

**REPORT****DATE ISSUED:** January 6, 2010**REPORT NO:** HCR 10-003**ATTENTION:** Chair and Members of the Housing Commission  
For the Agenda of January 15, 2009**SUBJECT:** Money Purchase Pension Plan Document for Temporary Employees of San Diego  
Housing Commission**REQUESTED ACTION:** That the Housing Commission review and approve the Money Purchase Pension Plan Document for Temporary Employees of San Diego Housing Commission.**STAFF RECOMMENDATION:** Approve and adopt the Money Purchase Pension Plan Document for Temporary Employees of the San Diego Housing Commission prepared by Pension Consultant, the Epler Company.**BACKGROUND:**

In July 1991, it was determined that any government entity, such as the San Diego Housing Commission, which opts out of Social Security must provide a minimum retirement plan to all employees. As a result of this determination, the Money Purchase Pension Plan for Temporary Employees of the San Diego Housing Commission (the Plan) was established effective July 1, 1991 by the San Diego Housing Commission (SDHC) for the benefit of its eligible employees. This Plan is a governmental plan as defined in section 3(32) of ERISA, and is exempt from Title I of ERISA and certain provisions of the Internal Revenue Code (IRC).

Additionally, Treasury regulations require that a defined contribution plan that is meant as a Social Security replacement plan must provide a minimum contribution of 7.5% of base pay AND the plan must be a plan that guarantees both principal and interest for part-time, seasonal and temporary employees. The 7.5% contribution can be divided between participants and the employer. The current SDHC Plan is structured along those guidelines. The employee contribution is 3.75% and SDHC's contribution is 3.75%.

The Plan document is intended to reflect certain provisions required or permitted to be made pursuant to the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and/or contained in the 2008 Cumulative List of Changes in Plan Qualification Requirements as outlined by the Internal Revenue Service (IRS).

The Housing Commission's Mandatory 457 Plan, administered by Great West, is considered a Social Security replacement plan. One of the basic requirements of this plan is a written plan document containing the provisions. A written plan for temporary employees does not exist, thus leading to the proposed plan document prepared by SDHC's pension consultant, the Epler Company.

**ENVIRONMENTAL REVIEW:**

This activity is not a project within the meaning of the California Environmental Quality Act (CEQA) pursuant to Section 15060 of the State CEQA guidelines, and it is exempt from the National Environmental Policy Act pursuant to 24 CFR Section 58.34 (a)(3).

Respectfully submitted,



Tina Holmes  
Human Resources Manager

Approved by,



Carrol M. Vaughan  
Executive Vice President &  
Chief Operating Officer

Attachments:

- 1) Money Purchase Pension Plan Document for Temporary Employees of the San Diego Housing Commission

Hard copies are available for review during business hours at the Housing Commission offices at 1122 Broadway, San Diego, CA 92101, Main Lobby and at the Office of the City Clerk, 202 C Street, San Diego, CA 92101. You may review complete docket materials on the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

**Money Purchase Pension Plan**  
**For Temporary Employees**  
**of**  
**San Diego Housing Commission**

**MONEY PURCHASE PENSION PLAN FOR TEMPORARY EMPLOYEES OF  
SAN DIEGO HOUSING COMMISION**

**Table of Contents**

**INTRODUCTION**

**ARTICLE I**  
**DEFINITIONS**

<u>Section</u>	<u>Page</u>
1.01 Account Balance.....	2
1.02 Active Participant.....	2
1.03 Anniversary Date.....	2
1.04 Annuity Contract.....	2
1.05 Board.....	2
1.06 Break-in-Service.....	2
1.07 Code.....	2
1.08 Compensation.....	2
1.09 Disability.....	4
1.10 Effective Date.....	4
1.11 Eligible Employee.....	4
1.12 Employee.....	4
1.13 Employee Contributions.....	5
1.14 Employer.....	5
1.15 Employer Contributions.....	5
1.16 ERISA.....	5
1.17 Fund.....	5
1.18 Hour of Service.....	5
1.19 Inactive Participant.....	7
1.20 Leased Employee.....	7
1.21 Leave of Absence.....	7
1.22 Named Fiduciary.....	7
1.23 Participant.....	8
1.24 Plan.....	8
1.25 Plan Administrator.....	8
1.26 Plan Year.....	8

**ARTICLE II**  
**ELIGIBILITY**

2.01	Eligibility.....	9
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**ARTICLE III**  
**CONTRIBUTIONS TO THE FUND**

3.01	Contributions.....	10
3.02	Rollover and Transfers .....	10
3.03	Maximum Annual Additions.....	11
3.04	Military Service .....	12

**ARTICLE IV**  
**FUND VALUATION**

4.01	Fund Valuation .....	13
4.02	Investment Funds.....	13

**ARTICLE V**  
**RETIREMENT BENEFITS**

5.01	Normal Retirement .....	14
5.02	Delayed Retirement .....	14
5.03	Form of Payment .....	14

**ARTICLE VI**  
**SEVERANCE FROM EMPLOYMENT**

6.01	Termination Benefit.....	15
6.02	Disability Benefits.....	15
6.03	Commencement of Payments Before Normal Retirement .....	15
6.04	Form of Payment .....	15

**ARTICLE VII**  
**DEATH BENEFIT - DESIGNATION OF BENEFICIARY**

7.01	Death Before Payments Commence .....	16
7.02	Death While on Active Military Duty .....	16
7.03	Designation of Beneficiary .....	16
7.04	Payment to Successive Preference Beneficiaries.....	17

## **ARTICLE VIII**

### **FORMS OF BENEFIT PAYMENT/DISTRIBUTIONS**

8.01	Normal Form of Retirement Benefit .....	18
8.02	Events Allowing Distribution.....	18
8.03	Amount and Timing of Distributions .....	18
8.04	Commencement of Benefits .....	19
8.05	Required Minimum Distributions .....	19
8.06	Qualified Domestic Relations Order .....	24
8.07	Direct Rollover Distributions .....	24

## **ARTICLE IX**

### **ADMINISTRATION OF THE PLAN**

9.01	Responsibility of Administration .....	26
9.02	Administrative Powers .....	26
9.03	Fiduciary Duties .....	27
9.04	Nondiscrimination .....	27
9.05	Delegation and Reliance.....	27
9.06	Claims Review Procedure .....	27
9.07	Plan Administrator's Decision Final.....	28
9.08	Standards of Review.....	28
9.09	Information Required by Plan Administrator.....	29
9.10	Compensation and Expenses .....	29
9.11	Indemnification.....	30
9.12	Agent for Service of Legal Process .....	30
9.13	Records .....	30
9.14	Investment Powers.....	30

## **ARTICLE X**

### **PLAN AMENDMENT AND TERMINATION**

10.01	Right of Amendment.....	32
10.02	Right to Terminate Plan.....	33
10.03	Nonforfeitability on Termination or Partial Termination.....	34
10.04	Allocation of the Fund on Termination of Plan.....	34

**ARTICLE XI**  
**MISCELLANEOUS**

11.01	Jurisdiction .....	35
11.02	Non-Alienation .....	35
11.03	Facility of Payment.....	36
11.04	No Enlargement of Employment Rights.....	36
11.05	Waiver of Notice .....	36
11.06	Absence of Guarantee.....	36
11.07	Employee Loans .....	36
11.08	Non-Diversion .....	36
11.09	Return of Employer Contributions .....	36
11.10	Litigation by Participants or Other Person .....	37
11.11	Use and Form of Words .....	37
11.12	Savings Clause.....	37
11.13	Misstatements/Mathematical Errors .....	37
11.14	Unclaimed Benefits .....	37
11.15	Merger and Consolidation of Plan or Transfer of Plan Assets .....	38

## **INTRODUCTION**

The Money Purchase Pension Plan for Temporary Employees of the San Diego Housing Commission (the Plan) was first established effective July 1, 1991 by the Governing Board of the San Diego Housing Commission (the Employer) for the benefit of its Eligible Employees. This Plan is a governmental plan as defined in section 3(32) of ERISA, and thus the Plan shall be exempt from Title 1 of ERISA and certain provisions of the Internal Revenue Code.

