

**DECLARATION OF TRUST**

**under**

**THE TOWN OF WETHERSFIELD**

**FIREFIGHTERS' PENSION PLAN**

Rev. 8/28/09

**DECLARATION OF TRUST**

**U n d e r**

**THE TOWN OF WETHERSFIELD  
FIREFIGHTERS' PENSION PLAN**

This **DECLARATION OF TRUST** made as of the 26th day of August, 2008, by **THE TOWN OF WETHERSFIELD, CONNECTICUT** (the "Town"):

**WITNESSETH:**

**WHEREAS**, the Town of Wethersfield, Connecticut (the "Town") adopted the Volunteer Firefighters Pension Plan (the "Plan") for the benefit of its eligible employees effective as of July 1, 1984; and

**WHEREAS**, Town amended and restated the Plan by action of its Town Council on August 25, 2008; and

**WHEREAS**, the Plan as restated provides in Article XII thereof for the establishment of a trust (the "Trust") to hold the Plan assets; and

**WHEREAS**, the Town desires to set forth in this Declaration of Trust the terms and conditions of the Trust;

**NOW, THEREFORE, THIS DECLARATION OF TRUST** is made as of the date first above written.

## **ARTICLE I**

### **Establishment and Purpose of Trust**

1.1 The Town hereby establishes a Trust consisting of such sums of money and other property acceptable to the Trust as shall from time to time be placed in the Trust, together with investments and proceeds thereof and earnings and appreciations thereon, less the distributions and expenditures which shall have been made by the Trustee at any time of reference, as authorized herein.

1.2 The name of the Trust shall be the Town of Wethersfield Volunteer Firefighters' Pension Plan Trust.

1.3 The Trustee shall be the Town of Wethersfield.

1.4 This Trust has been established to comply with the requirements of Section 457(g) of the Internal Revenue Code of 1986, as amended. The Trust will provide a mechanism for the Town to protect the assets of all Plan participants and beneficiaries by segregating those assets from other assets of the Town. Assets of the Trust are to be held for the exclusive benefit of participants and beneficiaries under the Plan, and shall not be available for use by the Town or its creditors.

## **ARTICLE II**

### **General Duties of Trustee**

2.1 The Trustee hereby establishes the Trust created hereunder and agrees to hold, invest, reinvest, manage and administer the

Trust in accordance with the terms of this Declaration. The Trustee as such shall have no duty or authority to determine the correctness of any contribution to the Trust, nor to enforce collection of any such contribution.

2.2 The Trustee shall make distributions or expenditures from the Trust to such persons, at such times, and in such amounts and manner as the Plan Administrator established under the Plan (the "Plan Administrator") or its delegate may direct.

2.3 (a) The Trustee shall invest and reinvest the Trust, without distinction between principal and income, in stocks, bonds, notes or other evidences of indebtedness or ownership (including, but not limited to, shares in mutual funds, investment trusts, or common or collective trusts, and in investment contracts with an insurance company), whether unsecured or secured by mortgages on real or personal property wherever situated or other securities or investments in any property, real or personal, foreign or domestic, as the Trustee may deem suitable for the Trust.

(b) From time to time the Plan Administrator shall communicate in writing to the Trustee and to any Investment Manager who may be acting pursuant to Section 2.4 hereof the current policy and method that have been established to carry out the objectives of the Plan.

(c) The Trustee shall invest the Trust solely in the interest of the Employees and their beneficiaries for the exclusive purpose of providing benefits to Employees and their beneficiaries and of defraying reasonable expenses of administering the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like

aims.

2.4 (a) Except as provided in paragraph (b), the Trustee shall invest and reinvest the Trust, as authorized hereunder, in accordance with the instructions of the Plan Administrator under the Plan pursuant to the Trusting policy established by the Plan Administrator.

(b) If the Plan Administrator has appointed a qualified investment manager (the "Investment Manager) vested with the authority to direct the investment of the assets of the Plan, then the Trustee shall follow the investment directions of such Investment Manager as provided in the agreement appointing such Investment Manager.

