined Benefit Fraction.** The Participant's Defined Benefit Fraction for any Plan Year is a fraction, the numerator of which is his projected annual benefit under this Plan determined as of the last day of the Plan Year and the denominator of which is the lesser of:
 - (A) 1.25 multiplied by the Dollar Limit and the product multiplied by the ratio of the Participant's Years of Vesting Service (not greater than 10) over 10; or
 - (B) 1.4 multiplied by his average Compensation for the three consecutive calendar years when his Compensation was highest.
- (2) **Defined Contribution Fraction.** Beginning in 1987, the Annual Addition includes all amounts allocated to the Participant's account(s) dollar-for-dollar, but his Annual Additions for previous Plan Years will not be recalculated to include amounts that were excludable under Code Section 415 as it existed before 1987. The Participant's Defined Contribution Fraction for any Plan Year is a fraction, the numerator of which is the sum of the Annual Additions to his account(s) for the Plan Year and all previous Plan Years during his Employment, and the denominator of which is the sum of the lesser of the following amounts for the Plan Year and all previous Plan Years during his Employment:
 - (A) 1.25 multiplied by \$30,000 (as adjusted to the CPI beginning as of the date when the Dollar Limit is adjusted up to \$120,000), or
 - (B) 1.4 multiplied by 25 percent of his Compensation for the Plan Year.

Alternatively, the Board may authorize the use of any method permitted by Treasury Regulations from time to time to compute the Defined Contribution Fraction.

- (3) **Transition Rule for Computing the Defined Contribution Fraction.** To compute each Participant's Defined Contribution Fraction for Plan Years ending after 1982, the Board may authorize the use of a denominator for all Plan Years ending before 1983, in an amount equal to the product of (A) the amount of the denominator for the Plan Year ending in 1982 under Code Section 415 as it then existed, multiplied by (B) the transition fraction which is a fraction, the numerator of which is the lesser of (i) \$51,875, or (ii) 1.4, multiplied by 25 percent of the Participant's Compensation for the Plan Year ending in 1981, and the denominator of which is the lesser of (i) \$41,500, or (ii) 25 percent of the Participant's Compensation for the Plan Year ending in 1981.
- (e) **Combining of Plans.** For purposes of applying the limitations described in this Section, all defined benefit plans maintained by the Town (whether or not terminated) will be treated as one defined benefit plan, and all defined contribution plans maintained by the Town (whether or not terminated) will be treated as one defined contribution plan; provided that the Percentage Limit will be applied separately to each defined benefit plan and will be applied under each plan by using the same period of consecutive calendar years (not more than three) as the period when the Participant's Compensation was greatest.
 - (f) **Compliance With Code Section 415.** The intent of this Section is that the maximum benefit payable to each Participant will be exactly equal to the maximum amount permitted under Code Section 415. If there is any discrepancy between this Section and Code Section 415, then Code Section 415 will prevail.

Restrictions on Benefits Payable to the 25 Highest Paid Participants.

- (a) Restricted Participants. In each Plan Year, the total number of Participants whose benefit payments are restricted under this Section is limited to the 25 highly compensated employees and former employees (within the meaning of Code Section 414(q)) with the greatest Compensation in the current or any prior Plan Year (the restricted Participants).
- (b) Restricted Amount. For each Plan Year, the amount of benefits payable to each restricted Participant will be limited to the annual amount that would be payable in the single life annuity form, unless either:
 - (1) the value of Plan assets remaining after payment to such Participant is at least 110 percent of the value of current liabilities, or
 - (2) the value of benefits paid to such Participant is less than one percent of the value of current liabilities.
- (c) Security for Restricted Amount. In lieu of the restrictions described in this Section and to the extent permitted by applicable law, the Plan may permit each restricted Participant to provide security for any payments which exceed the annual amount that would have been payable as a single life annuity.
- (d) Restriction upon Plan Termination. In the event the Plan terminates, the benefits payable to the restricted Participants will be limited to an amount that is not discriminatory under Code Section 401(a)(4).

