

**Governmental 457(b) Trust Agreement**

between

**INDIAN RIVER COUNTY BOCC**

and

**Lincoln Financial Group Trust Company,  
as Trustee**

## Index

<b>Article I</b>	<b>Definitions</b> .....	1
	Section 1.1 Definitions .....	1
<b>Article II</b>	<b>Creation; Purpose; Etc.</b> .....	2
	Section 2.1 Creation .....	2
	Section 2.2 Purpose .....	2
	Section 2.3 Exclusive Benefit .....	2
	Section 2.4 Domestic Trust .....	2
	Section 2.5 Prohibited Transactions .....	2
	Section 2.6 Directed Trustee .....	2
	Section 2.7 Employer Representation .....	2
<b>Article III</b>	<b>Administration of Plan</b> .....	3
	Section 3.1 Payment of Benefits .....	3
	Section 3.2 Reliance on Administrator .....	3
	Section 3.3 Trustee Not Responsible for Plan Administration .....	3
	Section 3.4 Trustee Not Responsible for Enforcing Contributions or for Sufficiency of Account .....	3
	Section 3.5 Plan-to-Plan Transfers/Rollovers .....	3
<b>Article IV</b>	<b>Investment of Trust</b> .....	3
	Section 4.1 Employer Authority .....	3
	Section 4.2 Investment Managers .....	3-4
	Section 4.3 Individually Directed Accounts .....	4
	Section 4.4 Reliance on Employer, Investment Managers, Participants .....	4
	Section 4.5 Late Day Trading .....	4
	Section 4.6 Self-Directed Brokerage Accounts .....	4
	Section 4.7 Plan Expense Account .....	4
<b>Article V</b>	<b>Powers of Trustee</b> .....	5-6
	Section 5.1 General Powers .....	6
	Section 5.2 Uninvested Cash and Float .....	6
	Section 5.3 Valuations .....	6
<b>Article VI</b>	<b>Records and Accounts of Trustee</b> .....	7
	Section 6.1 Records .....	7
	Section 6.2 Annual and Other Periodic Accounts .....	7
	Section 6.3 Tax Returns and Tax Withholding and Reporting .....	7
<b>Article VII</b>	<b>Trustee's Rights/Limitations of Trustee's Responsibility</b> .....	7
	Section 7.1 No Implied Duties .....	7
	Section 7.2 Evidence of Authority .....	7
	Section 7.3 Reliance by Trustee .....	8
	Section 7.4 Trustee May Employ Agents .....	8
	Section 7.5 No Obligation to Act on Unsatisfactory Notice .....	8
<b>Article VIII</b>	<b>Compensation, Taxes, Expenses, Indemnity</b> .....	8
	Section 8.1 Payment of Compensation and Expenses .....	8
	Section 8.2 Taxes .....	8
	Section 8.3 Indemnification by Employer .....	8-3
	Section 8.4 Indemnification by Trustee .....	9

<b>Article IX</b>	<b>Resignation or Removal of Trustee</b> .....	9
	Section 9.1 Removal or Resignation of Trustee .....	9
	Section 9.2 Reserve for Expenses .....	9-10
<b>Article X</b>	<b>Amendment or Termination of Agreement</b> .....	10
	Section 10.1 Amendment of Agreement .....	10
	Section 10.2 Termination of Agreement .....	10
<b>Article XI</b>	<b>Termination of Plan</b> .....	10
	Section 11.1 Amendment or Termination of Plan .....	10
	Section 11.2 Cessation of 457(b) Status .....	10
	Section 11.3 Application of Funds on Termination .....	10
<b>Article XII</b>	<b>General Provisions</b> .....	10
	Section 12.1 Governing Law .....	10
	Section 12.2 Entire Agreement .....	10
	Section 12.3 Notices .....	10-11
	Section 12.4 Plan Documents .....	11
	Section 12.5 Spendthrift Provision .....	11
	Section 12.6 Effect .....	11
	Section 12.7 Severability .....	11
	Section 12.8 Headings and Titles .....	11
	Section 12.9 Binding Agreement .....	11
	Section 12.10 Merger or Consolidation. ....	11
	Section 12.11 Force Majeure .....	12
	Section 12.12 Shareholder Communications Act.....	12
	Signatures .....	13
	<b>SDBA Addendum</b> .....	14-15

## Governmental 457(b) Trust Agreement

This TRUST AGREEMENT (the "Agreement") is made as of this 29th day of September, 2022, by and between INDIAN RIVER COUNTY BOCC (the "Employer"), and LINCOLN FINANCIAL GROUP TRUST COMPANY, a non-depository trust company organized under the laws of the State of New Hampshire (the "Trustee") (each a "Party" or collectively the "Parties").

