

TOWN OF DARIEN

EMPLOYEE RETIREMENT PLAN

PLAN DOCUMENT

Amended and Restated effective July 1, 2016
Approved by the RTM on January 22, 2018

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TOWN OF DARIEN EMPLOYEE RETIREMENT PLAN

INTRODUCTION

Effective July 1, 1971, the Town of Darien, a Connecticut municipality, adopted the retirement system known as the Town of Darien Employee Retirement Plan. The Plan was and is intended to be a governmental plan, as defined in Code Section 414(d), and was and is intended to qualify as a defined benefit plan under Code Section 401(a). It is also intended that all Member Contributions to the Plan be “picked-up” pursuant to Code Section 414(h). The Plan is maintained for the exclusive benefit of eligible Members and their Beneficiaries.

The Plan has been amended from time to time, and is hereby further amended and restated effective July 1, 2016.

Unless otherwise stated herein, the rights of Members who terminated service on or before June 30, 2016 shall be determined under the version of the Plan, including any underlying bargaining agreements, in effect on such Member’s date of termination and shall not be affected by any provision of this amendment and restatement, except as otherwise specifically provided in this Plan.

ARTICLE 1
DEFINITIONS

- 1.01 “**Administrator**” means the town pension board as constituted pursuant to Town Code Section 50-52.
- 1.02 “**Actuarial Value**” means a benefit of the equivalent current value to the benefit which would otherwise have been provided to the Member in the applicable normal form of benefit, determined using certain actuarial assumptions specified in the Plan or as otherwise determined by the Plan’s actuary.
- 1.03 “**Average Annual Compensation**” means the average of a Member’s Compensation for the highest three-year period out of the last five (5) years immediately preceding the date of computation. In the event the Member had not completed three (3) years of Service on the date of computation, Average Annual Compensation shall be determined over the period of employment.
- 1.04 “**Beneficiary**” or “**Beneficiaries**” means the person or persons designated by the Member, on a form prescribed by the Administrator, to receive any payments that become payable hereunder upon the Member’s death. If the Member designates no Beneficiary, or if no designated Beneficiary survives the Member, then the Administrator shall designate as Beneficiary, in order of preference, the Member’s surviving: (a) spouse, (b) children, (c) grandchildren, (d) parents, (e) brothers or sisters, or (f) executors or administrators.
- 1.05 “**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder and interpretations thereof as such may affect this Plan.
- 1.06 “**Compensation**” means the salary or wages (not to include benefits, severance pay, overtime pay, reimbursement for expenses or other special remuneration) being regularly paid by the Town to a Member. In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, effective January 1, 1996, with respect only to Members hired by the Town on or after such date, the Compensation taken into account under the Plan shall not exceed the annual compensation limit set forth hereafter. For the 2016 Plan Year, the Section 401(a)(17)(B) compensation limit is \$265,000, to be updated by the Commissioner of Internal Revenue for cost-of-living increases thereafter. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.
- 1.07 “**Credited Interest**” means interest earned on the Member’s contributions to the Plan, compounded annually at such rate as the Administrator, specified in Appendix A hereto, may from time to time prospectively determine and communicate to Members.

- 1.08 “**Credited Service**” means the period of a Member’s Service, except that in no cases other than those of military service shall periods of Service during which a Member receives no Compensation from the Town be included in the computation of Credited Service, provided that Credited Service for a Member who became eligible as a result of the elimination of the age fifty-five (55) maximum age limitation effective January 1, 1979, and who did not decline to join the Plan shall not include any portion of the Member’s service prior to membership.
- 1.09 “**Deferred Retirement Date**” means, in the case of a Member who, as permitted by Town Code Section 50-78, continues in active service after the Member’s Normal Retirement Date, the first day of any specified month (which is subsequent to the date of receipt by the Administrator of the Member’s written request) in which the Member elects to retire.
- 1.10 “**Dependent Child**” or “**Dependent Children**” means the surviving child or children of a deceased member who are under eighteen (18) years of age. Both natural and adopted children shall be included.
- 1.11 “**Disability Retirement Date**” means the first day of a month prior to a Member’s Normal Retirement Date as of which a Member who has incurred a Total and Permanent Disability, after completion of ten (10) years of Service, retires under Section 4.03. In the case of any Member who incurs a Total and Permanent Disability, as a result of his or her Service with the Town, the ten (10) years of Service requirement will be waived.
- 1.12 “**Early Retirement Date**” means the first day of a month prior to a Member’s Normal Retirement Date who has attained at least age fifty-five (55) and completed at least five (5) years of Service and elects to retire under Section 4.02.
- 1.13 “**Effective Date**” of this restatement of the Plan means July 1, 2016.
- 1.14 “**Employee**” means any person regularly employed by the Town on a permanent basis or any elective officer of the Town excluding: (a) temporary employees; (b) part-time employees (employees working less than twenty (20) hours per week or less than five (5) months per year); (c) employees employed for a special job whose employment terminates upon completion of such job; (d) employees who attained their Normal Retirement Dates before July 1, 1971; (e) any teacher who is eligible for membership in the Connecticut state teachers’ retirement system; and (f) any policeman eligible for membership in the Town’s police pension fund.
- 1.15 “**Former Plan**” means the Town’s retirement program prior to July 1, 1971, which has been funded under the Connecticut Municipal Employees’ Retirement Funds.
- 1.16 “**Former Plan Allocation**” means a Member’s interest in the Former Plan transferred to the Fund.
- 1.17 “**Fund**” means the trust fund provided under Article 12.

