

**PORT OF HOOD RIVER
Resolution No. 2003-04-3**

**Establishment of a 457(b) Deferred Compensation Plan
for Eligible Employees**

THIS AGREEMENT is made and entered into this 7th day of October, 2003, between **PEN ASSOCIATES INCORPORATED** and the **PORT OF HOOD RIVER**.

WITNESSETH:

WHEREAS, the Port of Hood River intends to co-sponsor and establish a 457(b) Deferred Compensation Plan to provide retirement and other incidental benefits to Employees who are eligible to participate in the Plan; and

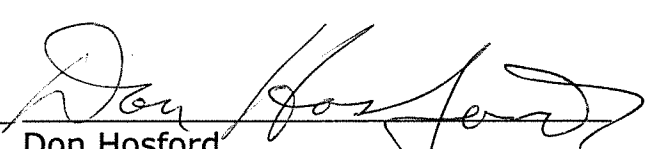
NOW, THEREFORE, effective October 7, 2003, the Port of Hood River establishes this 457(b) Deferred Compensation Plan and Trust (which plan and trust are hereafter called the Plan) to comply with all applicable statutes, including the Internal Revenue Code of 1986, as amended by the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Uniformed Services Employment and Reemployment Rights Act, and the Economic Growth and Tax Relief Reconciliation Act of 2001 and all other applicable rulings and regulations issued thereunder, and the Trustee accepts the Plan under the terms and conditions as attached.

IN WITNESS WHEREOF, this Plan and Trust have been executed by the Port of Hood River, Penn Associates Incorporated and the Trustee on the day, month, and year set forth in this Agreement.

ADOPTED BY THE PORT OF HOOD RIVER COMMISSIONERS this 7th day of October, 2003.



Bill Lyons



Don Hosford



Fred Duckwall



Sherry Bohn



Hoby Streich



PEN ASSOCIATES INCORPORATED

**The PEN Associates Incorporated
Eligible 457 Deferred Compensation Plan**

Initial effective Date January 1, 2002

ESTABLISHMENT OF PLAN

Pursuant to the subscription agreement joined hereto, [Eligible Adopting Employer] has adopted and subscribed to The PEN Associates Incorporated Eligible 457 Deferred Compensation Plan effective [subscription date].

This Plan document sets forth the provisions of this Code Section 457(b) Eligible Deferred Compensation Plan. Plan contributions are invested, at the direction of the Participant, in one or more of the Funding Vehicles available to the Participant under the Plan.

This Plan contains certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This Plan is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and the guidance issued thereunder.

PURPOSE OF PLAN

The purpose of this Plan is to allow Participants each subscribing Eligible Employer to enter into a salary reduction agreement with said employer where they may defer a specified amount of their Regular Salary as pre-tax Participant Plan Contributions, and to pay benefits attributable to such Participant Plan Contributions upon their severance from employment (within the meaning of Code Section 457(d)(1)(A)(ii)) or upon the occurrence of a severe financial hardship caused by an unforeseeable emergency (within the meaning of Code Section 457(d)(1)(A)(iii)), in accordance with the applicable requirements of Code Section 457 and the Treasury Regulations thereunder. PEN Associates Incorporated and each Adopting Eligible Employer intends this Plan to be a qualifying eligible deferred compensation Plan within the meaning of Code Section 457(b) which is established and maintained by an eligible governmental employer within the meaning of Code Section 457(e)(1)(A). The Plan is maintained for the exclusive benefit of Eligible Employees and their Beneficiaries.