This Plan document is intended to reflect certain provisions required or permitted to be made pursuant to the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and/or contained in the 2008 Cumulative List of Changes in Plan Qualification Requirements as outlined by the Internal Revenue Service. Except as otherwise provided, Plan provisions related to EGTRRA shall be effective as of July 1, 2002. This restatement will be presented to the Governing Board for approval.

The benefits of any Participant who had a severance from employment prior to July 1, 2009 shall be determined according to the terms and conditions of the Plan as in effect on the date of his severance, except as provided herein.

It is the intention of the Employer that the Plan meet the requirements of ERISA and qualify under section 401(a) of the Internal Revenue Code of 1986 (as amended), as they pertain to governmental entities. Except as otherwise provided, the Plan and all matters relating thereto shall be governed, construed and administered in accordance with the applicable laws of the United States and the State of California.

## **ARTICLE I**

### **DEFINITIONS**

The following words and phrases used herein shall have the following meanings unless a different meaning is plainly required by the context. Other words and phrases are defined throughout the Plan, but the fact that they are not defined in this Article I shall not mean such words and phrases do not have general application and meaning with respect to the entire Plan.

**Section 1.01. "Account Balance"** means, for each person entitled to benefits under the Plan, the sum total of that person's individual sub-accounts, as valued in accordance with Article IV, under the Plan.

**Section 1.02. "Active Participant"** means an Eligible Employee who has become eligible to participate in accordance with Article II of the Plan and who continues to remain eligible for Plan participation.

**Section 1.03. "Anniversary Date"** means June 30 of each Plan Year.

**Section 1.04. "Annuity Contract"** means a group annuity contract issued to the Plan by an insurance company licensed to conduct business in California. The provisions of the Annuity Contract shall be incorporated into this Plan as if they were a part of the Plan.

**Section 1.05. "Board"** shall mean the Governing Board of the Employer.

**Section 1.06. "Break-in-Service"** means any Plan Year in which the Employee completes less than one (1) Hour of Service. The benefits payable to an Employee who incurs a Break-in-Service, and who does not complete an Hour of Service after such Break, shall be determined in accordance with the provisions of the Plan as it existed as of the date such Break-in-Service occurred.

**Section 1.07. "Code"** means the Internal Revenue Code of 1986, as amended from time to time. For purposes of this Plan, the terms Code and Internal Revenue Code (IRC) will be used interchangeably.

**Section 1.08. "Compensation"**

- (a) **"Compensation"** means the sum total of an Employee's compensation for services rendered to the Employer that is includible in gross income (including overtime, bonuses, incentive pay, paid vacation and sick leave, special awards and other such payments) further including Employee Contributions made under this Plan and Code sections 125, 132(f)(4), 402(e)(3), 403(b) and 457 with respect to any specified period. Compensation excludes reimbursements and other similar allowances, fringe benefits, moving expenses, deferred compensation and welfare benefits that are not includible in taxable income unless otherwise specified above. Compensation for a Plan Year includes amounts earned

during that Plan Year but not paid during that Plan Year solely because of the timing of pay periods and pay dates if (i) such amounts are paid during the first few weeks of the next Plan Year, (ii) such amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and (iii) no Compensation is included in more than one Plan Year.

- (b) "Section 415 compensation" means Compensation as defined above, which is earned during the Limitation Year and prior to severance from employment with the Employer unless provided otherwise below. For this purpose, amounts that are made available to an Employee (or, if earlier, includible in the gross income of the Employee) are treated as being paid to the Employee.

Notwithstanding the above, Section 415 compensation for a Limitation Year includes amounts paid during that Limitation Year and includes the following amounts earned after the Employee's severance from employment with the Employer, provided such amounts are paid by the later of 2½ months after severance from employment with the Employer or the end of the Limitation Year that includes the date of severance from employment with the Employer and are includible in the Employee's gross income:

- (1) Regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments that would have been paid to the Employee prior to a severance from employment if the Employee had continued in employment with the Employer;
- (2) Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and
- (3) Payment received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the Employer.

Any payment that is not described in paragraphs (1) through (3) above, is not considered Section 415 compensation if paid after severance from employment with the Employer, even if it is paid within the time period described in this paragraph (b). Thus, Section 415 compensation does not include severance, or parachute payments within the meaning of Code section 280G(b)(2), if they are paid after severance from employment with the Employer, and does not include post-severance payments under a nonqualified unfunded

deferred compensation plan unless the payments would have been paid at that time without regard to the severance from employment.

Back pay, within the meaning of Treasury regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

For Plan Years beginning on or after January 1, 2002, Compensation shall be subject to a maximum \$200,000 per Plan Year (\$230,000 effective January 1, 2008), as adjusted annually for cost-of-living increases under section 401(a)(17)(B) of the Code. For purposes of this Plan, IRC section 401(a)(17) is hereby incorporated by reference. The cost-of-living adjustment in effect for a calendar year applies to Compensation for the Plan Year that begins with or within such calendar year. If Compensation for any prior determination period is taken into account in determining a Participant's contributions or benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual Compensation limit in effect under the prior Plan and Code section 401(a)(17) for that determination period.

If a Plan Year consists of fewer than 12 months, the compensation limit in this Section 1.08 will be multiplied by a fraction, not to exceed one, the numerator of which is the number of months in the Plan Year and the denominator of which is 12.

Effective for Limitation Years beginning on or after January 1, 2008, Section 415 compensation shall also be subject to the Code section 401(a)(17) maximum as described above.

**Section 1.09. "Disability"** means a medically determinable physical or mental impairment which, in the written opinion of competent medical authority that may be selected by the Administrative Committee, prevents the Participant from performing any gainful employment and which has lasted or can be expected to last for a period of not less than 12 months or is expected to result in death.

**Section 1.10. "Effective Date"** of this Plan means July 1, 2009, the effective date of this Plan. The original Plan was effective July 1, 1991.

**Section 1.11. "Eligible Employee"** means an Employee employed by the Employer who is a temporary non-benefitted employee.

**Section 1.12. "Employee"** means any person employed on a temporary non-benefitted basis by the Employer maintaining the Plan or any employee required to be aggregated under IRC section 414(b), (c) or (m). Subject to the provisions of Section 1.20, Employee shall not include any Leased Employee or independent contractor as provided in IRC sections 414(n) and (o). Any Leased Employee who later becomes an Employee of the Employer shall, for all purposes, be credited with Hours of Service as a Leased Employee.

Notwithstanding the foregoing, the term "Employee" shall not include any individual who has been classified by the Employer as an independent contractor, Leased Employee, or any other classification other than common law employee, unless such individual has been reclassified as an employee of the Employer pursuant to a final determination of the Internal Revenue Service, another governmental entity with the authority to make such a reclassification, or a court of competent jurisdiction. However, such an individual who, but for the preceding sentence, would be an Employee shall be an Employee for Plan Years following the Plan Year in which such reclassification occurs.

**Section 1.13. "Employee Contributions"** means the mandatory Employee Contributions described in Section 3.01.

**Section 1.14. "Employer"** means San Diego Housing Commission, a political subdivision of the State of California. "Employer" shall also include any successor employer which successor has expressly agreed in writing to continue the Plan, provided that such other entity is also considered a governmental entity.

**Section 1.15. "Employer Contributions"** means the Employer Contributions described in Section 3.01.

**Section 1.16. "ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time. Being a governmental entity, the Employer is not subject to most provisions of ERISA.

**Section 1.17. "Fund"** means the aggregate of all assets held in the Annuity Contract to provide the benefits of this Plan. The value of each Account Balance shall be determined by the funding agency under the Annuity Contract.

**Section 1.18. "Hour of Service"** means:

- (a) Each hour for which the Employee is paid directly or indirectly, or entitled to payment, for the performance of duties for the Employer. These hours shall be credited to the Employee for the Computation Period or periods in which the duties are performed.
- (b) Each hour for which the Employee is paid directly or indirectly, or entitled to payment, by the Employer with respect to a period of time during which no duties are performed due to vacation, holiday, sickness, incapacity (including Disability), layoff, jury duty, or Leave of Absence. These hours shall apply irrespective of whether severance from employment has occurred.

