

BOROUGH OF SOUTHMONT
CAMBRIA COUNTY, PENNSYLVANIA

ORDINANCE NO. 358

ORDINANCE OF THE BOROUGH OF SOUTHMONT, CAMBRIA COUNTY,
PENNSYLVANIA, AMENDING AND RESTATEMENT TO THE BOROUGH OF
SOUTHMONT POLICE PENSION PLAN, AND AMENDING ORDINANCE
NUMBERS 191, 339, 349, AND 350 AND RESOLUTION NUMBERS 73-9, 73-10
AND 6-80-2.

AMENDMENT AND RESTATEMENT TO

BOROUGH OF SOUTHMONT

POLICE PENSION PLAN

WHEREAS, on December 31, 1958, the Council of the Borough of Southmont, Cambria County, Pennsylvania, (hereinafter referred to as the "Employer") enacted Ordinance No. 191, thereby establishing the Borough of Southmont Police Pension Plan (hereinafter referred to as the "Plan").

WHEREAS, the provisions of the Plan have been amended and restated several times thereafter by regulatory Ordinances of the Employer; and

WHEREAS, the Employer now desires to restate the Plan for purpose of Ordinance consolidation and to make certain additional changes to the Plan's provisions;

NOW, THEREFORE, the Plan, effective as of January 1, 1989, as amended and restated in its entirety, is herein set forth;

ARTICLE I DEFINITIONS

1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under Section 5.02, multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the Aggregate Service which would be credited to the Participant as of his Normal Retirement Date if he were to continue to be employed as a full-time permanent police officer with the Employer until such date.

1.02 "Accumulated Contributions" shall mean the total amount contributed by any participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at four percent (4%) per annum. Such interest shall be credited annually in the form of a simple interest rate.

1.03 “Act” shall mean the Municipal Pension Plan Funding Standard and Recovery Act, enacted as P.L. 1005, (Act 205 of 1984), as amended.

1.04 “Actuary” shall mean the person, partnership, association or corporation which at any given time is serving as Actuary; provided that such Actuary must be an “Approved Actuary” as defined in the Act.

1.05 “Aggregate Service” means the total period or periods of the Participant’s employment with the Employer whether or not interrupted, which shall include voluntary or involuntary service with the armed forces of the United States of America, if preceded by a period of at least six (6) months of employment as a regularly appointed member of the Employer’s police force; provided, that should any such participant, fail to return to work with the Employer’s police force within six (6) months following his discharge from military service, or such other period in which his employment rights are guaranteed by law if longer, the term of his military service shall not be included in his Aggregate Service; provided further, that should any such Participant after any period of employment, withdraw his Accumulated Contributions, with respect to said period, such period of employment shall not be included in his Aggregate Service thereafter unless, at the commencement of his next period of employment, he repays to the Fund the amount of such withdrawal with interest.

1.06 “Basic Monthly Earnings” shall mean the total compensation of the Employee, whether salary or hourly wages, including overtime pay, holiday pay, longevity and any other form of compensation paid by the Employer for police services rendered.

1.07 “Council” shall mean the Council of the Employer.

1.08 “Employee” means any regular police officer employed by the Employer on a permanent full-time basis as a member of the Employer’s Police Department. “Full-time” shall mean any police officer whose employment with the Employer is for not less than forty (40) hours per week at a definite salary.

1.09 “Employer” shall mean the Borough of Southmont, located in Cambria County, Pennsylvania.

1.10 “Final Monthly Average Salary” shall mean the average monthly salary earned by the Participant and paid by the Employer during the final thirty-six (36) months immediately preceding retirement which are included in the averaging period. The term salary, as used herein, shall include the Employee’s regular salary and other forms of compensation which are fixed amounts paid at periodic intervals such as longevity pay, holiday pay and night differential pay, but shall exclude any irregular or extra forms of compensation such as overtime or court pay.

1.11 “Insurer” or “Insurance Company” shall mean a legal reserve life insurance company which shall issue a Policy or contract under this plan.

1.12 “Normal Retirement Date” shall mean the earliest date on which the Participant is entitled to a normal retirement benefit, as defined under Section 5.01.

1.13 “Participant” shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in Section 3.01, and who has not for any reason ceased to be a Participant hereunder.

1.14 “Pension Fund” shall mean the police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, policies and contracts standing in the name of the Plan.