TABLE OF CONTENTS

ARTICLE I 6

DEFINITIONS 6

1.1 Administrator: 6

1.2 Applicable Catch-up Amount: 6

1.3 Applicable Dollar Amount: 6

1.4 Adopting Employer: 6

1.5 BENEFIICIARY: 6

1.6 Board: 6

1.7 Deferred Salary or Deferred Compensation: 6

1.8 Eligible Rollover: 6

1.9 Eligible Retirement Plan: 6

1.10 Eligible Employer, "Entity" or "Employer": 7

1.11 Includible Compensation: 7

1.12 PARTICIPANT: 7

1.13 Normal Retirement Age: 7

1.14 Participation Agreement: 7

1.15 Participating Employer: 8

1.16 Plan-Year: 8

1.17 Separation from Service or Termination of Employment: 8

1.18 Subscription Agreement: 8

ARTICLE II 9

PARTICIPATION AND CONTRIBUTIONS 9

2.1 Deferral: 9

2.2 Minimum Deferral: 9

2.3 Non-Elective Contributions: 9

2.4 Employer Matching Contributions: 9

2.5 Participation: 9

2.6 Change in Participation: 9

2.7 Effective Dates: 9

2.8 General Limitation: 10

2.9 Inflation Adjustment: 10

2.10 Standard Catch-Up Provision: 10

2.11 Adjustment of Deferrals - Other Plans: 10

2.12 Notification by PARTICIPANT: 11

ARTICLE III 12

DECLARATION OF TRUST 12

3.1 The Trust: 12

3.2 Identification of Trust Assets: 12

3.3 Investment Options: 12

3.4 Board Responsibility: 12

3.5 Fiduciary Statutes: 13

3.6 Valuation of Accounts: 13

3.7 Records: 13

3.8 Statements: 14

3.9 Daily Valuation and Book Value: 14

3.10 Plan Statements: 14

3.11 Board Records: 14

3.12 Exclusive Benefit Rule: 14

3.13 Change of Investment Option: 15

3.14	Conditions for Change of Option:	15
3.15	Board's Right to Select Options:	15
3.16	Change of Beneficiary:	15
ARTICLE IV		16
BENEFITS - PAYMENT OF ACCOUNT BALANCE		16
4.1	Normal Retirement Age - General Rule:	16
4.2	Commencement of Benefits - Earliest Date:	16
4.3	Commencement of Benefits - Latest Date:	16
4.4	Payment After 70 ½:	16
4.5	Elections of Participants and Beneficiaries Concerning Payment of Benefits:	16
4.6	Distribution of Small Accounts:	16
4.7	Designated Beneficiary:	17
4.8	Payments to Beneficiaries:	17
4.9	Hardship:	17
4.10	Appeal:	17
4.11	Limitation:	18
4.12	Hardship Standards:	18
4.13	Possible Class Restriction:	18
4.14	Hardship After Retirement:	18
4.15	Transfers into the Plan:	18
4.16	Plan Charges:	19
4.17	Effect of Elections:	19
4.18	Transfers from this Plan:	19
4.19	Representations:	19
4.20	Domestic Relations Orders:	20
4.21	Loans:	20
ARTICLE V		21
ADMINISTRATION OF PLAN AND TRUST		21
5.1	Right to Amend Plan:	21
5.2	Right to Suspend Deferrals:	21
5.3	Parties to Plan and Trust:	21
5.4	No Implied Contract:	21
5.5	No Tax Warranty:	21
5.6	Trustee Powers:	22
5.7	Charges Against Participants:	22
5.8	Methods:	22
5.9	Effective Date:	22
5.10	Reserve Allowed:	22
5.11	Accounts for Expense Funds:	22
5.12	Direct Payment of Plan Expense:	23
5.13	Gender References:	23
5.14	Applicable Law:	23
5.15	Restriction on Creditors:	23
5.16	Anti-Assignment Clause:	23
5.17	Binding Provisions:	23
ARTICLE VI		24
ADDITIONAL CLASSES OF ACCOUNTS		24
ARTICLE VII		24
MISCELLANEOUS PROVISIONS		24
7.1	Dispute Resolution:	24

7.2 Construction:..... 24
7.3 Claims Against Board or Participating Employer:..... 24
7.4 Right to File Action:..... 25
7.5 Not Subject to ERISA:..... 25

ARTICLE I

Definitions

- 1.1 **Administrator:**
shall mean the entity designated by the PEN Associates Incorporated to perform the basic administrative duties and functions under the Plan on behalf of its sponsors.
- 1.2 **Applicable Age 50 Catch-up Amount:**
shall mean \$1,000 for the Plan Year beginning January 1, 2002, \$2,000 for the Plan Year beginning January 1, 2003, \$3,000 for the Plan Year beginning January 1, 2004, \$4,000 for the Plan Year beginning January 1, 2005 and \$5,000 for any Plan year beginning on or after January 1, 2006. In the case of any Plan Year beginning after December 31, 2006, the \$5,000 amount listed in the preceding sentence shall be adjusted annually for increases in the cost-of-living in the manner prescribed by Code Section 414(v)(2)(C).
- 1.3 **Applicable Dollar Amount:**
means \$11,000 for the Plan Year beginning January 1, 2002, \$12,000 for the Plan Year beginning January 1, 2003, \$13,000 for the Plan Year beginning January 1, 2004, \$14,000 for the Plan Year Beginning January 1, 2005 and \$15,000 for any Plan Year beginning on or after January 1, 2006. The \$15,000 amount listed in the preceding sentence shall be adjusted annually for increases in the cost-of-living in the manner prescribed by Code Section 457(e)(15)(B).
- 1.4 **Adopting Employer:**
shall mean the executable document used by each Participating employer to adopt the Plan and select unique provisions if any through the subscription agreement. Adopting employer may also mean "entity" or "employer" as appropriate.
- 1.5 **BENEFICIARY:**
shall mean the person, persons or entities that receive benefits under the Plan upon the death of a PARTICIPANT prior to the distribution of his entire account.
- 1.6 **Board:**
shall mean the Board of Trustees of the PEN Associates Incorporated 457 Deferred Compensation Plan and 401(a) Matching and Contribution Plan.
- 1.7 **Deferred Salary or Deferred Compensation:**
shall mean the salary that the PARTICIPANT agrees to defer under this Plan.
- 1.8 **Eligible Rollover:**
shall mean deposits to Plan made from other amounts eligible for rollover. An eligible rollover account is any amount not subject to the rules of Code Section 401(a)(9) or an amount made due to a severe hardship of a participant due to an

unforeseeable emergency. The source of eligible rollovers must be an eligible retirement Plan.

- 1.9 **Eligible Retirement Plan:**
shall mean an individual retirement account described in Code Section 408(a), and individual annuity contract described in IRC section 408(b), a qualified trust described in IRC section 401(a), an annuity Plan described in Code Section 403(a), an annuity contract described in IRC section 403(b), or an eligible deferred compensation Plan described in Code Section 457(b) which is maintained by a State, political subdivision of a State, that accepts the distributees eligible rollover distribution and that 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 qualified domestic relations order as defined under Code section 414(p), are distributes with regard to the interest of the spouse or former spouse. A direct rollover is a payment by the Plan to the eligible retirement Plan specified by the distributee.
- 1.10 **Eligible Employer, "Entity" or "Employer":**
shall mean the Adopting Employer.
- 1.11 **Includible Compensation:**
shall mean compensation received from an eligible employer for services rendered as an employee and that is includible in the PARTICIPANT'S gross income for the taxable year plus elective deferrals. Includible Compensation shall not exceed \$200,000 for the applicable limitation under IRC section 401(a)(17) as indexed for inflation.
- 1.12 **PARTICIPANT:**
shall mean any person who by reason of deferral of salary under the Plan has an account balance that has not yet been distributed to him, whether or not such person is presently deferring salary under the Plan, and whether or not such person has terminated employment with the participating employer. PARTICIPANT shall not include a BENEFICIARY.
- 1.13 **Normal Retirement Age:**
shall mean – for purposes of the Catch-up limitation under section 2.9, the Normal Retirement Age shall be age 70 ½, unless prior to that time, an alternate Normal Retirement Age is elected in writing by the PARTICIPANT. In selecting an alternate Normal Retirement Age, a PARTICIPANT can choose any age which is (a) not earlier than the earliest age at which the PARTICIPANT has the right to retire and receive unreduced retirement benefits from the employer's basic pension Plan if such a Plan exists, or (b) the date selected on the subscription agreement pursuant to a collective bargaining or other binding agreement, or (c) any other date not later than the date the participant attains age 70 ½.

