

**USD NO. 373, HARVEY COUNTY, KANSAS (NEWTON) PENSION PLAN**

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## ARTICLE I

### INTRODUCTION

**Section 1.01. Plan and Trust.** Unified School District No. 373, Harvey County, Kansas (Newton) hereby establishes this Plan for the payment of pension benefits to certain of its employees. This Plan is intended to qualify as a tax-exempt plan and trust under Code Sections 401(a) and 501(a), respectively.

**Section 1.02. Governmental Plan.** This Plan operates as a governmental plan within the meaning of Code Section 414(d).

## ARTICLE II

### DEFINITIONS

**Section 2.01. Definitions.** The following terms will have the following meanings unless the context clearly suggests otherwise:

*“Administrative Employment”* means an Employee’s full-time employment with the District in a position for which the District requires the Employee to hold an administrator’s license, including, but not necessarily limited to, a superintendent, assistant superintendent, principal, assistant principal, director or assistant director.

*“Basic Contract Salary”* means the contractual amount payable to an Employee for the basic duty performed by the Employee for the District. With respect to Employees in Licensed Employment, this amount is the amount established in the salary schedule in the District’s applicable negotiated agreement with the Employee’s bargaining unit. With respect to Employees in Administrative Employment, this amount is the amount set forth in such Employee’s individual contract with the District. Basic Contract Salary will not include payments for extra-curricular duties, extended duties, extended contract days or any other supplementary payments.

*“Code”* means the Internal Revenue Code of 1986, as amended from time to time, and the guidance promulgated thereunder.

*“Committee”* means the Committee that may be appointed by the District pursuant to Section 7.01 to serve as Plan Administrator.

*“Compensation”* means the Basic Contract Salary earned by an Employee from employment with the District.

The annual Compensation of each Participant taken into account for determining all benefits provided under the Plan shall not exceed \$200,000 or such other amount in effect under Code Section 401(a)(17)(B) (adjusted for cost-of-living increases). The amount in effect for a calendar year applies to any determination period that begins during such calendar year. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year. The determination period

shall be the Plan Year. If a determination period consists of fewer than 12 months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

“*Effective Date*” means January 1, 2007.

“*Employee*” means any individual who is employed by the District as a common law employee as evidenced by the District’s withholding of employment taxes from the individual’s pay, but excluding (a) leased employees (within the meaning of Code Section 414(n)), and (b) any individual who is classified by the District as an independent contractor, regardless of any subsequent reclassification as a common law employee by a court, administrative agency or other adjudicatory body.

“*District*” means Unified School District No. 373, Harvey County, Kansas (Newton).

“*Full Social Security Retirement Age*” means the age at which an individual qualifies for a full (normal) social security benefit under the U.S. Social Security system as it exists as of the Effective Date, which is as follows:

<b>Year of Birth</b>	<b>Full Social Security Retirement Age</b>
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943 to 1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

“*KPERS*” means the Kansas Public Employees Retirement System.

“*Licensed Employment*” means an Employee’s full-time employment by the District under a teacher’s basic contract, including but not necessarily limited to a teacher, counselor, media specialist, director or nurse.

“*Participant*” means an Employee who is eligible for and participates in the Plan in accordance with Article III.

“*Pension*” means a series of monthly amounts payable to a Participant as his or her benefit hereunder.

“Plan” means the USD No. 373, Harvey County, Kansas (Newton) Pension Plan, as stated herein and as may be amended from time to time.

“Plan Administrator” means the person(s) or Committee(s) designated by the District to administer the Plan.

“Plan Year” means the 12-consecutive month period beginning July 1 and ending June 30. However, the initial Plan Year is the period beginning on the Effective Date and ending on June 30, 2007.

“Required Beginning Date” means the later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or retires; except that benefit distributions to a 5% owner must commence by the April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

“Retirement Date” means the last date a Participant is required to provide services to the District under the Participant’s most current teacher’s basic contract or individual administrative contract, as applicable to the Participant.

“School Year” means that period of time determined by the District for the education of students by the District.

“Social Security Retirement Benefit” means the benefit payable to an Employee from the U.S. Social Security system when the Employee’s reaches his or her Full Social Security Retirement Age.

“Trust Fund” means all of the assets of the Plan held by the Trustee pursuant to Article VI.

“Trustee” means the person(s) designated by the District to hold and manage the Trust Fund.

### ARTICLE III

#### PARTICIPATION

##### Section 3.01. Eligibility.

(a) **Active Employees in General.** Each Employee who is in Administrative Employment or Licensed Employment on the Effective Date is eligible to participate in the Plan provided that as of the September 1 immediately following the Employee’s Retirement Date, such Employee (a) will have at least 15 years of Administrative and/or Licensed Employment with the District; (b) will be no more than 12 years from being able to receive a Social Security Retirement Benefit; (c) has not reached Full Social Security Retirement Age; and (d) is eligible for a retirement benefit under KPERS.