1.15 “Plan” shall mean the pension plan set forth herein, as amended from time to time and designated as the Borough of Southmont Police Pension Plan.

1.16 “Plan Administrator” shall mean the Retirement Plan Board appointed by the Council to administer the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Council.

1.17 “Plan Year” shall mean the twelve-month (12) period beginning on January 1 and ending on December 31 of each year.

1.18 “Policy” or “Contract” shall mean a retirement annuity or retirement income endowment policy (or a combination of both), or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of the Act and P.L. 1804, as amended (53 P.S. 767).

1.19 “Restatement Date” shall mean January 1, 1989, the date upon which this amendment and restatement of the Plan becomes effective.

ARTICLE II ADMINISTRATIVE PROVISIONS

2.01 Plan Operated Under Supervision of the Council – The operation of the Plan shall be supervised by the Council. The Council shall have the power and authority, by a majority of its members, either directly or through a designated Plan Administrator to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan.

The Plan Administrator shall keep such records as may be necessary for the determination of the status of each Participant and the presumptive share of each Participant in the Fund as determined by the Actuary.

The Council shall have authority and shall be charged with the performance of the duties set forth in this Plan, but shall have the authority by general rule or special decision to determine and make provisions for such items necessary for the proper carrying out and enforcement thereof that are not specifically provided by this Plan, at all times, however, subject to change by proper Ordinance or Resolution.

2.02 Acceptance of Gift, Grants, Etc. – The Council is hereby authorized to take by gift, grant, devise or bequest any money or property, real or personal, in trust for the benefit of the Plan, and to cause the same to be held as part of the Police Pension Fund. The care, management, investment and disposal of said fund is hereby vested in the Council or its duly appointed delegate, subject to the provisions of the laws of the Commonwealth of Pennsylvania and of this Plan and any amendment thereto, and subject to such direction not inconsistent therewith as the donors of such funds and property may prescribe.

ARTICLE III PARTICIPATION IN THE PLAN

3.01 Eligibility Requirements – Each Employee of the Police Department of the Employer shall participate herein.

3.02 Notification of Administrator – The Council shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder, within sixty (60) days of the date of such appointment.

3.03 Designation of Beneficiary – Any new, full-time Employee who becomes a Participant hereunder shall provide a written notice which designates his beneficiary or beneficiaries to the Council at the time his participation commences. The Participant's election of any such beneficiary or beneficiaries may be rescinded or changed, without the consent of the Beneficiary or Beneficiaries, at any time provided the Participant provides the Council with written notice of the changed designation.

ARTICLE IV CONTRIBUTIONS

4.01 Participant Contributions – Each Participant shall make regular monthly contributions to the Plan at a rate calculated as follows:

Where positions covered by the Plan are included in an agreement under the Federal Social Security Act, Participants shall pay into the Plan, a monthly amount, which shall not be less than five percent (5%) nor more than eight percent (8%) of his Basic Monthly Earnings, determined as follows:

(a) if the Plan provides for no offset under Section 5.02, five percent (5%) of Basic Monthly Earnings;

or

(b) if the Plan provides for an offset under Section 5.02;

(1) on Basic Monthly Earnings on which Social Security taxes are payable, at a rate calculated by subtracting from five percent (5%), the

product obtained by multiplying three percent (3%) by such offset percentage; and

(2) on Basic Monthly Earnings in excess of that on which Social Security taxes are payable, if any, five percent (5%).

For this Plan, the Participant contribution is as follows unless otherwise amended: The contribution shall be three and one-half percent (3.5%) of a Participant's Basic Monthly Earnings on which Social Security taxes are payable, plus five percent (5%) of the Participant's Basic Monthly Earnings in excess of that on which Social Security taxes are payable.

4.02 Payment of Participant Contributions – Such Participant contributions shall be deducted from the Participant's Basic Monthly Earnings in each month of his Aggregate Service during which he is a Participant hereunder.

4.03 Reduction of Participant Contributions – Notwithstanding the preceding, if any actuarial study shows that the condition of the Pension Fund is such that payments into the Fund by Participants may be reduced below the minimum percentages hereinbefore prescribed, or may be eliminated, and that, if such payments are reduced or eliminated, contributions by the Employer will not be required to keep the Pension Fund actuarially sound, the Employer may, on an annual basis, by ordinance or resolution, reduce or eliminate payments into the Pension Fund by Participants.