### Witnesseth

WHEREAS, Employer sponsors a plan under Section 457(b) of the Code, known as the Indian River County BOCC Deferred Compensation Plan for Public Employees 457 Governmental Plan and Trust ("Plan"), and

WHEREAS, Employer is either a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision of a State so that Employer is eligible to sponsor an eligible deferred compensation plan pursuant to Code Section 457(b), and

WHEREAS, Employer wishes to establish a trust for the Plan pursuant to the requirements of Code Section 457(g), and

WHEREAS, Employer wishes to appoint Trustee as trustee of the Trust established under the Plan and Trustee hereby accepts such appointment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Employer and Trustee hereby mutually agree as follows:

### Article I – Definitions

#### **Section 1.1 Definitions**

Unless the context otherwise requires or unless otherwise expressly provided, as used in this Agreement:

- (a) "Administrator" means, with respect to the Plan, the organization, entity, committee or other person responsible for benefit administration under the Plan, including any representative or delegate thereof designated in writing, authorized to act on behalf of such organization, entity, committee or other person, and may include the Employer.
- (b) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and regulations issued thereunder.
- (c) "Investment Manager" means a bank, insurance company or registered investment adviser satisfying the requirements of Section 3(38) of ERISA appointed by the Employer to manage all or any portion of the Trust as designated by the Employer.
- (d) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- (e) "Trust" means all property, real, personal or mixed, of any kind or nature, contributed, paid or delivered to the Trustee hereunder, and all investments, reinvestments and proceeds thereof, and all gains, earnings and profits thereon.

## **Article II - Creation; Purpose; Etc.**

### **Section 2.1 Creation**

The Employer hereby creates the Trust. Under the terms of the Plan, the Employer has the power to appoint and hereby appoints Lincoln Financial Group Trust Company to act as Trustee; and Lincoln Financial Group Trust Company hereby accepts the appointment to serve as Trustee.

### **Section 2.2 Purpose**

The Trust is established to fund the benefits payable to participants and their beneficiaries under the Plan.

### **Section 2.3 Exclusive Benefit**

Except as otherwise permitted by law, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under the Plan shall any part of the Trust be used for, or diverted to, any purposes other than for the exclusive benefit of the participants and their beneficiaries and for defraying the reasonable expenses of administering such Plan.

### **Section 2.4 Domestic Trust**

The Trust shall at all times be maintained as a domestic trust in the United States.

### **Section 2.5 Prohibited Transactions**

Neither Trustee, Employer, Investment Manager nor any participant shall knowingly enter into any transaction, engage in any activity, or direct the purchase or acquisition of any investment with respect to the Plan which would constitute a prohibited transaction under the Code for which a statutory or administrative exemption is not available.

### **Section 2.6 Directed Trustee**

Trustee shall have no discretion or authority with respect to the investments of the Trust but shall act solely as a directed Trustee of the funds contributed hereunder. Trustee shall not have any responsibilities for money or property not deposited into the Trust, except Trustee will take instruction from Employer regarding any group annuity issued by an affiliate of Trustee that Employer or Plan Sponsor owns. Trustee shall have no responsibility for money or properties held in any other trust Employer has established or will establish with respect to the Plan (unless specifically agreed to in writing by Trustee), or held by or deposited with any other trustee appointed by Employer.

Trustee will make distributions from the Plan in accordance with the written directions of the Administrator. To the extent Trustee follows such written direction, Trustee is not obligated in any manner to ensure a distribution complies with the terms of the Plan, that a participant or beneficiary is entitled to such a distribution, or that the amount distributed is proper under the terms of the Plan. If there is a dispute as to a payment from Trustee, Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or Trustee has been indemnified to its satisfaction.

### **Section 2.7 Employer Representation**

Employer represents that it is eligible to establish and maintain an eligible deferred compensation plan pursuant to Code Section 457(b). Employer represents that the Plan satisfies the requirement to be an eligible deferred compensation plan as defined in Code Section 457(b). Employer represents that the Plan is a governmental plan as defined in Code Section 414(d) and ERISA Section 3(32). Employer represents and warrants that the specifications, terms and conditions of the Plan are current and comply with applicable law, and that Employer has communicated such specifications, terms and conditions to Trustee in writing. Employer further represents and warrants that its underlying business and/or the plan will not cause or put Trustee in position to violate any federal, state or local law, regulation, rule or ordinance.

## **Article III – Administration of Plan**

### **Section 3.1 Payment of Benefits**

At the direction of the Administrator, Trustee shall pay moneys or other property directly to or for the benefit of participants and their beneficiaries, or to a paying or disbursing agent, which may be the Administrator. Any moneys or other property disbursed or paid over by Trustee pursuant to this Section 3.1 shall no longer be part of the Trust.

### **Section 3.2 Reliance on Administrator**

Any directions pursuant to Section 3.1 may, but need not, specify the application to be made of payments so directed. Each direction to Trustee under Section 3.1 shall constitute a representation and warranty by the Administrator that such direction is in accordance with this Agreement, the Plan and applicable law, and Trustee shall have no duty to make any independent inquiry or investigation before acting upon such direction, or to see to the application of any moneys or other property so paid.

### **Section 3.3 Trustee Not Responsible for Plan Administration**

Trustee shall not be responsible in any way for the determination, computation, payment or application of any benefit, or for any other matter affecting the administration of the Plan by the Employer or the Administrator or any organization, entity, committee or other person to whom such responsibility is delegated under the Plan.