(b) **Active Employees in Licensed Employment Retiring After the 2006-2007 School Year.** Notwithstanding subsection (a), effective for an Employee who is in

Licensed Employment and who retires after the 2006-2007 School Year, such Employee is eligible to participate in the Plan provided that as of the September 1 immediately following the Employee's Retirement Date, such Employee (a) will have at least 15 years of Administrative and/or Licensed Employment with the District; (b) has not reached Full Social Security Retirement Age; (c) is eligible for a retirement benefit under KPERS; and (d) will be no more than the number of years from being able to receive a Social Security Retirement Benefit in accordance with the following table:

<b>Years of Licensed Employment within the District</b>	<b>Years Before the Participant Receives a Social Security Retirement Benefit</b>
3	1
6	2
9	3
12	4
15	5
18	6
21	7
24	8
27	9
30	10
33	11
36	12

(c) **Former Employees.** Each former Employee who was in Administrative Employment or Licensed Employment prior to the Effective Date and who is receiving benefits as of the Effective Date under the District's voluntary early retirement program as set out in the District's Administrative Benefits summary and the applicable negotiated agreement between the District and the bargaining unit, respectively, is eligible to participate in the Plan.

**Section 3.02. Commencement of Participation.**

(a) **Active Employees.** Subject to Section 3.03, each Employee eligible under Section 3.01(a) will become a Participant in the Plan on his or her Retirement Date provided the eligible Employee has notified the District in writing by the March 15 immediately preceding his or her Retirement Date or such later date as approved by the District that he or she intends to retire from the District as of his or her Retirement Date.

(b) **Former Employees.** Each former Employee eligible under Section 3.01(b) will automatically become a Participant in the Plan on the Effective Date.

**Section 3.03. Procedures For Admission.** The Plan Administrator shall prescribe such forms and may require such data from an eligible Employee as are reasonably required to enroll the Employee in the Plan. Notwithstanding Section 3.02, an Employee will not be considered a Participant in the Plan until providing such forms and data to the Plan Administrator.

## ARTICLE IV

### BENEFITS

**Section 4.01. Benefit at Retirement.** A Participant is eligible for a Pension as of his or her Retirement Date. Subject to Sections 4.02 and 4.04, a Participant's total Plan benefit will equal the "Applicable Percentage" of his or her Basic Contract Salary determined as of his or her Retirement Date multiplied by either: (a) in the case of Section 4.01(b) or (c), the years until the Participant attains Full Social Security Retirement Age, or (b) in the case of Section 4.01(a) or (d), 65 minus the age of the Participant beginning in the first contract year of the Participant's retirement. The Applicable Percentage is determined as follows:

(a) *Licensed Employment Prior to the 2001-2002 School Year.* For a Participant who was in Licensed Employment on his or her Retirement Date and who retired before the 2001-2002 School Year, the Applicable Percentage is determined in accordance with the following table:

Age at Beginning of First Contract Year of Retirement	Percentage
53	19
54	20
55	21
56	22
57	23
58	24
59	25
60	26
61	27
62	28
63	29
64	30

(b) *Licensed Employment After the 2000-2001 School Year.* For a Participant who was in Licensed Employment on his or her Retirement Date and who retired after the 2000-2001 School Year, the "Applicable Percentage" is determined in accordance with the following table:

Years from a Participant's Retirement Date to Full Social Security Retirement Age	Percentage
12	19
11	20
10	21
9	22
8	23
7	24

6	25
5	26
4	27
3	28
2	29
1	30

(c) **Administrative Employment After the 2001-2002 School Year.** For a Participant who was in Administrative Employment on his or her Retirement Date and who retired after the 2001-2002 School Year, the “Applicable Percentage” is determined in accordance with the following table:

<b>Years from a Participant’s Retirement Date to Full Social Security Retirement Age</b>	<b>Percentage</b>
12	13
11	14
10	14
9	14
8	15
7	15
6	26
5	27
4	28
3	29
2	30
1	30

(d) **Administrative Employment Prior to the 2002-2003 School Year.** For a Participant who was in Administrative Employment on his or her Retirement Date and who retired prior to the 2002-2003 School Year, the “Applicable Percentage” is determined in accordance with the following table:

<b>Age at Beginning of First Contract Year of Retirement</b>	<b>Percentage</b>
55	14
56	14
57	14
58	15
59	15
60	26
61	27
62	28
63	29
64	30

**Section 4.02. Maximum Plan Benefits.** In no event will a Participant's monthly Pension benefit exceed the monthly amount the Participant would receive as a Social Security Retirement Benefit.