For the purposes of this paragraph (b), the number of Hours of Service credited to an Employee for any single continuous period during which no duties are performed in each Computation Period shall be equal to the lesser of the number of hours required to be credited under section 2530.200b-2, paragraphs (b) and (c) of the Code of Federal

Regulations, as amended from time to time, or 501 Hours. Notwithstanding the foregoing, in the case of a Leave of Absence for military duty, there will be no 501-hour cap.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the Computation Period or periods to which the award, agreement or payment pertains, rather than the Computation Period in which the award, agreement or payment is made, and shall further be subject to a maximum of 501 hours if no services were rendered during such period.
- (d) Each hour for which an Employee on leave from employment to serve in the Armed Forces of the United States would have been paid, directly or indirectly, or entitled to payment under (a) above assuming that but for such military service he would have been regularly engaged in the performance of his duties. Such hours shall be credited to the Computation Period in which he would have been regularly engaged in the performance of his duties but for such military service. Provided, however, that no Hours of Service shall be credited under this Section 1.18 unless the Employee returns to active employment with the Employer within the period provided by law for the protection of his re-employment rights. Hours of Service for reasons other than the performance of duties shall be determined and credited in accordance with Department of Labor Regulation sections 2530.200b-2(b) and (c), which is incorporated herein by reference.
- (e) Special Maternity/Paternity Rule. Solely for the purpose of determining whether a Break in Service has occurred, an Employee who is absent from employment because of the Employee's pregnancy, the birth of the Employee's child, the placement of child with the Employee in connection with the adoption of such child by the Employee, or the need to care for such child for a period beginning immediately following such birth or placement, shall be credited with:
  - (1) The Hours of Service which would normally have been credited to such individual but for such absence, or
  - (2) In any case in which the Plan Administrator is unable to determine the hours described above, eight (8) Hours of Service per day of such absence.

The above rule shall apply only if the Employee furnishes to the Plan Administrator such timely information as it may require to establish that the absence was for the above reasons and to determine the number of days of such absence. Such Hours of Service shall be credited in the Computation Period in which the absence from work begins, if such credit is necessary to prevent a Break in Service in that period. In any other case,

such Hours of Service shall be credited in the immediately following Computation Period. In no event shall more than five hundred one (501) Hours of Service be credited in a Computation Period because of such pregnancy or placement.

- (f) Family and Medical Leave. Solely to the extent required by law, an Employee who is absent from employment because of a leave of absence under the Family and Medical Leave Act of 1993 shall receive credit for Hours of Service during such absence. Provided, however, that the same Hours of Service shall not be credited under both this subsection and any other provision of this Section 1.18.

Hours of Service will be credited for employment with any employer required to be aggregated with the Employer under IRC sections 414(b), (c) or (m). Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under IRC section 414(n).

For purposes of this Section 1.18, "Computation Period" means a Plan Year, as defined in Section 1.26.

**Section 1.19. "Inactive Participant"** means a Participant who ceases to be an Eligible Employee, but who continues to have an Account Balance under the Plan.

**Section 1.20. "Leased Employee"** means any person who, pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer on substantially a full time basis for at least one year under the primary direction and control of the Employer. In the event the leasing corporation provides benefits or contributions to the Leased Employee on behalf of the Employer, such benefits and contributions shall be deemed provided by the Employer.

A Leased Employee shall not be considered an Employee of the Employer if such Leased Employee is covered by a non-integrated money purchase pension plan providing for contributions of at least 10% of compensation, as defined by IRC section 415(c)(3), and such money purchase pension plan also provides for full and immediate vesting. Further, Leased Employees shall not constitute more than 20% of the Employer's non-highly compensated work force.

**Section 1.21. "Leave of Absence"** means any Leave of Absence authorized by the Employer on the basis of uniform and non-discriminatory rules applicable to all Employees in similar circumstances. Leave of Absence shall include periods of service in the Armed Forces of the United States of America. However, if the Employee fails to return to active employment with the Employer within the period provided by law, the Employee shall be considered as having a severance from employment as of his last day of active employment.

**Section 1.22. "Named Fiduciary"** means the Employer as defined in Section 1.14, and the funding agent under the Annuity Contract.

**Section 1.23. "Participant"** means an Active Participant or an Inactive Participant.

**Section 1.24. "Plan"** means the Plan set for the herein and is designated as the Money Purchase Pension Plan for Temporary Employees of San Diego Housing Commission. This Plan is a defined contribution plan as permitted under section 457 of the Code.

**Section 1.25. "Plan Administrator"** means the Employer, which is responsible for the overall administration of the Plan.

**Section 1.26. "Plan Year"** means each twelve (12) month period ending June 30<sup>th</sup>.

**ARTICLE II**  
**ELIGIBILITY**

**Section 2.01. Eligibility.** All temporary, non-benefitted employees are immediately eligible to participate in this Plan upon completing an Hour of Service.

**ARTICLE III**  
**CONTRIBUTIONS TO THE FUND**

**Section 3.01. Contributions.** For a Participant who has met the requirements under Section 2.01 and continues to be an Eligible Employee, the Employer shall contribute the following to each sub-account:

- (a) **Employer Contribution.** Each pay period, the Employer shall contribute on behalf of each Participant an amount equal to 3.75% of his Compensation. Employer Contributions made on his behalf will be credited into his Employer Contribution Account. The Employer Contribution Account shall be valued and invested in accordance with Article IV and Section 9.14.
- (b) **Employee Contribution.** Each pay period, an Eligible Employee shall be required to contribute 3.75% of his Compensation on a pre-tax basis. Employee Contributions made on his behalf will be credited into his Employee Contribution Account. The Employee Contribution Account shall be valued and invested in accordance with Article IV and Section 9.14.

No other contributions are permitted under the Plan.

**Section 3.02. Rollover and Transfers.** A Participant who has received an Eligible Rollover distribution, as defined in Section 8.07, of his entire interest in a plan which meets the requirements of an Eligible Retirement plan, as defined in Section 8.07, may, in accordance with procedures established by the Plan Administrator, transfer the distribution to the Trust or instruct the Trust to accept such distribution directly from the distributing plan, provided the following conditions are met:

- (a) The distribution is an Eligible Rollover distribution from an Eligible Retirement Plan as defined in Section 8.07 that is qualified under the applicable Code;
- (b) The transfer occurs on or before the sixtieth (60th) day following the Participant's receipt of the distribution from the other plan, or, if such distribution had previously been transferred into an individual retirement account or individual retirement annuity described in section 408 of the Code, on or before the sixtieth (60th) day following the Participant's receipt of the distribution from such account or annuity;
- (c) The amount transferred does not exceed the fair market value of all the property the Participant receives in the distribution, reduced by the Employee contributions (other than accumulated deductible Employee contributions within the meaning of section 72(o)(5) of the Code);

- (d) The Participant provides the Administrator with whatever information it deems necessary to determine that the proposed rollover will meet the requirements of this Section 3.02, and
- (e) The amount transferred does not include any after-tax contributions.

The rollover will be credited to the Participant's Rollover Account and shall be valued and invested in accordance with Article IV and Section 9.14.

A Participant may, prior to severance from employment, withdraw all or any portion of his Rollover Account unless the Rollover came from a Money Purchase Pension Plan or a Defined Benefit Plan in which case, it can only be withdrawn upon termination of employment.

**Section 3.03. Maximum Annual Additions.** Notwithstanding any other provisions of the Plan, all contributions shall be subject to the restrictions and exceptions contained in section 415 of the Code, as amended from time to time. For purposes of this restated Plan, all provisions of Code section 415 are hereby incorporated by reference.