- 1.14 **Participation Agreement:**
shall mean the agreement signed by the PARTICIPANT when he commences participation in the Plan, any amendment thereto, and any subsequent agreement in which the PARTICIPANT designates the amount of his deferred salary, his investment selections, his designated retirement age, his date for commencement of benefits, and his method of payments of benefits.
- 1.15 **Participating Employer:**
shall mean each individual eligible employer, excluding PEN Associates Incorporated, who adopts and sponsors the PEN Associates Incorporated 457 Deferred Compensation Plan. PEN Associates Incorporated is not an eligible employer, therefore PEN Associates Incorporated employees shall not be permitted to participate.
- 1.16 **Plan-Year:**
shall mean the calendar year.
- 1.17 **Separation from Service or Termination of Employment:**
shall mean the date on which the employee terminates his service with the Participating Employer. For an employee on a leave of absence, such separation shall occur when the leave of absence expires.
- 1.18 **Subscription Agreement:**
shall mean the document associated herewith that shall be the adopting and binding executable document an Adopting Employer shall use to officially join and subscribe to the PEN Associates Incorporated Eligible 457 Deferred Compensation and 401(a) Matching and Contribution Plans.

ARTICLE II

Participation and Contributions

- 2.1 **Deferral:**
Compensation will be deferred into the PEN 457(b) Plan for a month only if an agreement providing for such deferral is entered into prior to the beginning of the month in which the deferral shall be effective. Initial participation agreements shall be submitted to an authorized adopting employer representative no later than 15 days prior to the first pay period in the following month in which participation is to begin to become effective on the desired date. Participation agreements submitted after the 15-day period will not be processed until the first pay period in the next following month. Excess deferrals (and income) shall be distributed as soon as administratively feasible following the end of the plan year in which the excess deferral occurred.
- 2.2 **Minimum Deferral:**
The minimum monthly deferral shall be twenty-five dollars. (\$25)
- 2.3 **Non-Elective Contributions:**
An eligible employer may make non-elective contributions in accordance with the subscription agreement into the PEN 401(a) Matching and Contribution Plan.
- 2.4 **Employer Matching Contributions:**
An eligible employer may make matching contributions in accordance with the subscription agreement into the PEN 401(a) Matching and Contribution Plan.
- 2.5 **Participation:**
Upon signing the Participation Agreement, the PARTICIPANT elects to participate in this Plan and consents to the PEN Associated Incorporated 457 Deferred Compensation Plan limits by deducting the amount specified in the Participation Agreement from the PARTICIPANT'S gross compensation for each pay period, and transmission of the elective amount to the Board to be held, accounted for, and distributed under the terms of the Plan.
- 2.6 **Change in Participation:**
The PARTICIPANT may revoke his election to participate, or may increase or decrease the amount of compensation to be deferred, or may select a new investment option, by signing and filing with the Administrator a written revocation or amendment on a form and in the procedural manner approved by the Administrator. Any such revocation or amendment reducing or increasing the amount deferred, or effecting a change of the investment option, shall be effective prospectively only. The Board may, once a PARTICIPANT has agreed in writing to participate in the Plan, allow changes in investment balances, or direction of deferral, to be effected by electronic means under regular procedures established therefore. Amended or updated participation agreements shall be submitted to an

authorized adopting employer representative no later than 15 days prior to the first pay period in the following month in which participation is to begin to become effective on the desired date. Participation agreements submitted after the 15-day period will not be processed until the first pay period in the next following month unless otherwise allowed by the adopting employer.

2.7 Effective Dates:

A PARTICIPANT'S election to participate in the Plan shall be effective for pay periods commencing after the date on which the Participation Agreement is filed with the Administrator or by such other entity as is designated by the BOARD.

2.8 General Limitation:

Subject to the special provisions contained elsewhere in this section, the maximum amount that may be deferred under the Plan in any Plan year may not exceed the lesser of (i) 100% of the Participant's Includible Compensation for such Plan Year or (ii) the Applicable Dollar Amount in effect for the Plan Year.

2.9 Inflation Adjustment:

The general limitation amount shall be annually adjusted to account for inflation in the manner permitted by IRC §457(e).