**Section 4.03. Form and Time of Benefit.** Payment of a Participant's benefit will commence as of the month immediately following the month of the Participant's final receipt of payment under his or her teacher's basic contract or administrative contract, as applicable, and will be paid in equal monthly payments on or about the 25th day of each month until terminated in accordance with Section 4.04.

**Section 4.04. Termination of Benefits.** A Participant's Pension will be payable until the first to arrive of the following dates:

- (a) the month prior to the first month the Participant is entitled to a Social Security Retirement Benefit;
- (b) the date the Participant dies;
- (c) as applied only to a Participant eligible under the Plan pursuant to Section 3.01(a) or 3.01(c), the date the Participant accepts licensed regular employment or an administrative position with the District or any other school district, with the exception of temporary substitute employment; or
- (d) the date the Participant becomes eligible for disability payments under KPERS.

**Section 4.05. Maximum Annual Benefit.**

(a) ***Effect on Participants.*** Notwithstanding any provision of the Plan to the contrary, a Participant's benefit will not exceed the maximum permissible benefit in accordance with Code Section 415.

(b) ***Definitions.***

(i) ***Defined Benefit Dollar Limitation.*** The "defined benefit dollar limitation" is \$160,000, as adjusted, effective January 1 of each year, under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Code Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. For this purpose the limitation year is the Plan Year.

(ii) ***Maximum Permissible Benefit.*** The "maximum permissible benefit" is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in (A) and, if applicable, in (B) or (C) below).

(A) If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation 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. In the case of a Participant who has fewer than 10 years of service with the District, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the District and (ii) the denominator of which is 10.

(B) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under (A) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5% interest rate and the applicable mortality table as defined in Code Section 417(e)(3). Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (B) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(C) If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 (adjusted under (A) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table as defined in Code Section 417(e)(3) and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5% interest rate assumption and the applicable mortality table as defined in Code Section 417(e)(3). For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

**Section 4.06. Death Benefits.** This Plan does not provide for any death benefit or other benefit payable on or after a Participant's death, and as such, the Participant does not have any right to designate a beneficiary hereunder. Any amounts remaining unpaid at a Participant's death will be forfeited in accordance with Section 4.04.

**Section 4.07. Required Minimum Distributions.** Notwithstanding any other Plan provision to the contrary, all distributions that may be made to a Participant shall be paid no less rapidly than required in accordance with the final regulations under Code Section 401(a)(9). The entire interest of a Participant must be distributed or begin to be distributed no later than the Required Beginning Date.

As of the first distribution calendar year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant,
- (b) the life of the Participant and a Beneficiary,
- (c) a period certain not extending beyond the life expectancy of the Participant, or
- (d) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a Beneficiary.

The life expectancy is calculated using the attained age of the Participant as of the birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. Life expectancy is computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Treasury Regulations. Unless otherwise elected by the Participant by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant and shall apply to all subsequent years. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.

The amount to be distributed each year, beginning with distributions for the first distribution calendar year shall not be less than the quotient obtained by dividing the Participant's benefit by the applicable life expectancy. The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that distribution calendar year. If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) of the Code and the proposed regulations thereunder.

**Section 4.08. Direct Rollover Distributions.**

- (a) **General Rule.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any

portion of an eligible rollover distribution to which he or she is entitled paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) **Definitions.** The following definitions apply for purposes of this Section 4.08.

(i) **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 of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any hardship distribution to the extent it is derived from elective deferrals.

(ii) **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state or an 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; or a qualified plan described in Code Section 401(a), that accepts the distributee'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.

(iii) **Distributee.** A distributee includes a Participant, former Participant or alternate payee with respect to the interest of the alternate payee's spouse or former spouse under the Plan.

(iv) **Direct Rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **Section 4.09. Legally Incompetent or Missing Payee.**

(a) **Minor or Incompetent.** If a distribution is to be made an individual who is legally incompetent, the Plan Administrator may direct that such distribution be paid to a legal guardian. Such payment shall fully discharge the Trustee, Plan Administrator, Trust Fund and the District from further liability on account thereof.

(b) **Missing Payee.** If all or any portion of the distribution payable to a Participant remains unpaid because the Plan Administrator has been unable to ascertain

the whereabouts of the Participant after sending a registered letter, return receipt requested, to the last known address of such Participant, the amount so distributable will be forfeited and used to reduce the cost of the Plan. Notwithstanding the foregoing, if a claim is subsequently made by the Participant for the forfeited benefit, such benefit will be reinstated.

**Section 4.10. Offset.** In the event any payment is made by the Trustee to any individual who is not entitled to such payment the Trustee has the right to reduce future payments due to such individual by the amount of any such erroneous payment. This right of offset, however, will not limit the rights of the Trustee to recover such overpayments in any other manner.

