

Florian Financial Group LLC

Registered Investment Advisor

Robert M. Florian, CFP[®], CLU[®], CPA

Retirement Plan Advisory Services

Agreement and Disclosures

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Florian Financial Group LLC

Retirement Plan Advisory Services Agreement and Disclosures

This Agreement (the “Agreement”) is made by and between Florian Financial Group LLC (“Adviser”) and the plan sponsor (“Plan Sponsor”) and, if other than Plan Sponsor, the fiduciary (the “Client”) of the tax qualified retirement plan (“Plan”), all of which are identified in Section 1 of this Agreement.

RECITALS:

Client is a fiduciary of the Plan and desires to engage Adviser to perform certain fiduciary and non-fiduciary services to the Plan. Adviser and Client desire to set forth in writing the terms and conditions upon which these services will be performed.

CONSIDERATION:

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, Adviser and Client hereby agree as follows:

1. Identification of Plan Sponsor, Client and Plan. For purposes of this Agreement:

- (a) “Plan” means: _____;
_____;
- (b) “Plan Sponsor” means: _____.¹
_____ and
- (c) “Client” means: _____.²
_____.

2. Services. Adviser hereby agrees to provide the following services to Client:

- (a) **Fiduciary Services.** Adviser shall provide Client the fiduciary services described in Exhibit A attached hereto (“Fiduciary Services”).
- (b) **Non-fiduciary Services.** Adviser shall provide Client the non-fiduciary services described in Exhibit B attached hereto.

¹ Insert identity of Plan Sponsor.

² If the fiduciary for whom the services are being provided is not the Plan Sponsor, such as the Plan Trustee or, if an investment committee has responsibility for investments, the investment committee responsible for oversight of Plan investments, insert the name of such fiduciary. Otherwise insert the name of the Plan Sponsor.

3. Fees. Plan Sponsor and Client agree to pay Adviser, at the time and in the amounts specified in Exhibit C attached hereto.

4. Excluded Services. Notwithstanding anything to the contrary contained in Exhibit A or Exhibit B, Plan Sponsor and Client expressly acknowledge and agree that:

- (a) Adviser has no responsibility for the final selection of the investments which are available to Plan participants and implementation of any investment policy statement;
- (b) Adviser provides no advice whatsoever with respect to “employer securities” or “employer real property” within the meaning of Section 407 of the Employee Retirement Income Security Act of 1976, as amended (“ERISA”), participant loans, real estate (other than real estate funds and publicly traded REITs), non-publicly traded partnership interests or other non-publicly traded securities or property);
- (c) Adviser has no responsibility, fiduciary or otherwise, for assuring Client’s adherence to any investment policy statement or for any recordkeeping or administration of the Plan, including the selection of any recordkeeper or third party administrator for the Plan, the determination of eligibility for or participation in the Plan or any other action relating to the management or administration of the Plan;
- (d) Adviser is not responsible for voting or making of recommendations on how to vote any proxies issued with respect to any mutual funds or other securities held under the terms of the Plan; and
- (e) Adviser does not provide any legal, accounting, tax or actuarial advice.

5. Adviser Representations. Adviser represents to Client that it is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended and that, in connection with Adviser’s performance of the Fiduciary Services described in Exhibit A attached hereto, Adviser is acting as a fiduciary for the Plan under Section 3(21) of ERISA for the sole purpose of providing non-discretionary investment advice.

6. Client Responsibilities. Client shall furnish Adviser with such information as may reasonably be requested by Adviser in connection with the performance by Adviser of the Services and shall be responsible for assuring that such information is complete and accurate in all respects. In addition, Client shall provide prompt written notice to Adviser of any material change in any financial or other information that

has been provided to Adviser. Client acknowledges and agrees that Adviser shall not be responsible for and shall have no obligation to verify the accuracy or completeness of any information provided by Client.

