CITY OF SANIBEL

ORDINANCE 09-012

AN ORDINANCE AMENDING THE PENSION PLAN FOR THE CITY'S POLICE OFFICERS; AMENDING SECTION 50-92, NUMBER, APPOINTMENT, TERM; AMENDING SECTION 50-132, INVESTMENTS; AMENDING SECTION 50-315, REVOCATION OR CHANGE OF ELECTION; AMENDING SECTION 50-356, MAXIMUM BENEFIT AMOUNT, BY DELETING THE LANGUAGE IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 50-356, TITLED "INTERNAL REVENUE CODE COMPLIANCE"; AMENDING SECTION 50-458, BENEFITS NOT ASSIGNABLE; PROVIDING FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has established a police officer pension plan to provide for the economic security of the City's current and retired police officers; and

WHEREAS, recent changes to federal laws and regulations require that various amendments be made to the Plan in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, the 2009 Florida Legislature enacted Chapter 2009-97, Law of Florida, which mandates certain amendments to the City's police officer pension plan; and

WHEREAS, recent changes to State statutes require several amendments to the pension plan in order to maintain eligibility for receipt of state premium tax revenues; and

WHEREAS, an amendment to the City code is necessary to permit such new obligations and conditions; and

WHEREAS, the Board of Trustees of the City of Sanibel Municipal Police Officers' Retirement Trust Fund have approved such an amendment as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan; and

WHEREAS, public hearings have been held pursuant to F.S., Chapter 166; and

WHEREAS, the City Council has, prior to the final adoption of this Ordinance, reviewed the actuarial impact statement which sets forth the costs to the City of this plan; and

WHEREAS, the City Council of the City of Sanibel determines that it is in the public interest to adopt the following Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Section 50-92 of the City of Sanibel Code of Ordinances is hereby amended to read as follows:

Sec. 50-92. Number, appointment, term.

...

(b) Appointed trustees shall serve for a term of ~~two~~ <u>four</u> years, unless sooner replaced by the city council at whose pleasure they serve.

(c) Elected trustees shall serve ~~two~~ <u>four</u> year terms, commencing on October 1st of the year in which they are elected. The city clerk shall conduct the elections by secret ballot during September prior to the expiration of a trustee's term.

SECTION 3. Section 50-132 of the City of Sanibel Code of Ordinances is hereby amended to read as follows:

Sec. 50-132. Investments.

(a) The trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, in a manner consistent with the investment policies or guidelines adopted by the board of trustees and approved by resolution of the Sanibel City Council. The trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in section 50-137 (f). The board of trustees shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph. The trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right. This is intended to vary the investment procedures of F.S. § 185.06(b), as permitted by that subsection.

SECTION 4. Section 50-315 of the City of Sanibel Code of Ordinances is hereby amended to read as follows

Sec. 50-315. Revocation or change of election.

...

(c) After benefits have commenced, a retired participant may change her or his designation of joint annuitant or beneficiary up to two times ~~twice~~ in the manner prescribed in F.S. § 185.341~~.~~ without the approval of the board of trustees or the current joint annuitant or beneficiary (or beneficiaries). The member need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

SECTION 5. Section 50-356 of the City of Sanibel Code of Ordinances is hereby deleted in its entirety and amended to read as follows with all subsequent sections being renumbered accordingly:

Sec. 50-356. ~~Maximum benefit amount.~~ Internal Revenue Code Compliance

(a) Maximum Pension

Notwithstanding any provision of this Plan to the contrary, the Annual Pension that is accrued by or paid to a participant shall not exceed the Dollar Limitation set forth below. If the benefit the participant would otherwise accrue in a Limitation Year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited to a benefit that does not exceed the Dollar Limitation.

(1) Definitions Used in this Section

(A) "Annual Pension" means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the Dollar Limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(B) "Dollar Limitation" means $160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a "Qualified Participant" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the Dollar Limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

(II) the Dollar Limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(ii) For benefits beginning after the age of 65, the age-adjusted Dollar Limitation is equal to the lesser of:

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's

age based on completed calendar months as of the annuity starting date); and

(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

(iii) There shall be no age adjustment of the Dollar Limitation with respect to benefits beginning between the ages of 62 and 65.

(2) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed $10,000 provided the participant has never participated in a Defined Contribution Plan maintained by the City.

(3) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.

(4) In the case of a participant who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (1)(B) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.

(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the City) or

rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any participant participate in more than one defined benefit plan maintained by the City, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the participant's benefit under this Plan shall be reduced so that the participant's combined benefits will equal the Dollar Limitation.

(7) For a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the Annual Pension under Paragraph (a)(1) of this Subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.

(b) Required Beginning Date:

Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

-April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or

-April 1 of the calendar year that next follows the calendar year in which the participant retires.

(c) Required Minimum Distributions.

(1) Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's Required Beginning Date as defined in Subsection (b) of this Section 50-356.

(2) Death of participant Before Distributions Begin.

(A) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(B) The participant's entire interest shall be distributed as follows:

(i) participant Survived by Designated Beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(A) above, over the life of the designated beneficiary or over a period certain not exceeding:

(I) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(A) and 2(B) above shall apply as though the surviving spouse were the participant.

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

(A) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the

annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(B) Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Subparagraph (3)(B), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Form of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(A), (4)(B) and (4)(C) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(A) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (c) ;

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be non-increasing or increase only as follows:

(I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(II) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(III) to provide cash refunds of employee contributions upon the participant's death; or

(IV) to pay increased benefits that result from a Plan amendment.

(B) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's Required Beginning Date (or, if the participant dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment

interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's Required Beginning Date.

(C) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this Subsection (c), distributions are considered to begin on the participant's Required Beginning Date. If annuity payments irrevocably commence to the participant (or to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

(A) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(B) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

(C) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) Eligible rollover distributions:

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distribute in a direct rollover.

(2) Definitions:

(A) Eligible rollover distribution: 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: any distribution that is one (1) 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 often (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(B) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code or a qualified trust described in section 401(a) of the Code, that accepts the □istribute's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An eligible retirement plan shall also mean, with respect to distributions made after December 31, 2001, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relation order, as defined in Section 414(p) of the Code.

(C) Distributee: A distributee includes a participant or former participant.

(D) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be $1000.

(f) Compensation Limitations Under 401(a)(17):

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is $200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. 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 EGTRRA 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.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(g) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Subsection (a) of Section 50-356 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

(h) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

SECTION 6. Section 50-458 of the City of Sanibel Code of Ordinances is hereby amended to read as follows

Sec. 50-458. Benefits not assignable.

The right of any person to any payment under this pension plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, and to make any payments for child support or alimony. Further, the recipient of any monthly benefit may authorize the board of trustees upon written request, to withhold from the monthly benefit those funds necessary to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The Retirement System shall not incur any liability for participation in such permissive program if its action is taken in good faith. Other than the withholding specifically permitted herein, if any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject such right to such process, such assignment, transfer or disposition shall be null and void.

SECTION 7. Code of Ordinances. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel, and it shall be recodified pursuant to Section 5 of Ordinance No. 81-07.

SECTION 8. Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

SECTION 9. Severance. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application thereof.

SECTION 10. Effective Date.

This Ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida on this 3rd day of November, 2009.

Mick Denham, Mayor

AUTHENTICATION:

Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler, City Attorney

9/29/09
Date

First Reading: October 6, 2009
Publication Notice: October 29, 2009
Second Reading: November 03, 2009

Vote of Council Members:

Denham	yea
Ruane	yea
Harrity	yea
Jennings	yea
Pappas	absent

Date Filed With City Clerk: Nobember 3, 2009

CITY OF SANIBEL

ORDINANCE 06-014

AN ORDINANCE AMENDING THE PENSION PLAN FOR THE CITY'S POLICE OFFICERS, PROVIDING FOR THE CREATION OF A COST OF LIVING ADJUSTMENT; PROVIDING FOR THE CREATION OF A DEFERRED RETIREMENT OPTION PROGRAM; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council has established a police officer pension plan to provide for the future economic security of the City's police officers and which will serve as an incentive to qualified police officers to remain employed by the City and to seek employment with the City of Sanibel; and

WHEREAS, public hearings have been held pursuant to Chapter 166, Florida Statutes; and

WHEREAS, the City Council has, prior to the final adoption of this Ordinance, reviewed the actuarial impact statements which set forth the costs to the City of this plan; and

WHEREAS, the City Council of the City of Sanibel determines that it is in the public interest to adopt the following Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Article 5 of Part II of Ordinance 91-45, as restated, be and is hereby amended by adding Section 5.7 to read as follows:

ARTICLE 5 - PENSION BENEFITS

Section 5.7 Cost of Living adjustment. Effective on adoption of this ordinance there shall be a Cost of Living adjustment for members retiring thereafter. The Cost of Living adjustment shall be calculated as a three percent (3%) increase to Normal and Early retirement benefit payments, to commence after receipt of twelve (12) monthly retirement payments.

The purpose of this section is to provide cost-of-living adjustments to the monthly benefits payable to members of this pension plan who retire after adoption of this ordinance. Commencing on adoption of this ordinance, the monthly benefit of each retiree shall be adjusted each October 1 after receipt of at least twelve (12) monthly retirement payments. The adjusted monthly benefit shall be the amount of the monthly benefit being received on September 30 immediately preceding the adjustment date plus an amount equal to 3 percent of the benefit.