### **Section 3.4 Trustee Not Responsible for Enforcing Contributions or for Sufficiency of Account**

Trustee shall not be responsible for enforcing payment of any contribution to the Trust, for the timing or amount thereof, or for the adequacy of the Trust or any part thereof or the funding standards adopted for the Plan to meet or discharge any liabilities of the Plan or the Trust. Trustee has no duty to inquire into the source of any money or property transferred to it nor to inquire into the authority or right of the transferor of such money or property to transfer such money or property to Trustee. Trustee does not have any duty to see that the contributions received by it comply with the provisions of the Plan, nor is Trustee obligated to collect any contributions from the Employer; provided, however, Trustee will take such reasonable collection efforts as directed by the Employer.

### **Section 3.5 Plan-to-Plan Transfers/Rollovers**

If the Plan permits plan-to-plan transfers and/or rollovers Trustee shall take such action as is necessary or desirable to accomplish any such matter, all pursuant to appropriate directions from the Administrator. The Administrator shall be responsible to determine that any such plan-to-plan transfers and/or rollovers comply with applicable law.

## **Article IV – Investment of Trust**

### **Section 4.1 Employer Authority**

Except as otherwise provided in Section 4.2 or 4.3, the Employer shall possess all discretionary authority for the management and control of the Trust. The Employer shall be responsible for determining the diversification policy (if and to the extent required), and for monitoring adherence by any Investment Manager or Investment Managers to such policy.

### **Section 4.2 Investment Managers**

Discretionary authority for the management and control of all or any portion of the Trust may be delegated by the Employer, in its absolute discretion, to one or more Investment Managers. The terms and conditions of appointment, authority and retention of any Investment Manager shall be the sole responsibility of the Employer. The Employer shall promptly notify Trustee in writing of the appointment or removal of any Investment Manager and the portion of the Trust over which such Investment Manager shall have authority. Any notice of appointment pursuant to this Section 4.2 shall constitute a

representation and warranty that the Investment Manager has been appointed in accordance with the Plan and that any Investment Manager is an Investment Manager as defined in this Agreement. The Employer may limit, restrict or impose guidelines affecting the exercise of the discretion conferred on any Investment Manager, and shall be responsible for communicating, and monitoring adherence to, any such limitations, restrictions or guidelines.

#### **Section 4.3 Individually Directed Accounts**

As to each individually directed account permitted by the Plan, the applicable participant shall possess all of the investment and investment-related authority held by the Employer hereunder, and Trustee shall invest and reinvest such assets pursuant to the directions of the participant, as communicated in writing, via facsimile or by electronic transmission to Trustee by the Administrator or its delegate. Trustee shall be fully protected in relying upon the instructions of the Administrator or its delegate as to the participant's directions. Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant.

#### **Section 4.4 Reliance on Employer, Investment Managers, Participants**

Trustee shall invest and reinvest the Trust pursuant to the directions of the Employer, participants – acting through the Administrator or its delegate - or the Investment Manager or Investment Managers, as the case may be. Trustee shall have no investment responsibility with respect to the Trust, and shall have no duty to inquire into the directions of the Employer, participants – acting through the Administrator or its delegate - any Investment Manager, as the case may be, to solicit such directions, to determine such directions are in compliance with the provisions of the Plan, or to review and follow the investments made pursuant to any such directions, other than to the extent required by law. Any such investment direction shall constitute a representation and warranty that the transaction will not constitute a prohibited transaction or other violation under the Code and that the investment is authorized under this Agreement, the Plan, any other applicable agreement affecting investment authority under the Plan, or any applicable law.

Trustee may refuse to comply with any directions in the event Trustee, in its sole discretion, deems such directions improper by virtue of applicable law. Trustee shall not be responsible or liable for any loss or expense which may result from Trustee's refusal and failure to comply with any such directions.

#### **Section 4.5 Late Day Trading**

Trustee does not engage in the practice of late day trading. In the event trade orders made by the Plan or its participants are received before the established cutoff time for Trustee or another party to receive such orders and such orders cannot be processed by the cutoff time, the Employer authorizes Trustee to process these orders after the cutoff time as if they were received and processed before the cutoff time.

#### **Section 4.6 Self-Directed Brokerage Accounts**

In the event the Plan now or hereafter provides for self-directed brokerage accounts ("Participant SDBAs") as an investment option, the Employer and Trustee agree that the provisions set forth on the Self Directed Brokerage Accounts Addendum attached hereto shall be deemed incorporated into this Agreement. The Employer agrees to give Trustee reasonable advance notice of its intention to offer Participant SDBAs.

#### **Section 4.7 Plan Expense Account**

The Employer hereby directs Trustee to establish a segregated sub-account within the Trust for the purpose of receiving certain amounts from mutual fund sub-transfer agents, administrative service fees, shareholder servicing fees or other revenue or annuity spread revenue (the "plan expense account"). As authorized by Employer, the plan expense account will be invested in an investment that has an investment objective of capital preservation and liquidity. The Employer hereby agrees that if included as an investment option under the Plan, such investment shall be a group fixed annuity or stable value investment issued by an affiliate of Trustee. If Employer chooses not to include such investment issued by an affiliate of Trustee, then the plan expense account will be invested in such other investment option as designated by the Employer.