2.10 Standard Catch-Up Provision:

In the last three years ending before the PARTICIPANT attains his normal retirement age, he may, after filing an election with the Administrator in writing, designate additional amounts to be deferred. The maximum amount that may be deferred under the Plan in any one of such years is the lesser of (A) Twice the dollar limitation for a given year (i.e. 2 x \$11,000) or (B) the sum of the maximum amounts determined under the general limitation for such PARTICIPANT for both the current Plan year and all prior Plan years commencing after December 31, 1978, less amounts the PARTICIPANT actually deferred in such years after 1978. In determining the maximum amounts that may be deferred under this Catch-Up provision, the PARTICIPANT may only take into account such prior years to the extent that in years after 1978 he was eligible to participate in either this Plan, or a similar Plan maintained by a governmental entity in the State of Oregon, and either did not participate, or had deferred salary under either Plan that was less than limits set forth in the general limitation or the similar limits in the other Plan in which he was eligible to participate. An election to increase deferred salary under this Catch-Up provision may only be made once, whether such election and use occurs under this Plan, or another eligible Plan maintained by another governmental entity.

2.11 Adjustment of Deferrals - Other Plans:

The amount that may be deferred by a PARTICIPANT in any year shall also be reduced by:

- (a) any amount excluded from the PARTICIPANT'S gross income for the year under Section 403(b) of the Internal Revenue Code;
- (b) any amount excluded from gross income under Section 402(e)(3) or 402(h)(1)(B) or (k);
- (c) amounts deferred during such year by the PARTICIPANT under another eligible Plan under §457 of the Internal Revenue Code.

2.12 **Notification by PARTICIPANT:**

Any PARTICIPANT who has, in the same Plan year, amounts excludable from his gross income because of Code Section 403(b), Section 402(e)(3) or 402(h)(1)(B) or (k), or through participation in another eligible Plan under Section 457 of the Internal Revenue Code, is required to inform the Administrator of the amount excluded.

ARTICLE III

Declaration of Trust

3.1 **The Trust:**

Each PARTICIPANT in the Plan shall have an account within the Trust Fund maintained by the Board under Article III hereof. As further described in this Article III each account, and the fund as a whole, shall be held in trust for the exclusive benefit of PARTICIPANTS and their BENEFICIARIES, under the requirements of IRC §457(g), and applicable Oregon State law. This Declaration of Trust shall apply to both existing account balances as of the effective date of this amended and restated Plan, and all future contributions and earnings of the Plan and Trust. This declaration of trust shall not be interpreted as prohibiting the use of trust assets to pay fees and other expenses incurred in the maintenance, administration and investment of the trust fund, or the PARTICIPANT'S share of Plan administration expense.

3.2 **Identification of Trust Assets:**

All assets of the Plan shall be held in trust by the Board for the exclusive benefit of PARTICIPANTS and their BENEFICIARIES. Such trust fund, and the investments, accounts, contracts, insurance policies, securities and other intangible property and rights that make up the trust fund, shall be sufficiently identified by the Trustees so that its status as trust property, and the individual interest therein, can always be determined. The Trustees shall take all reasonable and necessary steps to execute any documents necessary to effect such trust status for existing Plan assets.

3.3 **Investment Options:**

The Board shall determine from time to time the permitted investment options of the trust fund that are available for selection by PARTICIPANTS and BENEFICIARIES, who shall select among those options for the investment of their deferred salary, and income earned thereon. These options may include securities (debt or equity), mutual funds and/or regulated investment companies, life insurance policies, annuity contracts, investment contracts, investment pools, bonds, and collective investment vehicles (whether or not such collective investment vehicles are generally available to the public) managed either by the Trustees themselves or persons or entities hired by them to perform such function. In titling such investments the Board may use such vehicles as Master Trust Agreements that allow or provide for collective investment by one or more Plans. The Board may also invest in, or arrange for investment in, qualifying custodial accounts and contracts as permitted by IRC §457(g)(3). In each case, however, regardless of the type of investment, it is the intention of this PLAN and TRUST that the individual interest of each PARTICIPANT and BENEFICIARY within this Plan and Trust shall always be capable of identification.

3.4 Board Responsibility:

The BOARD, and such administrators and fiduciary or administrative agents as they hire to act on their behalf, shall have sole authority and responsibility for:

- (a) appointing, removing and replacing the agents, administrators, employees and others to act on their behalf in executing the terms and purposes of this Trust;
- (b) amending this Trust Agreement;
- (c) terminating this Trust;
- (d) determining the existence, nature and extent of the rights and interests of any PARTICIPANT or BENEFICIARY in this Trust;
- (e) determining the amount of benefits payable to PARTICIPANTS or their BENEFICIARIES and determining the time and manner in which such benefits are to be paid;
- (f) establishing and maintaining PARTICIPANT accounts and making all allocations thereto in accordance with the provisions of the Plan;
- (g) authorizing and directing all disbursements and distributions from the Trust Fund;
- (h) maintaining all records of the Plan and this Trust, and preparing and filing all reports and other information concerning the Plan and this Trust with any agency of the Federal or State government;
- (i) complying with all disclosure requirements imposed by State or Federal law; and
- (j) all other acts permitted or required to be performed by the Participating Employer under the Plan and this Trust Agreement.

3.5 Fiduciary Statutes:

Pursuant to applicable Oregon State law, the Trustees are fiduciaries subject to the responsibilities and requirements of said law. No provision of this Trust Agreement shall be construed in any manner that would be inconsistent with those duties and responsibilities. As permitted by Oregon State law, the Board of Trustees, as an entity, may: (a) allocate duties and responsibilities under this Trust Agreement to one or more of its members; (b) designate one or more persons or entities in their employ to perform such duties and responsibilities; and (c) determine any matter with respect to this Trust by a majority vote of those individuals then constituting the Trustees under the provisions of applicable Oregon State law.