- 1.18 “**Investment Manager**” means the investment manager, if any, appointed by the Town and vested with authority and discretion to manage, acquire and dispose of the assets of the Plan.
- 1.19 “**Member**” means any Employee who qualifies and continues to qualify for membership under Article 2.
- 1.20 “**Normal Retirement Date**” means the earlier of: (1) (a) the first day of the month next following the completion of thirty-five (35) years of Service, or (b) the first day of the month coinciding with or next following (i) the Member’s 65th birthday or (ii) the Member’s completion of five (5) years of Service, whichever is later; or (2) the first day of the month next following the date on which the sum of a Member’s age and years of Service equal at least eighty (80) so long as the Member has attained age 55.
- 1.21 “**Plan**” means this Town of Darien Employee Retirement Plan as set forth in this Plan and as it may be amended from time to time.
- 1.22 “**Plan Year**” means the fiscal year of the Plan, commencing on July 1 of a calendar year and ending on June 30 of the succeeding year.
- 1.23 “**Retirement Date**” means a Member’s Deferred, Disability, Early or Normal Retirement Date, as the case may be.
- 1.24 “**Service**” means an Employee’s period of employment as shown on the Town’s payroll records, commencing with the date of the Employee’s most recent hire and continuing until the Employee’s death, retirement or termination of employment. Service shall include authorized leaves of absence and: (a) periods during which an Employee’s employment by the Town is interrupted by active duty in military service, except such service resulting from re-enlistment; (b) a period not exceeding three (3) months after such active duty; and (c) a period not exceeding one (1) year of incapacity resulting from such active duty. Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).
- 1.25 “**Spouse**” means the surviving spouse of a deceased Member, provided that such spouse was legally married to the Member throughout the one-year period prior to the Member’s death.
- 1.26 “**Taxable Wage Base**” means, for Members who are not covered by a current collective bargaining agreement, the Taxable Wage Base shall, effective from and after December 31, 1990, be the earlier of (i) the level in effect on the Member’s termination of employment or (ii) the level in effect when the Member is three (3) years away from Normal Retirement Date (when the Member either reaches age sixty-two (62) with at least seven (7) years of employment or has thirty-two (32) years of employment, whichever occurs first); provided, however, that in no event shall the Taxable Wage Base be lower than the 1990 level of \$51,300. For Members who are covered by a collective bargaining agreement, the Taxable Wage Base shall be the level in effect on the Member’s termination of employment.

- 1.27 “**Total and Permanent Disability**” means the continuation of a physical or mental condition arising as a result of injury or disease, either occupational or non-occupational in cause, which on the basis of medical evidence satisfactory to the Administrator, totally and permanently prevents a Member from engaging in the Member’s occupation with the Town and for which the Member is eligible to receive disability benefits under the Social Security Act, but excluding disabilities resulting from: (a) service in the armed forces of any country for which government disability benefits are payable; (b) chronic alcoholism or addiction to narcotics; (c) engaging in a felonious criminal act; or (d) self-inflicted injury or illness or attempting to bring about the injury or illness of another person.
- 1.28 “**Town**” means the Town of Darien, Connecticut but, solely for purposes of determining Employees, Members eligible to participate in the Plan, and benefits, shall include Darien Library, Inc.
- 1.29 “**Town Code**” means the Town’s Code of Ordinances.
- 1.30 “**Trust Agreement**” means an agreement as in effect from time to time between the Town and a Trustee designated by the Town to hold the Plan assets.
- 1.31 “**Trustee**” means the trustee party to the Trust Agreement.

ARTICLE 2
MEMBERSHIP

- 2.01 **Continued Membership.** Any Employee who was a Member as of the Effective Date shall continue to be a Member hereunder.
- 2.02 **New Employees.** Each new Employee shall be eligible to become a Member on the first day of the month next following the date on which the Employee is first employed by the Town, provided the Employee has filed an application for membership on a form prescribed by the Administrator.
- 2.03 **Condition of Employment.** Membership by specified classes of Employees may be mandatory or optional as provided in Town Code Section 50-64 (Employees employed in the school lunch program); provided, however, that any election to participate or not participate in the Plan must be made no later than the date the Employee is first eligible to participate in any plan sponsored by the Town which is qualified under Code Section 401(a) or 403(b).

ARTICLE 3
CONTRIBUTIONS

- 3.01 **Town Contributions.** The Town shall contribute and pay to the Trustee such amounts as the Town shall consider necessary, on the basis of actuarial calculations made pursuant to Town Code Section 50-117, to carry out the purposes of the Plan, and such contributions shall be made at such times as the Town shall determine.
- 3.02 **Member Contributions.** Members shall contribute to the Plan, by payroll withholding, five (5%) percent of their Compensation.
- 3.03 **Town’s Pick-Up of Member Contributions.** Notwithstanding Section 3.02, the Town shall “pick up” the mandatory Member contributions to the Plan provided in such Section on or after April 5, 2004. Such picked-up contributions:
- (a) for purposes of calculating the Member’s Plan benefits are hereby designated as Member contributions that do not reduce the Member’s Compensation; and
 - (b) for tax purposes shall be treated as employer contributions pursuant to Code Section 414(h)(2) rather than as taxable income to the Member.
- 3.04 **Forfeitures.** Any amount forfeited by a Member shall not increase the benefit of any other Member but may be taken into account in determining subsequent Town contributions.
- 3.05 **Nonreversion.** The Town shall not participate directly or indirectly in any distribution by the Trustee prior to the satisfaction of all liabilities to Members and their Beneficiaries.

ARTICLE 4
RETIREMENT BENEFITS

4.01 **Normal or Deferred Retirement.** The annual retirement benefit of a Member who retires on a Normal or Deferred Retirement Date shall be equal to

- (a) the number of the Member’s years of Credited Service, multiplied
- (b) by two percent (2%) times his or her Average Annual Compensation; plus
- (c) if the Member was employed for the entire twelve-month period from July 1, 2002 to June 30, 2003, two-tenths of one percent (.2%) of such Member’s Average Annual Compensation that is in excess of fifty percent (50%) of his or her Taxable Wage Base or, if the Member was not employed for the entire twelve-month period, such amount will be determined by taking into account the Member’s Credited Service calculated to the nearest month; plus
- (d) if the Member was employed for the entire three-month period from April 1, 2002 to June 30, 2002, .25 times three-tenths of one percent (.3%) of such Member’s Average Annual Compensation that is in excess of fifty percent (50%) of his or her Taxable Wage Base or, if the Member was not employed for the entire three-month period, such amount will be determined by taking into account the Member’s Credited Service calculated to the nearest month; plus
- (e) four-tenths of one percent (.4%) of such Member’s Average Annual Compensation that is in excess of fifty percent (50%) of his or her Taxable Wage Base times his or her Credited Service prior to April 1, 2002.