ARTICLE 7
Contributions

7.1 Government Contributions.

- (a) Town Contributions. The Town will make contributions in the amounts determined by the Board to be necessary to provide benefits under the Plan, based on the recommendations of the Plan's actuary. Town contributions will be irrevocable and will be used only for the benefit of Participants and beneficiaries, except as provided in Sections 7.4 and 8.2. The Town reserves the right to establish and to change from time to time the method for funding benefits, either through the use of one or more trust agreements or one or more group annuity contracts or other forms of insurance contracts. The Town will maintain the actuarial soundness of the plan.
- (b) Chapter 185 Contributions. Under Chapter 185 of the Florida Statutes, the State of Florida pays to the Police Pension Plan Trust certain monies received as premiums on casualty insurance written in the Town to help fund the cost of the age 55 Normal Retirement Age and other benefits not generally provided to other employees. In the event that the Plan's actuary determines that all such contributions are not needed for such purpose, the Board will use the excess to fund other benefits provided under this Plan, subject to approval of the Florida Department of Management Services, Division of Retirement, Bureau of Police and Fire Pensions, and the Town. The Board will maintain a separate accounting of these contributions but may merge them with other Plan assets for investment purposes.

7.2 Employee Contributions. Effective May 18, 1994, as a condition of participation in the Plan, each Participant must contribute (via employer "pick-up") for each payroll period, through payroll deductions, an amount equal to five percent of his base pay. Between May 1, 1976 and September 30, 1977, each Participant was required to contribute an amount equal to five percent of base pay. Between October 1, 1977 and July 19, 1983, each Participant was required to contribute an amount equal to three percent of base pay. Between July 20, 1983 and May 30, 1983, each Participant was required to contribute an amount equal to 6-1/4 percent of base pay. Between June 1, 1983 and September 30, 1983, each Participant was required to contribute an amount equal to 4-1/4 percent of base pay. Between October 1, 1983 and May 18, 1994, each Participant was required to contribute an amount equal to 6-1/4 percent of base pay. Each Participant will be deemed to have consented to such payroll deductions.

7.3 Transfers. In the event a Participant transfers to a position as firefighter for the Town, the Board will transfer to the Town's firefighter plan an amount equal to the Chapter 185 contributions that is attributable to such Participant.

7.4 Return of Contributions to the Town. Any contribution made by mistake of fact will be returned to the Town within one year after the contribution is made.

7.5 Actuarial Gains. Actuarial gains arising from any cause whatsoever will not be applied to increase the benefits any Participant would otherwise receive at any time before termination of the Plan, but will be applied to reduce the Town's contributions for the current or subsequent Plan Years.

ARTICLE 8

Amendment, Termination, Merger

8.1 Amendment.

- (a) Procedure. The Town and the Union will have the right to amend the Plan from time to time. The Board will determine that an amendment is appropriate, and will direct that it be drafted in the form of an Ordinance. A majority of Board members then in office, and the Union, must approve the draft. As soon as practicable after the Board and the Union approve the proposed Ordinance, they will present it to the Mayor of the Town. If the Mayor approves the Ordinance, he or she will sign the amendment and thereby adopt it.
- (b) Prohibited Amendments. No amendment will be permitted which would have any of the following effects:
 - (1) Exclusive Benefit. No amendment will permit any part of the Trust Fund to be used for purposes other than the exclusive benefit of Participants.
 - (2) Non-reversion. No amendment will revert in the Town any portion of the Trust Fund except such amount as may remain after termination of the Plan and satisfaction of all liabilities.
 - (3) No Cutback. No amendment will eliminate any optional form of benefit described in Section 4.2 with respect to benefits accrued before the amendment.
- (c) Limited to Active Participants. Except as specifically stated in the amendment, no amendment will apply to any Employee whose Termination Date occurred before the effective date of the amendment.

8.2 Termination of the Plan.

- (a) Right to Terminate. The Town expects this Plan to be continued indefinitely, but necessarily reserves the right to terminate the Plan and all contributions at any time.
- (b) Full Vesting. In the event of termination or partial termination, the Accrued Benefit of each affected Participant, to the extent funded, will become fully vested as of the termination date. For purposes of accelerated vesting, affected Participants will include only those who are in active Employment as of the Plan termination date. All non-vested Participants who terminated Employment before the Plan termination date will be considered to have received constructive cash-outs of their entire Accrued Benefits as of their Termination Dates.
- (c) Provision for Benefits upon Plan Termination. In the event of termination, the Board may in its discretion act as follows:
 - (1) Maintain the Trust. The Board may continue the Trust for so long as it considers advisable and so long as permitted by law, either through the existing trust agreement(s), or through successor funding media.
 - (2) Terminate the Trust. The Board may terminate the Trust, pay all expenses, and direct the payment of the benefits as allocated under Subsection (d), either in the form of lump-sum distributions, installment payments, annuity contracts, transfer to another qualified plan, or any other form selected by the Board, to the extent not prohibited by law.
- (d) Allocation of Assets. Upon termination, the Board will allocate the assets that remain after payment of all Plan expenses, to Participants and to persons claiming under Participants, in the following order of priority:
 - (1) Refund of Employee Contributions;