4.04 Payments of State Aid – Payments of General Municipal Pension System State Aid, or any other amount of State aid received in accordance with the Act, which are received by the Employer and deposited into the Pension Fund governed by this Plan shall be used as follows:

- (a) to reduce the unfunded liability or, after such liability has been funded,
- (b) to apply against the annual obligation of the Employer for future service costs or, to the extent that the payment may be in excess of such obligation,
- (c) to reduce Participant contributions hereunder.

4.05 Employer Contributions – The remainder of the needed annual contributions, as determined by the Actuary in accordance with the Act, shall become the obligation of the Employer, and shall be paid into the Pension Fund by annual appropriations.

ARTICLE V RETIREMENT BENEFITS

5.01 Normal Retirement Date – Each Participant shall be entitled to normal retirement benefits provided he retires on or after his Normal Retirement Date, which shall be the earlier of the date set forth in (a) or (b):

(a) the later of:

(i) the date when the Participant has completed twenty-five (25) years with the Employer; and

(ii) the date when such Participant has attained the age of fifty-five (55) years; (or if an actuarial study of the cost shows that such reduction in age is feasible, such age may be set at fifty (50);

or

(b) in the case of an Employee for whom a pension fund has heretofore been established and such Employee was hired prior to December 21, 1965, the earlier of the date in (a) or the date when he has satisfied both of the following requirements:

(i) he has completed twenty (20) years of Aggregate Service with the Employer; and

(ii) he has attained the age of sixty (60) years (or fifty-five (55) years if such age had been so fixed by ordinance or resolution prior to December 21, 1965, and he is currently employed by the Employer).

5.02 Normal Retirement Benefit - Each Participant entitled to normal retirement benefits pursuant to Section 5.01 shall receive during his lifetime a monthly retirement income which shall be equal to one-half (1/2) of his Final Monthly Average Salary.

Provided, however, that payment of benefits upon retirement shall be conditioned upon a Participant's being subject to service from time to time as a police reserve in cases of riot, tumult or preservation of the public peace until unfitted for such service, at which time such Participant shall be finally discharged by reason of age or Disability upon written notice from the Council.

Such pension or retirement benefits for any month shall be computed as the sum of:

(i) if positions covered by the Plan are included in an agreement under the Federal Social Security Act, up to seventy-five percent (75%) of a Participant's full Social Security old-age insurance benefit calculated in accordance with the provisions of the Federal Social Security Act in effect on the date of his termination of employment, except that such amount shall be included only upon attainment of the age at which the Employee would be eligible to receive full Social Security old-age insurance benefits, and, in determining such eligibility and such amounts, only

compensation for services actually rendered by the Employee and covered by the Plan shall be included;

(ii) benefits from the Pension Fund to the extent necessary to bring the total benefits in any month up to the amount set forth in Section 5.01 above; and

(iii) any pension benefits from pension plans heretofore established by a private organization or association for the members of the police force but only to the extent that the Commonwealth of Pennsylvania or the Employer shall have contributed to such pension plan monies raised by taxation.

If the Employer or the Commonwealth shall have contributed monies raised by taxation to a pension plan established by a private organization or association for the members of the police force, the pension benefits to be taken into account under clause (iii) of this Section shall be that portion of the total pension benefits payable under clause (iii) as the assets attributable to contributions or monies raised by taxation bears to the total assets of the Pension Fund.

Provided, however, that any Participant who receives benefits from the Plan and who is also entitled to receive Social Security old-age insurance benefits shall not, regardless of when the Participant retired from active service, have his pension or retirement benefit offset or reduced by more than seventy-five (75%) of the Social Security old-age insurance benefits which he receives.

Under this Plan, the current percentage of a Participant's Social Security benefit, as defined under Section 5.02, which shall be applied as an offset or reduction against the Participant's retirement benefit shall be twenty-five percent (25%), unless otherwise amended.

In addition to the pension benefit provided in Section 5.02, an additional service increment benefit shall be payable to a retired Participant if such Participant has completed more than twenty-five (25) years of Aggregate Service with the Employer. The amount of increment shall be an amount equal to one hundred dollars (\$100) per month.