- (a) The Maximum Annual Addition, for Limitation Years beginning after December 31, 2001, which can be allocated to a Participant's defined contribution accounts for a Limitation Year, except to the extent permitted under section 414(v) of the Code, shall equal the lesser of:
  - (1) \$40,000 as adjusted for increases in the cost-of-living under Code section 415(d); or,
  - (2) 100% of the Participant's Section 415 compensation, as determined in accordance with Section 1.08 and the Treasury regulations under section 1.415(c)-2, for such Limitation Year. This limit shall not apply to any contribution for medical benefits (within the meaning of Code section 419A(f)(2)) after severance from employment which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an initial short Plan Year or an amendment changing the Limitation Year to a different 12 consecutive month period, the maximum permissible amount prescribed in this Section 3.03 will be multiplied by the following fraction:

$$\frac{\text{Number of Months in the Short Limitation Year}}{12}$$

For Limitation Years beginning prior to January 1, 2008, the Maximum Annual Addition is equal to the limitations in effect under the prior Plan and section 415 of the Code for such Limitation Years.

- (b) Annual Addition means the sum credited to a Participant's accounts under this Plan and any other defined contribution plan maintained by the Employer that is required to be aggregated under Code section 415 for any Limitation Year of:

- (1) Employer contributions;
- (2) Employee contributions; and
- (3) Forfeitures.

For purposes of Annual Additions, employee contributions are determined without regard to any rollover contributions (as defined in sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16) of the Code), catch-up contributions under Code section 414(v), repayments of loans made to a participant from the Plan, and any other amounts listed as excluded under Treasury regulation section 1.415(c)-1.

- (c) Limitation Year means a Plan Year.
- (d) Annual Additions in Excess of the Maximum.

If a contribution would cause the Annual Additions for a Participant to exceed the maximum permissible amount under Section 3.03(a) for a Limitation Year, the contribution amount to be allocated will be reduced so that the Participant's Annual Additions will equal the maximum permissible amount for such Limitation Year.

Prior to determining the Participant's actual Section 415 compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's Section 415 compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual Section 415 compensation for such Limitation Year.

- (e) Plan aggregation for 415 purposes will be determined as prescribed under Treasury regulation section 1.415(f).

**Section 3.04. Military Service.** Notwithstanding any provision of this plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

## **ARTICLE IV**

### **FUND VALUATION**

**Section 4.01. Fund Valuation.** The Fund shall be periodically valued at its fair market value by the Trustee at any time upon the direction of the Plan Administrator, but in no event less frequently than annually. More frequent valuations may be made if, in the opinion of the Plan Administrator, such valuation is warranted. On each valuation date, the value of each Participant's account shall be determined in a uniform, non-discriminatory manner and held as follows:

- (a) An Account Balance shall be established for each person entitled to benefits under the Plan. Each such Account Balance shall maintain separately the value of each type of contribution or transfer made on the Participant's behalf. These sub-accounts shall include an Employer Contribution Account, an Employee Contribution Account, and a Rollover Account.
- (b) Each valuation date, the value of each sub-account shall be adjusted to reflect the value of the Fund from the last Valuation Date, as well as the effect of any contributions, withdrawals, distributions, or other transactions occurring since the last valuation date.
- (c) Earnings and expenses of the Fund, and any appreciation or depreciation in the value of such Fund, as last reported by the Trustee, shall be allocated to each person's sub-account based on the basis of the proportionate value of such sub-accounts in the Fund in a nondiscriminatory manner, taking into account contributions, withdrawals and transfers made during the preceding and current valuation date.
- (d) Expenses paid by the Plan, other than fund expenses allocated in paragraph (c), shall be allocated as a flat fee amount, not to exceed the individual's Account Balance, and/or on a pro-rata basis. The Plan administrator will establish procedures for allocating such expenses which may include separate allocations for active and terminated Participant's Account Balances.
- (e) The value of a person's Account Balance at date of distribution shall be the value as of the last valuation date completed immediately preceding the date of distribution adjusted for any contributions or withdrawals to that Account Balance after such valuation date.

**Section 4.02. Investment Funds.** The Employer directs the investments under the Plan as provided under Section 9.14. The investment funds are valued as of each valuation date, as last reported by the funding agent under the Annuity Contract. Such valuation shall recognize any appreciation or depreciation in the fair market value of all securities or other property held by each respective investment fund, any cash and accrued earnings, and shall take into account any accrued expenses and proper charges against the investment fund as of such valuation date.

**ARTICLE V**  
**RETIREMENT BENEFITS**

**Section 5.01. Normal Retirement.** The Normal Retirement for a Participant shall be the Participant's 62<sup>nd</sup> birthday.

At Normal Retirement, a Participant shall be entitled to receive a retirement benefit, if he is then living. The amount of retirement benefit payable to any Participant who remains in employment until his Normal Retirement shall be the value of his Account Balance determined in accordance with Article IV.

**Section 5.02. Delayed Retirement.** Subject to Sections 8.04 and 8.05, a Participant may elect to delay his retirement beyond Normal Retirement and continue to participate in the Plan.

At Delayed Retirement, a Participant shall be entitled to receive a retirement benefit, beginning on the Participant's Delayed Retirement, if he is then living.

The amount of retirement benefit payable to any Participant at Delayed Retirement shall be the value of his Account Balance determined in accordance with Article IV.

**Section 5.03. Form of Payment.** Subject to Section 8.05, benefits which become payable in accordance with this Article V shall be paid in a single lump sum payment.

**ARTICLE VI**  
**SEVERANCE FROM EMPLOYMENT**

**Section 6.01. Termination Benefit.** A Participant, who separates from service prior to his Normal Retirement, shall be eligible to receive a distribution of 100% his Account Balance upon severance from employment; provided, however, that the eligibility of a Participant to receive a distribution on account of severance from employment shall be waived if he returns to employment with the Employer prior to receiving such distribution.

At any time prior to the date his payments commence, a Participant who has a severance from employment and who has made an election to defer receipt of his Account Balance may revoke such election and elect to receive payment earlier.

**Section 6.02. Disability Benefits.** A Participant who has a severance from employment with the Employer on account of Disability, as defined in Section 1.09, shall be entitled to receive a distribution of his Account Balance, provided, however, that the eligibility of a Participant to receive a distribution on account of Disability shall be waived if he returns to employment with the Employer prior to receiving such distribution.

**Section 6.03. Commencement of Payments Before Normal Retirement.** Benefits under Section 6.01 and 6.02 for any Participant who has a severance from employment may be commenced before his Normal Retirement provided the appropriate forms are provided to the Plan Administrator. The amount of benefit payable to the Participant shall be the value of the Participant's Account Balance determined in accordance with Article IV.

**Section 6.04. Form of Payment.** Benefits which become payable in accordance with this Article VI shall be paid in a single lump sum payment.

**ARTICLE VII**  
**DEATH BENEFIT - DESIGNATION OF BENEFICIARY**

**Section 7.01. Death Before Payments Commence.** If a Participant dies prior to the date benefit payments are scheduled to commence, his beneficiary shall be entitled to receive a death benefit. The beneficiary is entitled to receive such death benefit effective as of the first day of the month following the Participant's death, and shall be equal to 100% of the value of the Participant's Account Balance, determined in accordance with Article IV. Such death benefit shall be paid in a single sum.

In the event that there is no individual designated as beneficiary at time of death, any death benefit due shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death. This 5-year rule shall not apply to any death benefit payable to a beneficiary who is an individual, provided that such death benefit commences by December 31 of the calendar year immediately following the calendar year in which the Participant died and is payable over a term not exceeding the life expectancy of the beneficiary. If the beneficiary is the Participant's spouse, such spouse may elect to defer the payment of such death benefit to the first day of any month following the Participant's date of death, but in no event later than the first day of the month in which the Participant would have attained age 70 ½ or such earlier date as specified in Section 8.05. If the surviving spouse dies before the payment of benefits to such spouse begin, the surviving spouse shall be treated as if the spouse were the Participant.

If the Participant or surviving spouse, as the case may be, designates more than one beneficiary, each beneficiary will receive a percentage, of which the sum of the percentages cannot exceed 100%, of the death benefit as indicated by the Participant's or surviving spouse's, beneficiary designation.