- (2) Benefits in pay status, including the Disability benefit described in Section 3.5, and benefits payable to Participants who have remained in active Employment after their Normal Retirement Dates;
- (3) All other benefits accrued as of the Plan termination date.

If Plan assets are not sufficient to pay all liabilities, the Board will allocate assets on a pro rata basis within the first class in which benefits cannot be paid in full.

- (e) Surplus Reversion. Any assets that remain after all benefits under the Plan have been allocated will be returned to the Town.

8.3 Merger. In the event of any merger or consolidation of the Plan with any other plan, or the transfer of assets or liabilities by the Plan to another plan, each Participant will be entitled to receive a benefit immediately after the merger, consolidation or transfer, if the Plan then terminated, which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated.

ARTICLE 9
Administration

9.1 Allocation of Fiduciary Responsibilities. The Plan fiduciaries will have the powers and duties described below, and may delegate their non-discretionary duties.

- (a) Town. The Town will be responsible for maintaining the qualified status of the Plan, amending the Plan, and terminating the Plan if it considers termination to be appropriate. The Mayor and the Town Council will appoint and remove, as a ministerial function, the Board members, as long as this plan elects to follow the requirements of Florida Statutes §185. The Town will be responsible for making contributions to the Plan in the amounts determined by the Board based on the recommendations of the enrolled actuary.
- (b) The Board.
 - (1) Appointment and Termination of Office. The Board will consist of the following five individuals:
 - (A) Two legal residents of the Town, each of whom will be appointed by the Town Council, will accept their appointment in writing, and will serve at the pleasure of the Town Council;
 - (B) Two sworn police officers, each of whom will be elected by a majority of the police officers who participate in this Plan, and will serve a two year term unless he leaves Employment within that period; and
 - (C) One individual who will be appointed by the four Board members described above and who will serve a term of 2 years; the four Board members will submit their appointee's name to the Town Council and the Town Council will officially appoint him as the fifth Board member.

A member may resign at any time by written resignation to the Board and the Town. The Board will appoint a successor to fill any vacancy in the Board's membership.

- (2) Organization of the Board. The Board will elect a Chairman from among its members, and will appoint a Secretary from among its members who will keep records of Board meetings and actions. The Chairman and Secretary will execute documents on behalf of the Board. The Board members will serve without compensation for their services, but will be entitled to reimbursement for all reasonable and necessary disbursements made or expenses incurred by them in the performance of their duties, subject to any State Law, Town charter requirements, ordinance, or resolution which may limit or direct the amount and manner of these disbursement or expenses. The Board may appoint agents who may or may not be Board members, as it considers necessary for the effective performance of its duties, and may delegate to the agents non-discretionary powers and duties as it considers expedient or appropriate. The Board will fix the compensation of the agents.
- (3) Board Meetings. The Board will hold meetings at least quarterly. Meetings may be called more frequently at the request of any two Board members by giving three days advance notice of any such meeting. Three Board members then in office will constitute a quorum to transact business. Each action of the Board will be taken by a majority vote of all members then in office. All meetings must be properly noticed to the public, the Participants, and the Town, and must be recorded in a manner such that verbatim minutes could be transcribed

~~if necessary.~~ Minutes of all meetings shall be recorded electronically and the Board shall furthermore cause the minutes of all meetings to be transcribed with sufficient detail to include a record of all action taken by the Board. The electronic recording and original transcription of the minutes shall be maintained in the Office of the Town Clerk of the Town of Davie.