Notwithstanding any provision in the Plan to the contrary, effective July 1, 2017, the maximum benefit that any Member shall be entitled to receive is seventy percent (70%) of his or her Average Annual Compensation; provided, however, that any Member with at least twenty-five (25) years of Credited Service as of July 1, 2017 shall not receive an annual benefit that is greater than the greater of: (i) seventy-five percent (75%) of his or her Average Annual Compensation, or (ii) the benefit that the Member would have been entitled to receive had he or she retired on July 1, 2017.

4.02 **Early Retirement.**

- (a) **Deferred Benefit Commencement.** A Member who retires as of an Early Retirement Date may elect benefits beginning at what would have been the Member’s Normal Retirement Date had the Member continued working, in which case the Member’s benefits shall be calculated under Section 4.01 as though the Early Retirement Date were the Member’s Normal Retirement Date.
- (b) **Early Commencement Reduced Benefit.** In the event a Member elects to have benefits commence prior to the Member’s Normal Retirement Date, the benefit shall likewise be computed as though the Early Retirement Date were the Normal

Retirement Date, but the resulting benefit shall be reduced by one-third (1/3) of one percent for each month by which the payment commencement date precedes the Normal Retirement Date.

- 4.03 **Disability Retirement.** In the event a Member retires on a Disability Retirement Date, the Member’s total annual disability retirement benefit, payable commencing on such Disability Retirement Date, shall be computed as though such Disability Retirement Date were the Member’s Normal Retirement Date.
- 4.04 **Required Beginning Date.** A Member’s retirement benefits must begin to be paid not later than April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70½) or the calendar year in which the Member retires in accordance with the requirements of Code Section 401(a)(9).
- 4.05 **Form of Payment.** Article 5 provides for a joint and survivor Benefit as the presumed form of benefit for a married Member, Where Article 5 does not apply, the retirement benefit under this Plan shall be paid monthly in the form of a single life annuity equal to one-twelfth (1/12) of the annual benefit calculated under this Article 4.
- 4.06 **Duration of Payments.** The benefit under this Article 4 shall be payable monthly to the Member from the Member’s benefit commencement date until the Member’s death. However, if the Member retired on a Disability Retirement Date, benefits shall continue until the earliest of the date of the Member’s (a) Normal Retirement Date, (b) recovery, or (c) death. At a disabled Member’s Normal Retirement Date, the disability benefit shall cease and the Member shall begin receiving a benefit computed as though the Member’s Disability Retirement Date were the Normal Retirement Date. Upon a disabled Member’s recovery, the disability benefit shall cease and the Member shall again begin accruing benefits while retaining Credited Service for the period prior to the Member’s Disability Retirement Date.
- 4.07 **Small Benefits.** If monthly benefits would be less than twenty dollars (\$20), the Administrator may elect to pay such benefits quarterly or semiannually, in adjusted amounts, or to commute the equivalent Actuarial Value of the benefits to one lump sum payment to the Member or the Member’s Beneficiaries, as the case may be. For purposes of determining the Actuarial Value of these benefits the following actuarial assumptions shall apply:
- i. Mortality Table – the “applicable mortality table” for the Plan Year under Section 417(e)(3) of the Code used to determine the minimum present value of certain distributions, as such table may be modified as appropriate by the Secretary of Treasury.
 - ii. Interest Rate – the “applicable interest rate” as the term is defined under Section 417(e)(3) of the Code and the rate used is the rate or rates in effect on the second month prior to the beginning of the Plan Year.

4.08 **Reemployment.**

- (a) In the event a retired Member is reemployed by the Town, such Member's benefits then in payment status shall continue to be paid as long as the Member's Compensation in the renewed employment does not exceed, for any twelve (12) month period, one-third (1/3) of the Compensation that was last paid to the Member prior to retirement. If the reemployed Member's current Compensation is set at a level that will exceed, or in fact exceeds, the foregoing limitation, benefits shall cease during the period of renewed employment, and the Member shall during such period make contributions to the Plan and continue to accrue benefits thereunder. The Member shall reimburse the Plan, within 30 days of the date benefits cease, for any benefits received during such a period. Upon the subsequent retirement of a reemployed Member, the Member shall receive the benefit to which the Member is then entitled based on his or her aggregate years of Credited Service before and after the period of prior retirement and Average Annual Compensation as of the subsequent Retirement Date, less the Actuarial Value of the benefits received by the Member during the previous retirement.
- (b) If a Member who separated from employment with the Town for reasons other than retirement should be reemployed by the Town, such Member's benefits shall be determined pursuant to Section 8.04.

ARTICLE 5
JOINT AND SURVIVOR BENEFIT

- 5.01 **Applicability.** The joint and survivor form of benefit under this Article 5 shall be the automatic form of benefit for a Member who has been married for at least one year as of the Member’s benefit commencement date, unless the Member has elected otherwise with the consent of the Member’s spouse.
- 5.02 **Nature of Benefit.** If this Article 5 applies, the Member shall receive a reduced benefit during the Member’s lifetime, and after the death of the Member benefits shall continue to the Member’s surviving Spouse, for the Spouse’s remaining lifetime, at the rate of 50%, 75% or 100% of the reduced benefit that was payable to the Member during the Member’s lifetime.
- 5.03 **Presumed Form of Benefit.** In the absence of a contrary election by the Member, the 50% survivor benefit under Section 5.02 shall apply.
- 5.04 **Reduction Factors.** The reduced benefit payable under Section 5.02 to the Member during the Member’s lifetime shall be determined by multiplying the benefit otherwise payable by the appropriate factor below.