7. Client and Plan Sponsor Representations. Client and Plan Sponsor hereby represent and warrant to Adviser as follows:

- (a) Each has full power, authority and capacity to execute and deliver this Agreement and to perform their respective obligations hereunder; that this Agreement has been duly executed and delivered by Client and Plan Sponsor and constitutes a valid and binding obligation of Client and Plan Sponsor, enforceable against Client and Plan sponsor in accordance with its terms, except to the extent that enforcement is limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors rights;
- (b) An authorized fiduciary of the Plan has determined that the Fiduciary Services to be performed by Adviser: (i) will inure solely to the benefit of the Plan; (ii) are reasonably necessary for the operation of the Plan; and (iii) are being furnished pursuant to reasonable arrangements and for reasonable compensation; and
- (c) They have received and reviewed a copy of Adviser's fee disclosure as required by Section 408(b)(2) of ERISA (including in this Agreement and in Adviser's Form ADV Part 2) and have determined that the fees and other charges for the Fiduciary Services described in Exhibit A are reasonable.

8. Client and Plan Sponsor Acknowledgments. Each of Client and Plan Sponsor hereby acknowledge and agree that:

- (a) Adviser is not a fiduciary under ERISA with respect to Client's and Plan Sponsor's decision to enter into this Agreement or any decision by Client or Plan Sponsor to continue or terminate this Agreement or any of the Fiduciary Services described in Exhibit A;
- (b) Adviser does not, nor shall it, have any discretionary authority or control with respect to the Plan's investments within the meaning of ERISA and that Adviser is not an "investment manager" as defined under Section 3(38) of ERISA with respect to the Plan or its assets as a result of any services rendered by Adviser pursuant to this Agreement;
- (c) Adviser may, from time to time, offer products or services to individual participants in the Plan. Any such products or services are not covered by this Agreement and, unless specifically provided for by the terms of the agreements covering such arrangements, Adviser is not and shall not be deemed to be acting in a fiduciary capacity in relation to any such other products or services, with respect to either the Plan or any of its participants;

- (d) Adviser may perform other or similar services for other clients and, in connection with the performance of such services: (i) may charge a different fee than that charged to Client; and (ii) may provide different recommendations and advice from that provided to Client; and
- (e) That Adviser is unable to divulge to Client or any other party, or to otherwise act upon or use in connection with the services to be provided in connection with this Agreement, any confidential information obtained by Adviser from any other client.

9. Indemnification.

- (a) Plan Sponsor and Client shall indemnify, defend and hold Adviser and its affiliates, and any directors, officers, employees or agents of Adviser or its affiliates (hereinafter collectively “Adviser Group”), from and against any and all third party claims, liabilities, losses, damages and expenses, including reasonable attorneys’ fees, incurred by Adviser Group as a result of Adviser’s entry into or performance of the any of the services to be provided under this Agreement, except to the extent that any such claims, liabilities, losses, damages and expenses result from the gross negligence or willful misconduct of Adviser in the performance of the any of the services to be provided by Adviser hereunder.
- (b) Adviser shall indemnify, defend and hold harmless the Plan, Plan Sponsor, Client and each of their respective affiliates and any directors, officers, employees and agents of Plan Sponsor, Client or any of their respective affiliates (hereinafter collectively “Plan Sponsor Group”) from and against any and all third party claims, liabilities, losses, damages and expenses, including reasonable attorneys’ fees, incurred by Plan Sponsor Group as a result of the gross negligence or willful misconduct of Adviser in the performance of the any of the services to be provided by Adviser hereunder.
- (c) Nothing in this Section 9 shall be deemed or construed to constitute a waiver or limitation of any rights of Client or Plan Sponsor under applicable federal or state law with respect to the services to be provided by Adviser pursuant to this Agreement.

10. Term and Termination. Either party may terminate this Agreement upon thirty (30) days advance written notice to the other party; provided that, Client and Plan Sponsor on the one hand and Adviser on the other shall have the right to terminate this at any time without notice if the other party becomes insolvent or makes an assignment (as such term is interpreted under the Investment Adviser’s Act) of this Agreement without the other party’s consent. In the event of any termination of this Agreement, any fees payable to Adviser shall be prorated through the effective date of such termination and the obligation of Plan Sponsor for payment of such fees shall continue following such termination. Upon the

effective date of termination, Adviser will have no further obligation under this Agreement to advise Client with respect to any services to be provided pursuant to this Agreement.

11. Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. The rights and obligations of a party to this Agreement shall not be assigned without the prior written consent of the other party.