## ARTICLE V

### CONTRIBUTIONS

**Section 5.01. Contributions.** The District shall, in accordance with the provisions of any law applicable to the Plan, contribute to the Trust Fund in such amounts as shall be necessary to provide the benefits set forth herein. Subject to the provisions of Section 6.03, all contributions made by the District to the Trust Fund shall be irrevocable and shall be used solely for the exclusive benefit of Participants and to defray reasonable expenses of the Plan or Trust Fund. Forfeitures arising for any reason will be applied to reduce the cost of the Plan, not to increase the benefits otherwise payable to Participants. The District may retain an enrolled actuary on behalf of the Plan who may certify to the District the required contribution for the Plan Year, if any.

**Section 5.02. Employee Contributions.** The Plan does not require or permit Participant contributions, including, but not limited to rollover contributions.

## ARTICLE VI

### TRUST FUND

#### **Section 6.01. Trust Fund.**

(a) ***Continuation of Trust Fund.*** A trust is hereby established under the Plan and the Trustee will maintain a trust account for the Plan and, as part thereof, Participants' accounts for such individuals as the District shall from time to time give written notice to the Trustee are Participants in the Plan. The Trustee will accept and hold in the Trust Fund such contributions as it may receive from time to time from the District, including amounts transferred by any prior trustee of the Plan, and such earnings, income and appreciation as may accrue thereon; less losses, depreciation and payments made by the Trustee to carry out the purposes of the Plan. The Trust Fund shall be fully invested and reinvested in accordance with the applicable provisions of the Plan.

(b) ***Exclusive Benefit.*** All contributions made to the Plan are made for the exclusive benefit of the Participants, and such contributions shall not be used for, or

diverted to, purposes other than for the exclusive benefit of the Participants (including the costs of maintaining and administering the Plan and corresponding trust).

(c) ***Return of Contributions.*** Notwithstanding any other provision of the Plan: (i) as contributions made prior to the receipt of an initial determination letter are conditional upon a favorable determination as to the qualified status of the Plan under Code Section 401(a), if the Plan receives an adverse determination with respect to its initial qualification, then any such contribution may be returned to the District within one year after such determination, provided the application for determination is made by the time prescribed by law; (ii) contributions made by the District based upon mistake of fact may be returned to the District within one year of such contribution; and (iii) after all liabilities under the Plan have been satisfied, the remaining assets of the Trust shall be distributed to the District to the extent provided in Section 8.03.

In the case of the return of a contribution due to mistake of fact, the amount that may be returned is the excess of the amount contributed over the amount that would have been contributed had there not been a mistake. Earnings attributable to the excess contributions may not be returned to the District but losses attributable thereto must reduce the amount to be so returned. Any return of contribution or distribution of assets made by the Trustee pursuant to this section shall be made only upon the direction of the District, which shall have exclusive responsibility for determining whether the conditions of such return or distribution have been satisfied and for the amount to be returned.

## **Section 6.02. Duties Of The Trustee.**

(a) ***In General.*** The Trustee is not a party to, and has no duties or responsibilities under, the Plan other than those that may be expressly contained in this Article. The Trustee shall have no duties, responsibilities or liability with respect to the acts or omissions of any prior trustee. The Trustee shall discharge its assigned duties and responsibilities under this Article and the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) ***Contributions.*** The Trustee agrees to accept contributions that are paid to it by the District in accordance with the terms of this Article. Such contributions shall be in cash. The Trustee shall have no duty to determine or collect contributions under the Plan and shall have no responsibility for any property until it is received by the Trustee. The District shall have the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan, the transmittal of the same to the Trustee and compliance with any statute, regulation or rule applicable to contributions.

(c) ***Distributions.*** The Trustee shall make distributions out of the Trust Fund pursuant to instructions described in Section 6.04. The Trustee shall not have any responsibility or duty under this Article for determining that such are in accordance with the terms of the Plan and applicable law, including without limitation, the amount, timing

or method of payment and the identity of each person to whom such payments shall be made. The Trustee shall have no responsibility or duty to determine the tax effect of any payment or to see to the application of any payment. In making payments to service providers pursuant to instructions, the District acknowledges that the Trustee is acting as a paying agent and not as the payor, for tax information reporting and withholding purposes. In the event that any dispute shall arise as to the persons to whom payment or delivery of any assets shall be made by the Trustee, the Trustee may withhold such payment or delivery until such dispute shall have been settled by the parties concerned or shall have been determined by a court of competent jurisdiction.

(d) **Records.** The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the District and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the District or the Plan Administrator. A Participant may examine only those individual account records pertaining directly to him.

(e) **Accounting.** The Trustee shall file with the Plan Administrator a written account of the administration of the Trust Fund showing all transactions effected by the Trustee subsequent to the period covered by the last preceding account and all property held at its fair market value at the end of the accounting period. The Trustee shall use its best effort to file such written account within 90 days, but not later than 120 days after the end of each Plan Year. Upon approval of such accounting by the Plan Administrator, neither the District nor the Plan Administrator shall be entitled to any further accounting by the Trustee. The Plan Administrator may approve such accounting by written notice of approval delivered to the Trustee or by failure to express objection to such accounting in writing delivered to the Trustee within six months from the date on which the accounting is delivered to the Plan Administrator.