Member’s Age at Benefit Commencement	50% Survivor Benefit (Presumed)	75% Survivor Benefit Option	100% Survivor Benefit Option
65 or more	.900	.860	.820
64	.903	.865	.826
63	.906	.869	.832
62	.909	.874	.838
61	.912	.878	.844
60	.915	.883	.850
59	.918	.887	.856
58	.921	.892	.862
57	.924	.896	.868
56	.927	.901	.874
55	.930	.905	.880

If the Member’s age is more than five (5) years greater (less) than the age of the spouse, the relevant factor will be decreased (increased) by the following amounts for each year of difference in excess of five (5) years: .005 for the 50% survivor benefit, .006 for the 75% option and .007 for the 100% option.

5.05 **Available Elections.** A Member to whom this Article 5 applies:

- (a) may elect the 75% or 100% survivor benefit, in lieu of the presumed 50% survivor benefit, or
- (b) may elect out of this Article entirely and elect to receive a life annuity form of benefit.
- (c) A Member must make either such election, under subsection (a) or subsection (b) above, in writing and file the election with the Administrator. In the case of an election out of the joint and survivor annuity in its entirety under subsection (b) (with the result that the Member, if living at the benefit commencement date, will receive a single life annuity), such election shall be subject to the consent of the Member's Spouse, pursuant to which such Spouse acknowledges the effect of such election and the consent is witnessed by a notary public or a Plan representative. If it is established to the satisfaction of the Plan representative that the aforementioned spousal consent cannot be obtained because there is no Spouse, or because the Spouse cannot be located, then such spousal consent shall not be required. An election cannot be changed or revoked after benefit payments have commenced.

5.06 **Minimum Required Distributions.** Notwithstanding any other provision of the Plan, all distributions from the Plan shall conform to Code Section 401(a)(9), including the incidental death benefit provisions of Code Section 401(a)(9)(G), provided that the exceptions for government plans contained in Code Section 401(a)(9)(C)(iv) shall apply. If a Member dies after payments have commenced, any payments continuing on to the Member's spouse or other Beneficiary shall be distributed at least as rapidly as under the method of distribution being used as of the Member's date of death.

ARTICLE 6
AUTOMATIC PRERETIREMENT SURVIVOR BENEFIT
FOR SPOUSE OR DEPENDENT CHILDREN

- 6.01 **Applicability.** If a Member who meets the requirements of Section 6.02 should die and is survived by a Spouse or Dependent Child, then, unless the Member has elected otherwise as provided in Section 6.06, survivor benefits shall be paid under this Article 6 rather than under Article 7.
- 6.02 **Requirements.** The requirements for a survivor benefit under this Article 6 are that the Member had not retired or otherwise separated from Service as an Employee as of the date of the Member's death and either: (a) the Member had completed ten (10) years of Service as of such date, or (b) the Member's death was service-connected.
- 6.03 **Amounts of Benefits.** The survivor benefit under this Article 6 shall be an annual amount equal to forty percent (40%) of the Member's Average Annual Compensation as of the date of the Member's death.
- 6.04 **Payment of Benefits.** The benefit under Section 6.03 shall be payable in equal monthly installments commencing on the first day of the month next following the date of the Member's death.
- 6.05 **Duration of Benefits.** The benefit under Section 6.03 shall be payable to the deceased Member's Spouse, if any, until such Spouse either dies or remarries. If the Spouse's benefit should cease for either such reason while there are Dependent Children, or if there is no Spouse, then the Dependent Children, if any, shall receive the survivor benefit, share and share alike as specified in Town Code Section 50-304. If a Dependent Child should die or cease to qualify as a Dependent Child by reason of attaining age eighteen (18), then the benefit shall be reapportioned to any remaining Dependent Children. This process shall continue until there are no remaining Dependent Children in which case all survivor benefits shall cease.
- 6.06 **Available Election.** A Member may waive the survivor benefit under this Article 6 by filing a written election to do so with the Administrator. Such election must affirmatively waive the right to the survivor benefit, and moreover, be subject to the spousal consent requirements specified in Section 5.06(c) including an acknowledgment before a Plan representative or notary public. In that event, no survivor benefit will be payable under this Article 6, and any survivor benefit for which the Member qualifies under Article 7 will be paid to the Member's Beneficiary.

ARTICLE 7
PRERETIREMENT SURVIVOR BENEFIT
WHERE NO OTHER BENEFIT APPLIES

- 7.01 **Applicability.** Survivor benefits under this Article 7 shall be applicable only if there are no survivor benefits payable under either Article 5 or Article 6, either because there is no survivor who would qualify for Article 5 or 6 benefits or because the deceased Member elected out of such benefits as provided in Article 5 or 6.
- 7.02 **Members Not in Pay Status.** If a Member to whom this Article applies should die before the benefit commencement date, the Member's Beneficiary shall receive a payment equal to the sum of (a) the Member's contributions to the Plan and (b) the Member's Former Plan Allocation, if any, with Credited Interest on such sum calculated to the date of the Member's death.
- 7.03 **Members in Pay Status.** If a Member to whom this Article applies should die after such Member's benefit commencement date, the Member's Beneficiary shall receive a payment equal to the excess, if any, of the payments computed under Section 7.02 over the sum of the benefit payments previously made to the Member.
- 7.04 **Beneficiaries**
- (a) A Member may change any named Beneficiary from time to time by written request filed with the Plan Administrator. The consent of his Beneficiary is not required to any naming or change thereof. Such request is effective when the Member signs it whether or not he is living at the time the request is received by the Plan Administrator.
 - (b) Upon the death of the Member, a named Beneficiary, if eligible, will receive benefits in accordance with the terms of the Plan.