From time to time, Trustee shall receive such fees or revenue and deposit or sweep it into the plan expense account. Such funds shall be considered Plan assets. The activity of the plan expense account shall be provided quarterly to the Employer. Any Plan expense to be paid from the plan expense account shall be at the direction of the Administrator or its delegate to Trustee or its affiliate. At no time shall Trustee or its affiliates have discretion to make deposits into or payment out of the plan expense account. If the balance in the account is to be used as contributions to Plan participants, the Administrator or its delegate will notify Trustee or its affiliate of the amount in the plan expense account that will be used for participant contributions. The Plan's record keeper will coordinate the transfer of funds from the plan expense account to participant accounts.

Trustee is not responsible for ensuring the accuracy or adequacy of assets transferred to the plan expense account but will rely on its affiliated recordkeeper and service provider, Lincoln Retirement Services Company, LLC, to transfer the agreed amounts to the plan expense account. The Employer will have control over such account and will be responsible for any application or use of such funds in the plan expense account.

## **Article V – Powers of Trustee**

### **Section 5.1 General Powers**

Upon the directions of the Employer, the Investment Manager(s), or the Administrator on behalf of the participants with respect to individually directed accounts, as the case may be, Trustee shall be authorized and empowered to exercise any and all of the following rights, powers and privileges with respect to the Trust:

- (a) To invest and reinvest the principal and income of the Trust Fund, without distinction between principal and income, in such securities as but not limited to, common stocks, preferred stocks, bonds, bills, notes, commercial paper, debentures, mortgages, equipment trust certificates, investment trust certificates, partnership interests and also in other investments, whether real, personal or mixed property.
- (b) To receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust.
- (c) To settle, compromise, or submit any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal proceedings; and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any part of the Trust or the administration thereof.
- (d) To borrow money from any source as may be necessary or advisable to effectuate the purposes of the Trust.
- (e) To generally take all actions, execute all instruments, and exercise all rights and privileges with relation to the Trust, whether or not expressly authorized, as Trustee is directed or in its sole discretion deems necessary or desirable, subject however to the directions by an appropriate party as set forth in this Agreement.
- (f) To execute and deliver any vote, proxy, tender offer or similar rights incident to the ownership of any securities held in the Trust, except that Trustee shall exercise such rights only pursuant to the written instructions of the Employer, or the written instructions of plan participants or beneficiaries if the Plan gives such rights to participants or beneficiaries, or by the Investment Manager if an Investment Manager has been appointed pursuant to Section 4.2. If no such written directions are timely received from the appropriate party, Trustee shall not vote or exercise any such rights with respect to such securities.
- (g) To sell, exchange, convey, transfer or otherwise dispose of any such property at public or private sale, for cash or credit, or partly for cash and partly for credit, and with or without notice or advertisement of any kind.
- (h) To purchase whole or part interests in real property or in mortgages on real property, wherever situated, directly or through financial intermediaries or entities, such as, but not limited to,



partnerships, and to mortgage or lease for any term any real property or part interest in real property; and to delegate to a manager the management and operation of any interest in such property or properties.

- (i) To purchase or sell, write or issue, puts, calls or other options, covered or uncovered, to enter into financial futures contracts, forward placement contracts and standby contracts, and in connection therewith, to deposit, hold or pledge assets of the Trust Fund.
- (j) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefore; and to extend the time of payment of any obligation at any time owing to the Trust Fund.
- (k) To transfer, from time to time, all or any part of the Trust Fund to any common, collective or commingled trust fund exempt from taxation under the Code ("Collective Trust") and/or to enter into the relevant trustee agreement on behalf of the Plan for such Collective Trust, to be held and administered subject to the terms and provisions of the relevant trust agreement, and such trust agreement shall be deemed adopted as part of this Agreement and the Plan to the extent that any portion of the Trust Fund is invested therein.
- (l) To apply for and procure from an insurance company as an investment of the Trust such annuity, or other contracts on the life of any participant as the Administrator shall deem proper; exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other contracts; and collect, receive, and settle for the proceeds of any such annuity, or other contracts as and when entitled to do so under the provisions thereof.
- (m) To, upon the written direction of the Administrator, enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any employee of the Employer. Trustee is also authorized, upon the written direction of the Administrator, to transfer some or all of a participant's vested account balance to another qualified retirement plan on behalf of such participant.

### **Section 5.2 Uninvested Cash and Float**

With respect to uninvested cash and float, while Trustee may not at any time accept deposits of funds, it is understood that State Street Bank (or any successor thereto) (hereinafter, the "depository bank"), acting on behalf of Trustee, may from time to time, have on hand funds from (i) the receipt of contributions that are awaiting investment or (ii) the sale of assets which are awaiting reinvestment or distribution. While there is not an explicit fee debited from plan assets as float revenue, a noninterest-bearing omnibus bank account has been established at depository bank in which to temporarily place cash to facilitate purchases and liquidations into and out of the Plan. The account is a noninterest bearing account, so no explicit direct float income is earned on the cash in transit. However, the account does earn banking credits based on the following formula: The Fed Funds Rate x 1/360 treasury rate. Contributions into the account are generally held in the account for one to two days. Distributions from the account are generally in the account for less than one day for wires and ACH transfers and three or more days for distributions. The length of time cash stays in this account can vary depending on how quickly the check is redeemed by the participant or how quickly payroll is processed. Credits earned are used entirely to pay banking fees and other fees that would otherwise be charged to Trustee and its clients.