(f) **Participant Eligibility.** The Trustee shall not be required to determine the facts concerning the eligibility of any Participant to participate in the Plan, the amount of benefits payable to any Participant under the Plan, or the date or method of payment or disbursement. The Trustee shall be fully entitled to rely in good faith solely upon the written advice and directions of the Plan Administrator as to any such question of fact.

(g) **Notice.** The Trustee shall provide the District with advance notice of any legal actions the Trustee may take with respect to the Plan and Trust and shall promptly notify the District of any claim against the Plan and Trust.

**Section 6.03. General Investment Powers.** In addition to all powers and authority under common law, statutory authority and other provisions of this Article and to the extent not inconsistent with any applicable law, the Trustee shall have the following powers and authorities:

(a) Invest and reinvest the Trust Fund in any property, real, personal or mixed, wherever situated, and whether situated, and whether or not productive of income or consisting of wasting assets, including, without limitation, common and preferred stock, bonds, notes, debentures, options, mutual funds, leaseholds, mortgages (including

without limitation, any collective or part interest in any bond and mortgage or note and mortgage), certificates of deposit, and oil, mineral or gas properties, royalties, interests or rights (including equipment pertaining thereto), without being limited to the classes of property in which trustees are authorized by law or any rule of court to invest trust funds and without regard to the proportion any such property may bear to the entire amount of the Trust Fund;

(b) Hold property in nominee name, in bearer form, or in book entry form, in a clearinghouse corporation or in a depository, so long as the Trustee's records clearly indicate that the assets held are a part of the Trust Fund;

(c) Collect income payable to and distributions due to the Trust Fund and sign on behalf of the Trust any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts;

(d) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;

(e) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;

(f) Take all action necessary to pay for authorized transactions or make authorized distributions, including exercising the power to borrow or raise moneys from any lender, upon such terms and conditions as are necessary to settle such transactions or distributions;

(g) To keep such portion of the Trust Fund uninvested in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;

(h) To accept and retain for such time as the Trustee may deem advisable any securities or other property received or acquired as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

(i) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(j) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Plan and/or Trust Fund in all suits and legal and administrative proceedings;

(k) To invest in Treasury Bills and other forms of United States government obligations;

(l) Deposit cash in interest bearing accounts in the banking department of the Trustee or an affiliated banking organization;

(m) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;

(n) Invest and reinvest all or any portion of the Trust Fund collectively with funds of other retirement plan trusts exempt from tax under Code Section 501(a), including, without limitation, the power to invest collectively with such other funds through the medium of one or more common, collective or commingled trust funds which have been or may hereafter be operated by the Trustee, the instrument or instruments establishing such trust fund or funds, as amended from time to time, being made part of this Trust so long as any portion of the Trust Fund shall be invested through the medium thereof;

(o) Sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the Trust created hereunder, partition or exchange any real property which may from time to time constitute a portion of the Trust Fund, for such prices and upon such terms as it may deem best, and to make, execute and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers and other legal instruments, either necessary or convenient for the passing of the title and ownership thereof to the purchaser, free and discharged of all trusts and without liability on the part of such purchasers to see to the proper application of the purchase price;

(p) Repair, alter, improve or demolish any buildings which may be on any real estate forming part of the Trust Fund or to erect entirely new structures thereon;

(q) Renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any mortgage or to any other modification or change in the terms of any mortgage or of any guarantee pertaining thereto, in any manner and to any extent that may be deemed advisable for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure, to bid on property in foreclosure, to take a deed in lieu of foreclosure with or without paying a consideration therefor, and in connection therewith to release the obligation on the bond or note secured by the

mortgage; and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee;

(r) Purchase any authorized investment at a premium or at a discount;

(s) To execute all necessary receipts and releases and shall be under the duty to make efforts to collect such sums as may appear to be due (except contributions hereunder); provided, however, that the Trustee shall not be required to institute suit or maintain any litigation to collect the proceeds of any asset unless it has been indemnified to its satisfaction for counsel fees, costs, disbursements and all other expenses and liabilities to which it may in its judgment be subjected by such action. Notwithstanding anything to the contrary herein contained, the Trustee is authorized to compromise and adjust claims arising out of any asset held in the Trust Fund upon such terms and conditions as the Trustee may deem just, and the action so taken by the Trustee shall be binding and conclusive upon all persons interested in the Trust Fund;

(t) To retain the services of investment advisors to invest and reinvest the assets of the Trust Fund, as well as employ such legal, actuarial, medical, accounting, clerical and other assistance as may be required in carrying out the provisions of the Plan. The Trustee may also appoint custodians, subcustodians or subtrustees as to part or all of the Trust Fund; and

(u) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.