3.6 Valuation of Accounts:

Each PARTICIPANT'S account in the Plan and Trust shall be equal in value to the PARTICIPANT'S deferred salary, plus (i) income earned and market gains for the account under the PARTICIPANT'S investment selection, less (ii) market losses for the account, and expenses and charges to such account under the PARTICIPANT'S particular investment selection and less (iii) assessments and charges made against the PARTICIPANT'S account by the Board for the expenses of the Plan. If such selection is a life insurance policy, said account at

any given time shall be equal in value to the net benefits available under said policy at that time.

3.7 Records:

The records of each PARTICIPANT'S account shall be maintained by the Administrator or by such other entity as is designated by the BOARD from time to time.

3.8 Statements:

Statements of each PARTICIPANT'S account shall be furnished to each PARTICIPANT at least annually, within 90 days after the end of each calendar year, and at such more frequent intervals as is determined by the BOARD.

3.9 Daily Valuation and Book Value:

All interest, dividends, charges for premiums and changes in value due to market fluctuations, or charges or expenses of administration shall be credited or debited to the PARTICIPANT accounts as they occur. All accounts shall be valued on a daily basis, except in cases where the Board, by specific resolution, authorizes a different valuation method. All reports to the PARTICIPANT shall be based on fair market value as of the reporting date, except that: (i) investments or investment pools that are measured by daily income accruals and fair or book value of the contracts contained therein shall be valued in that manner, and shall not require independent appraisals of value, and; (ii) the Board, in cases where the marketability of an investment has been suspended at a time when value must be determined, may make such reasonable estimates of value of all accounts within such particular investment option as is necessary to determine the value of any PARTICIPANT'S interest therein.

3.10 Plan Statements:

Within ninety (90) days after the end of the year, the Administrator, or such other person or entity as is from time to time designated by the BOARD, shall file with the records of the BOARD a written report of the assets of the Plan, a schedule of all receipts and disbursements, and a report of all material transactions of the Plan during the preceding year. This report shall be in such form and contain such other information as the BOARD shall determine or require.

3.11 Board Records:

The BOARD'S records, and any records of the Administrator pertaining to a PARTICIPANT'S account, shall be open to inspection during normal business hours by a PARTICIPANT, or his designated representative.

3.12 Exclusive Benefit Rule:

Any deferred amount shall be delivered by the PARTICIPATING EMPLOYER to the BOARD, or to such other entities selected by the BOARD to administer such amounts, who shall hold such amounts in trust for the exclusive benefit of

PARTICIPANTS and BENEFICIARIES, to be paid by the BOARD or at the BOARD'S direction, to the PARTICIPANT pursuant to Article IV.

- 3.13 **Change of Investment Option:**
The PARTICIPANT may change the index he has selected for his account balance, or a portion of his account balance, by amending his Participation Agreement, and filing such amendment with the Administrator or other entity designated by the BOARD. Such amendment shall become effective only under such terms, conditions and charges as are set by the BOARD, and at such time as the BOARD or its authorized agents are able to change any account balance maintained by it for the PARTICIPANT'S benefit under the existing investment selection previously chosen by the PARTICIPANT, to the new specification selected by the PARTICIPANT in his amended Participation Agreement. Such amendments to the Participation Agreement may be made through electronic means under regular procedures established therefore.
- 3.14 **Conditions for Change of Option:**
Such amendments to the Participation Agreement, for purposes of changing an employee's investment selection for his account balance, may be made at such times and under such conditions as may be determined from time to time by the BOARD during the Plan year.
- 3.15 **Board's Right to Select Options:**
The BOARD may unilaterally, without consent of any PARTICIPANT whose investment selection may be affected, (i) restrict or terminate the right to change an investment selection for all PARTICIPANTS, or class of PARTICIPANTS, or (ii) change the investment selection for any class of PARTICIPANTS through altering, modifying or terminating the BOARD'S contractual relationship with the business entities maintaining such investments through contracts with the BOARD, or withdrawing such amounts from such business entities. The maintenance by the BOARD of electronic or automated methods of investment selection, or of methods that permit daily change in investment selection, shall not constitute a guarantee against any loss in value that may accrue through temporary inability to change such selection through use of such methods.
- 3.16 **Change of Beneficiary:**
A BENEFICIARY of a deceased PARTICIPANT shall have the same rights as a PARTICIPANT to elect a change of investment selection.

ARTICLE IV

Benefits - Payment of Account Balance

- 4.1 **Normal Retirement Age - General Rule:**
Benefits through payment of a PARTICIPANT'S account balance shall be paid in accordance with this Article upon the PARTICIPANT'S death, retirement, separation from service, the occurrence of an unforeseeable emergency causing financial hardship, or the attainment by the PARTICIPANT of the normal retirement age pursuant to the terms of the subscription agreement, whichever shall first occur. Benefits payable to the PARTICIPANT are the total value of his account. The normal retirement age may be liberalized through the subscription agreement.
- 4.2 **Commencement of Benefits - Earliest Date:**
Payment of any benefits under this Plan may not commence earlier than (i) the death of a PARTICIPANT, or (ii) his separation from Participating Employer service through either termination of employment or his retirement from Participating Employer employment, or (iii) an unforeseeable emergency causing financial hardship, or (iv) attainment of normal retirement age by the PARTICIPANT, even if still employed.
- 4.3 **Commencement of Benefits - Latest Date:**
Payment of benefits must commence no later than 60 days after the end of the Plan year in which the PARTICIPANT attains, or would have attained, normal retirement age or age 70 ½ if later as defined under this Plan.
- 4.4 **Payment After 70 ½:**
Notwithstanding the requirements under section 4.1, 4.2 and 4.3, if a PARTICIPANT attains age 70½ in any year in which he is still employed by the Participating Employer, payment of benefits to such PARTICIPANT shall be permitted at the election of the PARTICIPANT made as if said PARTICIPANT had separated from service on the date he attained age 70½. Plan shall comply with the Required Minimum Distribution rules as prescribed under IRC 401(a)(9).
- 4.5 **Payment of Benefits:**
Payment of Benefits shall begin:
- (a) as soon as administratively feasible following severance from employment or retirement following written request from participant, or
 - (b) no later than the required beginning data required under IRC 401(a)(9).
- 4.6 **Distribution of Small Accounts:**
Consistent with the authority granted by IRC §457(e)(g), the Board may, by separate resolution, approve the automatic Rollover to an IRA if the account

