ITEM 10.J.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: Honorable City Council

FROM: Ron Ahlers, Finance Director RA

DATE: March 26, 2009 (CC Meeting of April 1, 2009)

SUBJECT: Consider a Resolution Adopting a Revised ICMA-RC 457 Plan and Rescinding Resolution No. 2000-1742, and a Resolution Adopting a Revised Nationwide Retirement Solutions Deferred 457 Plan and Amending Resolution No. 2001-1931, to Allow Loans to Employees

BACKGROUND

The City of Moorpark offers its employees the opportunity to defer a portion of their income utilizing a 457 plan {Internal Revenue Code, Section 457}. The City currently contracts with two plan providers: International City Manager's Association Retirement Corporation {ICMA-RC) and Nationwide Retirement Solutions {NRS}. We are requesting the Council amend both of the City's 457 program plans to allow employees to borrow funds from their individual 457 accounts.

DISCUSSION

The Small Business Job Protection Act of 1996, passed by the Congress in August 1996 and subsequently signed by President Clinton, made a number of changes to Internal Revenue Code {IRC} section 457. The City of Moorpark's deferred compensation plan is governed by this section 457 of the IRC. These changes have greatly benefited the employees of the City by increasing the deferral amount and establishing a trust fund for the safety of the employees' assets. However, there was one major change that the City has not yet implemented. That change was the allowance of loans against an employee's 457 account.

We are recommending that the City Council amend the 457 plan documents to allow the employees to borrow funds against their 457 account. In accordance with the requirements of the two different plan providers, the current ICMA-RC 457 plan resolution (2000-1742) will be rescinded and the entire plan readopted, and the NRS 457 plan resolution (2001-1931) will be amended.

The following is a summary of the proposed loan program for the Council's consideration. These shall apply to both plan providers, where there is a difference we shall so designate with the initials of the providers: ICMA-RC and NRS.

- A "Loans Guidelines Agreement" must be completed and the Plan Agreement must be amended to allow loans.
- A loan may be taken from participant account balances for all purposes
- Participants will be required to take a loan before taking an emergency withdrawal
- Participants may only receive one loan per calendar year
- Participants may have only one loan outstanding at a time
- Generally, all loans must be repaid within five years from the date the loan is made. However, loans for the purpose of buying a principal residence may be repaid up to a maximum of 15 years {NRS} or 30 years {ICMA-RC}.
- Loan repayments will be repaid through payroll deductions {ICMA-RC} or through automatic deduction from the employee's bank account by ACH {NRS}
- Participants are not allowed to "skip" a payment, even if the participant has made a large payment or submitted multiple payments
- Loans are only available to active plan participants. Former employees, beneficiaries, and alternate payees are not allowed to make a loan
- Loans must be submitted online for ICMA-RC or by direct mail with NRS
- All loans are due and payable in full upon the employee's separation from service. The employee may not continue to pay off his/her loan once he/she separates from service.
    - If a participant does not repay the outstanding loan amount at the time it is due, the loan is "foreclosed." This means that the outstanding loan amount must be reported by the plan administrator {ICMA-RC or NRS} as a taxable distribution in the year of the foreclosure.

Calculating the Amount Available for a Loan

- Minimum loan is $1,000
- Maximum loan amount is 50% of the account balance less any outstanding loans

City of Moorpark Additional Duties & Considerations

- We shall experience a decline in the number of "emergency withdrawal" applications, because the employee will be required to get a 457 loan instead.

- We will need to establish new payroll deduction codes for the 457 loan (ICMA-RC only). We shall become the "fiscal agent" for the employees, as they will pay the City and then the City transfers the payment to the 457 plan provider.

- The City may not stop taking loan repayments from the employee's paycheck, even if the employee asks that repayment be stopped. Failure to payroll deduct loan repayments on schedule could both jeopardize the eligibility or qualification of the entire plan as well as create a taxable event for the participant.

- We also become a "loan processing" department. In order to minimize the amount of time spent on loans, we shall require that all loan applications be submitted directly with the two plan providers.

- If the City chooses, in the future, to accept a written application, then we are responsible to ensure that all loan documents are signed off in good form before we issue the check to the employee. We must also completely adhere to the loan amortization schedule as set forth by the plan providers.