#### **Section 6.04. Instructions.**

(a) ***Reliance on Instructions.*** Whenever the Trustee is permitted or required to act upon the directions or instructions of the Plan Administrator or District, the Trustee shall be entitled to act in good faith upon any written communication signed by any person or agent designated to act as or on behalf of the Plan Administrator or District. Such person or agent shall be so designated either under the provisions of the Plan or in writing by the District and their authority shall continue until revoked in writing. The Trustee shall incur no liability for failure to act in good faith on such person's or agent's instructions or orders without written communication, and the Trustee shall be fully protected in all actions taken in good faith in reliance upon any instructions, directions, certifications and communications believed to be genuine and to have been signed or communicated by the proper person.

(b) ***Designation of Agent.***

(i) ***District.*** The District shall notify the Trustee in writing as to the appointment, removal or resignation of any person designated to act as or on behalf of the Plan Administrator or District. After such notification, the Trustee shall be fully protected in acting in good faith upon the directions of, or dealing with, any person designated to act as or on behalf of the Plan Administrator or District until it receives notice to the contrary. The Trustee shall have no duty to

inquire into the qualifications of any person designated to act as or on behalf of the Plan Administrator or District.

(ii) *Trustee.* If there is more than one Trustee, the Trustees may designate one of the Trustees to act behalf of the Trustees. Such designated Trustee shall be authorized to take any and all actions and execute and deliver such documents as may be necessary or appropriate.

(c) *Payment of Benefits.* The Trustee shall pay benefits and expenses from the Trust Fund only upon the written direction of the Plan Administrator. The Trustee shall be fully entitled to rely in good faith on such directions furnished by the Plan Administrator, and shall be under no duty to ascertain whether the directions are in accordance with the provisions of the Plan.

### **Section 6.05. Compensation and Indemnification.**

(a) *Compensation.* The Trustee shall be entitled to reasonable compensation for its services as is mutually agreed upon with the District. If approved by the Plan Administrator, the Trustee shall also be entitled to reimbursement for all direct expenses properly and actually incurred on behalf of the Plan. Such compensation or reimbursement shall be paid to the Trustee out of the Trust Fund unless paid directly by the District.

(b) *Indemnification.* The District shall indemnify and hold harmless the Trustee from all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees and expenses, incurred by the Trustee in connection with its duties hereunder but only to the extent not covered by insurance and arising from the District's or its Board of Education's actions or inactions, except when the same is due to the Trustee's own negligence, misconduct, lack of good faith or breach of its fiduciary duties.

### **Section 6.06. Resignation and Removal.**

(a) *Resignation.* The Trustee may resign at any time by written notice to the Plan Administrator which shall be effective 60 days after delivery unless prior thereto a successor Trustee assumes the responsibilities of Trustee hereunder.

(b) *Removal.* The Trustee may be removed by the District at any time.

(c) *Successor Trustee.* The appointment of a successor Trustee hereunder shall be accomplished by and shall take effect upon the delivery to the resigning or removed Trustee, as the case may be, of written notice of the District appointing such successor Trustee, and an acceptance in writing of the office of successor Trustee hereunder executed by the successor so appointed. All of the provisions set forth herein with respect to the Trustee shall relate to each successor Trustee so appointed with the same force and effect as if such successor Trustee had been originally named herein as the Trustee hereunder. If within 45 days after notice of resignation shall have been given under the provisions of this Article a successor Trustee shall not have been appointed, the

resigning Trustee or the Plan Sponsor may apply to any court of competent jurisdiction for the appointment of a successor Trustee.

(d) ***Transfer of Trust Fund.*** Upon the appointment of a successor Trustee, the resigning or removed Trustee shall transfer and deliver the Trust Fund to such successor Trustee, after reserving such reasonable amount as it shall deem necessary to provide for its expenses in the settlement of its account, the amount of any compensation due to it and any sums chargeable against the Trust Fund for which it may be liable. If the sums so reserved are not sufficient for such purposes, the resigning or removed Trustee shall be entitled to reimbursement for any deficiency from the Plan Sponsor.

## ARTICLE VII

### PLAN ADMINISTRATION

#### Section 7.01. Plan Administrator.

(a) ***Designation.*** The District will serve as the Plan Administrator unless it otherwise appoints a Plan Administrator. If a Committee is designated by the District as the Plan Administrator, the Committee shall consist of one or more individuals who may be Employees appointed by the District and the Committee shall elect a chairman and may adopt such rules and procedures as it deems desirable. The Committee may take also action with or without formal meetings and may authorize one or more individuals, who may or may not be members of the Committee, to execute documents in its behalf.