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SECTION 3. Article 6 of Part II of Ordinance 91-45, as restated, be and is hereby amended by adding to Section 6.3 to read as follows

ARTICLE 6 - PENSION BENEFITS

(d) Deferred Retirement Option Program - A Participant may enter into the deferred retirement option program (DROP), which program is to be created and

administered by the Board of Trustees of the Pension Plan, on the first day of any month upon or after attaining Normal Retirement Age as defined herein. The maximum duration of participation in the DROP shall not exceed sixty (60) months and participation will end if the employee resigns, dies or is terminated for just cause prior to completion of said sixty (60) months.

A Participant may participate in the DROP only once and after commencement in the DROP he or she shall not be eligible to be a contributing Participant of the Pension Plan during such participation in the DROP.

Upon the effective date of the commencement of participation in the DROP, membership in the Pension Plan shall terminate and neither employee nor employer contributions shall be payable. The employee contributions to the retirement plan, including those picked up by the employer shall cease. For purposes of this section, average monthly earnings and creditable service shall remain as they existed on the effective date of commencement of participation in the DROP. The monthly retirement benefits that would have been payable, had the Participant elected to cease employment and receive a service retirement allowance, shall be credited to a DROP account.

The DROP account shall earn interest at four percent (4%) per annum, credited quarterly.

Upon termination of employment, a participant in the DROP shall receive, at his or her option, a lump sum payment from the account equal to the payments to the account, plus earned interest, or an annuity based upon his or her account, or the participant may elect any other method of payment if approved by the board of

trustees to include direct trustee to trustee roll over to another qualified fund. The monthly benefits that were being paid into the fund during the period of DROP participation shall begin being paid to the retiree.

If a participant dies during the period of participation in the DROP, a lump sum payment equal to his or her account balance shall be paid to the participant's named beneficiary, or, if none, to his or her estate; in addition, any survivor benefits selected by the participant shall be payable, within ninety (90) days of notice of such death.

If employment is not terminated at the end of the period specified for participation in the DROP, payments into the account shall cease and no further interest shall be earned or credited to the individual account for the duration of employment. The amount in the DROP account shall not be payable to the individual until he or she terminates employment.

If a DROP Participant dies after the maximum period of participation in the plan but is still an employee, a lump sum payment equal to his or her account balance shall be paid to the employee's named beneficiary or, if none, to his or her estate, in addition, any survivor benefits selected by the participant shall be payable within ninety (90) days of notice of such death.

***

SECTION 4. Code of Ordinances. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel, and it shall be recodified pursuant to Section 5 of Ordinance No. 81-07.

SECTION 5. Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

SECTION 6. Severance. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application thereof.

SECTION 7. Effective Date. This Ordinance shall take effect on adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this 17th day of October, 2006.

AUTHENTICATION:

Carla Brooks Johnston, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler, City Attorney

9/27/06
Date

October 03, 2006 First Reading

October 05, 2006 Publication Date

October 17, 2006 Second Reading

Vote of Council Members:

Johnston	yea
Denham	nay
Brown	yea
Jennings	yea
Rothman	nay

Date filed with the City Clerk: October 18, 2006

CITY OF SANIBEL
ORDINANCE NO. 04-014

AN ORDINANCE PERTAINING TO THE POLICE PENSION PLAN; AMENDING ORDINANCE NO. 91-45, AS AMENDED, WHICH ESTABLISHED THE SANIBEL POLICE OFFICERS' PENSION PLAN; PROVIDING FOR COMPLIANCE WITH CHAPTER 2004-21, LAWS OF FLORIDA, TO PROVIDE THAT RETIREES MAY AUTHORIZE DIRECT THIRD PARTY PAYMENTS AS A DEDUCTION FROM NET BENEFITS FOR SPECIFIC PURPOSES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the 2004 Florida Legislature enacted Chapter 2004-21, Law of Florida, which authorizes the trustees of the city's police officers' pension plan, when authorized by a retiree or retiree's dependent, to make certain deductions from monthly retirement payments, and

WHEREAS, an amendment to the city code is necessary to permit such deductions, and

WHEREAS, the trustees of the City of Sanibel Police Officers' Pension Plan have requested and approved such an amendment as being in the best interests of the participants and beneficiaries and improves the administration of the plan, and

WHEREAS, an actuarial impact statement is not necessary since this amendment is not a change in plan benefits,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, LEE COUNTY, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Section 16-3 of Article XVI of Part I of Ordinance 91-45, as amended, be and is hereby amended to read as follows:

> The right of any person to any payment under this pension plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process; except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, and to make any payments for child support or alimony. ~~In the event~~ Other than the withholding specifically permitted herein, if any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject such right to such process, such assignment, transfer or disposition shall be null and void.
>
> ...

SECTION 3. Code of Ordinances. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel, and it shall be recodified pursuant to Section 5 of Ordinance No. 81-07.

SECTION 4. Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

SECTION 5. Severance. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application thereof.

SECTION 6. Effective Date. This Ordinance shall take effect April 27, 2004, which was the effective date of Chapter 2004-21, Laws of Florida.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this 5th day of October, 2004.

AUTHENTICATION:

Marty Harrity, Mayor

City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler
City Attorney

9/14/04
Date

Member of Council

Member of Council

09/21/04 First Reading

10/01/04 Publication Date

10/05/04 Second Reading

Vote of Council Members:

Marty Harrity	Aye
Dick Walsh	Excused
Jim Jennings	Aye
Steve Brown	Aye
Judy Workman	Aye

Date filed with the City Clerk, 5th day of October, 2004.

G:\\SAN\PLAN\ORDN\HB251-OrdinanceAmendment-Police

CITY OF SANIBEL, FLORIDA

ORDINANCE NO. 91-45

AN ORDINANCE ADOPTING A NEW PENSION PLAN FOR THE CITY'S POLICE OFFICERS, PROVIDING FOR THE CREATION OF THE SANIBEL POLICE PENSION TRUST FUND AND RE-ESTABLISHING A BOARD OF TRUSTEES TO HOLD AND ADMINISTER SAME, THE METHOD FOR APPOINTING AND ELECTING SAID TRUSTEES AND THEIR POWERS, METHODS OF COLLECTING MONEY FOR SAID TRUST FUND, THE POWERS AND DUTIES OF SAID TRUSTEES, THE METHOD FOR RESOLVING CONTROVERSIES AND DISPUTES AND FOR TERMINATING SAID TRUST; ESTABLISHING THE NEW SANIBEL POLICE PENSION PLAN AND SETTING FORTH THE REQUIREMENTS FOR PARTICIPATION IN SAID PLAN AND EARNING VESTING AND BENEFIT CREDITS IN SAID PLAN, PROVIDING FOR PENSION BENEFITS, EARLY RETIREMENT BENEFITS, DISABILITY BENEFITS, AND RETURN OF CONTRIBUTIONS AND PROVIDING THE ELIGIBILITY AND METHODS FOR DETERMINING THE AMOUNTS OF SAID BENEFITS, PROVIDING FOR THE PAYMENT OR SUSPENSION OF BENEFITS FOR EMPLOYMENT AFTER RETIREMENT OR RECOVERY FROM DISABILITY, PRE-RETIREMENT SURVIVOR BENEFITS, AND LUMP SUM PAYMENTS OF BENEFITS, AND PROVIDING THE ADMINISTRATION AND OPERATION OF THE PLAN, PROVIDING FOR PARTIAL CODIFICATION, PROVIDING FOR REPEALER, PROVIDING FOR CONFLICT SEVERANCE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has established and desires to re-establish a police pension plan to provide for the economic security of the City's police officers and which will serve as an incentive to qualified police officers to remain employed by this City, and

WHEREAS, public hearings have been held pursuant to Chapter 166, Florida Statutes, and

WHEREAS, the City Council has, prior to the final adoption of this Ordinance, reviewed the actuarial impact statement which sets forth the cost to the City of this plan, and

WHEREAS, the City Council of the City of Sanibel determines that it is in the public interest to adopt the following Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

Section 1: There is hereby re-established and restated a Sanibel Municipal Police Officers' Retirement Trust Fund, and Sanibel Police Pension Plan, which, as amended and restated, shall read as follows:

SANIBEL MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND

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SANIBEL MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND

PART I: DECLARATION OF TRUST

ARTICLE I

DEFINITIONS

Section 1.1 Administrator. The term "Administrator" as used herein shall mean the Board of Trustees as defined in Section 1.13 herein.

Section 1.2 Beneficiary. The term "Beneficiary" shall mean a person designated by a Participant or by the terms of the Pension Plan created pursuant to this Declaration of Trust, who is or may become entitled to a benefit, thereunder.

Section 1.3 City. The term "City" as used herein shall mean the City of Sanibel, a Florida municipal corporation.

Section 1.4 Consultant. The term "consultant" as used herein shall mean any person or entity who, for compensation, advises, represents, or provides other assistance to the Trustees concerning the establishment, or operation of the Plan as defined in Section 1.10.

Section 1.5 Contributions. The term "contributions" shall mean the payments required of the City of Sanibel and those payments made by the State of Florida for this Fund, or payments made by or on behalf of Participants or their beneficiaries.

Section 1.6 Custodian. The term "custodian" as used herein shall mean one who is officially entrusted with guarding and keeping records and documents of this Trust Fund.

Section 1.7 Declaration of Trust. The term "Declaration of Trust" as used herein shall mean PART I of this ordinance including all amendments and modifications as may from time to time be made.

Section 1.8 Named Fiduciary. The term "named fiduciary" as used herein shall mean the Board of Trustees as defined in Section 1.134 herein and any investment manager which acknowledges in writing that it is a named fiduciary with respect to the Trust Fund.

Section 1.9 Participant. The term "Participant" shall mean any pensioner or beneficiary receiving or entitled to receive benefits, any person with vested benefits, and any Employee who accrues or retains credited service, in accordance with the provisions of the Plan established pursuant to this Declaration of Trust.