12. Counterparts; Facsimile or Email Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument. Delivery by a party of executed counterparts of this Agreement by facsimile, portable data file or PDF or other electronic means shall constitute execution and delivery of such counterpart to the same extent as if such counterpart were executed and delivered personally by such party.

13. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable in any jurisdiction, such provision shall be ineffective to the extent of such invalidity, illegality or unenforceability, and the validity, legality or enforceability of the other provisions hereof shall not be affected thereby.

14. Amendment. This Agreement may only be amended by written agreement of the parties hereto.

15. Governing Law. Except as otherwise preempted by ERISA or any other federal laws, this Agreement and the rights and obligations of the parties hereunder shall be governed by the internal laws of the State of New York, without reference to its conflicts of laws principles.

16. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be resolved by binding arbitration. The arbitration shall be held in the City of Buffalo, New York and, except to the extent inconsistent with this Agreement, shall be conducted in accordance with the rules of the American Arbitration Association for the arbitration of commercial disputes then in effect at the time of the arbitration, and otherwise in accordance with principles which would be applied by a court of law or equity. The arbitrator shall be acceptable to both parties to the arbitration proceeding. If the parties cannot agree on an acceptable arbitrator, the dispute shall be heard by a panel of three arbitrators one appointed by each of the parties and the third appointed by the other two arbitrators. Any expense of arbitration shall be borne by the party who incurs such expense and joint expenses shall be shared equally.

The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection which it or they may now or hereafter have to such jurisdiction and any defense of inconvenient forum.

18. Headings. The headings of the Sections of this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.

19. Effective Date. This Agreement shall be effective on the date set forth opposite the signature of Client below.

20. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the matters addressed herein, superseding any and all prior agreements, whether written or oral.

IN WITNESS WHEREOF, this Agreement has been executed by Adviser, Client and Plan Sponsor, on and as of the dates set forth opposite their signatures below.

FLORIAN FINANCIAL GROUP LLC

By: _____
Name: _____
Title: _____

Dated: _____

CLIENT:

By: _____
Name: _____
Title: _____

Dated: _____

PLAN SPONSOR:

By: _____
Name: _____
Title: _____

Dated: _____

EXHIBIT A

Fiduciary Services

Adviser will perform the following Fiduciary Services:

- (i) Provide non-discretionary investment advice to Client about asset classes and investment alternatives available for the Plan in accordance with the Plan's investment policies and objectives. Client shall have the final decision-making authority regarding the initial selection, retention, removal and addition of investment options.
- (ii) Assist Client with the selection of a broad range of investment options consistent with ERISA section 404(c) and the regulations thereunder.
- (iii) Assist Client in the development of an investment policy statement (IPS). The IPS establishes the investment policies and objectives for the Plan. Client shall have the ultimate responsibility and authority to establish such policies and objectives and to adopt and amend the investment policy statement.
- (iv) Assist in monitoring investment options by preparing periodic investment reports that document investment performance, consistency of fund management and conformance to the guidelines set forth in the IPS and make recommendations to maintain or remove and replace investment options.
- (v) Meet with Client on a periodic basis to discuss the reports and the investment recommendations.
- (vi) Provide non-discretionary investment advice to the Plan Sponsor with respect to the selection of a qualified default investment alternative (QDIA) for participants who are automatically enrolled in the Plan or who otherwise fail to make an investment election. Client retains the sole responsibility to provide all notices to participants required under ERISA Section 404(c)(5).

EXHIBIT B

Non-Fiduciary Services

Adviser will perform the following Non-Fiduciary services:

- (i) Assist in the education of the participants in the Plan about general investment principles and the investment alternatives available under the Plan. Client understands that Adviser's assistance in participant investment education shall be consistent with and within the scope of (d) (i.e., the definition of the investment education) of Department of Labor Interpretive Bulletin 96-1. As such, Adviser is not providing fiduciary advice (as defined in ERISA) to the participants. Adviser will not provide investment advice concerning the prudence of any investment option or combination of investment options for any particular participant or beneficiary under the Plan.
- (ii) Assist in the group enrollment meetings designed to increase retirement plan participant among employees and investment and financial understanding by the employees.

Adviser may provide the services or, alternatively, may arrange for the Plan's other providers to offer these services, as agreed upon between Adviser and Client.

EXHIBIT C

Fees

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