### **Section 5.3 Valuations**

Trustee shall periodically determine the market value of the assets of the Trust or, in the absence of readily ascertainable market values, at such values as Trustee shall determine in accordance with methods consistently followed and uniformly applied. With respect to assets without readily ascertainable market values, Trustee may rely for all purposes of this Agreement on the latest valuation and transaction information submitted to it by the person responsible for the investment. The Employer shall cause such person to provide Trustee with all information needed by Trustee to discharge its obligations to value such assets and to account for such assets under this Agreement.

## **Article VI – Records and Accounts of Trustee**

### **Section 6.1 Records**

Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions in the Trust and all accounts, books and records relating thereto shall be open to inspection and audit at reasonable times during normal business hours by any person designated by the Employer.

### **Section 6.2 Annual and Other Periodic Accounts**

Within ninety (90) days following the close of each Plan year, and within sixty (60) days following the close of each Plan quarter, Trustee shall file with the Employer or the Administrator a written account setting forth the receipts and disbursements and the investments and other transactions effected by it with respect to the Trust during such Plan year or quarter, as the case may be. Unless otherwise requested, recipients will be set up for quarterly statements and access via the web for all trust account reporting. Upon the expiration of ninety (90) days from the date of mailing (or, if applicable, distribution via e-mail or other electronic means) of its annual or quarterly account, Trustee shall be forever released and discharged from all liability and further accountability to the Employer, the Administrator or any other person with respect to the accuracy of such accounting and all acts and failures to act of Trustee reflected in such account, except to the extent that the Employer or the Administrator shall, within such 90-day period, file with Trustee specific written objections to the account. Neither the Employer, the Administrator, any participant nor any other person shall be entitled to any additional or different accounting by Trustee and Trustee shall not be compelled to file in any court any additional or different accounting.

### **Section 6.3 Tax Returns and Tax Withholding and Reporting**

Unless otherwise agreed to in writing by the Parties, Trustee shall prepare and file tax returns or other filings with respect to the Trust only if such returns or filings must be filed by Trustee rather than by the Administrator or the Employer. If Trustee disburses funds from the Trust to a Plan participant, Trustee shall withhold and remit to the Internal Revenue Service ("IRS") and other applicable taxing authorities the amount of any income tax withholding required by law. Unless otherwise agreed to in writing by the Parties, the Employer shall be responsible for preparing and filing all other applicable federal and state reports.

## **Article VII – Trustee’s Rights/Limitation of Trustee’s Responsibility**

### **Section 7.1 No Implied Duties**

The duties and responsibilities of Trustee shall be solely determined in accordance with this Agreement, shall not be deemed to be enlarged by the provisions of the Plan, and no other or further duties or responsibilities shall be implied against or imposed on Trustee.

### **Section 7.2 Evidence of Authority**

The Employer shall furnish Trustee from time to time with a certificate evidencing the name, title and specimen signature of any person authorized to give instructions to Trustee on behalf of the Employer hereunder. The Employer shall also furnish Trustee from time to time or cause Trustee to be furnished from time to time with certified lists of the names and signatures of all other organizations, entities, committees or other persons authorized to act as the Administrator or in any manner authorized to issue notices, requests, directions, instructions or other communications to Trustee pursuant to this Agreement. The Employer shall cause each Investment Manager to furnish Trustee from time to time with the names and signatures of the persons authorized to direct Trustee on its behalf hereunder. Trustee shall be entitled to rely upon each such evidence of authority until it is revoked in writing.

**Section 7.3 Reliance by Trustee**

Trustee shall be entitled to rely upon each representation, information, notice, direction, certificate and other communication furnished by or on behalf of the Employer, the Administrator, and each Investment Manager; and Trustee shall be protected to the extent the law permits in acting in accordance with and relying upon such representations, information, notices, directions, certificates and other communications; and Trustee shall be under no duty to make any inquiry or investigation in connection therewith.

**Section 7.4 Trustee May Employ Agents**

Trustee may from time to time employ and consult with counsel (who may also serve as counsel for the Employer or Trustee) and shall be protected to the extent the law permits in acting upon such advice of counsel. Trustee may also from time to time employ accountants and other agents as may be reasonably necessary in administering and protecting the Trust, and Trustee may pay such counsel, accountants and other agents reasonable compensation, which shall be reimbursed to Trustee in accordance with Section 8.1. Trustee shall at no time be obligated to institute any legal action or to become a party to any legal action unless Trustee shall have been indemnified to its satisfaction for any fees, costs and expenses to be incurred in connection with such legal action.