balance is greater than \$1,000 but less than \$5,000 – unless the PARTICIPANT elects otherwise. In event of Rollover, PARTICIPANT shall be given appropriate notices, forms and communications prior to Rollover.

4.7 **Designated Beneficiary:**

The PARTICIPANT shall file with the Administrator, or such other entity as may be designated by the BOARD from time to time, a written BENEFICIARY form, or change of BENEFICIARY form, designating or changing the person or persons who shall receive any balance of the PARTICIPANT'S account under this Plan in the event of the PARTICIPANT'S death. The PARTICIPANT may also designate his estate as the BENEFICIARY of his account, or a trust created by him as the BENEFICIARY, so long as the trust is in existence at the time of the designation. The form for this purpose shall be provided by the Administrator and will have no effect until it is signed and filed by the PARTICIPANT with the Administrator. If the PARTICIPANT dies without having designated a BENEFICIARY, any payment due shall be made to the properly appointed fiduciary of the PARTICIPANT'S estate; provided, that if a fiduciary has not been appointed and qualified within one hundred twenty (120) days after the PARTICIPANT'S death, such payment may, in the discretion of the BOARD, be made first, to a surviving spouse, second, to a surviving child or children or third, to a surviving parent or parents. The PARTICIPANT shall have the burden for executing and filing a proper BENEFICIARY designation form.

4.8 **Payments to Beneficiaries:**

Following the death of the PARTICIPANT, a BENEFICIARY shall request payment of PARTICIPANT'S account in writing. BENEFICIARY will receive benefit in one lump-sum payment unless Board is instructed otherwise – if instructions are otherwise acceptable under the terms of the plan.

4.9 **Hardship:**

Notwithstanding any other provisions herein, in the event of an unforeseeable emergency causing "financial hardship", with such event being beyond the control of the PARTICIPANT, a PARTICIPANT may request the Administrator to pay all or part of his benefits to him immediately. All requests for hardship withdrawals shall be made initially to the Administrator or such other entity as may be designated by the BOARD from time to time. The BOARD shall designate from time to time that amount under which the initial decision as to whether the PARTICIPANT is entitled to such withdrawal shall be made by the Administrator, and over which the decision shall be made by the BOARD, or such committees of the BOARD as may be designated. Any decision made by the Administrator may be appealed by the PARTICIPANT to the BOARD, but any decision of the BOARD shall be final and conclusive.

4.10 **Appeal:**

If a PARTICIPANT takes an appeal from a decision of the Administrator to deny a hardship distribution, such PARTICIPANT may submit, to designated BOARD

staff, such documents as he believes support his right to a hardship distribution under the standards of this Plan and §457. He may also appear in person before the designated staff, who may affirm or reverse the Administrator's decision. No further appeal may be taken to the Board, except on vote of a majority of the members at a duly held regular meeting. If the Board shall vote to hear such an appeal, it shall establish the procedures therefore as part of that same vote.

4.11 Limitation:

The amount to be paid to the PARTICIPANT shall be limited to the amount necessary to meet the needs constituting financial hardship, and will not be made to the extent that the needs caused by such emergency or financial hardship are met or can be relieved by:

- (a) reimbursement or compensation by insurance or otherwise, or;
- (b) by liquidation of the assets of the PARTICIPANT, to the extent that liquidation of such assets would not itself cause financial hardship, or;
- (c) by stopping the PARTICIPANT'S deferral of salary under the Plan.

4.12 Hardship Standards:

"Financial Hardship" under the Plan shall mean severe financial hardship to the PARTICIPANT resulting from a sudden and unexpected illness or accident of the PARTICIPANT or one or more of his dependents (as defined in Section 152(a) of the Internal Revenue Code, as amended from time to time). "Financial Hardship" shall also mean financial hardship to the PARTICIPANT caused by loss of the PARTICIPANT'S property due to casualty, or other similar extraordinary and unforeseeable circumstances arising from events beyond the control of the PARTICIPANT. While other instances of emergency circumstances will depend upon the facts and circumstances of the individual case, in no event shall normally budgetable expenditures, such as purchase of an automobile, or home, or provision for educational expenditures, be considered as an emergency.

4.13 Possible Class Restriction:

The BOARD may further limit and/or prohibit such withdrawals for classes of accounts maintained under the Plan.

4.14 Hardship After Retirement:

A PARTICIPANT who has irrevocably elected a method of payment, and a BENEFICIARY of a deceased PARTICIPANT, shall be entitled to accelerate payment of amounts otherwise due him because of financial hardship; but such right shall only be available to the extent that such acceleration of payments is not subject to contractual restrictions under the method of payment elected.