Section 1.10 Pension Plan. The term "Pension Plan" or "Plan" shall mean the plan, program, method, rules, and procedures for the payment of benefits from the Trust Fund which is part of this ordinance.

Section 1.11 Police Officer. The term "police officer" shall mean any person employed by the City who satisfies the definition of police officer in F.S. section 185.02(1).

Section 1.12 Trust Fund. "Trust", "Trust Fund" and "Fund" as used herein shall mean the entire trust estate of SANIBEL MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND as it may, from time to time be constituted, including, but not limited to, all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds, and other sums payable to the Trustees on account of such contracts), all investments made and held by the Trustees, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the Trustees by reason of their acceptance of this Declaration of Trust.

Section 1.13 Trustees. The term "Trustees" or "Board of Trustees" as used herein shall mean the Board of Trustees of the Sanibel Municipal Police Officers' Retirement Trust Fund as designated in this Declaration of Trust, together with their successors, designated and appointed in accordance with the terms of this Declaration of Trust. The Board of Trustees may also be referred to as the Sanibel Police Pension Board.

ARTICLE II

CREATION AND PURPOSE OF FUND

Section 2.1 Creation. The Trust Fund is created, established and maintained as an irrevocable trust pursuant to Section 112.66(7), Florida Statutes, and the Trustees agree to receive, hold, manage, control and administer the Plan, for the purpose of providing such benefits as now are, or hereafter may be authorized or permitted by law for Participants and their beneficiaries and in accordance with the provisions set forth herein and in the Pension Plan.

ARTICLE III

BOARD OF TRUSTEES

Section 3.1 Number, Appointment, Term.

(a) The Plan shall be administered by five (5) Trustees, who shall collectively be referred to as the Board of Trustees of the Sanibel Municipal Police Officers' Retirement Trust Fund; or the Sanibel Police Pension Board.

(1) Two trustees shall be elected by the police officers employed by the City who participate in the Plan;

(2) Two trustees shall be appointed by the City Council; and

(3) One trustee shall be elected by a majority of the previous four trustees.

(4) The trustees appointed by the City Council must, at all times while serving as a trustee, be a resident of the City of Sanibel.

(b) Appointed trustees shall serve for a term of two years, unless sooner replaced by the City Council at whose pleasure they serve.

(c) Elected trustees shall serve two year terms, commencing on October 1st of the year in which they are elected. The City Clerk shall conduct the elections by secret ballot during September prior to the expiration of a trustee's term.

(d) A vacancy shall occur whenever a trustee resigns, is no longer eligible or qualified to serve as a trustee, dies or becomes incapacitated. The vacancy shall be filled in the same manner as was utilized to select the original trustee. Successors to elected trustees shall serve out the unexpired term of the prior trustee.

Section 3.2 Resignation. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the City Clerk or such shorter notice as the remaining Trustees may accept as sufficient. In the notice there shall be stated a date on which such resignation shall take effect; and such resignation shall take effect on the date specified in the notice unless a Successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee.

Section 3.3 Successor Trustees, Assumption of Office. Any Successor Trustee shall immediately upon appointment or election and acceptance of the Trusteeship, become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee, without the necessity of any formal conveyance or other instrument of title.

Section 3.4 Acceptance of the Trust by Trustees. A Trustee shall execute a written acceptance in a form satisfactory to the Trustees. By executing such written acceptance, a Trustee shall be deemed to have accepted the Trust created and established by this Declaration and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance shall be filed with the secretary.

Section 3.5 Limitation of Liability of Trustees. No Successor Trustee shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date of becoming a Trustee. No Trustee shall be liable for the acts or omissions of another Trustee to whom certain responsibilities, obligations or duties have been delegated pursuant to this Trust Declaration, nor shall any Trustee be liable for the acts or omissions of any investment manager, attorney, agent, or assistant employed by them pursuant to this Agreement, if such person's performance was periodically reviewed by the Trustees who found such performance to be satisfactory.

Section 3.6 Office of the Fund. The principal offices of the Trust Fund shall be located and maintained in Lee County, at Sanibel City Hall, or at such other locations in the City of Sanibel as the Trustees with City Council approval, may determine.

Section 3.7 Officers. In the first meeting after October 1st of each year, the Trustees shall elect from among themselves a Chairman and a Secretary for a term of one (1) year, or until his or their successors have been elected. The Secretary or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees, and legal counsel. The Chairman shall preside at all meetings of the Trustees and shall be entitled to one vote on all matters.

Section 3.8 Power to Act in Case of Vacancy. In case of death, resignation or refusal or inability to act of any one or more of the Trustees, the remaining Trustees shall have all the powers, rights, estates and interests of this Trust, and shall be charged with its duties, provided that, in such cases there shall be no change in the quorum or voting requirements established in Section 3.11 hereof.

Section 3.9 Meetings; Notices. The Trustees shall meet at least once each quarter and at such other times as they deem it necessary to transact their business. The Chairman or the Secretary of the Board of Trustees may, and upon the written request of any two (2) Trustees shall, call a meeting of the Trustees at any time by giving at least five (5) days' notice in writing, of the time and place thereof to the remaining Trustees. Notice of such meetings shall be posted or advertised to the public.

Section 3.10 Attendance at Meetings; Minutes. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee and legal counsel, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote shall be recorded. Such minutes shall bear the signature of the Secretary and shall be approved at the succeeding meeting.

Section 3.11 Quorum; Voting; Action Without Meeting.

(a) A quorum of the Board of Trustees shall be at least three trustees.

(b) Any action taken by the trustees, except as herein otherwise provided, shall be by affirmative vote of at least three votes. The Trustees must cast their votes in person.

Section 3.12 Removal of Trustees.

(a) The Board of Trustees shall initiate action to cause the removal of any Trustee who is not qualified to serve as a Trustee under this Agreement or state law. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.3 of this Article.

(b) Members of the Board may be removed for cause, including misfeasance, malfeasance and nonfeasance. Nonfeasance shall include chronic unexcused absences, or unexcused absences from three (3) consecutive Board meetings. An absence may be excused by the Chairman upon notice by the member to the Chairman prior to the meeting, and for a reasonable cause. Removal of a member shall be by majority vote of the other members, after notice and an opportunity to respond and be heard has been given to the member to be removed. Immediately upon removing a member from the Board, the Board shall notify in writing the appointing authority of the vacancy. Vacancies occurring on the Board shall be filled, for the remainder of the term in the manner provided in Section 3.3, above.

ARTICLE IV

CONTRIBUTIONS AND COLLECTIONS

Section 4.1 Employer Contributions.

(a) The City and Participants shall make prompt contributions or payments to the Trust Fund in such amounts and under the terms as are provided for in this ordinance and as required by law. Such contributions or payments are absolute obligations to the trust fund, and such obligations shall not be subject to (by way of illustration and not limitation) set-off or counterclaim which the City or any Participant may have for erroneous contributions to any other Trust Funds, or for any other liability of of any Employee, the City, the Trustees, or any other person.

(b) Contributions to the Fund shall be paid to the Trust Fund or to such depository as the Trustees shall designate, only by check, bank draft, or money order, or its equivalent.

Section 4.2 Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees in accordance with Section 5.8 of Article V are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the City and Participants. The Trustees are hereby vested with all right, title and interest in and to such monies and all interest which may be accrued thereon, and are authorized to receive and be paid the same.

Section 4.3 Collection and Enforcement of Payments. The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect and receive City and Participant payments and all other money and property to which the Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money and property.

ARTICLE V

POWERS AND DUTIES OF TRUSTEES

Section 5.1 Conduct of Trust Business. The Trustees shall have general, sole and exclusive supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto. The Trustees may in the course of conducting the business of the Trust, execute all instruments in the name of the Sanibel Municipal Police Officers' Retirement Trust Fund, or the Sanibel Police Pension Fund.

Section 5.2 Use of Fund for Expenses. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such materials, supplies and equipment and the performance of such other acts, as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

Section 5.3 Use of Fund to Provide Benefits. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of retirement and related benefits to eligible Participants and beneficiaries in accordance with the terms, provisions and conditions of the Pension Plan.

Section 5.4 Investments.

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, in a manner consistent with the investment policies or guidelines adopted by the Board of Trustees and approved by resolution of the Sanibel City Council. The Trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in Section 5.9 (f). The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right. This is intended to vary the investment procedures of Section 185.06(b), Florida Statutes, as permitted by that subsection.

(b) Delegation and Allocation of Investment Functions.

(1) The Trustees shall appoint one or more investment managers who shall be responsible for the management, acquisition, disposition, investing and reinvesting the assets of the Trust Fund, and who are hereby named as fiduciaries with respect to the Fund. Any such appointment may be terminated by the Trustees upon written notice. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund. The Trustees shall require that the investment manager acknowledge in writing that it is a named fiduciary with respect to the Fund.

(2) In connection with the allocation or delegation of investment functions under paragraph (1) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines, which must be approved by a resolution of the City Council, and which may vary from the investment procedures set forth in Section 185.06, Florida Statutes.

Section 5.5 Deposits and Disbursements. All funds and securities of the Trust shall be deposited by the Trustees in such depository or depositories as defined in Section 280.02(12), Florida Statutes, as the Trustees shall, from time to time, select, and any such deposit or deposits, or disbursement therefrom, shall be made in the name of the Trust in the manner designated and authorized by the Trustees or by the Investment Manager appointed in accordance with Section 5.4(b)(1) of this Article.