5.03 Cost of Living Increases – For Participants retired and future retirees, a cost-of-living adjustment shall be made to the pension benefit payable to such Participant; this adjustment shall apply to the regular pension amount set forth in Section 5.02. The service increment amount set forth in Section 5.02 shall not apply to such Participant. The cost-of-living adjustment shall be an increase in the monthly benefit, equal to the percentage change in the Consumer Price Index during the last year multiplied by the Participant's monthly benefit, effective as of each anniversary of the Participant's

Retirement Date. Such cost-of-living increases shall not exceed any of the following limitations:

- (a) Such cost-of-living increase shall not exceed the percentage increase in the Consumer Price Index from the year in which the Participant was last employed by the Employer; or
- (b) In no case shall the total police pension benefit payable under this Plan exceed seventy-five percent (75%) of the Participant's Final Monthly Average Salary; or
- (c) The total cost-of-living increase applied to a Participant's retirement benefit shall not exceed thirty percent (30%).

NO COST OF LIVING INCREASE WHICH WOULD IMPAIR THE ACTUARIAL SOUNDNESS OF THE PENSION FUND SHALL BE GRANTED.

5.04 Late Retirement – A Participant may continue to work beyond his Normal Retirement Date subject to the Employer's rules and regulations regarding retirement age. If a participant who has met the requirements of Section 5.01 shall continue to work beyond his Normal Retirement Date, there shall be no retirement benefits paid until employment ceases and retirement begins.

5.05 Payment of Benefits – Retirement payments shall be made monthly as of the first day of each month. The first installment of any retirement benefit payable to a Participant shall be payable on the first day of the month next following the retirement date.

5.06 Assignment – The pension payments herein provided for shall not be subject to attachment, execution, levy, garnishment or other legal process, and shall be payable only to the Participant, his survivors or his designated beneficiary and shall not be subject to assignment or transfer.

ARTICLE VI DISABILITY RETIREMENT

6.01 Disability Retirement Benefits – Any Participant who becomes disabled due to injuries incurred during his service with the Employer shall receive disability benefits as covered in the insurance policy provided by the Employer.

ARTICLE VII DEATH BENEFITS

7.01 Pre-retirement Death Benefits Payable to Spouse – In the event a Participant who has not attained entitlement to any type of retirement benefits hereunder is killed in service, the spouse of the Participant, or, if no spouse survives or if the spouse survives and subsequently dies or remarries, then the child or children under the age of eighteen (18) years shall be entitled to receive fifty percent (50%) of the benefit provided under

Section 5.02. In the event there is not a spouse or children entitled to receive the above benefit, then the Participant's estate shall be entitled to receive a refund of the Participant's contributions with interest.

7.02 Surviving Spouse Benefit – In the event a Participant who is eligible to receive or is receiving normal retirement benefits pursuant to Section 5.01 shall die, the spouse of the deceased Participant, or, if no spouse survives or if the spouse survives and subsequently dies or remarries, then the child or children under the age of eighteen (18) years of the deceased Participant, shall, during the spouse's lifetime or so long as the spouse does not remarry in the case of the spouse or until reaching the age of eighteen (18) in the case of the child or children, receive a monthly income calculated at the rate of fifty percent (50%) of the monthly retirement benefit which the Participant was receiving or would have been receiving had he been retired at the time of his death.

In no case shall a Participant receiving disability retirement benefits be eligible for the benefit provided under this Section.

7.03 Payment of Survivor Benefits – Survivor payments shall be made monthly as of the first day of each month. The first installment of any benefit payable to a survivor shall be payable on the first day of the month next following the date of death of the Participant and the last installment shall be payable as of the first day of the month in which occurs either:

- (a) the death of the spouse, if payments are made to the spouse, and the spouse's death occurs at a time when there are no surviving children under the age of eighteen (18); or
- (b) the date when the younger surviving child attains the age of eighteen (18), if payments are made to any children of the Participant.

ARTICLE VIII TERMINATION OF EMPLOYMENT

8.01 Rights of Terminated Employees – If a Participant shall cease to be an Employee except as otherwise hereinbefore provided, his interest and rights under this Plan shall be limited to those contained in the following Sections of this Article.

8.02 Refund of Accumulated Contributions – If a Participant whose employment with the Employer has been terminated for any reason prior to his Normal or Disability Retirement Date, and he is neither eligible for a pension under the Plan, such Participant or his beneficiary shall be entitled to receive a refund of his Accumulated Contributions to the Plan. Upon receipt of such Accumulated Contributions, said Participant and his or her beneficiary shall not be entitled to any further payments from the Pension Plan.