**Section 7.5 No Obligation to Act on Unsatisfactory Notice**

Trustee shall not be liable for any failure to act pursuant to any notice, direction or any other communication from the Employer, the Administrator, any Investment Manager or any other person or delegate of any of them unless and until it shall have received directions in the form specified in this Agreement.

**Article VIII – Compensation, Taxes, Expenses, Indemnity**

**Section 8.1 Payment of Compensation and Expenses**

Trustee shall be entitled to receive reasonable compensation for its services and reimbursement of all reasonable costs and expenses incurred in connection with the administration of the Trust. Unless and until agreed otherwise in writing by the Employer and Trustee, the compensation of Trustee shall be as agreed upon from time to time among Trustee and the Employer; and in the event that Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation. Any change in Trustee’s compensation or charges will be applicable only after reasonable notice to the Employer. If such compensation, costs and expenses are not paid by the Employer, they shall be paid from the Trust.

**Section 8.2 Taxes**

All income or other taxes of any kind whatsoever which may be properly levied or assessed under existing or future laws upon, or in respect of, the Trust shall, at the direction of the Administrator, be paid by Trustee out of the Trust, and, until paid, shall constitute a charge upon the Trust.

**Section 8.3 Indemnification by Employer**

In addition to any other remedies at law or in equity available to Trustee for breach of this Agreement by Employer, the Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from, any and all damages, losses, costs, judgments, fines and expenses (including attorneys’ fees and disbursements) of any kind and nature related to this Agreement including any such items arising out of any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter in the aggregate referred to as the “Losses”), unless such Losses results from Trustee’s intentional wrongdoing or negligent actions or omissions. Except as otherwise provided by the preceding sentence, the Employer also shall indemnify Trustee against, and agrees to hold Trustee harmless from, all Losses arising from any actions or breach of any responsibility by any party other than Trustee.

The Employer agrees to indemnify Trustee against any Losses arising as a result of any act taken or failure to act by Trustee, in accordance with the directions received from the Employer, Administrator, Investment Manager, participant, or a designee specified by the Administrator or the Employer.

Trustee shall not be responsible in any way for any actions taken, or failure to act, by a prior trustee or custodian. The Employer shall indemnify and hold harmless Trustee for any Losses for such prior trustee's or custodian's acts or inactions.

The Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from any Losses resulting from Trustee's actions or inactions pursuant to the provisions of Section 5.1(f) pertaining to voting, proxies, tender offers or similar rights.

As a condition of indemnification, (i) Trustee shall give Employer timely notice in writing of any potential Losses promptly after Trustee becomes aware of them; (ii) Employer shall, at its option, have sole control of the defense of such Losses; and (iii) Trustee shall cooperate with Employer in the defense of such Losses. Employer shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Employer's written consent.

For purposes of this Section 8.3, the term Trustee shall include Trustee's officers, directors (or managers), employees and agents.

#### **Section 8.4 Indemnification by Trustee**

In addition to any other remedies at law or in equity available to Employer for breach of this Agreement by Trustee, Trustee will indemnify Employer, from and against any Losses imposed on or incurred by Employer and related to this Agreement where such Losses are the result of Trustee's intentional wrongdoing or its negligent actions or omissions. However, Trustee will have no liability with respect to claims of breach of its duties for (i) the inclusion, exclusion, or deletion of investments in the Plan, or (ii) the monitoring of such investments after the Employer's selection of them as an investment option for the Plan.

As a condition of indemnification, (i) Employer shall give Trustee timely notice in writing of any potential Losses promptly after Employer becomes aware of them; (ii) Trustee shall, at its option, have sole control of the defense of such Losses; and (iii) Employer shall cooperate with Trustee in the defense of such Losses. Trustee shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Trustee's written consent.

For purposes of this Section 8.4, the term Employer shall include Employer's officers, directors (or managers), employees and agents.

## **Article IX – Resignation or Removal of Trustee**

#### **Section 9.1 Removal or Resignation of Trustee**

Trustee may be removed by the Employer at any time by 60 days prior written notice to Trustee. Trustee may resign at any time by written notice to the Employer. Such notice shall be effective 60 days after receipt by the Employer or such later date as shall be specified therein, or at an earlier date by the mutual agreement of the Parties. Upon the effective date of the removal or resignation of Trustee, Trustee shall deliver the Trust to a successor Trustee or Trustee designated by the Employer. If, for any reason, the Employer cannot or does not act promptly to appoint a successor Trustee, Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee. Any expenses incurred by Trustee in connection therewith shall be charged to and paid from the Trust as an expense of administration.

#### **Section 9.2 Reserve for Expenses**

Trustee is authorized to reserve such sum of money (and for that purpose to liquidate property to produce such sum) as it may deem advisable for payment of all proper charges against the Trust,

including expenses in connection with such resignation or removal, and any balance of such reserve remaining after the payment of such charges shall be paid over to the successor Trustee or Trustee.

## **Article X – Amendment or Termination of Agreement**

### **Section 10.1 Amendment of Agreement**

Subject to Section 2.3, a Party may not alter, modify or amend this Agreement in whole or in part at any time, without the prior written consent of the other Party.