Section 5.6 Allocation and Delegation of Non-Investment Responsibilities. The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees. In addition, the Trustees may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion, and consistent with state law provided, however, that such action shall have been approved by the Trustees. Such delegations or allocations of responsibilities shall not relieve the Board of Trustees of its responsibility for the sole and exclusive administration of the Trust Fund.

Section 5.7 Committee of the Board of Trustees. Each committee or subcommittee shall consist of at least two Trustees. A quorum of a committee shall be at least two trustees.

Section 5.8 By-Laws, Rules and Regulations.

(a) The Trustees are hereby empowered and authorized to adopt by-laws and to promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All by-laws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No by-law, regulation, rule, action or determination made or adopted by the Trustees, shall in any, manner conflict or be inconsistent with any provision of this Declaration, or with any applicable Federal, State or local law.

Section 5.9 Additional Authority. The Trustees are hereby empowered in addition to such other powers as are set forth herein or conferred by law,

(a) To enter into any and all contracts and agreements for carrying out the terms of this Declaration and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) To keep property and securities registered in the name of the Trustees or of the Fund;

(c) To establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) To pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder, and

(f) To sell, exchange, lease, convey, or dispose of any property, whether real or personal, forming a part of the Trust Fund upon such terms as they may deem proper and to execute and deliver at any time, any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

Section 5.10 Bonds. The Trustees may obtain from an authorized surety company such bonds as may be required by law or desired by the Trustees covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 5.11 Insurance. The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as Employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund, unless such insurance is being provided by the City,

(a) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, Employees or agents, respectively, and

(b) with respect to injuries received or property damage suffered by them.

The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

Section 5.12 Information to Participants and Beneficiaries. The Trustees shall provide Participants and beneficiaries such information as may be required by law.

Section 5.13 Accountants and Actuaries. The Trustees shall engage one or more independent qualified public accountants and one or more enrolled actuaries to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary. The costs incurred under this Section shall be paid out of the Trust Fund.

Section 5.14 Trustee Reimbursement. The Trustees shall not be entitled to compensation, but be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund and to mileage and meal allowance in amounts established by the City, including, without limitation, for attendance at meetings and other functions of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund.

Section 5.15 Reports. The Board of Trustees shall make reports to and file such information with appropriate public authorities as may be required by applicable law.

Section 5.16 Records of Trustees' Transactions. The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the Trustees), which records and books may be audited at least annually by a certified public accountant. A copy of each audit report shall be available for inspection by interested persons at Sanibel City Hall at reasonable times and after reasonable notice.

Section 5.17 Construction and Determination by Trustees. Subject to the stated purposes of the Fund and the provisions of this Declaration, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe and interpret the provisions of this Ordinance, this Declaration, the pension plan, the terms used herein and the by-laws and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and the beneficiaries hereof. No questions or disputes arising under this Declaration shall be subject to the grievance or arbitration procedure established in any collective bargaining agreement between the City and any labor organization, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

Section 5.18 Liability. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine, to contain a true statement of facts, and to be signed by the proper person.

Section 5.19 Reliance on Written Instruments.

(a) By Trustees. Any Trustee, to the extent permitted by her or his fiduciary responsibility and by applicable law, may rely upon any instrument in writing purporting to have been approved by a majority vote of the Trustees and signed in accordance with Section 5.1 as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument. In any controversy, claim, demand, suit at law or other proceeding between any Participant or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, or with the City, and any facts certified to the Trustees, by the City, any facts which are of public record and any other evidence pertinent to the issue involved.

(b) By Others.

(1) No party dealing with the Trustees shall be obligated

(A) To see the application to the stated Trust purposes of any funds or property of the Trust Fund; or

(B) To see that the terms of this Declaration have been complied with; or

(C) To inquire into the necessity or expediency of any act of the Trustees.

(2) Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon

(A) That at the time of execution of said instrument the Trust was in full force and effect,

(B) That the instrument was executed in accordance with the terms and conditions of this Declaration, and

(C) That the signing Trustees were duly authorized and empowered to execute the instrument.

(c) Reliance on Counsel's Opinion. The Trustees may consult with legal counsel concerning any question which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Declaration or the Trust hereby established. The opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel. The Trustees shall not be liable therefore to the extent permitted by applicable law.

(d) The provisions of this section shall not relieve the Trustees of any responsibilities or obligations imposed by Chapters 112, 185 as applicable to local law plans, or 286 of the Florida Statutes or other applicable laws.

Section 5.20 Discharge of Liability. The receipt by the Trustees of any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same to the extent of such payment or transfer.

Section 5.21 Establishment of Plan.

(a) The Sanibel City Council shall, upon the recommendation of the Board of Trustees, adopt a written Pension Plan wherein the Trustees, as named fiduciaries, shall have the authority to control and manage the operation and administration of the Plan. Such Plan shall provide for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are required by law or feasible by way of illustration and not limitation:

(1) conditions of eligibility for Participants and beneficiaries

(2) standards for vesting of benefits

(3) a schedule of the type and amount of benefits to be paid

(4) a procedure for the payment of benefits in the form of a qualified joint and survivor annuity

(5) procedures for claiming benefits and for the distribution of benefits

(6) a procedure for the separate accounting for the portion of each Employee's accrued benefit, if any, derived from Employee contributions

(7) the establishment and maintenance of a funding standard policy

(8) a procedure for establishing and carrying out a funding policy

(9) any procedures for the allocation of authority for the operation and administration of the Plan

(10) the basis on which payments are made from the Plan.

Such Pension Plan shall at all times comply with all applicable laws.

(b) The Trustees shall, recommend amendments to the Plan which shall then be submitted to the Sanibel City Council for enactment as an ordinance. This Plan and any amendments thereto, shall qualify under applicable provisions of the Internal Revenue Code.

Section 5.22 Amendment of Plan. The Pension Plan may be amended by the Trustees recommending amendments to the City Council provided that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, all other applicable law, and the purposes as set forth in this Declaration and are enacted by the Sanibel City Council. Additionally, and not by way of limitation, the Trustees may recommend that the City Council amend the Pension Plan, in future, or retroactively where they deem it necessary, to maintain the continuation of the Trust Fund's tax exempt status or to preserve compliance with the then applicable Internal Revenue Code, and all other applicable law. A copy of each amendment of the Pension Plan shall be made available to the Participants and their beneficiaries requesting such.

ARTICLE VI

CONTROVERSIES AND DISPUTES

Section 6.1 Submission to Trustees. All questions or controversies of whatever character, arising in any manner or between any persons or entities in connection with the Trust Fund or the operation thereof, which are related to any claim for any benefit by any Participant or any other person, shall, pursuant to Rules and Regulations adopted by the Trustees, be submitted to the Trustees, and the decision of the Trustees, shall be final and binding upon all persons dealing with the Trust Fund or Plan, or claiming benefits thereunder.

Section 6.2 Settling Disputes. The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement entered into by the Trustees, shall be conclusive and binding on all parties involved in this Trust, provided that all such settlements are in accordance with the Pension Plan and applicable state law.

ARTICLE VII

BENEFICIAL RIGHTS

Section 7.1 No Right, Title or Interest of the City of Sanibel. The City of Sanibel, any Participant or beneficiary shall not have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Pension Plan and other than a pension or other benefit for which a Participant or beneficiary is entitled under the terms and conditions set forth in the Pension Plan. There shall be no prorata or other distribution of any of the assets of the Trust Fund as a result of any group of Employees or Participants and their beneficiaries, ceasing their participation in this Trust Fund for any purpose or reason, except as required by law.

Section 7.2 Limitation Upon Beneficial Rights of Employees. All benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process.

ARTICLE VIII

TERMINATION OF TRUST

Section 8.1 Procedure in Event of Termination.

In the event of termination, the Trustees shall:

(a) Make provision out of the Trust Fund for the payment of any and all obligations of the Trust, including expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;

(b) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;

(c) File all notices or reports in connection therewith as may be required by applicable law;

(d) Distribute the remaining assets in accordance with section 185.37 of the Florida Statutes and other applicable law.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Law Applicable. This Trust is created and accepted in the State of Florida and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Florida, except as to matters governed by Federal Law.

Section 9.2 Savings Clause. Should any provision of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Fund.

Section 9.3 Judicial Settlements. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or for instructions as to any action thereunder, and, further, as to any questions relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust. Any such determination, decision, or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

Section 9.4 Withholding Payment. In the event any questions or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.

Section 9.5 Qualification of Trust Personnel. No person shall serve as a Trustee, administrative manager, custodian, investment manager, or consultant to the Trust Fund or Plan or serve in any other capacity thereof whether as an agent, officer, or employee, unless such person is eligible for service in accordance with applicable law.

Section 9.6 Vesting of Rights. No Participant, Beneficiary or Employee or other person shall have vested interest or right in the Trust Fund except as provided by the Pension Plan and Florida law.

Section 9.7 Gender. Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and wherever any words are used in the plural, they shall also be construed to include the singular.

Section 9.8 Amendment to Declaration. The provisions of this Declaration may be amended at any time by an amendment recommended by a majority vote of the Trustees and enacted as an ordinance by the Sanibel City Council provided, however, in no event shall the Trust Fund be used for any purpose other than the purposes set forth in this Declaration, and for the purposes of paying the necessary expenses incurred in the administration of this Trust. Nothing herein shall be construed as limiting the power of the Sanibel City Council to amend, modify, repeal, or otherwise act in relation to this Declaration on its own.

Part II - PENSION PLAN

ARTICLE I DEFINITIONS

Section 1-1 Actuarial Equivalence, or Actuarially Equivalent. Actuarial equivalence or actuarially equivalent shall mean that any benefit payable under the terms of this Plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven percent (7%) interest and the UP 1984 Mortality Table. In the case of a lump sum distribution, the actuarial present value shall be determined on the basis of the same mortality rates as just described.