For purposes of this Section 7.01, any distribution required under the incidental death benefit requirements of section 401(a) of the Code shall be treated as a distribution required under section 401(a)(9) of the Code.

**Section 7.02. Death While On Active Military Duty.** In the event of the death of a Participant while performing qualified military service (as defined in Code section 414(u)), the survivors of the Participant shall be entitled to any benefits (other than such qualified military service) provided by the Plan had the Participant returned to the service of the Employer and terminated employment on account of death.

**Section 7.03. Designation of Beneficiary.** Each Participant or surviving spouse, as the case may be, shall designate a beneficiary to whom benefits, if any, shall be paid in the event of his death. The beneficiary may be changed by the Participant or surviving spouse, as the case may be, at any time, or from time to time, during his life by giving written notice to the Employer. However, the spouse of a married Participant shall be automatically deemed to be the sole designated beneficiary at date of death,

unless such spouse gives written consent to an alternate election made by the Participant, and such election and the spouse's consent is either notarized or accepted in writing by a Plan representative. The alternate election must designate a specific alternate beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent) and must acknowledge the effect of the election. A spouse's consent that permits designations by the Participant without the requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary and that the spouse voluntarily relinquishes this right.

If it is determined to the satisfaction of a Plan representative that a spouse's consent cannot be obtained because there is no spouse or the spouse cannot be located, no consent shall be required. Any consent by a spouse (or the establishment that the consent of a spouse cannot be obtained) shall be effective only with respect to such spouse.

**Section 7.04. Payment to Successive Preference Beneficiaries.** If no beneficiary has been designated by the Participant, or if the designated beneficiary does not survive the Participant, any death benefits becoming payable shall be paid to the surviving person or persons in the first of the following classes of successive preference beneficiaries of which a member survives the Participant:

- (a) The Participant's spouse.
- (b) The Participant's children, including legally adopted children.
- (c) The Participant's parents.
- (d) The Participant's brothers and sisters.
- (e) The Participant's estate.

**ARTICLE VIII**  
**FORMS OF BENEFIT PAYMENT/DISTRIBUTIONS**

**Section 8.01. Normal Form of Retirement Benefit.** The sole form of benefit payment under the Plan is a lump sum payment. The amount of the distribution shall be equal to the total value of the Participant's Account Balance or that portion thereof for distributions described under Section 8.02(c), (d) and (e).

**Section 8.02. Events Allowing Distribution.** A Participant, beneficiary, or alternate payee, as applicable, shall be eligible to begin payments of his Account Balance upon:

- (a) The Participant's attainment of Normal Retirement, retirement, death, severance from employment or Disability, provided, however, that the eligibility of a Participant to receive a distribution on account of a severance from employment shall be waived if he returns to employment with the Employer prior to receiving such distribution; or,
- (b) Termination of this Plan without establishment or maintenance of another defined contribution plan; or,
- (c) Required minimum distributions under Section 8.05 and Treasury regulation section 1.401(a)(9) ; or,
- (d) Distributions to an alternate payee under a Qualified Domestic Relations Order; or,
- (e) A Participant may elect to receive a partial or total lump sum distribution of his Rollover Account, regardless of whether or not he has had a severance from employment.

"Severance from employment" means the Employee ceases to be an Employee of the Employer maintaining the Plan or the Employee's new employer, if any, does not maintain the Plan.

Distributions shall be payable as provided in this Article VIII.

**Section 8.03. Amount and Timing of Distributions.** A Participant, beneficiary, or alternate payee, eligible to receive a distribution in accordance with Section 8.02, shall be entitled to receive his distribution based on the value of his Account Balance and Rollover Account, as the case may be, determined in accordance with Article IV and payable in a lump sum payment.

Such distribution shall commence to the individual within a reasonable time after the event described in Section 8.02 occurs and any required distribution paperwork is completed and received by the Plan Administrator.

- (a) **Consent of Distribution.** If the value of the Participant's (and his spouse's or surviving spouse's, if applicable) Account Balance exceeds \$1,000, no distribution shall be made

hereunder prior to the Participant's Normal Retirement without the consent of the Participant (and his spouse or surviving spouse, if applicable).

The failure of a Participant (and his spouse or surviving spouse, if applicable) to consent to such a distribution that is immediately distributable, shall be deemed to be an election to defer commencement of such payment. However, his Account Balance shall be distributed in accordance with this Article VIII no later than the applicable date set forth in Section 8.05.

Under this Article VIII, a benefit is immediately distributable if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the older of Normal Retirement age or age 62.

- (b) Small Benefits. If the value of an individual's Account Balance is not greater than \$1,000, the Employer may direct that such Account Balance be paid without consent as soon as administratively feasible after the Plan year-end in which the event described in Section 8.02(a) through 8.02(d), as the case may be, occurred.

If the Participant's Account Balance is zero at the time of distribution, the Participant shall be deemed to have received a distribution of such Account Balance at the time the event in Section 8.02(a) occurred.

**Section 8.04. Commencement of Benefits.** Unless the Participant or his surviving spouse elects otherwise in writing, pursuant to a provision of this Plan in effect on the date of such election, the payment of benefits under the Plan to a Participant shall commence no later than the 60<sup>th</sup> day after the close of the Plan Year in which the last of the following occurs:

- (a) The Participant attains age 65 or Normal Retirement Age, if earlier;
- (b) The 10<sup>th</sup> anniversary of the date on which the Participant commenced participation in the Plan; or
- (c) The Participant has a severance from employment with the Employer.

Notwithstanding the above, distributions to a Participant or his surviving spouse must commence no later than the Participant's Required Beginning Date or an earlier date as defined in Section 8.05. All distributions required to be made under Treasury regulation section 1.401(a)(9) shall be determined and made in accordance with Section 8.05 and Treasury regulation section 1.401(a)(9).

**Section 8.05. Required Minimum Distributions.**

- (a) General Rules.

- (1) The provisions of this Section 8.05 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
  - (2) The requirements of this Section 8.05 will take precedence over any inconsistent provisions of the Plan.
  - (3) All distributions required under this Section 8.05 will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code and the minimum distribution incidental death benefit requirement of section 401(a)(9)(G) of the Code.
  - (4) Notwithstanding the other provisions of this Section 8.05, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.
- (b) Time and Manner of Distribution.
- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
  - (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
    - a. If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ , if later.
    - b. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
    - c. If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- d. If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a, will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b)(2) and subsection (d), unless subsection (b)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If subsection (b)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

- (3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (c) and (d) of this Section 8.05. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

(c) Required Minimum Distributions during Participant's Lifetime.

- (1) During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - a. the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - b. if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's birthdays in the distribution calendar year.

- (2) Required minimum distributions will be determined under this subsection (c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (d) Required Minimum Distributions After Participant's Death.
  - (1) Death On or After Date Distributions Begin:
    - a. Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:
      - 1. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
      - 2. If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
      - 3. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
    - b. No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated

using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

- a. Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (d)(1).
- b. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- c. Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (b)(2)(a), this subsection (d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions.

- (1) Designated beneficiary. The individual who is designated as the beneficiary under Article VII of the Plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4, of the Treasury regulations.
- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (b)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the

Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (3) Life expectancy. Life expectancy as computed by use of the single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (4) Participant's account balance. The Account Balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (5) Required Beginning Date. The Required Beginning Date of a Participant under this Plan is April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or severance of employment, if later.

**Section 8.06. Qualified Domestic Relations Order.** Distribution of benefits to an alternate payee under a Qualified Domestic Relations Order meeting the requirements of section 414(p) of the Code shall be payable in a single lump sum, subject to the provisions of Section 8.03. Subject to Section 8.05, such payment shall be made on a date specified in the Qualified Domestic Relations Order, which date may precede the time the Participant would be eligible to receive a distribution under the terms of the Plan regardless of the Participant's age or whether the Participant has had a severance from employment.