### **Section 10.2 Termination of Agreement**

Subject to Sections 2.3 and 9.1, the Parties may at any time terminate this Agreement by written notice given to the other Party. The Parties may by mutual agreement determine an earlier time when such termination shall be effective. Such notice of termination shall be accompanied by a certified copy of a resolution of the Board of Directors of the Employer approving such termination. In the event of the termination of this Agreement, the Trust shall be distributed pursuant to Article IX or XI hereof.

## **Article XI – Termination of Plan**

### **Section 11.1 Amendment or Termination of Plan**

Subject to Section 2.3, if Employer alters, modifies, amends or terminates the Plan in whole or in part, Employer shall give written notice to Trustee promptly of such alteration, modification or amendment. Such notice shall include a certified copy of a resolution of the Board of Directors of the Employer or letter on Employer's letterhead and signed by an officer with authority over the Plan.

### **Section 11.2 Cessation of 457(b) Status**

The Employer shall promptly notify the Trustee if the Plan becomes an ineligible deferred compensation plan pursuant to the provisions of Code Section 457(f), or if the Plan ceases for any reason to qualify as a Section 457(b) plan.

### **Section 11.3 Application of Funds on Termination**

In the event of termination of the Plan, the interests of the Plan participants shall vest and be processed in accordance with the written directions of the Employer, accompanied by a certificate that such disposition is in accordance with the terms of the Plan.

## **Article XII – General Provisions**

### **Section 12.1 Governing Law**

To the extent not preempted by the provisions of any applicable federal law, this Agreement shall be administered, construed and enforced according to the laws of the State of Indiana, and shall be deemed to have been executed and delivered in that State.

### **Section 12.2 Entire Agreement**

Trustee's duties and responsibilities to the Plan or any person interested therein shall be limited to those specifically set forth in this Agreement. No amendment to the Plan or any other document affecting the Plan shall affect Trustee's duties or responsibilities hereunder without its prior written consent.

### **Section 12.3 Notices**

Except as otherwise provided in writing and agreed to by Trustee, all notices, reports, accounts and other communications from Trustee to the Employer, the Employer, the Administrator, the Investment Manager(s) or any other person shall be in writing or in such other form agreed to by the parties,

including transmission by electronic means through the facilities of third parties or otherwise. Any paper communication shall be deemed to be duly given if mailed; postage prepaid, or otherwise placed for delivery by a national delivery service, shipping prepaid, or is delivered by hand to such person at the address appearing on the records of the Trustee. Any electronic notice shall be deemed to be duly given at the time the electronic notification is sent. Except as otherwise provided in writing and agreed by Trustee, all directions, notices, objections and other communications to Trustee shall be in writing or in such other form, including transmission by electronic means through the facilities of third parties or otherwise, specifically agreed to in writing by Trustee and shall be deemed to have been given when received by Trustee at its offices.

#### **Section 12.4 Plan Documents**

Upon execution of this Agreement, Trustee hereby requests the Named Fiduciary to provide complete, current copies of the Plan documents. Trustee shall be entitled to rely upon the Named Fiduciary's attention to this obligation and shall be under no duty to request such documents again or to inquire of any person as to the existence of any documents not provided hereunder.

#### **Section 12.5 Spendthrift Provision**

Except as may be required by law, no interest or claim of interest of any kind of any participant under the provisions of this Trust is assignable, nor may any such interest or claim be subject to garnishment, attachment, execution or levy of any kind, and no attempt to transfer, assign, pledge or otherwise encumber or dispose of such interest by act of the person involved or by operation of law will be recognized.

#### **Section 12.6 Effect**

All persons at any time interested in the Plan shall be bound by the provisions of this Agreement and, in the event of any conflict between this Agreement and the provisions of the Plan or any instrument or agreement forming part of the Plan, the provisions of this Agreement shall control.

#### **Section 12.7 Severability**

The illegality or unenforceability of any provisions of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

#### **Section 12.8 Headings and Titles**

The titles of the Articles and headings of Sections in this Trust Agreement are for convenience of reference only and in case of conflict the text of this Trust Agreement rather than such titles or headings shall control.

#### **Section 12.9 Binding Agreement**

This Agreement shall be binding upon Trustee and the Employer, their successors and assigns, and upon the participants and their beneficiaries, heirs, executors, administrators and assigns.

#### **Section 12.10 Merger or Consolidation**

Any legal entity into which Trustee may be merged, or with which it may be consolidated, or any legal entity resulting from any merger or consolidation to which Trustee may be a party, or any legal entity succeeding to the business of Trustee or to which substantially all of the assets of Trustee may be transferred, shall be the successor of Trustee hereunder without the execution or filing of any paper and without any further action on the part of the parties hereto, with like effect as if such successor Trustee had originally been named Trustee herein.

**Section 12.11 Force Majeure**

Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Agreement which result from events beyond its control, including without limitation, interruption of the business of Trustee due to acts of God, acts of governmental authority, acts of war, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs), or any action of any courier or utility, mechanical or other malfunction, or electronic interruption.