ARTICLE 8
TERMINATION OF EMPLOYMENT AND VESTING

- 8.01 **Unvested Members.** A Member who separates from employment with the Town for reasons other than death or retirement and who has fewer than five (5) years of Service shall receive, within ninety (90) days after termination of employment, a payment equal to the sum of (a) the Member’s contributions to the Plan and (b) the Member’s Former Plan Allocation, if any, with Credited Interest on such sum as determined pursuant to Appendix A of the Plan calculated to the date of his or her date of termination. However, no Credited Interest shall be paid unless the Member has at least one (1) year of Service.
- 8.02 **Vested Members.** A Member who separates from employment with the Town for reasons other than death or retirement and who has at least five (5) years of Service shall be entitled to choose either (a) a payment computed under Section 8.01 or (b) the benefit provided in Section 8.03.
- 8.03 **Deferred Vested Benefit.**
- (a) A Member electing a benefit under Section 8.02(b) shall receive, beginning at what would have been the Member’s Normal Retirement Date if the Member had remained in employment: (i) a deferred vested benefit computed as though the Member’s date of termination of employment were the Member’s Normal Retirement Date; or (ii) alternatively, with the approval of the Administrator, the Member may elect a reduced benefit of equal Actuarial Value commencing on the first day of any month after the Member’s fifty-fifth (55th) birthday.
 - (b) If a Member elects to receive a reduced benefit prior to his or her Normal Retirement Date pursuant to subsection (a)(ii) above, such benefit will be reduced by one-third (1/3) of one percent (1%) for each month the date the Member’s benefit commences prior to his or her Normal Retirement Date.
- 8.04 **Reemployment.** If a Member who separated from employment with the Town for reasons other than retirement should be reemployed by the Town, the Member’s subsequent benefits hereunder shall be as follows:
- (a) If the Member was entitled to a benefit under Section 8.02 when first separated but did not receive a lump sum payment under Section 8.02(a), then benefits, if any, being paid under Section 8.02(b) shall cease during the period of renewed employment, and the Member shall during such period make contributions to the Plan and continue to accrue benefits hereunder. Upon the subsequent retirement or termination of employment of such a reemployed Member, the Member shall receive the benefit to which the Member is then entitled based on the Member’s Credited Service before and after the period of absence and Average Annual Compensation as of the subsequent termination or Retirement Date, less the Actuarial Value of the benefits, if any, received by the Member prior to reemployment.

- (b) If the reemployed Member had received a lump sum payment under Section 8.02(a), then the Member may elect within six (6) months of reemployment to apply for reinstatement of the Member's prior accrued benefits hereunder. Such reinstatement shall require the reinstated Member to repay the lump sum payment, with Credited Interest thereon, to the Plan, after which the Member's benefit shall be calculated in accordance with Section 8.04(a), but without the offset thereunder for the Actuarial Value of benefits previously received. If the reemployed Member does not apply for reinstatement and repay the lump sum, then the reemployed Member will be treated as a new Employee for Plan purposes as of the date of reemployment.

8.05 **Vesting**. Anything herein this Article 8 to the contrary notwithstanding, a Member will be vested in his or her benefit under the Plan upon: (i) the complete or partial termination of the Plan to the extent his or her benefit is funded; (ii) upon his or her attainment of Normal Retirement Date; or (iii) where otherwise required by the application of Code Sections 401(a)(4) and 401(a)(7) or the regulations thereunder as in effect on September 1, 1974, prior to the enactment of the Employee Retirement Income Security Act of 1974.

ARTICLE 9
LIMITATION OF BENEFITS

- 9.01 **Annual Benefit.** For purposes of this Article, “annual benefit” means the benefit payable annually under the terms of the Plan (exclusive of any benefit not required to be considered for purposes of applying the limitations of Code Section 415 to the Plan) payable in the form of a straight life annuity with no ancillary benefits. If the benefit under the Plan is payable in any other form, the “annual benefit” shall be adjusted to the equivalent of a straight life annuity pursuant to Section 9.03.
- 9.02 **Maximum Annual Benefit.** Notwithstanding the foregoing and subject to the exceptions below:
- (a) For purposes of applying the limitations of Code Section 415, the “limitation year” shall be the Plan Year.
 - (b) The maximum “annual benefit” payable to a Member under this Plan in any “limitation year” shall be \$210,000 (for the Plan Year commencing July 1, 2016), as adjusted in subsequent years pursuant to Code Section 415(d) to reflect cost-of-living increases.
 - (c) In the case of a benefit beginning after the Member attains age sixty-five (65), such dollar limitation shall be of equal Actuarial Value to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted as provided in paragraph (b) above, if required).
 - (d) In the case of a benefit beginning prior to the Member’s attainment of age sixty-two (62), the dollar limitation described in Code Section 415(b)(1)(A) shall be of Actuarial Value to the maximum benefit payable at age sixty-two (62) (adjusted as provided in paragraph (b) above, if required), subject to any applicable exception under Treas. Reg. § 1.415(b)-1(d)(4) regarding the adjustment under this subsection (d) with respect to any distribution made on account of the Member’s becoming disabled, as determined under the Plan, by reason of personal injuries, sickness, or death.
 - (e) If the retirement allowance is payable neither as a life annuity nor a qualified joint and survivor annuity with the Member’s Spouse as Beneficiary, the maximum limitation shall be of equal Actuarial Value to the maximum limitation otherwise payable. No mortality adjustment shall be made in determining such maximum benefit, provided that: (i) the Plan continues to grant a qualified preretirement survivor annuity for which no charge is made, or (ii) there is otherwise no forfeiture of benefits upon the Member’s death prior to the annuity commencement date with respect to benefits paid prior to attainment of age sixty-two (62), or between the Member’s attainment of age sixty-five (65) and the annuity commencement date for benefits commencing after attainment of age sixty-five (65).