**Section 8.07. Direct Rollover Distributions.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 8.07, a Distributee may elect at the time and in the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution to which he is otherwise entitled, paid directly to any one Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

For purposes of this Article VIII, the following definitions shall apply:

- (a) "Eligible Rollover Distribution" means 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: (i) any distribution to the extent such distribution is required under Code section 401(a)(9); (ii) any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (iii) 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 beneficiary, or for a specified period of 10 years or more; or (iv) any distribution that is a hardship distribution.

For purposes of the direct rollover provisions in the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified trust or to an annuity contract described in section 403(b) of the Code if such trust or contract agree to separately account for amounts so transferred, including separately accounting for the portions of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (b) "Eligible Retirement Plan" means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a Roth IRA account under section 408A of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, or a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution, and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.
- (c) "Distributee" means an employee or former employee who is entitled to receive benefits from the Plan. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in section 408(a) or 408(b) of the Code ("IRA") that is established on behalf of the beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code. Also, in this case, the determination of any required minimum distribution under section 401(a)(9) of the Code that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.
- (d) "Direct rollover" means a payment by the Plan to a Eligible Retirement Plan specified by the Distributee.

**ARTICLE IX**  
**ADMINISTRATION OF THE PLAN**

**Section 9.01. Responsibility of Administration.** The Plan Administrator shall be the Employer, which may appoint an Administrative Committee composed of one or more persons, which shall carry out the general administration of the Plan. No member of the Administrative Committee shall be deemed a fiduciary. No Administrative Committee member who is an Employee shall receive compensation from the Plan with respect to his or her service on the Administrative Committee. Any member of the Administrative Committee may resign by delivering written resignation to the Board and to the Administrative Committee. The Employer may remove or replace any member of the Administrative Committee at any time.

The Administrative Committee shall appoint a secretary, who may or may not be a member of the Administrative Committee. The secretary shall have the primary responsibility for keeping a record of all meetings and acts of the Administrative Committee and shall have custody of all documents, the preservation of which shall be necessary or convenient to the efficient functioning of the Administrative Committee. All reports required by law may be signed by the chairman or another member of the Administrative Committee designated by the Administrative Committee.

The Administrative Committee shall act by a majority of its members in office and may adopt such by-laws and regulations as it deems desirable for the conduct of its affairs. Any member of the Committee may take appropriate action on any administrative matters relating to the Plan.

**Section 9.02. Administrative Powers.** The Plan Administrator shall have full power to administer the Plan and to construe, interpret and apply all of its provisions, as hereinafter provided. Any action taken by the Plan Administrator in the exercise of authority conferred upon it by this Plan shall be conclusive and binding upon the Participants, as well as upon any Employee or any person who is in any way affected by said action. In amplification of its powers and duties, but not by way of limitation, the Employer shall have the responsibility and authority to:

- (a) Resolve questions relating to the eligibility of Employees to become Participants, the service of any Employee or Participant, and the amount of benefits to which any Participant, beneficiary, or alternate payee under the Plan may be entitled.
- (b) Be responsible for the compilation and maintenance of all records it determines to be necessary, appropriate or convenient in connection with the Plan.
- (c) Establish and maintain a Plan funding policy and method, which is consistent with the Plan objectives and financial needs.

- (d) Authorize the payment of all benefits as they become payable under the Plan, which payments shall be made by the funding agent upon written instructions from the Employer or its designated representative. The funding agent shall not be liable to determine or make inquiry as to the accuracy of a mailing address of a payee.
- (e) Perform, or cause to be performed, such further acts as it may deem to be necessary, appropriate or convenient in the efficient administration of the Plan.
- (f) Engage, or cause to be engaged, such experts as the Employer deems necessary for the sound administration of the Plan.
- (g) Resolve any and all claims, which may be submitted in accordance with Section 9.06.
- (h) Recommend Plan amendments required or deemed desirable, subject to the approval and adoption by the Board and execution by the Employer.

**Section 9.03. Fiduciary Duties.** The Employer shall act in accordance with the documents and instructions governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA that pertain to governmental agencies, and shall act 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.

**Section 9.04. Nondiscrimination.** The Plan Administrator shall not take action nor direct the funding agent to take any action with respect to any of the benefits provided hereunder which would discriminate or which would benefit certain Participants at the expense of others. There shall similarly be no discrimination between similarly situated Participants.

**Section 9.05. Delegation and Reliance.** To the extent permitted by law, the Plan Administrator and any person to whom it may delegate any duty or power in connection with administering the Plan, the Employer, the officers and directors thereof, and the Board, shall be entitled to rely conclusively upon, and shall be fully protected in any action taken in good faith in the reliance upon any actuary, counsel, accountant or other person selected by the Plan Administrator. Further, to the extent permitted by law, neither the Plan Administrator, nor any Employer, nor the officers or directors thereof, shall be liable for any neglect, omission or wrongdoing of an insurance company, investment manager, or any other person or fiduciary.

**Section 9.06. Claims Review Procedure.** The claims procedure hereunder shall be as provided herein:

- (a) **Claim.** A Participant or beneficiary or other person who believes that he is being denied a benefit to which he is entitled (hereinafter referred to as "Claimant") may file a written request for such benefit with the Plan Administrator setting forth his claim.

- (b) Response to Claim. The Plan Administrator shall respond within ninety (90) days of receipt of the claim. However, upon written notification to the Claimant, the response period may be extended for an additional ninety (90) days for reasonable cause. If the claim is denied in whole or in part, the Claimant shall be provided with a written opinion using non-technical language setting forth:
- (1) The specific reason or reasons for denial;
  - (2) The specific references to pertinent Plan provisions on which the denial is based;
  - (3) A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or such information is necessary;
  - (4) Appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review; and
  - (5) The time limits for requesting a review.
- (c) Request for Review. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Plan Administrator review the determination. The Claimant or his duly authorized representative may review the pertinent documents and submit issues and comments in writing for consideration by the Plan Administrator. If the Claimant does not request a review of the determination within such sixty (60) day period, he shall be barred from challenging the determination.
- (d) Review and Decision. The Plan Administrator shall review the determination within sixty (60) days after receipt of a Claimant's request for review; provided, however, that for reasonable cause such period may be extended to no more than one hundred twenty (120) days. After considering all materials presented by the Claimant the Plan Administrator will render a written opinion, written in a manner calculated to be understood by the Claimant setting forth the specific reasons for the decision and containing specific references to the pertinent Plan provisions on which the decision is based.

**Section 9.07. Plan Administrator's Decision Final.** Subject to applicable law, any interpretation of the provisions of the Plan and any decision on any matter within the discretion of the Plan Administrator made by the Plan Administrator in good faith shall be binding on all persons. A misstatement or other mistake of fact shall be corrected when it becomes known and the Plan Administrator shall make such adjustment on account thereof as it considers equitable and practicable.

**Section 9.08. Standards of Review.** The Plan Administrator shall perform its duties as the Plan Administrator and in its sole discretion shall determine appropriate courses of action in light of the

reason and purpose for which this Plan is established and maintained. In particular, the Plan Administrator shall interpret all Plan provisions, and make all determinations as to whether any Participant, beneficiary, or alternate payee is entitled to receive any benefit under the terms of this Plan which interpretation shall be made by the Plan Administrator in its sole discretion. Any construction of the terms of the Plan that is adopted by the Plan Administrator and for which there is a rational basis shall be final and legally binding on all parties.

Any interpretation of the Plan or other action of the Plan Administrator shall be subject to review only if such interpretation or other action is without rational basis. Any review of a final decision or action of the Plan Administrator shall be based only on such evidence presented to or considered by the Plan Administrator at the time it made the decision that is the subject of review. If the Employer and/or any eligible Employee who performs services for a participating Employer that is or may be compensated for in part by benefits payable pursuant to this Plan, such an individual shall be treated as agreeing with and consenting to any decision that the Plan Administrator makes in its sole discretion and further agrees to the limited standard of review described by this Section 10.08 by the acceptance of such benefits.