FISCAL IMPACT

All of the above is additional administrative workload, with no compensation from the employee. This is an additional benefit provided at no charge to our employees.

STAFF RECOMMENDATION (Roll Call Vote)

1. Adopt Resolution No. 2009 - _____ approving a Revised ICMA-RC 457 Plan and Rescinding Resolution No. 2000-1742, and authorize the City Manager to sign the "Loan Guidelines Agreement for a Retirement Plan" and the "Amendment to ICMA-RC Governmental Section 457 Plan & Trust Adoption Agreement" for the City of Moorpark; and

2. Adopt Resolution No. 2009 - _____ approving an amendment to Resolution Number 2001-1931, to revise the Nationwide Retirement Solutions Deferred Compensation Plan and Trust/Custodial Document, and authorize the City Manager to sign the "Restated and Amended Deferred Compensation Plan and Trust/Custodial Document for Public Employees" and "The City of Moorpark Participant Loan Program."

Attachments:
1. "A guide to Implementing a Loan Program" ICMA-RC
2. Resolution No. 2009 - _____
3. Resolution No. 2009 - _____

ATTACHMENT 1

A GUIDE TO IMPLEMENTING A LOAN PROGRAM

ICMARC

Building Retirement Security

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A loan program in your retirement plan provides eligible plan participants the ability to borrow funds from their plan account balance. Adding loans to your retirement plan is a big step. As the administrator of your loan program, ICMA-RC will attempt to minimize the amount of resources you need to devote to the program.

However, there are administrative and fiduciary responsibilities associated with offering loans which, as a practical matter, cannot be delegated to ICMA-RC. For this reason, before you design a program that is right for you and your employees, there are several issues you may wish to consider. And the decisions you make in designing your loan program will determine the resources you, as the plan sponsor, will have to commit to that program.

This brochure details the issues you should consider in designing your retirement plan loan program.

LOAN GUIDELINES

In order to offer loans from a retirement plan, the Internal Revenue Code (the Code) requires that you establish written guidelines that govern the granting of loans. Included in this packet is the Loan Guidelines Agreement that you must complete and formally adopt to establish your loan program.

Along with completing the *Loan Guidelines Agreement*, you must amend your plan document to allow loans. You will need to send to ICMA-RC a statement executed by a designated official or resolution approved by your governing body, as applicable to your plan. In addition, if you are adding a loan provision to a 401 plan, the adoption agreement applying to that plan must be amended. A sample resolution and an adoption agreement amendment form are included in this package. If you have any questions about amending your plan document to allow for loans, please call our Client Services Team toll-free at 1-800-326-7272.

The Code provides you with some flexibility when establishing your Loan Guidelines as long as the guidelines are consistent with the plan document provisions on loans and with section 72(p) of the Code.

1. **Eligibility (Section II in Loan Guidelines Agreement)**

   You may allow a loan to be taken from (1) vested employer contributions and/or (2) participant account balances. You may designate whether or not a loan may be taken

   (A) for all purposes or

   (B) only in the case of hardship or other certain specified financial situations.

   401 Plans: Under the Code, only employers can authorize a hardship for loan purposes. Upon request, ICMA-RC will provide an opinion to you concerning the likely compliance of the hardship within the requirements of the Code and regulations. Normally, for loan purposes, hardship and other specified situations include, but are not limited to: unreimbursed medical expenses, buying or rehabilitating the participant's principal residence, and paying for college education for the participant or his/her dependents. Car loan, car repairs, and the purchase or repair of a vacation or rental property would not be included in the hardship definition.

   The option you choose to define "loan purpose" in the Eligibility section will have a significant impact on the number of loans made from your plan. Obviously, if you choose "for all purposes," more of your employees will request loans than if you select "hardship or other specified financial situations only."

   457 Plans: Loans must be coordinated with unforeseeable emergency withdrawals. The emergency withdrawal regulations under Section 457 of the Code require that an emergency withdrawal be a resource of the "last resort." If the participant is able to take a loan from your ICMA-RC 457 plan or any other plan you sponsor, the participant has resources available to meet, or partially meet, the financial need. Therefore, a participant will be required to take a loan before taking an emergency withdrawal.