(b) ***Authority and Responsibility of the Plan Administrator.*** The Plan Administrator shall have total and complete discretionary power and authority:

(i) to make factual determinations, to construe and interpret the provisions of the Plan, to correct defects and resolve ambiguities and inconsistencies therein and to supply omissions thereto. Any construction, interpretation or application of the Plan by the Plan Administrator shall be final, conclusive and binding;

(ii) to determine the amount, form or timing of benefits payable hereunder and the recipient thereof and to resolve any claim for benefits in accordance with this Article VII;

(iii) to determine the amount and manner of any benefit calculations hereunder;

(iv) to maintain and preserve records relating to Participants and former Participants;

(v) to prepare and furnish to Participants all information and notices required under federal law or the provisions of this Plan;

(vi) to prepare and file or publish with the Secretary of Labor, the Secretary of the Treasury, their delegates and all other appropriate government officials all reports and other information required under law to be so filed or published;

(vii) to approve and enforce any loan hereunder including the repayment thereof;

(viii) to provide directions to the Trustee with respect to the purchase of life insurance, methods of benefit payment, valuations at dates other than regular valuation dates and on all other matters where called for in the Plan or requested by the Trustee;

(ix) to hire such professional assistants and consultants as it, in its sole discretion, deems necessary or advisable;

(x) to determine all questions of the eligibility of Employees and of the status of rights of Participants;

(xi) to arrange for bonding, if required by law;

(xii) to adjust Accounts in order to correct errors or omissions;

(xiii) to take such action as the Plan Administrator deems appropriate in the case of any domestic relations order;

(xiv) to retain records on elections and waivers by Participants;

(xv) to supply such information to any person as may be required;

(xvi) to establish, revise from time to time, and communicate to the Trustee, a funding policy and method for the Plan; and

(xvii) to perform such other functions and duties as are set forth in the Plan that are not specifically given to the Trustee.

(c) ***Procedures.*** The Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate for the administration of the Plan. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished to it. The Plan Administrator's decisions shall be binding and conclusive as to all parties.

(d) ***Allocation of Duties and Responsibilities.*** The Plan Administrator may designate other persons to carry out any of its duties and responsibilities under the Plan.

**Section 7.02. Compensation of Plan Administrator.** The Plan Administrator shall serve without compensation for its services.

**Section 7.03. Plan Expenses.** All direct expenses of the Plan, Trustee, Plan Administrator or any other person in furtherance of their duties hereunder shall be paid or reimbursed by the District, and if not so paid or reimbursed, shall be proper charges to the Trust Fund and shall be paid therefrom.

**Section 7.04. Allocation of Fiduciary Responsibility.** A Plan fiduciary shall have only those specific powers, duties, responsibilities and obligations as are explicitly given him under the Plan and Trust Agreement. It is intended that each fiduciary shall not be responsible for any act or failure to act of another fiduciary. A fiduciary may serve in more than one fiduciary capacity with respect to the Plan.

**Section 7.05. Indemnification.** The District shall indemnify and hold harmless any person serving as the Plan Administrator from all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees and expenses, incurred by such persons in connection with their duties hereunder but only to the extent not covered by insurance and arising from the District's or its Board of Education's actions or inactions, except when the same is due to such person's own negligence, misconduct, lack of good faith, or breach of its fiduciary duties.

**Section 7.06. Claims Procedures.** If a claim for benefits under the Plan is denied, the Plan Administrator will give notice in writing of such denial to the claimant within a reasonable period of time after receipt of the claim by the Plan, not to exceed 90 days (or if the circumstances warrant an extension of time, within a period not to exceed 120 days), by registered or certified mail. The notice will set forth the specific reasons for such denial, referencing pertinent Plan provisions on which the denial is based, a description of any additional materials or information necessary for the claimant to perfect the claim with an explanation of why such material or information is necessary and an explanation of the Plan's claim procedures.

The Plan Administrator will also advise the claimant that he or she may request a full and fair review of the decision denying the claim by filing a request for review with the Plan Administrator within 30 days after the Plan Administrator has mailed the denial notice. If such a request is received by the Plan Administrator, the Plan Administrator will conduct a review within 60 days of receipt of such request (or if the circumstances warrant an extension of time, within a period not to exceed 120 days after receipt of such request). The Plan Administrator will provide the claimant written notice of the decision on review.

## ARTICLE VIII

### AMENDMENT, MERGER AND TERMINATION

**Section 8.01. Amendment.** The provisions of the Plan may be amended in writing at any time and from time to time by the District, provided, however, that no amendment to the Plan shall decrease a Participant's benefit. Notwithstanding the preceding sentence, a Participant's benefit may be reduced to the extent permitted under Code Section 412(c)(8). No amendment shall increase the duties and liabilities of the Trustee without the Trustee's consent. For purposes of this subsection, a Plan amendment that has the effect of (i) eliminating or

reducing an early retirement benefit or a retirement-type subsidy, or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits, unless such amendment is authorized under applicable Treasury Regulations. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, a death benefit (including life insurance).