**Section 9.09. Information Required by Plan Administrator.** Each person entitled to benefits under the Plan must file his most recent post office address with the Plan Administrator. Any communication, statement or notice addressed to any such person at the last post office address filed with the Plan Administrator will be binding upon such person for all purposes of the Plan. Each person entitled to benefits under the Plan also shall furnish the Plan Administrator with such documents or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The Employer shall furnish the Plan Administrator with such data and information as the Plan Administrator may deem necessary or desirable in order to administer the Plan. The records of any Employer with respect to periods of employment, severance from employment and the reason therefore, leave of absence, reemployment and earnings will be conclusive on all persons unless determined by the Plan Administrator to be incorrect.

**Section 9.10. Compensation and Expenses.** Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan provided that such payment is permitted by law. Such expenses include, but are not limited to, expenses for bonding required by ERISA; expenses for record keeping and other administrative services; fees and expenses of the annuity contract; expenses for investment education service; and direct costs that are incurred by all officers, agents, investment counsel, legal counsel or other persons retained or employed by the Employer or Plan Administrator to assist in the administration of the Plan. The Plan Administrator whose duty it shall be to administer this Plan, in accordance with this Article IX, shall serve in such capacity without compensation, but shall be reimbursed for any expenditures incurred in the discharge of its administrative duties.

**Section 9.11. Indemnification.** To the extent permitted by law, the Employer shall indemnify each member of the Board and the Plan Administrator, and any other Employee of the Employer with duties under the Plan, against expenses (including any amount paid in settlement) reasonably incurred by him in connection with any claims against him by reason of his conduct in the performance of his duties under the Plan, except in relation to matters as to which he acted fraudulently, or in bad faith, in the performance of such duties. The preceding right of indemnification shall pass to the estate of such a person.

The Employer shall further indemnify against liability all officers, agents, investment counsel, legal counsel or other persons retained or employed by the Employer to perform administrative duties in connection with the Plan, except liability arising from the gross negligence or willful misconduct in the performance of such duties.

The preceding right of indemnification shall be in addition to any other right to which the Board member, Plan Administrator, or other person may be entitled as a matter of law or otherwise.

**Section 9.12. Agent For Service of Legal Process.** The Employer shall herein be designated as an agent for service of legal process.

**Section 9.13. Records.** The Plan Administrator shall keep or cause to be kept a record of all of its proceedings and all such books, accounts, records or other data as may be necessary or advisable in its judgment for the administration of the Plan, and to properly reflect the affairs thereof. In addition, the latest copies of the Plan, announcement material, annual report or other instruments under which the Plan was established or is operated shall be made available for inspection during reasonable business hours to any Participant or beneficiary who so requests, at the primary location of the Employer or other place or places as it may designate in order to comply with governmental regulations. Upon the written request of a Participant or beneficiary receiving benefits under the Plan, the Plan Administrator shall furnish him with a copy of any of these items. The Plan Administrator may make a reasonable charge to the requesting person for the copy. At the close of each Plan Year, each Participant, and each beneficiary who is receiving benefits under the Plan, shall be furnished with such information as is required by law to be disclosed.

Any person dealing with the Employer may rely on and shall be fully protected in relying on a certificate or memorandum, in writing, signed by the Employer, as evidence of any action taken or resolution adopted by the Employer.

**Section 9.14. Investment Powers.** The funding agent shall have the rights, duties and responsibilities for the investment of the Fund, and shall act in accordance with the provisions of the Annuity Contract; however, the Plan Administrator retains the right to direct the funding agent concerning the investment and reinvestment of the Plan assets held under the Annuity Contract. In such event, the Plan Administrator shall direct the investment of the Plan assets 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, and consistent with the provisions of ERISA.

**ARTICLE X**  
**PLAN AMENDMENT AND TERMINATION**

**Section 10.01. Right of Amendment.** The Employer, by action of its Board, reserves the right to amend or modify the Plan, retroactively or otherwise, at any time, in any respect consistent with the requirements and regulations of the Code, as amended from time to time, and regulations promulgated thereunder.

Any modification or amendment shall satisfy the following rules:

- (a) The duties and liabilities under the Annuity Contract and Plan cannot be changed substantively without written consent of the Employer and funding agent.
- (b) No amendment shall reduce the Account Balance of a Participant or beneficiary or eliminate an optional form of distribution except to the extent permitted under section 412(c)(8) of the Code or other applicable Treasury regulations.
- (c) No merger or consolidation with, or transfer of assets or liabilities to any other plan shall be made unless each Participant and each other person entitled to benefits under the Plan shall be entitled to a benefit immediately after such merger, consolidation or transfer (if the plan into which such persons were merged, etc., then terminated) which is equal to or greater than the benefit such persons would have been entitled to receive immediately before the merger, consolidation or transfer (if the plan from which such persons were merged, etc. had then terminated).
- (d) Under no condition shall any amendment result in the return or repayment to any Employer of any part of the Fund of the income therefrom, or result in the distribution of the Fund for the benefit of anyone other than Participants and any other persons entitled to benefits under the Plan except as provided under Sections 10.02 and 10.04 or as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.
- (e) No modification or amendment of the Plan shall be made retroactively unless deemed by the Employer to be necessary or appropriate to conform the Plan to or to satisfy the conditions of any law, governmental regulation or ruling or to permit the Plan and the Fund to meet the requirements of sections 401, 404 and 501 of the Code, or the corresponding provisions of any subsequent law.
- (f) If the Plan's vesting schedule is changed as a result of an amendment, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date)

of such employee's employer-provided benefit will not be less than the percentage computed under the Plan without regard to such amendment. Furthermore, each Participant who has completed at least three Years of Service with the Employer may elect to continue to have his vested percentage computed in accordance with the vesting schedule in effect for that Participant prior to the amendment. This election may be made no earlier than the date the amendment is adopted and no later than the latest of the date that is 60 days after the date: (i) the amendment is adopted; (ii) the amendment becomes effective; or (iii) the Participant is issued a written notice of the amendment by the Employer or Plan Administrator. If an Active Participant fails to make an election during the election period, then such Active Participant shall be subject to the new vesting provisions.

- (g) No amendment shall cause or effect any discrimination in favor of officers, shareholders or highly compensated employees as defined under Code section 414(q).

**Section 10.02. Right to Terminate Plan.** It is the intent of the Employer to continue the Plan indefinitely and to make contributions required by the Plan. However, the Employer, by action of its Board, may institute proceedings to effect a partial or a total termination of the Plan. The Plan will terminate on the first to occur of the following:

- (a) The date it is terminated by the Employer through action taken by its Board,
- (b) The date the Employer is judicially declared bankrupt or insolvent; or
- (c) The dissolution, merger, consolidation or reorganization of the Employer, except that:
  - (1) In any such event arrangements may be made with the consent of the Employer whereby the Plan will be continued by any successor to that employer or any purchaser of all or substantially all of its assets, in which case the successor or purchaser will be substituted for that employer under the Plan and the Trust Agreement; and
  - (2) If an employer is merged, dissolved or in any way reorganized into, or consolidated with, any other employer, the Plan as applied to the former employer will automatically continue in effect without a termination thereof.

The termination of the Plan shall not cause or permit any part of the Fund to be diverted to purposes other than for the exclusive benefit of the Participants or their beneficiaries, or cause or permit any portion of the Fund to revert to or become the property of the Employer at any time prior to the satisfaction of all liabilities with respect to the Participants and their beneficiaries.

Upon termination of this Plan, the Plan Administrator shall continue to act for the purpose of complying with the preceding paragraph and shall have all power necessary or convenient to the winding

up and dissolution of the Plan as herein provided. While so acting, the Plan Administrator shall be in the same status and position with respect to other persons as if the Plan remained in existence.

**Section 10.03. Nonforfeitable on Termination or Partial Termination.** In the event of a partial or total termination of the Plan or a complete discontinuance of contributions to the Plan, the Account Balance credited to each affected Employee who has not incurred a Break-in-Service shall be non-forfeitable. An Employee does not have any recourse toward satisfaction of his non-forfeitable benefits from other than the Plan assets. Upon partial or total termination, Account Balances may be distributed in a lump sum, or, at the sole discretion of the Employer, may be transferred to a successor qualified plan, in accordance with the applicable provisions of the Internal Revenue Code and the regulations issued thereto.