4.15 Transfers into the Plan:

An employee otherwise eligible to participate in the Plan may do so through

transfer at any time of his existing account balance from another eligible Plan as defined in Article I. Such an employee may become a PARTICIPANT whether or not he also agrees to defer current salary under this Plan. Such a transfer shall only be permitted if:

- (a) it is a transfer of the entire account balance in the other eligible Plan to this Plan and occurs through a direct transfer of such account balance between Plans. For this purpose, deduction by said other Plan of its own applicable charges and fees imposed upon Plan distributions shall not be viewed as a transfer of less than the entire account balance.
- (b) the employee has not yet received any distributions (other than hardship distributions) from his account balance in the other Plan.
- (c) the employee executes all consent and participation agreements required for any employee to participate in this Plan.

4.16 Plan Charges:

An employee who has become a PARTICIPANT through a transfer or rollover shall be liable for Plan charges and expenses in the same manner and to the same extent as any other Plan PARTICIPANT notwithstanding the fact that all or part of his existing account balance may have been derived from contributions and earnings attributable to another Plan. In addition, the BOARD may from time to time impose charges on said transfers to be deducted directly from the PARTICIPANT'S new account in this Plan once the transfer has occurred.

4.17 Effect of Elections:

Neither this Plan nor a new PARTICIPANT making such a transfer shall be bound by any elections or designations (whether of a commencement date of distributions, or manner of distributions, designation of retirement age or beneficiaries) made under such other Plan, but, instead, shall make and be bound by such elections and designations as are required under this Plan.

4.18 Transfers from this Plan:

A PARTICIPANT in this Plan who has terminated his employment with the Participating Employer and become eligible to participate in another §457 Plan may elect to transfer his entire account balance from this Plan to such other Plan. Such a transfer shall only be permitted if:

- (a) it is a transfer of the entire account balance in this Plan to the other §457 Plan and occurs through a direct transfer of such account balance between Plans. For this purpose, deduction by this Plan of applicable charges and fees imposed upon Plan distributions shall not be viewed as a transfer of less than the entire account balance.
- (b) the employee has not yet received any distributions (other than hardship distributions) from his account balance in this Plan.

4.19 **Representations:**

With respect to receipt or transfer of account balances, both the Board and Plan Administrator may rely upon representations made by either the PARTICIPANT or other §457 Plan (made through those having apparent authority to make them) that:

- (a) the employee has terminated employment with the former relevant employer and commenced employment with the new employer;
- (b) no prior distributions of account balances (other than hardship distributions) have yet occurred;
- (c) that the Plan from or to which a transfer is to be made is currently a qualifying §457 Plan.

4.20 **Domestic Relations Orders:**

In administration of this Plan, the Board and the Plan Administrator shall account for Domestic Relations Orders that award part or all of a PARTICIPANT'S account to the spouse of a PARTICIPANT, and may establish such procedures as enable any discrete interest of a spouse under such an order to be separately accounted for and distributed. Any funds held under such a separate account shall not be distributed in any form or manner that would cause the Plan to become an ineligible §457 Plan, nor at any time earlier than otherwise provided by current domestic relations law. This section shall not be construed as requiring the Board or the Plan Administrator to recognize or make distributions under any Domestic Relations Order whose validity is in doubt. Authority to resolve disputes under such Orders, and procedures for complying with such orders, is delegated to a member of the Board.

4.21 **Loans:**

The Board may, if approved under separate resolution, authorize a PARTICIPANT to borrow against his account value, but only if the Board receives satisfactory opinion of counsel that allowing such loans will not cause the Plan to lose its status as an eligible §457 Plan. Such separate resolution shall set forth the terms and conditions of such loans. Whether such loan programs are undertaken, and the terms and conditions therefore, shall be solely at the Board's discretion. Loans shall be subject to IRC §72(p).

ARTICLE V

Administration of Plan and Trust

5.1 **Right to Amend Plan:**

The BOARD may at any time amend, modify, or terminate this Plan with or without consent of the PARTICIPANT (or any BENEFICIARY thereof) provided that all amendments shall become effective on the first day of the month following the giving of not less than 30 days prior notice of the amendment. Notice shall be deemed given when the amendment is posted in the office of the Administrator and the office of the Secretary to the BOARD. The Administrator or the BOARD shall notify each PARTICIPANT at the time he receives his statement of account values if the Plan has been amended during the preceding statement period. No amendment may be effected, however, if it removes Plan assets from the Trust hereunder, or causes Plan assets to be used for a purpose other than the exclusive benefit of PARTICIPANTS and their BENEFICIARIES.

5.2 **Right to Suspend Deferrals:**

Suspension or termination of additional deferral of salary under the Plan generally, or under one or more investment options maintained by the Plan, shall not otherwise restrict or affect other provisions of this Plan. The BOARD, in its sole discretion, may suspend or terminate additional deferral of salary for (i) all PARTICIPANTS, or (ii) a class of PARTICIPANTS, or (iii) for one or more investment options maintained under the Plan.

5.3 **Parties to Plan and Trust:**

Any private entity or company with which the BOARD may from time to time contract, whether for purposes of maintaining an investment selection for PARTICIPANTS, or for any other purpose, shall not be a party to the Plan; and any rights or claims against such private entities or companies shall be enforced, adjusted or settled by, and only by, the BOARD, which may enforce, settle or adjust said claim, or decide not to do so, solely in its own discretion.

5.4 **No Implied Contract:**

Participation in this Plan by a public employee shall not be construed to give a contract of employment to the PARTICIPANT or to alter or amend an existing employment contract of the PARTICIPANT, nor shall participation in this Plan be construed as affording to the PARTICIPANT any representation or guarantee regarding his continued employment.

5.5 **No Tax Warranty:**

Neither PEN Associates Incorporated nor the BOARD guarantees that any particular Federal or State income, payroll, estate or inheritance, or other tax consequence will occur because of the PARTICIPANT'S participation in this Plan, or elections made under this Plan.