Section 1-2 Average Final Compensation. The term "average final compensation" means one-twelfth of the average annual compensation of the five highest years of service prior to the employee's normal retirement date. Annual compensation shall mean total earnings and compensation received by an employee, including overtime, details, assignment and shift pay, uniform allowance, and payment for accrued unused leave.

Section 1-3 Board of Trustees. The term "Board of Trustees" shall mean the Trustees designated in this Ordinance, and any successor Trustees selected as provided therein, acting in a group as the Administrator of this Pension Plan.

Section 1-4 City. The term "City" means the City of Sanibel, Florida, a municipal corporation.

Section 1-5 Covered Employment. The term "covered employment" shall mean service for which an Employee is obligated to pay contributions to this Pension Plan.

Section 1-6 Married.

(a) The term "married" means a Participant who is married on the date of receipt of pension benefits.

(b) Special Rules - A Participant shall also be considered "married" if the Participant dies before receipt of such benefits, but the Participant was married on the date of the Participant's death.

Section 1-7 Maternity or Paternity Leave.

(a) The term "maternity or paternity leave" means a Participant's absence from work by reason of:

(1) the pregnancy of the Participant; or

(2) the birth of a child of the Participant; or

(3) the placement of a child with the Participant in connection with the adoption of such child by by the Participant; or

(4) the caring for such child by the Participant for a period beginning immediately following such birth or placement.

(b) Crediting Hours of Leave - Solely for purposes of determining whether a break in service has occurred as provided in Section 4-1 (Breaks in Service), and not for purposes of vesting or benefit accrual, a Participant who is absent from work in covered employment due to maternity or paternity leave shall be credited with the hours of service which otherwise would normally have been credited to the Participant but for such absence, not to exceed three months per Plan Year.

(c) Crediting Period - The hours of service absent from work due to maternity or paternity leave shall be credited, solely for purposes of excusing a break in service:

(1) during the Plan Year in which the absence began if the crediting of those hours is necessary to prevent a break in service in that Plan Year, or, in all other cases;

(2) in the next following Plan Year.

Section 1-8 Pension. The term "pension" or "pension benefit" shall mean an early retirement benefit, a normal retirement benefit or a disability retirement benefit.

Section 1-9 Pension Plan. The term "Pension Plan" shall mean the City of Sanibel Police Pension Plan, which shall be a local law plan within the meaning of F.S. section 185.35.

Section 1-10 Plan Year. The term "Plan Year" shall mean the 12 month period from October 1st to the following September 30th.

Section 1-11 Police Officer. The term "police officer" shall mean any person employed by the City who satisfies the definition of police officer in F.S. 185.02(1).

Section 1-12 Retirement. The term "retirement" or "retired" shall mean the complete withdrawal of a Participant from any further employment as an employee of the Police Department of the City.

Section 1-13 Service.

(a) The term "service" means years and completed months of continuous employment as a police officer of the City, commencing on the date of hire, for which a person is paid, or entitled to payment, by the City:

(1) for the performance of duties; or

(2) for reasons other than the performance of duties, including vacations, holidays, temporary disability, illness, jury duty, military duty, administrative leave, paid leave or approved leave of absence; or

(3) as the result of back-pay being awarded, or agreed to, by the City (irrespective of mitigation of damages).

(4) The term "service" shall also mean time spent in the military service of the United States or United States Merchant Marine by the police officer on leave of absence; provided that the police officer must have re-entered the City's police service within one year of date of release from service.

(b) Non-Covered Employment - A person who is paid, or entitled to payment, by the City shall also be credited with service for purposes of participation, vesting, and breaks in service (but not for benefit purposes) based upon service in non-covered employment for the City, provided that the person worked for the City in covered employment immediately before or immediately after the non-covered employment, and further provided that no quit, discharge or retirement occurred between the covered employment and the non-covered employment.

(c) Determination of Amount of Service - The amount of service shall be ascertained from the most accurate records available, including records of hours, work shifts, days or weeks for which payment is made or owing, as reported to the Board of Trustees.

(d) Crediting Period - Service shall be credited for each year for which duties were performed, or if no duties were performed, then during the year for which the payment relates.

Section 1-14 Vested. The term "vested" shall mean a non-forfeitable right to a pension benefit under this Pension Plan.

ARTICLE 2 PARTICIPATION IN THE PENSION PLAN

Section 2-1 Participation.

(a) A person shall become a Participant on the first day of service. Each full-time police officer employee of the City shall be a Participant in the Plan. Full-time employees shall become a Participant on the first day of full-time service.

(b) A person shall remain a Participant until the earlier of:

(1) terminating service prior to earning a vested benefit and prior to reaching normal retirement age;

(2) all benefits have been paid to the Participant; or

(3) the person dies.

ARTICLE 3 VESTING CREDITS

Section 3-1 Vesting Schedules. A Participant shall have a 100% vested right to a normal retirement benefit upon:

(1) earning 5 Vesting Credits; or

(2) the termination or partial termination of this Pension Plan (to the extent funded as of such date).

Section 3-2 Vesting Credits. A full-time Participant shall earn one Vesting Credit for each year of service. A Participant may lose Vesting Credits as provided in Article 4 (Loss of Credits). The total number of Vesting Credits earned and retained shall determine whether a Participant has a vested right to a pension benefit.

Section 3-3 Limitation on Changes in Vesting Schedules. No amendment shall reduce a Participant's vested right to a normal retirement benefit at the time such amendment is adopted, or, if later, at the time such amendment is effective.

Section 3-4 Vesting of Benefits. No Participant, beneficiary or other person shall have any vested right to a pension benefit unless the Participant has met the requirements for vesting as provided in this Article.

ARTICLE 4 LOSS OF CREDITS

Section 4-1 Breaks in Service.

(a) A break in service shall occur when a Participant is no longer employed by the City as a full-time employee.

(b) A break in service shall not occur if the Participant is not employed due to the Participant:

(1) entering into the Armed Forces of the United States or the United States Merchant Marine on leave of absence provided the person returns to work in the police service of the City within one year of discharge, or within one year of discharge from a hospital, if the person was hospitalized at the time of separation from the Armed Forces; or

(2) becoming employed by the City in non-covered employment which non-covered employment shall not be used to accrue benefits under this plan; or

(3) being absent from work due to maternity or paternity leave as provided in Section 1-9 (Maternity or Paternity Leave), or due to unpaid leave of absence approved by the City; or

(4) becoming temporarily totally disabled or receiving a disability benefit from the Plan; or

(5) terminating employment with the City and becoming re-employed by the City within five years of termination provided that the employee did not receive a refund of the employee's accumulated contributions.

Section 4-2 Refund of Contributions. A Participant who is not vested and suffers a break in service shall be entitled to a refund of the Participants' Accumulated Contributions.

Section 4-3 Re-Entry Into The Pension Plan.

(a) A person who has been paid a refund of Accumulated Contributions and subsequently earns any Vesting Credits under the Pension Plan may repay to the Pension Plan the Accumulated Contributions previously received, plus interest on that amount at the actuarially assumed interest rate, compounded annually, or such other amount as prescribed in Section 411(c)(2)(d) of the Internal Revenue Code.

(b) Upon repayment of the refunded Accumulated Contribution, plus interest, the Participant shall be credited with all Vesting Credits previously lost and there shall be no reduction in the value of any subsequent benefit by the value of the Accumulated Contributions previously refunded.

ARTICLE 5 PENSION BENEFITS

Section 5-1 Right to Pension Benefits. A pension benefit shall be payable if the Participant:

(a) has a vested right to a pension benefit; and

(b) has reached the applicable retirement age; and

(c) has retired; and

(d) has filed a claim for pension benefits.

Section 5-2 Normal Retirement Age. The normal retirement age shall be the first day of the month on which or after the Participant attains age 60 and 5 vesting credits.

Section 5-3 Normal Retirement Benefit. The normal retirement benefit shall be the benefit level provided in Article 9 (Benefit Level).

Section 5-4 Early Retirement Age. The early retirement age shall be the first day of any month on which or after a Participant has earned 5 Vesting Credits and has attained age 50.

Section 5-5 Early Retirement Benefit. The early retirement benefit shall be the benefit level provided in Article 9 (Benefit Level) reduced by 2.5 percent for each year by which the Participant is younger than the normal retirement age for said Participant on the effective date of his early retirement.

ARTICLE 6 FORMS OF BENEFIT PAYMENTS

Section 6-1 Forms of Benefit Payments. A Participant who has a right to receive a pension benefit as provided in Section 5-1 (Right to Pension Benefits) shall automatically be paid the standard form of benefit payment unless a timely election is made to receive an optional form of benefit payment.

Section 6-2 Standard Benefits. The standard pension benefit shall be a monthly benefit payable until the Participant's death except that if the Participant should die before he has received retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary or beneficiaries as designated by the Participant for the balance of such ten year period.

Section 6-3 Optional Forms of Benefits.

(a) Joint and Survivor Annuity - This form of benefit shall provide monthly payments of a smaller amount for the life of the Participant, with monthly payments continuing thereafter for the life of the Participant's designated beneficiary. The monthly benefit payable to the beneficiary shall be 50%, 66-2/3% or 100% of the monthly benefit payable during the joint lives of the Participant and the beneficiary, as elected by the Participant. If payment of a pension is to be made in the form of a Joint and Survivor Pension, the pension amount shall be adjusted so as to be actuarially equivalent to the standard benefit. The standard pension benefit shall be 10 years certain and life.