   Many emergency withdrawals are not approved because the financial need, while serious, may not meet the conditions itemized in the 457 regulations. The ability to take a loan will allow participants access to money that is not otherwise available. And the repayment provisions for loans ensures that participants replenish their accounts, thereby preserving their retirement savings.

2. **Frequency of Loans (Section III in Loan Guidelines Agreement)**

   Participants may receive only one loan per calendar year. However, you may elect to allow participants to have either

   (A) only one loan outstanding at a time or

   (B) no more than five loans outstanding at one time.

   The option you choose under Frequency of Loans will have an impact on the number of loans made from your plan. It may also have a direct impact on your payroll system if you select Payroll Deduction as a repayment option for your participants. *Each loan repayment for each pay period must be accounted for separately.* Repayments of multiple loans are a much larger burden on your payroll system (and personnel) than a repayment of a single loan.

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3. **Length of Loan (Section V in Loan Guidelines Agreement)**

Generally, all loans must be repaid within five years from the date the loan is made. There is an exception for loans used to buy, but not to improve or repair, a principal residence. In the case of a loan for buying a principal residence, you may specify the number of years, not to exceed 30, over which the loan must be repaid.

In determining the maximum repayment period for residential loans, you should be mindful that the loan term may extend beyond the period the participant is employed by you. If you allow employees to continue to pay their loans after they separate from service (see Acceleration of Loan Repayment on the next page), repayments would continue by the participant, through you, for the entire term of the loan (e.g., 30 years). Every payroll period, the participant (former employee) will be required to give you a check for the periodic loan repayment amount. You then include this amount with your next contribution submittal to ICMA-RC. *Loan repayments may not be made directly to ICMA-RC by the participant, unless you choose ACH debit as a repayment option.*

4. **Loan Repayment Process (Section VI in Loan Guidelines Agreement)**

All loans must be repaid either through payroll deduction or through ACH debit as long as the employee is actively employed by you. For payroll deducted payments, ICMA-RC's media used for remitting contribution detail (e.g. EZLink, magnetic tape, or diskette) allow for the inclusion of loan repayment detail. Participants may pay off their loans early by requesting that you submit a larger repayment amount from their pay on their regularly scheduled repayment dates through your contribution submittals to ICMA-RC. Please note that no payment date may be "skipped" even if the employee has made a large payment or submitted multiple payments.

The enclosed Loan Guidelines Agreement form allows your plan to offer a participant the option of making loan repayments via direct debit of the employee's bank account. Direct debit is authorized by the participant and allows ICMA-RC to debit loan repayments from the participant's bank account via Automated Clearing House (ACH). With this feature, you are free of the burden of establishing and monitoring payroll deduction and submitting of repayments to ICMA-RC.

Please note that you will not be notified directly when a participant's bank account has insufficient funds for a complete loan repayment. The EZLink loan reports that will be available to you online will provide this information. It is possible that participant loans may default more often for lack of repayment when participants choose ACH repayment rather than payroll deduction. You may choose to restrict certain participants to payroll deduction for this reason.

In implementing a loan program you should be aware that some employers who offer loans through their retirement plan have had to contend with the inability of some participants to repay their loan(s). You should be aware that you may *not* stop taking loan repayments from the employee's paycheck – even if the employee asks that repayments be stopped. Failure to payroll-deduct loan repayments on schedule could both jeopardize the eligibility or qualification of the entire plan as well as create a taxable event for the participant.

Likewise, if an employee is repaying the loan through ACH debit of his/her bank account, and the employee fails to make payments, this could jeopardize the eligibility of your retirement plan. Employers are ultimately responsible for ensuring that loans are repaid according to the loan terms. ICMA-RC assists you by notifying both you and the employee if a payment has not been received.

Your plan may allow terminated employees to continue to repay their loans either through ACH debit of their bank account, or by giving/sending you a check each repayment period (refer to Acceleration of Loan Repayment section on page three). If you adopt this latter repayment method, you will include the repayment amount given to you by the former employee in your next regular employee contribution remittance to ICMA-RC.

If a participant has more than one loan outstanding at any one time, then each loan repayment must be separately reported to ICMA-RC.

5. **Loan Application Procedures (Section VIII in Loan Guidelines Agreement)**

(A) Active Employees Only – Loans are available only to active employees. Former employees, beneficiaries, and alternate payees may not take a loan.