8.03 Vested Benefits Upon Termination – In lieu of receiving a refund of his Accumulated Contributions, a Participant who has completed at least twelve (12) years of Aggregate Service with the Employer and who ceases to be an Employee of the

Employer for any reason other than death, retirement or Disability shall vest at the option of the Participant. Such vesting option must be exercised by the Participant by filing a written notice of his intention to vest with the Administrator within ninety (90) days of the date he ceases to be an Employee of the Employer. A Participant who exercises such an option shall be eligible, upon attainment of what would have been his Normal Retirement Date, had he continued to be an Employee of the Employer, to a vested retirement benefit equal to his Accrued Benefit. If a Participant elects to vest his benefit but dies prior to the commencement thereof, the beneficiary of such Participant shall be entitled to a refund of the Participant's Accumulated Contributions in accordance with the terms of the preceding paragraph.

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

9.01 Actuarial Valuations – The Plan's Actuary shall perform an actuarial Valuation at least biennially unless the Employer is applying or has applied for Supplemental State Assistance pursuant to Section 603 of the Act, whereupon actuarial valuation reports shall be made annually.

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

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

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

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

the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

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

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

9.03 Benefit Plan Modifications – Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an Approved Actuary, which estimate shall disclose to the Council the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future minimum obligation of the Employer with respect to the Plan.

ARTICLE X AMENDMENT AND TERMINATION OF PENSION PLAN OR PENSION FUND

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

- (a) that no amendment shall deprive any Participant or any beneficiary of a deceased Participant of any of the benefits to which he is entitled under this Pension Plan with respect to contributions previously made; and
- (b) that no amendment shall provide for the use of funds or assets held under this Pension Plan other than for the benefit of employees and no funds contributed to this Pension Plan or assets of this Pension Plan shall, except as provided in Section 10.05, ever revert to or be used or enjoyed by the Employer; and
- (c) that no amendment to the Pension Plan which provides for a benefit modification shall be made unless the cost estimate described in Section 9.03 has been prepared and presented to the Council in accordance with the Act.

10.02 Termination of the Plan – The Employer shall have the power to terminate this Pension Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.

10.03 Automatic Termination of Contributions – Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt, or upon the making of a general assignment for the benefit of its creditors.

10.04 Distribution Upon Termination – In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the Employer shall direct either (a) that the Plan Administrator continue to hold the vested Accrued Benefits of Participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provision, or (b) that the Plan Administrator immediately distribute to each Participant an amount equal to his vested Accrued Benefit to the date.

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

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

10.05 Residual Assets – If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied, and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and, any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.

10.06 Exclusive Benefit Rule – In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Pension Plan, their beneficiaries or their estates.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.01 Plan Not a Contract of Employment – No policeman of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Pension Plan except those expressly granted to them hereunder. Nothing

herein shall be construed to give any policeman the right to remain on the police force of the Employer.

11.02 Masculine/Feminine; Singular/Plural – For purposes of this Pension Plan, the masculine shall be read for the feminine and singular shall be read for the plural, wherever the person or context shall plainly so require.

11.03 Construction of Document – This Pension Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth of Pennsylvania.

11.04 Headings – The headings of Articles are included solely for convenience of reference, and if there be any conflict between such headings and the text of the Pension Plan, the text shall control.

11.05 Severability of Provisions – In case any provisions of this Plan Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Pension Plan but this Pension Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.

11.06 Incapacity of Pensioner – If any pensioner shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such pensioner is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such pensioner.

11.07 Benefits for a Deceased Participant – If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, and are payable to the Participant's estate, and if no administration of such Participant's estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there be no such surviving spouse, to such Participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.

11.08 Liability of Officers of the Plan Administrator and/or Participating Employers – Subject to the provisions of the Act, no past, present or future officer of the Employer shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.

11.09 Assets of the Fund – Nothing contained herein shall be deemed to give any Participant or his beneficiary any interest in any specific property of the Pension Fund or

any right except to receive such distributions as are expressly provided for under the Plan.

11.10 Pension Fund for Sole Benefit of Participants – The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and, to the extent permitted by law, shall be free, clear and discharged from and are not be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or beneficiary.

IN WITNESS WHEREOF, and intending to be legally bound hereby, in accordance with the proper Ordinance of the Council of the Borough of Southmont, we have hereunto caused this instrument to be executed and the municipal seal affixed the day and year below written.

APROVED AND ENACTED into law this 20th day of February, 1989.