- (f) Notwithstanding anything in this Article to the contrary, if the Plan has complied at all times with the requirements of Code Section 415, the maximum “annual benefit” for any individual who is a Member as of the first day of the “limitation year” beginning after December 31, 1986 shall not be less than the “current accrued benefit.” “Current accrued benefit” shall mean a Member’s accrued benefit under the Plan, determined as if the Member had separated from service as of the close of the last “limitation year” beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Code Section 415(b)(2). In determining the amount of a Member’s “current accrued benefit,” the following shall be disregarded: (1) any change in the terms and conditions of the Plan after May 5, 1986; and (2) any cost of living adjustment occurring after May 5, 1986.
- (g) For the purpose of this Article, all qualified defined benefit plans (whether terminated or not) ever maintained by the Town shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Town shall be treated as one defined contribution plan.
- (h) For the purpose of this Article, if the Town is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)) or is a member of an affiliated service group (as defined by Code Section 414(m)), all Employees of such employers shall be considered to be employed by a single employer.

9.03 **Adjustments to Annual Benefit and Limitations.** Notwithstanding any other Plan provisions to the contrary, equivalent Actuarial Value for purposes of this Article 9 shall be determined in accordance with Code Section 415(b) and the regulations or rulings issued thereunder. Benefits paid in a form to which Code Section 417(e)(3) does not apply shall be computed using whichever of the following factors produce the greatest equivalent Actuarial Value of a straight life annuity form of benefit: (a) the Plan’s early retirement, late retirement, or optional factors, as appropriate, or (b) the IRS Mortality Table, if applicable, and an interest rate of five percent (5%). Benefits paid in a form to which Code Section 417(e)(3) applies shall be computed using whichever of the following three factors produce the greatest equivalent Actuarial Value of a straight life annuity form of benefit:

- (a) the Plan’s early retirement, late retirement, or optional factors, as appropriate;
- (b) the IRS Mortality Table, if applicable, and an interest rate of five and one-half percent (5.5%); or
- (c) the applicable interest rate under Treas. Reg. §1.417(e)-1(d)(3) and the IRS Mortality Table, divided by 1.05.
- (d) If the maximum benefit payable to a Member must be adjusted, such adjustment shall be made in accordance with the provisions of Code Section 415(b).

- 9.04 **Exception to Basic Limitation.** The limitation described Sections 9.02 (b), (c), (d), and (e) above shall not be applied to reduce the benefit of any Member below \$10,000.
- 9.05 **Participation or Service Reductions.** If a Member has fewer than ten (10) years of participation in the Plan at the annuity starting date, the Section 9.02(b) limitation shall be reduced by multiplying such limitation by a fraction. The numerator is the number of years of the Member's participation (or part thereof) in the Plan and (b) the denominator of which is ten (10), but such fraction shall in no event be less than 1/10th. Additionally, to the extent provided in regulations of the Secretary of the Treasury, the above-described reductions shall be applied separately with respect to each change in the benefit structure of the Plan. This Section 9.05 shall be inapplicable to disability benefits payable hereunder.
- 9.06 **Treatment of Employee Contributions.** Anything herein to the contrary notwithstanding, to the extent any mandatory Employee contributions are to be treated as elective contributions pursuant to Treas. Reg. § 1.415(b)-1(b)(2) (relating to the treatment of mandatory employee contributions in a defined benefit plan as annual additions under a defined contribution plan), the limits with respect to a Member's benefit under the Plan shall be governed by Treas. Reg. § 1.415(c)-1.
- 9.07 **Incorporation of IRC §415 by Reference.** Notwithstanding anything contained in this Article to the contrary, the limitations, adjustments and other requirements prescribed in this Article shall at all times comply with the applicable provisions of Code Section 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

ARTICLE 10
DIRECT ROLLOVERS

- 10.01 **Application.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this Article, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- 10.02 **Eligible Rollover Distribution.** For purposes of this Article, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten (10) years or more; (ii) the portion of any distribution that is not includible in gross income; (iii) any distribution that is considered a required minimum distribution as defined in Code Section 401(a)(9); and (iv) any other distribution not considered an eligible rollover distribution as indicated in guidance issued by the Commissioner of Internal Revenue pursuant to applicable guidance or otherwise specified in Treas. Reg. §1.402(c)-2.
- 10.03 **Eligible Retirement Plan.** For purposes of this Article, an eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee’s eligible rollover distribution. In the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is only an individual retirement account or individual retirement annuity. In the case of a non-Spouse Beneficiary, an eligible retirement plan can only be an individual retirement account or individual retirement annuity established on behalf of the Beneficiary.
- 10.04 **Distributee.** For purposes of this Article, a distributee includes an Employee or former Employee. In addition, the employee’s or former employee’s surviving spouse and an alternate payee under a domestic relations order, including a qualified domestic relations order as defined in Code Section 414(p), which has been honored by the Plan are distributees with regard to the interest of the spouse or former spouse.
- 10.05 **Direct Rollover.** For purposes of this Article, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- 10.06 **Notice Requirement.** The Town shall furnish each Member, no less than thirty (30) days and no more than one hundred eighty (180) days prior to the date such Member will receive a distribution which is not paid in the form of an annuity, with a written explanation of his or her right to elect a Direct Rollover and the withholding consequences of not making such election. A Member may waive the thirty (30) day minimum time period set forth above.

- 10.07 **Withholding**. Unless a Member elects a Direct Rollover, twenty percent (20%) of the amount of any lump sum distribution shall be subject to Internal Revenue Service Income Tax Withholding. If a Member's retirement benefit does not exceed \$200 (or such other amount as prescribed by the Internal Revenue Service), the foregoing withholding requirement shall not apply.

ARTICLE 11
AMENDMENT OR TERMINATION OF PLAN

- 11.01 **Town's Right.** Subject to Section 11.02, the Town shall be under no obligation or liability whatsoever to continue contributions or to maintain this Plan indefinitely, and the Town, with the approval of the Board of Finance and the Representative Town Meeting, reserves the right, at any time and from time to time, to suspend or discontinue contributions or to modify, suspend, amend, or terminate this Plan in whole or in part (including the provisions relating to contributions).
- 11.02 **Exceptions.** The Town shall have no power to perform any action under Section 11.01 in a manner that would cause or permit (i) a collective bargaining agreement to be violated; (ii) the benefits theretofore accrued to any Member or beneficiary to be reduced, or (iii) until all obligations under the Plan have been met, any part of the funds accumulated pursuant to this Plan to be diverted to purposes other than for the exclusive benefit of Members or their Beneficiaries or to revert to, or become the property of, the Town.