### **ARTICLE III**

#### **Powers of the Trustee**

3.1. In addition to the powers given by law, the Trustee is authorized and empowered:

(a) To sell, exchange, convey, transfer, grant options with respect to, or otherwise dispose of any real or personal property, at public or private sale, for such prices and on such terms as the Trustee deems suitable;

(b) To hold all or any part of the Trust in cash, without liability for interest thereon;

(c) To exercise any right, including the right to vote personally or by general or special proxies or powers of attorney, appurtenant to any securities or other property held in the Trust;

(d) To exercise or sell any conversion privileges, subscription rights or other rights or options and to make any payments incidental thereto; to oppose, consent to, or otherwise participate in, any

reorganization, recapitalization or other changes affecting securities held in the Trust, or any lease, mortgage or sale of the property of an organization the securities of which are held in the Trust; to deposit any securities or other property in a voting trust or with any Plan Administrator, to delegate discretionary powers, and to pay expenses, assessments, or charges in connection therewith; to retain any new securities or other property issuable to the Trust by reason of the exercise of any rights of exchange, subdivisions or conversion or by reason of any other change in respect of any securities at any time held in the Trust;

(e) To borrow money in such amounts and upon such terms as the Trustee deems advisable; to issue promissory notes therefor, and pledge all or part of the Trust as security therefor; provided that any borrowing against the loan values of insurance contracts shall not be discriminatory as to the remaining interests of employees;

(f) To hold securities or other property in its name as Trustee or in bearer form, provided that the Trustee's records shall at all times show that such property is part of the Trust;

(g) To make, execute, acknowledge and deliver any instruments or documents that may be necessary or appropriate to carry out the powers herein granted; provided, nonetheless, that any such instrument or document to be executed by the Trustee may be made, executed, acknowledged, and delivered by the Trustee; any person, firm or corporation, including any insurance company or bank, may rely upon and shall be protected in relying upon the signature of the Trustee;

(h) To consult and employ accountants, attorneys, investment advisors, custodians, consultants and other agents and employees and to pay their reasonable expenses and compensation;

(i) To apply for, purchase, hold, transfer, pay premiums on, surrender, collect the proceeds of, and exercise all the rights, privileges and

incidents of ownership of life insurance, retirement income, endowment and annuity contracts;

(j) To enforce, abstain from enforcing, settle, modify, compromise, submit to arbitration or abandon any rights, obligations, claims, debts or damages due or owing to or from the Trust; in general to protect in any way the interests of the Trust; to commence, defend or represent the Trust in all suits and legal and administrative proceedings; and to abandon any property;

(k) To acquire, hold, manage, operate, repair, develop, improve, alter, demolish, partition, mortgage, grant options with respect to, lease for any term or terms of years, or otherwise deal with real property held in the Trust, all upon such terms and conditions as the Trustee deems advisable;

(l) To collect and receive any money or other property due to the Trust and to give full discharge and acquittance therefor;

(m) To enter into an agreement, upon such terms and conditions as the Trustee deems necessary or desirable, with a bank or trust company providing for (i) the deposit of all or part of the Trust assets with such bank or trust company, (ii) the appointment of such bank or trust company as the agent of the Trustee for investment purposes, with such discretion in investing and reinvesting the assets of the Trust as the Trustee deems it necessary or desirable to delegate, including, if the Trustee deems it desirable and consistent with applicable law, authority to invest assets of the Trust in any collective fund created and maintained by such bank or trust company as trustee, the instrument creating such collective Trust being hereby effective when and as any such investment is made, incorporated in and made a part hereof, and (iii) the payment to such bank or trust company of reasonable compensation for its services; and

(n) To do all acts and things, although not specifically named

herein, which the Trustee deems advisable to carry out the purposes of this Declaration.