- (4) Powers of the Board. The Board will have primary responsibility for administering the Plan, and all powers necessary to enable it to properly perform its duties, including but not limited to the following powers and duties:
- (A) Rules. The Board may adopt rules and regulations necessary for the performance of its duties under the Plan, provided that these rules and regulations may not supersede any rules and regulations promulgated by the State of Florida or the Town.
 - (B) Construction. The Board will administer the Plan according to its written terms, but will have the power to construe the Plan and to decide all questions arising under the Plan.
 - (C) Rights to Benefits. The Board will have discretionary authority to determine the eligibility of Participants to receive benefits and the amount of benefits to which any Participant may be entitled under the Plan, and will enforce the claims procedure described in Section 9.4.
 - (D) Employee Data. The Board will request from the Town complete information regarding the Compensation and Employment of each Participant and other facts as it considers necessary from time to time, will maintain such records, and will treat Town records as conclusive with respect to such information.
 - (E) Payments. The Board will direct the payment of benefits from the Trust, or may appoint a disbursing agent, and will specify the payee, the amount and the conditions of each payment; the Chairman and Secretary of the Board must sign each payment request.
 - (F) Disclosure. The Board will prepare and distribute to the Employees plan summaries, notices, and other information about the Plan in such manner as it deems proper and in compliance with applicable law.
 - (G) Application Forms. The Board will provide forms for use by Participants in applying for benefits.
 - (H) Actuarial Determinations. The Board will appoint an enrolled actuary to make annual actuarial valuations of the Plan's experience and liabilities, to prepare actuarial statements, and to recommend the amounts of contributions to be made by the Town. The Board will notify the Town, by June 1st of each year, of the amount of contributions determined to be necessary to provide benefits based on the recommendations of the enrolled actuary.
 - (I) Agents. The Board will retain legal counsel, accountants, and such other agents as it deems necessary to properly administer the Plan.
 - (J) Funding Policy. The Board will maintain and execute a funding policy, will maintain records showing the fiscal operation of the Plan, and will keep in convenient form the data required for actuarial valuations.
 - (K) Investment Manager. The Board may appoint one or more investment managers from time to time. The Board must, at least every five years, openly and competitively solicit Investment Manager(s).
 - (L) Custodian of Funds. The assets of the Plan shall be secured through third-party custody and safekeeping procedures. Bearer instruments shall be held only through third-party institutions. Investment officials shall be bonded. Collateralized securities shall be purchased using the delivery versus payment procedure. Unless prevailing practices or economic circumstances dictate otherwise, ownership shall be

protected through third-party custodial safekeeping. Safekeeping procedures shall be reviewed annually by an independent certified public accountant.

9.2 Expenses. Plan expenses include, but are not limited to, fees and charges of actuaries, attorneys, accountants, consultants, and investment managers. No Employee will receive any additional Compensation for services performed in connection with the Plan.

9.3. Indemnification. The Town will indemnify and hold harmless the Board and each member and each person to whom the Plan Administrator or Board has delegated responsibility under this Article, from all joint or several liability for their acts and omissions and for the acts and omissions of their duly appointed agents in the administration of the Plan, except for their own breach of fiduciary duty and willful misconduct.

9.4 Claims Procedure.

(a) Application for Benefits. The Board will furnish to each Participant, upon his retirement, information about the benefits to which he is entitled under the Plan. The Board may require any person claiming benefits under the Plan to submit a written application, together with such documents, evidence, and information as it considers necessary to process the claim.

(b) Action on Application. Within 90 days after receipt of an application and all necessary documents and information, the Board will furnish the claimant a written notice of its decision. If the Board denies the claim in whole or in part, the notice will set forth (1) specific reasons for the denial, with specific reference to Plan provisions upon which the denial is based; (2) a description of any additional information or material necessary to process the application with an explanation why such material or information is necessary; and (3) an explanation of the Plan's claim review procedure.

If special circumstance require an extension of time for processing the claim, the Board will furnish the claimant written notice of the extension before the end of the initial 90 day period. In no event will the extension exceed a period of 90 days from the end of the initial period. The notice will explain the circumstances requiring an extension of time and the date by which the Board expects to render a decision.

(c) Claim Review. The claimant who does not agree with the decision rendered on his application may request that the Board review the decision. The request must be made within 60 days after the claimant receives the decision, or if the application has neither been approved nor denied within the 90 day period specified in Subsection (b), then the request must be made within 60 days after expiration of the 90 day period.