(B) Request Submittal – Loan requests may be submitted by participants through the Direct Application (written form) or on Account Access, ICMA-RC's online account program. To offer these features, the employer pre-authorizes ICMA-RC to approve loan requests. Otherwise, all loan requests must be in writing, signed by the participant, and approved by you, the employer.

Under the Code, the amount of the loan may not exceed a maximum amount. *The amount available for a loan is affected by all other loans the participant may have outstanding or has recently paid off from your ICMA-RC retirement plan, and any other retirement plans you sponsor.* Please refer to page 7 for a worksheet illustrating how maximum loan amounts are calculated. The loan modeling program in Account Access incorporates this calculation automatically.

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(C) Check Issuance – Unless you select Direct Application or online (Account Access) application, the participant is required to sign acceptance of a promissory note evidencing the loan and a disclosure statement, which includes an amortization schedule. Upon receipt of an approved loan application, ICMA-RC will prepare these loan documents and send them, along with the loan check. The loan check may not be given to the participant until all of these loan documents have been signed by the participant. Once the loan documents are signed, you return them to ICMA-RC. Because the promissory note is considered a plan asset, all loan documents must be complete and preserved by ICMA-RC for at least the life of the loan.

With online loans or Direct Application, ICMA-RC sends loan documents with the check to the participant. When the participant endorses the check, that signifies acceptance of terms.

For payroll-deducted loan repayments, once a loan is issued, your payroll department must ensure that loan repayments are withheld from the employee's paycheck each pay period, in the amount specified or the amortization schedule, until the loan is repaid in full. It is essential that the amortization schedule coincide with your payroll cycle. ICMA-RC can help you determine the first pay date on which you should withhold loan repayments.

6. Acceleration of Loan Repayment (Section X in Loan Guidelines Agreement)

You have three options for determining how outstanding loans are accelerated:

A. All loans are due and payable in full upon the employee's separation from service. The employee may not continue to pay off his/her loan once he or she separates from service.

B. After separation from service, all loans are due and payable in full as soon as the participant takes a withdrawal of any amount from the plan.

C. After separation from service, all loans are due and payable in full only when the participant withdraws his/her entire account balance.

You should consider these options carefully, since each provision could result in a taxable event for the participant. If a participant does not repay the outstanding loan amount at the time it is due, the loan is "foreclosed." This means that the outstanding loan amount must be reported by the plan administrator (ICMA-RC) as a taxable distribution in the year of the foreclosure.

On the other hand, given the burdens associated with collecting loan repayments from former employees, you may not wish to maintain a **potentially** long term "relationship" with former employees (especially in the case of **residential loans**).

You should carefully consider the level of responsibility each option entails.

7. Deemed Distribution of Delinquent Loans (Section XIV in Loan Guidelines Agreement)

Internal Revenue Service (IRS) regulations governing participant loans issued after December 31, 2001, have provided clarification on requirements for loan processing. The regulations have always established loan criteria such as term and borrowing limitations. However, the regulations now specifically illustrate how plan sponsors should treat delinquent loans, which violate the special rules allowing loans to be made from retirement plan assets.

A loan typically becomes a deemed distribution when scheduled payments are not made in adherence with the granted "cure period." The maximum allowable cure period is the end of the calendar quarter following the calendar quarter in which the payment was due. For example, if a participant's loan payment is due February 1st, the maximum cure period for the repayment is June 30th. If the total amount of all delinquent payments is not received by the end of the cure period, the loan is deemed a distribution. The principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, the taxable distribution is not the only event in conjunction with a deemed distribution. The following negative consequences occur as a result of deemed distribution.

- The deemed distribution is a taxable event. However, it is not an actual distribution and therefore remains an asset of the participant's account. The outstanding loan balance and accrued interest are reported on the participant's account statement.
- Repayment of a deemed distribution will not change or reverse the taxable event.
- The loan continues to be considered outstanding until it is repaid or "offset" using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in your plan document.
- ICMA-RC requires participants to repay any outstanding deemed distributed loan before they can become eligible for a new loan. The deemed distributed loan and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan.
- A recent IRS ruling requires that a participant who has had a prior deemed distribution must make repayments

to a new loan through payroll deduction, or provide proof of adequate security.