(b) Single Life Annuity - Any Participant may file an election to receive monthly payments for life.

(c) Any other actuarially equivalent benefit approved by the Board or provided by section 185.161, Florida Statutes.

Section 6-4 Election of Optional Benefits.

(a) Manner of Electing Optional Benefits - Optional forms of benefit payments shall only be payable if a timely election is made. Such election must be in writing, signed by the Participant, on a form provided by the Board of Trustees.

(b) Time Limits - Any optional form of benefit payment must be elected prior to commencement of benefits from this Pension Plan.

Section 6-5 Revocation or Change of Election.

(a) Revocation by Participant - An election of a standard or optional form of benefit payment may be revoked at any time before cashing or depositing the first benefit check from this Pension Plan. Such a revocation must be in writing, signed by the Participant.

(b) If an election is revoked, then the standard form of benefit payment shall be paid unless another election of an optional benefit payment is timely made as provided in Section 6-4 (Election of Optional Benefits).

(c) After benefits have commenced, a retired Participant may change her or his designation of joint annuitant or beneficiary twice in the manner prescribed in section 185.341, Florida Statutes.

Section 6-6 Notice of Forms of Pension Benefits.

(a) Written notice of the availability of all forms of pension benefits shall be provided to all vested Participants on an annual basis.

(b) The notice shall contain a written explanation of:

(1) the terms and conditions of the standard form of benefit; and

(2) the right to elect, and to revoke an election of, any optional form of benefit payment.

ARTICLE 7 DISABILITY BENEFITS

Section 7-1 Right to Disability Benefits.

(a) Service-Connected - A service-connected disability benefit shall be payable if a Participant:

(1) has suffered a service-connected injury, illness, disease, or disability which wholly prevents the Participant, either mentally or physically, from rendering useful and efficient service as a police officer and is likely to remain so disabled continuously and permanently, and

(2) has filed a claim for disability benefits.

(b) Presumption - Any permanent disability, as described in section (a)(1), above, which is the result of or caused by tuberculosis, hypertension, heart disease or hardening of the arteries shall be presumed to have been incurred in the line of duty so as to be service-connected unless a physical examination of the Participant conducted upon initial hiring by the City revealed that such condition existed at that time.

(c) Non-Service-Connected - A non-service connected disability benefit shall be payable if a Participant has 10 or more vesting credits and is wholly prevented from rendering useful and efficient service as a police officer, has not reached normal retirement age, and has filed a claim for disability benefits.

Section 7-2 Amount of Disability Benefits.

(a) Service-Connected - The monthly service-connected disability benefit shall be the Participant's accrued retirement benefit or 42% of the Participant's average monthly compensation at the time of disability, whichever is greater, commencing on the date of disability and continuing for life, or, should the Participant die before receiving benefits for at least ten years, the balance shall be payable to the Participant's beneficiary.

(b) Non-Service Connected - The monthly non-service connected disability benefit for Participants with at least ten vesting credits shall be the Participant's accrued retirement benefit or 25% of the Participant's average monthly compensation at the time of disability, whichever is greater, commencing on the date of disability and continuing for life, should the Participant die before receiving benefits for at least ten years, the balance shall be payable to the Participant's beneficiary.

(c) Worker's Compensation Offset - The disability benefits provided herein shall be offset by disability income benefits actually received by the Participant from worker's compensation only to the extent by which the total of the worker's compensation benefit plus the disability benefit payable hereunder exceeds the employee's average monthly compensation at the time of the disability.

Section 7-3 Determination of Disability.

(a) Initial Determination - The Board may consider reports of physicians, and Social Security, Worker's Compensation and Veterans Administration disability determinations in determining whether a Participant is disabled; however, such reports and determinations

shall not be binding upon the Board. The Board may also require the Participant to be examined, at the Plan's expense, by physicians and other medical, vocational and rehabilitation professionals selected by the Board whose reports may be considered by, but shall not be binding upon, the Board in determining disability. The Board shall determine eligibility for disability benefits within 60 days after all required documentation and reports have been submitted to the Board.

(b) Continuing Review - The Board may review the status of each disability benefit recipient periodically and may, in its sole discretion, require recipients, as a condition of continued payment of disability benefits, to submit physician's reports or submit to examinations, at the Plan's expense, by physicians or other medical, vocational or rehabilitation professionals.

Section 7-4 Recovery from Disability.

(a) Recovery - If a disability benefit recipient recovers and is no longer eligible for a disability benefit, the Participant's disability benefit shall be discontinued.

(b) Credit During Disability - A recipient of a disability benefit who has recovered and returned to work shall not receive vesting credit for the time during which the Participant received a disability benefit but shall not suffer a break in service for the period of his disability.

(c) This section shall not obligate the City to re-employ a Participant who recovers from a disability. Participants' employment and re-employment rights are governed by the City's Personnel Rules and Regulations, as they may, from time to time, be amended.

ARTICLE 8 PAYMENT OF BENEFITS

Section 8-1 Payment of Benefits.

(a) Frequency of Payments - Pension benefits shall be paid monthly.

(b) First Payment - The first payment shall begin on the first day of the month on which or after the Participant meets the requirements of Section 5-1 (Right to Pension Benefits), provided that in no event may a member's retirement benefit be delayed beyond the latter of the April 1st following the calendar year in which he attains age seventy and one-half (70 1/2) or April 1st of the year following the calendar year in which he retires. Distributions under this Plan will be made in accordance with regulations under Internal Revenue Code Section 401(a)(9). Provisions of Internal Revenue Code Section 401(a)(9) shall override any distribution options in the Plan that may be inconsistent with such section.

(c) Last Payment - The last payment shall be the month coincident with the death of the Participant (or survivor, if applicable) or later, depending on the form of benefit selected.

ARTICLE 9 BENEFIT LEVEL

Section 9-1 Calculation of Benefit Amount.

(a) A Participant's monthly benefit level is the product of Service multiplied by three percent (3%) of average final compensation but cannot exceed the maximum benefit of 90% of average final compensation.

(b) The actual benefit amount is determined by making the adjustment, if any, for early retirement and for the form of benefit which the Participant selects.

Section 9-2 Maximum Benefit Amount. In no event may a member's annual benefit exceed the lesser of:

(a) 90% of the participant's Average Final Compensation, or

(b) $90,000 (adjusted for cost of living in accordance with Internal Revenue Code (IRC) Section 415(d), but only for the year in which such adjustment is effective), or

(c) One hundred percent (100%) of the average annual compensation for the member's three highest paid consecutive years; however, benefits of up to $10,000 a year can be paid without regard to the one hundred percent (100%) limitation if the total retirement benefits payable to a member under all defined benefit plans (as defined in IRC Section 414(j)) maintained by the employer for the present and any prior year do not exceed $10,000 and the employer has not at any time maintained a defined contribution plan (as defined in IRC Section 414(j)) in which the employee was a member.

If the member has less than ten years of service with the employer (as defined in IRC Section 415(b)(5) and as modified by IRC Section 415(b)(6)(D)), the applicable limitation in paragraph (a) or paragraph (b) of this subsection shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years, or part thereof, of service with the employer; the denominator shall be ten years.

For purposes of this subsection, the "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in paragraphs (a) and (b) above will be reduced actuarially, using an interest rate assumption equal to the greater of 5% or the interest rate used in the most recent annual actuarial valuation, to reflect such ancillary benefits.

If distribution of retirement benefits begins before age 62, the dollar limitation as described in paragraph (a) shall be reduced actuarially using an interest rate assumption equal to the greater of 5% or the interest rate used in the most recent annual actuarial valuation; however, retirement benefits shall not be reduced below $75,000 if payment of benefits at or after age 55 and not below the actuarial equivalent of $75,000 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of paragraph (a) shall be increased actuarially using an interest assumption equal to the lesser of 5% of the interest rate used in the most recent annual actuarial valuation.

For purposes of this subsection, the "average annual compensation for a member's three highest paid consecutive years" shall mean the member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active member of the Plan.

ARTICLE 10 EMPLOYMENT AFTER RETIREMENT

Section 10-1 Suspension of Benefits.

The payment of pension benefits shall be suspended for each month a Participant works as a full-time police officer of the Police Department of the City of Sanibel or if a disability benefit recipient resumes employment as a police officer.

Section 10-2 Notice of Re-Employment and Re-Retirement.

(a) Retired Participants must notify the Board of Trustees upon returning to any type of work for the City of Sanibel Police Department within 30 days after starting work. Notice of re-employment shall be given on a form provided by the Board of Trustees.

(b) A Participant must notify the Board of Trustees upon re-retirement if the Participant returns to work for the City of Sanibel Police Department after having a claim filed for pension benefits. Notice of re-retirement shall be given on a form provided by the Board of Trustees. Pension benefits shall be suspended until notice of re-retirement is given.

Section 10-3 Advance Determination of Prohibited Work. A Participant may request, in writing and on a form provided by the Board of Trustees, an advance determination whether certain work for the City Police Department is prohibited under this Pension Plan. A written determination shall be given to the Participant within 60 days of the request, unless special circumstances (such as a hearing) require additional time, not to exceed 120 days from receipt of the request.

Section 10-4 Resumption of Benefits.

(a) Benefit payments for pension recipients shall resume effective by the first day of the month after receipt of the notice of re-retirement, or verification of retirement, from the Participant.

(b) The Board of Trustees may deduct 25% of each month's benefit payment for benefits previously made which should have been suspended. The first three months are subject to offset without limitation. The Board of Trustees shall notify the Participant of the amount subject to offset, the manner of offset, and the months of work involved.