ARTICLE 12
ADMINISTRATION

- 12.01 **Administration.** The Plan assets shall be held by the Trustee in the Fund pursuant to the Trust Agreement. The Plan and Fund shall be administered consistently with applicable provisions of the Town Code of Ordinances, including Sections 50-51 through 50-53 thereof or successor provisions. If an Investment Manager is acting, the Trustee shall invest the Fund according to the directions of the Investment Manager to the extent so provided in the appointment agreement between the Town and the Investment Manager.
- 12.02 **Trust.** The Trust is maintained by the Trustee for the Plan under a trust agreement with the Town. Benefits under the Plan shall be only such as can be provided by the assets of the Trust, and no liability for payment of benefits shall be imposed upon the Town, or any of its elected officials, or employees.
- 12.03 **Expenses of the Plan.** The expenses of administration of the Plan shall be paid from the Trust, unless the Town elects to make payment.
- 12.04 **No Reversion.** The Trust shall be for the exclusive benefit of Members, Beneficiaries and persons claiming under or through them. All contributions made to the Trust by the Town shall be irrevocable and such contributions, as well as the assets of the Trust, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the Town except that:
- i. the residual amounts specified in Article 12 may be returned to the Town; and
 - ii. any contributions which are made under a mistake of fact may be returned to the Town within one year after the contributions were made.

The Town shall determine, in its sole discretion, whether the contributions described above, other than the residual amounts described in paragraph (a), shall be returned to the Town. If any such contributions are to be returned, the Town shall direct the Trustee, in writing to return such amounts.

- 12.05 **Change of Funding Medium.** The Town shall have the right to change at any time the means through which benefits under the Plan shall be provided. No such change shall constitute a termination of the Plan or result in the diversion to the Town of any funds previously contributed in accordance with the Plan.
- 12.06 **Administration.** The Plan shall be administered by the Administrator or such other entity as may be appointed by the Town to administer the Plan. If there shall arise any misunderstanding or ambiguity concerning the meaning of any of the provisions of the Plan, the Town shall have the sole right to construe such provisions. The Town's decision shall be final. The Town may establish such rules and regulations supplementing the Plan as it considers desirable.
- 12.07 **Benefit Estimates.** Members in the Plan may request an estimate of their retirement benefit payable from the Plan. Such estimate will be prepared assuming the Member

elected to commence benefits on the first day of the month following the date on which the Member attains Normal Retirement Date, unless the Member requests an estimate using his Early or Deferred Retirement Date. Estimates may be requested in accordance with the procedures specified by the Town but in no event may a Member request more than one estimate in any 12-month period.

If an actuary is engaged to estimate the amount of retirement benefits, it will be provided to the Member at the actual cost charged to the Plan by the Plan's actuary to prepare such estimate; provided, however, that the cost of the first estimate requested by the Member shall be at no cost to the Member. The final calculation of any retirement benefit payable to the Member from the Plan shall be provided at no cost. Payment for each estimate shall be made by the Member prior to the preparation of the estimate through after-tax payroll deductions.

- 12.08 **Agents**. The Town may employ such agents to perform clerical and other services, and such counsel, accountants and actuaries as it may deem necessary or desirable for administration of the Plan. The Town may rely upon the written opinions or certificates of any agent, counsel, actuary or physician.
- 12.09 **Procedures**. The Town may adopt such rules, bylaws and/or procedures as it deems desirable and shall keep all such books of account, records and other data as may be necessary for proper administration of the Plan. The Town shall keep a record of all actions and forward all necessary communications to the Trustee and the Town. The Town shall keep records containing all relevant data pertaining to any person affected hereby and such person's rights under the Plan.
- 12.10 **Powers and Duties**. The Administrator shall have such powers and duties as may be necessary to discharge its function hereunder, including, but not by way of limitation, the following:
- (a) To construe and interpret the Plan, to decide all questions which may arise relative to the rights of Employees, past and present, and their Beneficiaries, under the terms of the Plan.
 - (b) To obtain from Employees such information as shall be necessary for the proper administration of the Plan, and, when appropriate, to furnish such information promptly to the Trustee or other persons entitled thereto.
 - (c) To prepare and distribute, in such manner as the Town determines to be appropriate, information explaining the Plan.
 - (d) To furnish the Town, upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate.
 - (e) To obtain and review reports of the Trustee pertaining to the receipts, disbursements and financial condition of the Trust.

- (f) To establish and maintain such accounts in the name of the Town and of each Member as are necessary.
- (g) To delegate in writing all or any part of its responsibilities under the Plan to the Trustee and in the same manner revoke any such delegation of responsibility. Any action of the Trustee in the exercise of such delegated responsibilities shall have the same force and effect for all purposes as if such action had been taken by the Town. The Trustee shall have the right, in its sole discretion, by written instrument delivered to the Town, to reject and to refuse to exercise any such delegated authority.
- (h) To determine, upon the advice of the actuary, the amount to be contributed by the Town for inclusion in the annual budget.

12.11 **Pension Board.** The investment of the Plan’s assets shall be administered by a Pension Board consisting of such members as set forth in the Town Ordinance.

- (a) The appointed member may, but need not be, a Member under the Plan, but, if the appointed member is a Member, he shall refrain from voting on any question relating to his benefits under the Plan. The Pension Board shall serve without remuneration. An action of the majority of the voting members of the Pension Board expressed from time to time by a vote at a meeting, or in writing without a meeting, shall constitute an action of the Pension Board.
- (b) The Pension Board shall advise the Trustee, in writing, with respect to investment and reinvestment of the contributions under the Plan; if instructions are not forthcoming, however, the Trustee shall have full power to invest and reinvest any funds under its control. The Trustee’s rights and duties relative to investments which are contained in the Trust Agreement shall inure to the benefit of, and are binding upon, the Pension Board when it renders investment advice.