**Section 10.04. Allocation of the Fund on Termination of Plan.** In the event of a complete or partial termination of the Plan, or upon complete discontinuance of contributions under the Plan, with respect to all Participants or a specified group or groups of Participants, the Employer may continue the Trust to pay benefits as they mature or liquidate and distribute the relevant part of the Fund. If the Fund is liquidated, the net assets shall be allocated by the Trustee among the Participants and any other persons entitled to benefits under the Plan in proportion to their interests. The amount of forfeitures, if any, shall revert to the Employer in accordance with Treasury regulations permitting such a reversion. Distributions under this Section 10.04 shall be made as soon as administratively feasible after the plan termination date.

**ARTICLE XI**  
**MISCELLANEOUS**

**Section 11.01. Jurisdiction.** This Plan shall be a governmental plan as defined in section 3(32) of ERISA.

The Plan shall be construed, administered and enforced in accordance with the applicable laws of the United States and the State of California.

**Section 11.02. Non-Alienation.**

- (a) **Protected Benefits.** None of the benefits under the Plan are subject to the claims of creditors of Participants or their beneficiaries, and will not be subject to attachment, garnishment or any other legal process. Neither a Participant or his beneficiary may assign, sell, borrow on, or otherwise encumber any of his beneficial interest in the Plan and Fund, nor shall any such benefits be in any manner liable for or subject to the deeds, contracts, liabilities, engagements or torts of any Participant or beneficiary. If any such Participant or beneficiary shall become bankrupt or attempt to anticipate, sell, alienate, transfer, pledge, assign, encumber or change any benefit specifically provided for herein, or if a court of competent jurisdiction enters an order purporting to subject such interest to the claim of any creditor, then the Trustee shall hold or apply such benefit to or for the benefit of such Participant or beneficiary in such manner as the Trustee may deem proper.
- (b) **Qualified Domestic Relations Order.** The foregoing Section 11.02(a) shall also apply to the creation, assignment or recognition of a right under a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order as defined in section 414(p) of the Code (and those other domestic relations orders permitted to be so treated by the Plan Administrator under the provisions of the Retirement Equity Act of 1984) which if satisfied, may assign a Participant's benefits to an alternate payee specified in the Qualified Domestic Relations Order.

The Plan Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. The Plan Administrator shall determine whether an order meets the requirements of this Section 11.02 within a reasonable period after receiving an order. The Administrative Committee shall notify the Participant and any alternate payee that an order has been received. Any amounts which are to be paid pursuant to the order, during the period while its qualified status is being determined, shall be held in a separate account under the Plan for any alternate payee pending determination that an order meets

the requirements of this section. If within eighteen months after such a separate account is established, the order has not been determined to be a qualified Order, the amount in the separate account shall be allocated to the individual who would have been entitled to such amount if there had been no order.

**Section 11.03. Facility of Payment.** In the event that any benefit hereunder becomes payable to a minor, to a person under a legal disability, or to a person who, in the opinion of the Plan Administrator, is incapable of properly using, expending, investing or otherwise disposing of such distribution, then the Plan Administrator may direct the payment of such benefit: (a) directly to such person; (b) to the legally appointed guardian or conservator of such person; (c) to a relative, friend or institution for the care and support of such person; or (d) as directed by a court of competent jurisdiction.

**Section 11.04. No Enlargement of Employment Rights.** Nothing contained in the Plan may be construed as conferring any rights upon any person for a continuation of his employment, or as in any way affecting such employment, nor may it be construed as limiting in any way the right of the Employer to terminate the employment of, or to retire, an Employee.

**Section 11.05. Waiver of Notice.** Any notice required under the Plan may be waived by the person entitled to notice.

**Section 11.06. Absence of Guarantee.** Neither the Plan Administrator nor the Employer in any way guarantees the Fund from loss or depreciation. Except as required by applicable law, the Employer does not guarantee any payment to any person. The liability of the funding agent or the Plan Administrator to make any payment under the Plan will be limited to the assets held under the Annuity Contract which are available for that purpose.

**Section 11.07. Employee Loans.** The Plan does not permit Employee loans.

**Section 11.08. Non-Diversion.** There shall be no use or diversion of any portion of the assets of the Fund other than for the exclusive benefit of Participants and their beneficiaries

**Section 11.09. Return of Employer Contributions.** All contributions made by the Employer to the Fund shall be irrevocable unless a contribution (or any portion of a contribution) is made as a result of a mistake of fact, or is conditioned on qualification of the Plan under the Internal Revenue Code. The return to the Employer of a contribution (or any portion of a contribution) must be made within one year of the payment of the contribution (or any portion of the contribution), or denial of qualification.

In the event a contribution (or any portion of a contribution) is returned to the Employer as a result of a mistake of fact or denial of qualification, the amount which may be returned to the Employer is the excess of (a) the amount contributed over (b) the amount which would have been contributed had there not occurred a mistake of fact or denial of qualification. Such returned contribution shall exclude any earnings which may have accrued on the contribution, but any losses which may have occurred with

respect to such contribution must reduce the amount so returned. However, if the withdrawal of the amount attributable to the contribution to be returned would cause the Account Balance of any Participant to be reduced to less than the Account Balance which would have resulted had there not been a mistake in contribution or denial of qualification, then the amount to be returned to the Employer shall be limited so as to avoid such reduction in the Participant's Account Balance.

**Section 11.10. Litigation by Participants or Other Person.** If a Participant or other person brings a legal action against the funding agent, the Employer and/or the Plan Administrator, and such action results adversely to that person, or if a legal action arises because of conflicting claims to a Participant's or other person's benefits, the costs borne under the Annuity Contract, the Employer or the Plan Administrator in defending the action will be charged, to the extent permitted by law, to the amounts involved in the action or which were payable to the Participant or other person concerned.

**Section 11.11. Use and Form of Words.** Whenever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply. Whenever any words are used in the singular form, they shall be construed as though they were also used in the plural form in all cases where they would so apply.

**Section 11.12. Savings Clause.** In case any provision of the Plan is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced as if said illegal and invalid provision had never been inserted in the Plan.

**Section 11.13. Misstatements/Mathematical Errors.** If it shall be found that age, years of service, Compensation or any other factor used in determining or calculating the amount payable to a Participant, beneficiary or alternate payee has been misstated, an adjustment shall be made in benefits with respect to said individual. The amount payable with respect to said Participant, beneficiary, or alternate payee shall be calculated, in accordance with the provisions of the Plan, on the basis of true age, years of service, Compensation or any other relevant factor with respect to said Participant, beneficiary, or alternate payee.

In addition, should a Participant's benefit or any other person entitled to benefits from the Plan be calculated in error and result in an incorrect amount being paid to such Participant or other person, the Plan Administrator shall take all steps necessary to correct the error. Such action shall include (but not be limited to) seeking reimbursement from the Participant or such other person in the event of overpayment, and disbursement of additional funds in the event of underpayment.

**Section 11.14. Unclaimed Benefits.** If the Participant or any other person entitled to benefits under the Plan cannot be located, and reasonable efforts have been made to find him, including the sending of notification by certified or registered mail to his last known address, the Employer may instruct the funding agent to distribute the funds for such person by placing them in a savings account; or, in the case where the individual's Account Balance is more than \$1,000, an Individual Retirement

Account (IRA) in the name of such person; or, by escheating his Account Balance in the name of such person to the State of California. In this circumstance, the Participant or other person entitled to such benefits will be deemed to have elected a lump sum distribution and shall discharge, in full, the Plan's liability to such person.

**Section 11.15. Merger and Consolidation of Plan or Transfer of Plan Assets.** This Plan may not merge or consolidate with, or transfer its assets or liabilities to, any other Plan unless each Participant or his beneficiary in the Plan would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated.

IN WITNESS WHEREOF, the Employer has executed this Plan this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

San Diego Housing Commission

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Employer