ARTICLE 11 PRE-RETIREMENT SURVIVOR BENEFITS

Section 11-1 Pre-retirement Death Benefits for Vested Participants.

(a) Any Participant whether or not still in active employment, who has a nonforfeitable (vested) right to any portion of the Accrued Benefit, and who dies prior to the commencement of benefits, shall have a survivor benefit payable on his behalf. The survivor benefit shall be payable to the Participant's designated beneficiary and shall be the benefits otherwise payable to the police officer at early or normal retirement age, as elected by the beneficiary.

(b) If the participant dies before vesting, the beneficiary of the deceased police officer shall be entitled to a refund of 100%, without interest, of the contributions made to the Fund by the deceased police officer.

ARTICLE 12 LUMP SUM PAYMENTS

Section 12-1 Involuntary Lump Sum Distributions. If the present value of a benefit is $5,000 or less and the payment of such benefit has not begun, the Board of Trustees may, in its sole discretion, pay the actuarial equivalent of such benefit in a lump sum, or in monthly installments, without the consent of the Participant or the Participant's spouse.

Section 12-2 Interest Assumption. For purposes of computing the present value of a benefit payable under this section the interest assumption to be used shall be the actuarially assumed interest rate adopted by the Board of Trustees.

ARTICLE 13 ADMINISTRATION

Section 13-1 Board of Trustees.

The Board of Trustees shall administer and control the operation of this Pension Plan in accordance with the provisions of this Pension Plan, the Declaration of Trust, this Ordinance, and other Florida law. The Board of Trustees may, from time to time, establish rules for the interpretation, application and administration of the Pension Plan. In making any such determination or rule, the Board of Trustees shall pursue uniform policies and shall not unreasonably discriminate in favor of, or against, any person or group of persons.

Section 13-2 Claim for Benefits.

(a) Advance Claim Required - In order to receive a benefit under this Pension Plan, a claim for benefits must be submitted, in writing, and shall be made on duly prescribed form containing the information required in this section. A claim for benefits must be filed before any benefits are payable.

(b) Information Required - All Participants and beneficiaries shall furnish such information as the Board of Trustees considers necessary or desirable for the purposes of administering the Pension Plan. This shall include the expected date of retirement of the Participant, the marital status and proof of date of marriage of the Participant, proof of age of the Participant and any designated beneficiaries, and date and proof of death if a claim is filed for a survivor annuity or a death benefit. If proof of age is not submitted as required, other information may be used as the Board of Trustees deems reliable. Any adjustment required by reason of lack of proof, or misstatement of age, shall be made in

such a manner as the Board of Trustees deems equitable. Benefits provided under this Pension Plan are conditioned upon the furnishing of such true and complete information as may be needed. The Board of Trustees and any other persons involved in the administration of the Pension Plan shall be entitled to rely upon any certification, statement or representation made by a Participant or beneficiary with respect to age, marital status, death of the Participant, or other facts require to be determined under any of the provisions of the Pension Plan, and the Board of Trustees shall not be liable on account of the payment of any monies or the commission of any act or failure to act, in reliance thereon.

Section 13-3 Multiple Claims Prohibited. Once a claim for pension benefits has been approved by the Board of Trustees, no further claims for a pension benefit shall be permitted.

Section 13-4 Notification of Mailing Address.

(a) All Participants and beneficiaries shall file with the Board of Trustees, from time to time, in writing, their mailing address and each change of address. Failure to submit such mailing address may result in the payment of benefits being delayed.

(b) Any check representing payment hereunder, and any communication addressed to a Participant, beneficiary or other person, at the last address on the records of the Board of Trustees, shall be binding on such persons for all purposes of this Pension Plan.

(c) If the Board of Trustees is in doubt whether payments are being received by the person entitled thereto, it may notify such person, by certified mail at the last known address, that all payments of benefits shall be withheld until the Board of Trustees is provided such information as it deems necessary.

Section 13-5 Benefits Payable to Minors and Incompetents.

(a) Whenever any person entitled to payments under this Pension Plan shall be a minor, under a legal disability, or, in the sole judgment of the Board of Trustees, be otherwise unable to care for their affairs in their own best interest and advantage (whether because of illness, accident, incapacity or other mental or physical condition), the Board of Trustees may direct that all or any portion of such payments be made in any of the following ways (unless a claim has been made by a legal guardian, tutor, conservator, committee or other duly appointed legal representative, in which event payment shall be made to such representative):

(1) to the spouse, child, parent, or other blood relative, to be expended on behalf of the person (or on behalf of those dependents as to whom the person has the duty to support); or

(2) to a recognized charity or governmental institution to be expended for the benefit of the beneficiary (or for the benefit of those dependents as to whom the person has the duty to support): or

(3) to such other persons, organizations or institutions as the Board of Trustees deems appropriate to provide for the care and benefit of the person (or for the benefit of those dependents as to whom the person has the duty to support).

(b) The decision of the Board of Trustees shall be final and binding upon all persons. After such decision, the Board of Trustees shall not be obliged to see to the proper application or expenditures of any payments so made.

ARTICLE 14 CLAIMS, NOTICES AND INQUIRIES

Section 14-1 Claims, Notices and Inquiries. All claims for benefits, elections for a specific form of benefit, notices of re-employment, notices of re-retirement, verifications of retirement, notices of mailing address, notices of appeal, and all other inquiries and matters concerning the Pension Plan shall be submitted to the Board of Trustees addressed as follows:

Secretary
Sanibel Police Department
Sanibel Police Pension Fund
800 Dunlop Road
Sanibel, Florida 33957

Section 14-2 Response to Claims and Inquiries. All inquiries shall be answered promptly. The final decision for approval of benefits shall be made by the Board of Trustees.

Section 14-3 Denial of Benefits. If any claim for benefits is denied, suspended, or terminated, in whole or in part, then the claimant shall be furnished with a Notice of denial, suspension or termination no later than 30 days after the final decision has been made. The Notice shall be provided in writing, by certified mail, and shall set forth:

(1) the specific reasons for the denial, suspension or termination of benefits; and

(2) the specific references to the pertinent provisions of the Pension Plan upon which the action is based and a copy of the Pension Plan provisions shall be furnished with this Notice; and

(3) a description of any additional material or information necessary for the claimant to perfect the claim, along with an explanation of why such material or information is necessary; and

(4) an explanation of the Claims Review Procedure.

Section 14-4 Claims Review Procedure.

(a) Requests for Review - If a claim for benefits is denied, suspended or terminated, in whole or in part, then the claimant may appeal to the Board of Trustees for a full and fair review. In order to file an appeal, a written Notice of Appeal must be submitted within 60 days after the Notice of denial, suspension or termination is received by the claimant (or such later time as the Board of Trustees deems reasonable). The Notice of Appeal shall briefly describe the grounds upon which the appeal is based on shall be signed by the claimant. The claimant shall be allowed to review all pertinent documents during normal business hours, and shall be permitted to submit comments and a statement of issues for consideration by the Board of Trustees.

(b) Representation - A claimant may designate an attorney, or any other duly authorized person, to act as his or her representative at any stage of the Claims Review Procedure. Any rights provided to the claimant during the Claims Review Procedure shall

automatically extend to the representative designated by the claimant. A designation of representative shall be signed by the claimant and the representative, and shall be submitted in writing.

(c) Claims Review Board - The Board of Trustees shall rule on all appeals brought under this section. A decision to grant or deny an appeal shall be based solely on the record before the Board of Trustees, unless the Board of Trustees determines, in its sole discretion, that a hearing is necessary for the proper resolution of the appeal. The Board of Trustees shall decide, by majority vote, to grant or deny an appeal, the final decision shall be made by the Board of Trustees, in writing, and shall be made no later than 60 days after receipt of the Notice of Appeal, unless special circumstances (such as the need for a hearing) require an extension of time. In no event, however, should the decision of the Board of Trustees be made later than 120 days after receipt of the Notice of Appeal. If an appeal is denied, in whole or in part, then the decision shall set forth the specific reasons for the action, with specific references to those Pension Plan provisions upon which the decision is based. The claimant shall be promptly provided with a copy of this decision. The decision of the Board of Trustees shall be final and binding.

Section 14-5 Exhaustion of Claims Review Procedure. No action in law or in equity shall be brought to contest a denial, suspension or termination of benefits until the claimant has complied with the procedures provided in Section 14-4 (Claims Review Procedure), unless the Board of Trustees fails to render a decision within 120 days after receipt of the Notice of Appeal. In no case, however, shall any action be brought unless instituted within one year from the time the claimant received the Notice of denial, suspension or termination provided in Section 14-3 (Denial of Benefits).

ARTICLE 15 FUNDING

Section 15-1 Funding. The Plan shall be funded by contributions from Participants, contributions from the City of Sanibel and the amount derived from the premium taxes provided in Florida Statutes Section 185.08 and Section 13.5-53 of the Code of Ordinances of the City of Sanibel and other income sources as authorized by law, except that the amount derived from premium taxes provided in F.S. Section 185.08 shall not be used to fund benefits for part-time Participants.

Section 15-2 Participant Contributions.

(a) All Participants shall make regular contributions at the rate of five percent of earnings which shall be deposited in the Fund at least monthly until reaching normal retirement age, at which time the Participant contribution shall be one percent of earnings.

(b) If a Participant has not made contributions for any period of covered service, the Participant must pay retroactive contributions for that period in order to receive vesting credit for that period. Such retroactive contributions shall be made over a period of time equal to the period of time for which contributions were not made unless the Participant selects a shorter period. A retroactive contributions due must be paid in full prior to retirement.