12.12 **Liability and Indemnification of the Administrator.** In connection with any action or determination concerning the Plan’s investments, the Administrator, or any designee, shall be entitled to rely upon information furnished by the Town. To the extent permitted by law, the Town shall indemnify the Administrator, and any designee, against any liability or loss sustained by reason of any act or failure to act in its administrative capacity, if such act or failure to act does not involve willful misconduct, fraud or a lack of good faith. Such indemnification shall include attorney’s fees and other costs and expenses reasonably incurred in defense of any action brought against the Administrator, or any designee, by reason of any such act or failure to act.

12.13 **Standard of Review.** The Town, Administrator and Trustee shall have sole discretion to make decisions regarding a Member’s or Beneficiary’s benefits and such decision shall be conclusive and binding on all parties. The Town, in its discretion, shall have the authority to interpret all provisions of this Plan, and to make all decisions regarding administration of the Plan and eligibility for benefits under the Plan, and such interpretation shall be conclusive and binding on all parties. All decisions of the Town

with respect to this Plan, or the Administrator with respect to the Plan’s investments, shall be respected unless arbitrary and capricious.

- 12.14 **Domestic Relations Orders**. The Administrator shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which it approves.

Under the terms of the Plan, a Member’s benefit may be allocated all or in part to the Member’s ex-spouse (the “alternate payee”) upon the divorce of the Member and the alternate payee. The allocation of benefits to the alternate payee must be set forth in a domestic relations order issued by a court pursuant to state domestic relations law.

If the Plan receives a domestic relations order, the Administrator will make a determination as to whether the order is valid under the terms of the Plan. If the Administrator determines that the order is valid, the Administrator will instruct the Plan’s actuary to calculate the alternate payee’s benefit and implement the terms of the order. The Member will be responsible for the actual cost of the actuary’s services for such calculation and implementation, including the review of any draft order. Such amounts shall be payable by the Members, unless the domestic relations order provides that such expense will be paid by the Member and/or the alternate payee.

ARTICLE 13
MISCELLANEOUS

- 13.01 **No Contract of Employment.** Neither the action of the Town in establishing the Plan, nor any action taken under the provisions of this Plan, nor any provisions of the Plan, shall be construed as giving to any Employee the right to be retained by the Town or the right to any retirement income or benefit beyond those provided for by this Plan and by the funds accumulated pursuant thereto. All benefits under the Plan shall be paid or provided for solely from the Fund, and the Town assumes no liability or responsibility therefor.
- 13.02 **Non-Assignability.** All payments, benefits and refunds hereunder to a Member, Beneficiary or other payee are for the support and maintenance of such Member, Beneficiary or other payee, and shall not be assigned, commuted or anticipated, and shall be free from the claims of all creditors to the fullest extent permitted by law. If any Member, Beneficiary or other payee entitled to any benefit under the Plan shall attempt to assign, commute or anticipate any benefit under the Plan, then such benefit shall, in the discretion of the Town, cease and terminate, and in that event the Town shall have such benefit held or applied to or for the benefit of such person, his spouse, children, or other dependents or any of them in such manner and in such proportion as the Town shall determine. Notwithstanding any provision in the Plan to the contrary, that the Town shall be authorized to comply with the terms of a any judgment, decree or order which establishes the rights of another person to all or a portion of the Member's benefit under the Plan to the extent it is a domestic relations order entered by court order and does not require the Plan to provide any type or form of benefit, or any option that is not otherwise provided under the provisions of the Plan.
- 13.03 **Facility of Payment.** If, in the judgment of the Town, any Member, Beneficiary or other payee is legally, physically or mentally incapable of personally receiving and receipting for any payment due him, such payment or any part thereof, may be made to any person or institution who, in the opinion of said Town, is then maintaining or has custody of the Member, Beneficiary or other payee, until a claim is made by the duly appointed guardian or other legal representative of the Member, Beneficiary or other payee.
- 13.04 **Claims of other Persons.** Nothing in the Plan or Trust Agreement shall be construed as giving any Member or any other person, firm, or corporation, any legal or equitable right as against the Town, their officials or employees, or as against the Trustee, except such rights as are specific provided for in the Plan or Trust Agreement or hereafter created in accordance with the terms and provisions of the Plan.
- 13.05 **Construction.** This Plan shall be construed, regulated and administered in accordance with the laws of the State of Connecticut and the Code of Ordinances of the Town. To the extent that the provisions of this Plan and the Code of Ordinances are inconsistent, the most recently enacted or approved provision of either the Plan or the Code of Ordinances shall apply. To the extent that the provisions of any applicable collective bargaining agreement conflict with the terms of this Plan or the Code of Ordinances, the provisions of such collective bargaining agreement shall apply. To the extent the provisions of any

collective bargaining agreement should conflict with the provisions of the Code, the provisions of the Code shall apply. Accordingly, should the provisions of any of the foregoing conflict with the Code, the provisions of the Code shall apply.

IN WITNESS WHEREOF, the Town has executed this instrument the 22nd day of January, 2018.

THE TOWN OF DARIEN, CONNECTICUT

By: *Jayme J. Stevenson*
Its First Selectman

APPENDIX A

A.01 Credited Interest. Credited Interest, as determined prospectively by the Administrator on an annual basis for purposes of calculating interest earned on a Member's Plan contributions, shall be equal to the following rates, compounded annually, for the following periods:

For the period on or before June 30, 2010: Four Percent (4%)

For the period on and after July 1, 2010: One Percent (1%)

A.02 Buyback. Credited Interest for purposes of Section 8.01 of the Plan shall equal the amount of the applicable rate of interest as determined by the Administrator in this Appendix A, plus one percent (1%).