#### **ARTICLE IV**

##### **Accounting by Trustee**

4.1 The Trustee shall keep or cause to be kept complete and accurate records of all transactions of the Trust, which shall be open to inspection and audit at all reasonable times by persons designated by the Town.

4.2 The Trustee shall prepare annual written accounts setting forth all investments, receipts, disbursements and other transactions of the Trust during the preceding year.

4.3 No less frequently than annually as of the last day of the Plan's accounting year and at such other intervals as directed by the Plan Administrator, the Trustee shall value the Trust at its then fair market value and report the same to the Plan Administrator.

4.4 The Trustee, or its delegate, shall prepare annual written statements of all individual accounts.

#### **ARTICLE V**

##### **Compensation; Expenses**

5.1 The Trustee shall serve without compensation so long as the Trustee is the Town or an official of the Town. If an unrelated entity or person is appointed successor Trustee, the Town may negotiate appropriate compensation with such successor, which shall be paid from Trust.

5.2 The following shall be paid from the Trust:



(a) All taxes of any kind that may be levied or assessed under existing or future laws upon the Plan, or in respect of the Trust or its income;

(b) All commissions on acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust;

(c) Reasonable compensation to the Plan Administrator, but only if and when the Plan Administrator is not the Town or an official of the Town;

(d) Reimbursement of reasonable expenses incurred by the Plan Administrator in the performance of its duties (including but not limited to fees for legal, accounting, investment and custodial services).

## **ARTICLE VI**

### **Amendment and Termination**

6.1 Except as otherwise provided in the Plan, the Town by action of its Town Council shall have the right at any time to amend, in whole or in part, any or all of the provisions of this Declaration, or to terminate this Declaration; provided, however, that no amendment shall divest a vested benefit unless such divestiture is required to maintain compliance with section 457 of the Code or is required by any other applicable law; and provided further that no amendment of this Declaration shall increase the duties of the Trustee unless the Trustee shall have consented in writing to such amendment.

6.2 In the event of termination of this Declaration or of the Plan, the Trustee shall continue to hold the Trust in trust for application and disbursement in such manner and at such time as the Plan Administrator

may direct.

6.3 If continuance of the Trust beyond a certain period would cause it to fail, then it shall continue for the maximum period permitted by law and shall then terminate, and upon such termination, all assets in the Trust shall be distributed as the Plan Administrator shall direct.

## **ARTICLE VII**

### **Miscellaneous Provisions**

7.1 Unless the context clearly indicates otherwise, any term used herein shall have the same meaning as in the Plan. Where the context so requires, the singular when used herein includes the plural.

7.2 At no time (whether upon amendment or termination of this Declaration or otherwise) shall any part of the Trust be used for or diverted to purposes other than for the exclusive benefit of Employees and their beneficiaries.

7.3 Neither the Town nor the Trustee shall be responsible for the validity of any investment contract or for the failure on the part of the any person to make any payments or to provide any benefit under any such contract, or for the action of any other person which may render any contract invalid or unenforceable. Neither the Town nor the Trustee shall be responsible for the inability to perform or delay in performing any act occasioned by any restriction or provisions of any contract imposed by the insurer or by any other person.

7.4 The Trustee shall not be liable for the acts or omissions of other fiduciaries unless (a) the Trustee knowingly participates in, or knowingly attempts to conceal the act or omission of another fiduciary, and the Trustee knows the act or omission is a breach of a fiduciary

responsibility by the other fiduciary; or (b) the Trustee has knowledge of a breach by the other fiduciary and shall not make reasonable efforts to remedy the breach; or (c) the Trustee's breach of its own fiduciary responsibility permits the other fiduciary to commit a breach.

7.5 This Trust shall be construed and enforced according to the laws of the State of Connecticut and the Code. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

IN WITNESS WHEREOF, this Declaration is effective as of the day and year first above written.

THE TOWN OF WETHERS FIELD

By

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey K. Bridges, Jr.  
Its Town Manager