**Section 12.2 Shareholder Communications Act**

Trustee is obligated to provide to issuers of securities identifying information such as Employer's name(s), address(es), and share positions, unless Employer objects below or through subsequent notice to Trustee in writing.

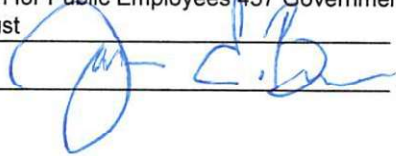
\_\_\_\_\_Employer requests that Trustee withhold Employer's identifying information from issuers.

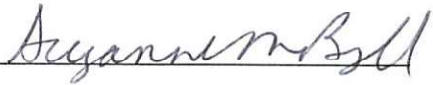
IN WITNESS WHEREOF, the Employer and Trustee have caused this Agreement to be executed by their respective duly authorized officers, all as of the day and year first above written.

**Employer**

By: Jason E. Brown  
Title: County Administrator

Attest: Suzanne M. Boyll  
Title: Human Resources Director

Indian River County BOCC Deferred Compensation  
Plan for Public Employees 457 Governmental Plan and  
Trust  
Employer: Trust  
Signature: 


Signature: 

**Trustee**

By: Ralph Ferraro

Title: President

Trustee: Lincoln Financial Group Trust  
Company, as Trustee

Signature: 



## **Self-Directed Brokerage Accounts Addendum**

### **Effect of Addendum**

This Addendum is part of the Trust Agreement between the Employer and the Trustee upon Employer establishing self-directed brokerage accounts (SDBAs) for its participants as described herein. Except as otherwise provided in this Addendum, Participant SDBAs (as hereafter defined) shall be subject to all of the terms and conditions of the Trust Agreement and the TD Ameritrade Documents (as hereafter defined) governing the Participant SDBAs.

### **Participant SDBAs**

The Plan provides that certain self-directed brokerage accounts (the "Participant SDBAs") may be invested by a participant in investments selected solely by the participant, subject to such limitations as may be determined by the Employer from time to time, and not solely from among the eligible investments otherwise applicable to all participant accounts or the Trust in its entirety. The Employer shall communicate any such limitations in writing to the Trustee. The Employer acknowledges and agrees that the Trustee, if and as directed by the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant, shall establish accounts representing Participant SDBAs through TD Ameritrade, Inc. ("TD Ameritrade"), a registered broker-dealer, and shall enter into an agreement or agreements with TD Ameritrade governing such Participant SDBAs (the "TD Ameritrade Documents"). Participant SDBAs shall be subject to the TD Ameritrade Documents and to such terms and procedures as are agreed upon by the Trustee, the Employer and the Administrator or its delegate from time to time, and also to such other terms and procedures as may be reasonably required by TD Ameritrade from time to time and communicated in writing by TD Ameritrade or the Trustee to the Employer and the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant.

### **Authority of Participants Regarding Participant SDBAs, Etc.**

Once a Participant SDBA is established through TD Ameritrade, a participant shall communicate all investment and investment related instructions relating to such account to TD Ameritrade, and TD Ameritrade, on behalf of the Trustee, shall invest the Participant SDBAs pursuant to the directions of the participant. The participant shall be solely responsible for managing his or her Participant SDBA subject to the terms and conditions applicable to such Participant SDBA. The Employer shall be responsible for communicating to participants (or causing to be communicated to participants) all applicable terms and conditions. Notwithstanding the foregoing, unless and until otherwise agreed in writing by the Employer and the Trustee, the Administrator or its delegate shall direct the Trustee with respect to: (i) the terms and conditions of all transfers of cash and/or other property between a Participant SDBA and the remainder of the Trust, including, without limitation, any sale or liquidation instructions associated with such transfers; and (ii) all withdrawals and distributions on behalf of each participant.

**Reliance on Participants, Etc.**

The Trustee and TD Ameritrade shall be fully protected in relying upon the directions of the participant with respect to investments and investment related decisions within Participant SDBAs. The Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant or the Administrator, or other person or entity authorized to give instructions under this Addendum. Neither the Trustee nor TD Ameritrade shall have any investment responsibility with respect to the Participant SDBAs, or any duty to inquire into the directions of the participants, to solicit such directions or to review and follow the investments made pursuant to any such directions. Any such investment direction by a participant shall constitute a representation and warranty that the transaction will not constitute a non-exempt prohibited transaction under the Code and that the investment is authorized under the Agreement, the Plan and any other applicable agreement affecting the participant's investment authority under the Plan. Further, the Trustee and TD Ameritrade shall also be fully protected in relying upon the directions of the Administrator, or other person or entity authorized to give instructions under this Addendum.

**Costs of Participant SDBAs**

The costs and expenses of establishing and maintaining Participant SDBAs shall be borne by the respective participants and Participant SDBAs, except to the extent otherwise paid by the Employer or the Trust. TD Ameritrade shall be entitled to the payment of fees for each Participant SDBA, including without limitation as TD Ameritrade's compensation for executing securities transactions, without diminution of the compensation otherwise payable to Trustee under the Agreement.