### **Section 8.02. Merger and Transfer.**

(a) **Merger.** In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant shall have a benefit in the surviving or transferee plan (as if such plan were then terminated immediately after such merger, consolidation or transfer) that is equal to or greater than the benefit he would have had immediately before such merger, consolidation or transfer in the plan in which he was then a Participant had such plan been terminated at that time.

(b) **Transfer.** The Plan Administrator may direct the Trustee to accept assets and related liabilities from another qualified plan provided that it receives sufficient evidence that the transferor plan is a tax-qualified plan. The Plan Administrator may direct the Trustee to transfer assets and related liabilities to another qualified plan provided that it receives sufficient evidence that the transferee plan is a tax-qualified plan.

### **Section 8.03. Termination.**

(a) It is the intention of the District that this Plan will be permanent. However, the District reserves the right to terminate the Plan at any time for any reason.

(b) Any termination of the Plan shall become effective as of the date designated by the District. Except as expressly provided elsewhere in the Plan, prior to the satisfaction of all liabilities with respect to the benefits provided under this Plan, no termination shall cause any part of the funds or assets held to provide benefits under the Plan to be used other than for the benefit of Participants or to meet the administrative expenses of the Plan. In the event of the termination or partial termination of this Plan, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be nonforfeitable.

(c) Upon termination of this Plan with respect to all Participants, the Plan Administrator shall direct the Trustee to allocate and distribute the assets of the Trust Fund to satisfy the liabilities to Participants in the priorities and according to the categories required by applicable law; provided, however, that any assets remaining in the Trust Fund after such allocation and distribution pursuant to the priorities and categories required by law shall revert to the District. To the extent that such remaining assets do not revert to the District, such assets shall be reallocated to the remaining Participants in a non-discriminatory manner.

## ARTICLE IX

### MISCELLANEOUS

#### **Section 9.01. Nonalienation of Benefits.**

(a) Except as provided in Section 9.01(b), the Trust Fund shall not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of the District or Participants under the Plan and all payments, benefits and rights shall be free from attachment, garnishment, trustee's process, or any other legal or equitable process available to any creditor of such District or Participant. Except as provided in Section 9.01(b), no Participant shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he may expect to receive, contingently or otherwise, under the Plan.

(b) Notwithstanding the foregoing, the Trustee and/or Plan Administrator may:

(i) Subject to Section 9.02, comply with the provisions and conditions of any domestic relations order.

(ii) Comply with any federal tax levy made pursuant to Code Section 6331.

(iii) Bring action to recover benefit overpayments.

#### **Section 9.02. Rights of Alternate Payees.**

(a) **General.** An alternate payee shall have no rights to a Participant's benefit and shall have no rights under this Plan other than those rights specifically granted to the alternate payee pursuant to a domestic relations order that are consistent with this section.

(b) **Distribution.** Notwithstanding any provision of the Plan to the contrary, the Plan Administrator may direct the Trustee to distribute all or a portion of a Participant's benefits under the Plan to an alternate payee in accordance with the terms and conditions of a domestic relations order. A distribution pursuant to a domestic relations order shall not include any type of benefit or payment option not otherwise payable by the Plan.

(c) **Maximum Amount.** A domestic relations order may not provide for the assignment to an alternate payee of an amount that exceeds the vested amount of the Participant's benefit.

(d) **Plan Procedures.** The Plan Administrator may establish reasonable procedures for determining whether any domestic relations order received with respect to the Plan qualifies as a domestic relations order, and for administering distributions in accordance with the terms and conditions of such procedures and any domestic relations order.

**Section 9.03. No Right to Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the District and the Participant, or as a right of any Employee to continue in the employment of the District, or as a limitation of the right of the District to discharge any of its Employees, with or without cause.

**Section 9.04. No Right to Trust Assets.** No Employee, Participant, former Participant or alternate payee shall have any rights to, or interest in, any assets of the Trust upon termination of employment or otherwise, except as specifically provided under the Plan. All payments of benefits under the Plan shall be made solely out of the assets of the Trust.

**Section 9.05. Participant Benefiting.** A Participant shall be treated as benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treasury Regulation Section 1.410(b)-3(a).

**Section 9.06. Governing Law.** This Plan shall be construed in accordance with and governed by the laws of the State of Kansas to the extent not preempted by Federal law.

**Section 9.07. Severability of Provisions.** If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions had not been included.

**Section 9.08. Headings and Captions.** The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

**Section 9.09. Gender and Number.** Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa.

Executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

UNIFIED SCHOOL DISTRICT NO. 373,  
HARVEY COUNTY, KANSAS

By: \_\_\_\_\_  
(Name and Title)