(c) Pursuant to Ordinance No. 89-37, which took effect on January 1, 1990, the City of Sanibel shall assume and pay Participant contributions in lieu of payroll deductions from Participants' earnings. No Participant shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City directly to the Plan. All such contributions by the City shall be deemed and considered as a part of the

Participant's Accumulated Contributions and subject to all provisions of this Plan pertaining to Accumulated Contributions of Participants. This City "pick up" of contributions is the result of a 5% reduction of each Participant's base pay and of base pay levels which occurred on January 1, 1990 and is intended to comply with Section 414(h)(2) of the Internal Revenue Code.

Section 15-3 State Contributions. The Fund shall receive the premium taxes collected and disbursed by the Florida Insurance Commissioner and Treasurer pursuant to Sections 185.08 and 185.10, which monies shall be deposited into the Fund within five days of receipt.

Section 15-4 City Contributions. The City of Sanibel shall contribute to the Plan on at least a quarterly basis an amount which, together with the contributions derived from Participants and the amount derived from premium taxes and other income sources as authorized by law, will be sufficient to meet the normal cost of the Plan and to fund the actuarial deficiency over a period of not more than 30 years.

Section 15-5 Basis of Payments from the Pension Plan. All benefits and expenses shall be paid in accordance with the provisions of this Pension Plan and the Trust Agreement and consistent with Florida Statutes and the Internal Revenue Code.

ARTICLE 16 MISCELLANEOUS

Section 16-1 Construction. The terms and conditions of this Pension Plan shall be construed subject to the purposes and provisions of the Ordinance and Declaration of Trust establishing the Plan, and subject to state law, the Internal Revenue Code and all other applicable laws.

Section 16-2 Standards of Proof. The Board of Trustees shall be the sole judge of the standards of proof required in any case. In the application and interpretation of this Pension Plan, the decisions of the Board of Trustees shall be final and binding on the Participants and beneficiaries, the City and all other persons.

Section 16-3 Benefits Not Assignable. The right of any person to any payment under this Pension Plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. In the event any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignment, transfer or disposition shall be null and void.

Section 16-4 Forfeitures. Forfeitures and dividends shall not be used to increase the benefits that any Participant would otherwise receive under the Pension Plan at any time prior to the termination of the Pension Plan or the complete discontinuance of contributions to the Pension Plan, but shall be anticipated in determining the costs under the Pension Plan.

Section 16-5 Merger. This Pension Plan shall not merge or consolidate with any other pension plan, nor transfer any assets or liabilities to any other pension plan, unless each Participant in this Pension Plan will receive a benefit immediately after such merger, consolidation or transfer (if the Pension Plan then terminated) which is at least equal to the benefit the Participant was entitled to immediately before such merger, consolidation or transfer (if the Pension Plan had terminated).

Section 16-6 Termination of Pension Plan. In the event of termination of the Pension Plan, the Board of Trustees shall follow the procedures contained in Florida Statutes, the Internal Revenue Code, and all other applicable laws.

Section 16-7 Incorporation by Reference. This Pension Plan is maintained for the exclusive purpose of providing benefits to Participants and beneficiaries, and is intended to satisfy all the requirements of Florida Statutes and the Internal Revenue Code. In the event any requirements of such laws have been omitted, they shall be deemed to be incorporated herein by reference.

Section 16-8 Amendment of Pension Plan. This Pension Plan may be amended at any time by vote of the Board of Trustees and the Sanibel City Council prospectively or retroactively, provided that such amendment complies with the Internal Revenue Code, Florida Statues, all other applicable laws, and the purposes as set forth in the Ordinance and Declaration of Trust. Additionally, and not by way of limitation, the City Council, upon the recommendation the Board of Trustees, may amend this Pension Plan when it is deemed necessary to maintain its tax exempt status, or to preserve compliance with the Internal Revenue Code, Florida Statutes, and all other applicable laws. However, no amendment which reduces the accrued benefits of any Participant shall take effect.

Section 16-9 Personnel Rules and Regulations. This Pension Plan only governs and is only intended to apply to the establishment, granting, eligibility and funding of the pension, disability and death benefits provided hereunder; otherwise, this Pension Plan shall not affect any of the other terms and conditions of Participants' employment, which are governed and determined by the City's Personnel Rules and Regulations, as amended.

Section 2: All of the assets, funds, property, books and records of the current municipal police officers' retirement trust fund maintained pursuant to Chapter 185, Florida Statutes, shall, on the effective date of this Ordinance, be transferred to the Sanibel Police Pension Trust Fund which is created hereby. The Sanibel Police Pension Trust Fund shall assume, pay and satisfy all liabilities and just debts of the municipal police officers retirement Trust Fund.

Section 3 - Repealer:

This Ordinance amends Ordinance No. 80-23; as amended by Ordinance Nos. 86-37, 87-27 and 88-15, all as codified in Section 13.5-51 and 13.5-52 of the Code of Ordinances of the City of Sanibel; Ordinance No. 88-16 as amended by Ordinance Nos. 89-31 and 89-37; and those Ordinances are repealed; however, the Plan set forth in Ordinance No. 88-16, as amended, shall remain in force until terminated under the provisions contained therein.

Section 4 - Code of Ordinances:

Part I, Article III of this Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel, and it shall be recodified, pursuant to Section 5 of Ordinance No. 81-07.

Section 5 - Conflict:

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

Section 6 - Severance:

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

Section 7 - Effective Date:

This ordinance shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida, this 1st day of October, 1991.

ATTEST:

Member of Council

Member of Council

Member of Council

City Clerk

Mayor

Member of Council

September 17, 1991 First Reading

September 20, 1991 Publication Date

October 1, 1991 Second Reading

Filed in the Office of the City Clerk this 1st day of October, 1991.

City Clerk

APPROVED AS TO FORM:

9/9/91

City Attorney

CITY OF SANIBEL

ORDINANCE NO. 80 - 23

AN ORDINANCE ESTABLISHING THE SANIBEL BOARD OF TRUSTEES OF THE MUNICIPAL POLICE OFFICERS RETIREMENT TRUST FUND; DEFINING THEIR DUTIES; IMPOSING A 1% EXCISE TAX ON THE GROSS AMOUNT OF RECEIPTS OF PREMIUMS COLLECTED ON CASUALTY INSURANCE POLICIES; PROVIDING FOR SEVERANCE; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of this ordinance to bring into full force and effect the provisions of Florida Statutes Chapter 185;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Sanibel, Lee County, Florida:

Section 1. The Board of Trustees.

There is hereby created a Sanibel Board of Trustees of the Municipal Police Officers Retirement Trust Fund (hereinafter "The Board") pursuant to Florida Statutes Chapter 185. The Board shall consist of the mayor, the chief of police, two regularly employed Sanibel policemen , and one Sanibel resident. The two regularly employed policemen shall be appointed by the City Council upon recommendation of a majority of the regularly employed policemen of the Sanibel Police Department. The Sanibel resident shall be appointed by the Council. The mayor and chief of police shall serve as long as they continue to hold office as mayor and police chief respectively and upon a vacancy, their respective successors shall succeed to the position of trustees. Each of the regular policemen shall be trustee for a term of two years, unless he sooner leaves the employment of the city as a policemen, whereupon the Council upon recommendation of a majority of the regularly employed policemen of the City, shall choose his successor. The resident member shall be trustee for a term of two years and may succeed himself in office. The mayor shall be chairman of the Board. The Board shall elect one of its members as secretary of the Board. The secretary shall

keep a complete minute book of the Board's proceedings. The trustees shall not receive any compensation as such.

Section 2. The Board's Powers.

The powers, duties, privileges and responsibilities of the Board shall be as set forth in Chapter 185 Florida Statutes, and as said chapter may be from time to time amended.

Section 3. Excise Tax.

(a) There is hereby levied, assessed, and imposed on every insurance company, corporation or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of casualty insurance as shown on the records of the Department of Insurance, an excise or license tax in addition to any lawful license or excise tax now levied by the City, amounting to one percent (1%) of the gross amount of receipts of premiums from policy-holders on all premiums collected on casualty insurance policies covering property within the Sanibel corporate limits.

(b) In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, thirty percent (30%) of such premium shall be used as the basis for the one percent (1%) tax above.

(c) Said excise tax shall be payable annually on or before March 1 of each year after the effective date of this ordinance.

(d) All excise tax funds received by the City pursuant to this ordinance and Fla. Stat. Chapter 185 shall be promptly paid into the police pension fund. The City may not use such proceeds to reduce the amount it must contribute to the general pension system established for all city employees.

Section 4. State Departments.

(a) The City Manager is hereby authorized and directed to deposit a certified copy of this ordinance, as it is duly

adopted, with the Florida Department of Insurance and Department of Banking and Finance.

(b) The Florida Department of Insurance is hereby requested to furnish the City of Sanibel a copy of all reports filed by insurers under §185.09 Fla. Stat.

Section 5. Code of Ordinances.

The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the City of Sanibel, as an addition thereto, and shall be appropriately numbered and renumbered to conform to the uniform numbering system of the Code upon such inclusion.

Section 6. Severance.

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

Section 7. Conflict.

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this Ordinance conflicts with any other part, it shall be severed and the remainder shall have the full force and effect and be liberally construed.

Section 8. Effective Date.

This Ordinance shall take effect on the 10th day of September , 1980.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida this 10th day of September, 1980.

ATTEST:

Member of Council

City Clerk

Member of Council

Mayor

Member of Council

Member of Council

August 5, 1980 First Reading

August 8, 1980 Publication Date

September 10, 1980 Second Reading

Filed in the Office of the City Clerk this 10th day of September, 1980.

City Clerk

APPROVED AS TO FORM:

August 8, 1980

City Attorney