5.6 Trustee Powers:

The BOARD, in performing its duties under this Plan, may:

- (a) make contracts with private entities or companies to offer investment options for PARTICIPANT'S accounts under the Plan, enforce any right or claim under said contracts, and/or resolve any claim or dispute through negotiation and agreement with such private entity or company;
- (b) make contracts with private entities or companies to perform administrative functions under the Plan;
- (c) contract for such advisory services as may be necessary to perform its functions, including legal, accounting, actuarial and employee benefit consulting services, or investment advice.

5.7 Charges Against Participants:

The BOARD is authorized to assess such charges against PARTICIPANT'S accounts as may be necessary to pay for the expenses of the Plan.

5.8 Methods:

In assessing said charges, the BOARD may calculate same as a percentage of a PARTICIPANT'S deferred salary or account value in or at the end of any period or year (including assessment as part of any daily valuation system) or as a sum in dollars assessed upon the status and/or value of an PARTICIPANT'S account as of the closing date for statements of such account. In assessing such charges, the BOARD need not assess the same charge or type of charge against every PARTICIPANT, but may establish different charges based on the size of the account, the investment option the PARTICIPANT has selected, or the type and number of transactions with respect to an individual PARTICIPANT.

5.9 Effective Date:

Such charges or assessments will be effective 30 days after they are set by the BOARD; and may be amended from time to time upon 30 days notice to the PARTICIPANT, which shall be given in the same manner as the notice of Plan Amendment under Section 5.01.

5.10 Reserve Allowed:

In setting the amount of such charges the BOARD may not only consider expenditures already incurred, but may set charges at such a level as to fund a reserve for future expenditures.

5.11 Accounts for Expense Funds:

The BOARD is authorized to establish and maintain bank accounts and short-term investments for funds coming into its hands for administration expense or reserves thereof. Records of any such accounts, income and expenditures shall be available on reasonable notice to PARTICIPANTS or their authorized

representatives for inspection and any such income and expenditure shall be accounted for in the annual financial statement of the Plan.

5.12 **Direct Payment of Plan Expense:**

The Board, in its discretion, may adopt methods under which PARTICIPANTS can elect to pay directly (rather than through reduction of account values or by deferral of salary) their proportionate share of administration expense.

5.13 **Gender References:**

Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the Plan specifically require a different construction.

5.14 **Applicable Law:**

The Law of the State of Oregon shall apply in determining the construction and validity of this Plan and its associated trust.

5.15 **Restriction on Creditors:**

The rights of the PARTICIPANT or the BENEFICIARY under this Plan shall not be subject to the rights of creditors of the PARTICIPANT or any BENEFICIARY, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.

5.16 **Anti-Assignment Clause:**

It is agreed that neither the PARTICIPANT nor his BENEFICIARY nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable.

5.17 **Binding Provisions:**

This Plan and any properly adopted amendment shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns, and on all designated BENEFICIARIES of the PARTICIPANT.

ARTICLE VI

Additional Classes of Accounts

6.1 **Additional Accounts:**

An adopting employer may, through a subscription agreement election, elect to match 457(b) deferrals in the PEN 401(a) Matching and Contribution Plan. Non-elective employer contributions may also be made to the PEN 401(a) Plan. Each adopting employer shall designate the desired classes of accounts through their subscription agreement. These accounts are:

- (a) matching. Matching contributions may be made (to the PEN 401(a) Matching and Contribution Plan shall be based upon deferrals made in this Plan) using a discretionary formula pursuant to the subscription agreement.
- (b) non-elective. Other non-elective amounts contributed by the employer on a discretionary basis to the PEN 401(a) Matching and Contribution Plan.

ARTICLE VII

Miscellaneous Provisions

7.1 **Dispute Resolution:**

The BOARD shall be authorized to resolve any questions of fact necessary to decide the PARTICIPANT'S rights under this Plan and such decision shall be binding on the PARTICIPANT and any BENEFICIARY thereof.

7.2 **Construction:**

The BOARD shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.

7.3 **Claims Against Board or Participating Employer:**

The PARTICIPANT specifically agrees not to seek recovery against the Participating Employer, the BOARD, any member of the BOARD or any other employee, contractee, or agent of the Participating Employer or the BOARD for any loss sustained by the PARTICIPANT or his BENEFICIARY, for the nonperformance of their duties, negligence, or any other misconduct of the above named persons; except that this paragraph shall not excuse fraud, wrongful taking or gross negligence by any person. Neither the Participating Employer nor the BOARD nor any member of the BOARD waives any immunity available to them under the laws of Oregon. This provision is intended to restrict PARTICIPANTS

and BENEFICIARIES to those enforcement rights and associated damages as are available under Oregon State Law.

7.4 **Right to File Action:**

The BOARD (or its agents) if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment, or allow the filing in any state court of competent jurisdiction a suit in such form as considered appropriate for legal determination of the benefits to be paid and the persons to receive them. The BOARD shall comply with the final orders of the court in any such suit and the PARTICIPANT, for himself and his BENEFICIARY, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.

7.5 **Not Subject to ERISA:**

The PEN Associates Incorporated Eligible Deferred Compensation Plan is established and maintained for eligible participating employers as a governmental Plan that is exempt from the requirements of Title I of ERISA, as provided under ERISA 4(b)(1).

Program Sponsor
PEN Associates Incorporated

Execution Date

Adopting Employer shall agree to adopt and sponsor the PEN Associates, Incorporated Eligible 457 Deferred Compensation Plan through execution of the Subscription agreement pursuant to §1.18 of this document.