Each request for review must be in writing and addressed to the Board. Concurrently with filing the request for review, or within the 60 day request period, the claimant may submit in writing to the Board a statement of the issues raised by his appeal and supporting arguments and comments.

Pending appeal, the claimant may inspect all documents which are reasonably pertinent to his case, upon reasonable notice to the Board. However, under no circumstance will the Town be required to disclose to any claimant information concerning any person other than the Participant whose benefit is being claimed, to the extent such information is normally treated as confidential.

Where the Board believes that the issues raised by the claimant's appeal may be more efficiently or fairly processed by taking testimony of the claimant or others, it will set the matter for oral hearing and give the claimant reasonable notice of the time and place. Whether or not an oral hearing is scheduled, the Board will proceed promptly to resolve all issues raised by the claimant's appeal and will render a written decision on the merits, with a statement of the reasons and references to the pertinent supporting provisions of the Plan, within 60 days following receipt of the claimant's request for review.

If special circumstances require an extension of time, the Board will render a decision as soon as possible, but not later than 120 days after receipt of the request for review. If an extension is required, the Board will furnish to the claimant written notice of the extension, including an explanation of the circumstances requiring the extension, before commencement of the extension period.

9.5 Actuarial Disputes Resolution Procedure

The Board has a fiduciary responsibility to have actuarial reports and statements prepared in a manner that assures proper funding by the Town and the participants. In setting those assumptions, the Board must attempt to fairly and justly assess the expense of the Plan to both current and future generations of contributors to the Plan. The Board has the initial responsibility to adopt reasonable actuarial assumptions that are used in the development of those reports and statements. In the event that the Town disputes the actuarial assumptions used in the development of those plans and statements, the Town will have the right to ask the Board to reconsider its adoption and use of those assumptions. The Board will have 45 days to respond to the Town as to whether or not the assumptions have been changed. The Board will detail its reasons for adopting the assumptions used in the reports and statements. Should the Town still disagree with the assumptions used by the Board, the Town and the Board will enter into binding arbitration within 45 days of the date of the Boards response to the Town over the issues of actuarial assumptions. The decision of the arbitrator will be final, subject to acceptance by the State of Florida.

ARTICLE 10

Miscellaneous

- 10.1 Headings. The headings and subheadings in this Plan have been inserted for convenient reference, and to the extent any heading or subheading conflicts with the text, the text will govern.
- 10.2 Construction. The Plan will be construed in accordance with the laws of the State of Florida, except to the extent such laws are preempted by the Code.
- 10.3 Qualification for Continued Tax-Exempt Status. Notwithstanding any other provision of the Plan, the amendment and restatement of the Plan is adopted on the condition that it will be approved by the Internal Revenue Service as meeting the requirements of the Code for tax-exempt status (as applicable to government plans), and in the event continued qualification is denied and cannot be obtained by revisions satisfactory to the Board, this amendment and restatement will be null and void.
- 10.4 Non-alienation. No benefits payable under the Plan will be subject to the claim or legal process of any creditor of any Participant or beneficiary, and no Participant or beneficiary will alienate, transfer, anticipate or assign any benefits under the Plan, except that distributions will be made pursuant to (a) domestic relations orders; (b) judgments resulting from federal tax assessments; and (c) as otherwise required by law.
- 10.5 No Employment Rights. Participation in the Plan will not give any Employee the right to be retained in the employ of the Town, or upon termination any right or interest in the Plan except as provided in the Plan.
- 10.6 No Enlargement of Rights. No person will have any right to or interest in any portion of the Plan except as specifically provided in the Plan.
- 10.7 Withholding for Taxes. Payments under the Plan will be subject to withholding for payroll taxes as required by law. Beginning in 1993, the Town will withhold 20 percent federal income tax from each lump sum payment which is not rolled over directly into another qualified retirement plan or individual retirement account under Subsection 4.5(c).
- 10.8 False Statements. Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record pertaining to the Plan, will be punished under the terms of applicable laws of the Town.

IN WITNESS WHEREOF, the Town of Davie has caused this amendment and restatement of the Town of Davie Police Pension Plan to be executed by its duly authorized officer this 2nd day of June 1999, to be effective as of October 1, 1997.

TOWN OF DAVIE

By: 

Mayor/Councilmember

ATTEST:

Title: 

Administrative Services Director

SIGNED VERSION