Employers, as plan sponsors and fiduciaries, have an obligation to comply with plan document and loan guideline requirements applicable to participant loans. In this regard, loan payments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. Employers retain this obligation if there is a loan program associated with their retirement plan, even if participants apply for loans online, and regardless of the method of repayment - whether participants are repaying their loans through ACH debit or payroll deduction.

Employers who do not ensure proper loan repayment practices in their retirement loan programs risk not only having individual participant loans being deemed distributions, but also potentially jeopardize the tax-favored status of the entire plan. In the extreme, plans with mismanaged loan programs – a high occurrence of deemed distributed loans, and/or program participants in default, for example – may be disqualified (in the case of 401 plans) or classified as ineligible (for 457 plans) by the IRS. Disqualification results in the loss of tax-deferred status for all contributions and a possible increase in the taxable income for participating employees.

It is a plan sponsor's and plan administrator's fiduciary obligation to properly manage the retirement plan and its benefits. Mismanagement of a loan program may be considered failure to meet this fiduciary obligation and may expose a plan sponsor to litigation, in addition to being in violation of applicable laws and regulations.

To assist plan sponsors whose plan options include loans, ICMA-RC will provide reports of participants with payments delinquent by 30 to 89 days, 90 or more days but not yet deemed, and those whose loans have been deemed distributed. ICMA-RC is committed to supporting employers who request assistance with their loan programs in order to reduce the number of delinquent loans and decrease the occurrence of deemed distributions.

SPECIAL CIRCUMSTANCES

If you have more than one retirement plan, ICMA-RC will administer your loan program, but you will have to perform some loan verification activities. You will also have to perform these activities if loans are available to your employees from several like retirement plans, such as two different qualified plans, or if you have different types of retirement plans (e.g. Section 457 deferred compensation and section 401 qualified plan). The degree of your involvement will depend on your situation.

1. Multiple Plans

If you offer *several retirement plans,* each with its own plan document and provisions unique to each administrator, ICMA-RC and your other administrators should be able to administer loans because these are distinct plans and the loan provision applies at the *plan* level. However, the Code sets a maximum on the aggregate of all loans from all retirement plans in which the employee participates. No provider will be able to calculate, by itself, the maximum amount that a participant may borrow at any point in time. Since only you, the employer, can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any retirement plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining all loan amounts currently outstanding and repaid in the last 12 months. For your convenience, ICMA-RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

If you elect online loans, participants are asked to input all outstanding loan balances in their online worksheet so that the program can properly calculate the maximum amount. Participants are on the "honor system" when they enter other loan amounts; ICMA-RC is unable to verify any loan amounts associated with plans administered by other providers. However, if there are any outstanding loans in other plans administered by ICMA-RC, our online program will take them into account.

2. Single Retirement Plan/Multiple Providers

If you have adopted a single retirement plan with one master plan document under which ICMA-RC and your other administrator(s) must operate, then you may ultimately have to self-administer your loan program, *unless* you require:

- that the maximum that may be borrowed from any provider is 50 percent of the balance with that provider and
- that the loan must be repaid only to the provider from which the loan was made.

If you do not impose these requirements, you may have to self-administer your loan program. This is because of:

- Problems calculating the loan amount.

  The amount available for a loan is based, in part, on the total account balance in *the plan.* Since employees *may* have balances with more than one of the administrators, only you, the employer, can determine the actual account balance by aggregating the balance for each administrator.

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The Code sets a maximum on the aggregate of *all* loans from all retirement plans in which the participant participates. Since only you can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any retirement plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining *all* loan amounts currently outstanding and repaid in the last 12 months. For your convenience, ICMA-RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

- Problems preparing loan documents.

  Each loan has terms and conditions that are reflected in the promissory note, disclosure statement and amortization schedule for the loan. Other providers may be able to prepare these documents if given all the pertinent information about the loan by you. However, the other provider may be reluctant to provide documents for a loan to which it is not a party. And it may be difficult for the other provider's system to provide documents for a loan in an amount that exceeds what its system shows is available.

- Problems keeping accurate loan records.

  Since loans are generally made and recordkept on a plan level basis, theoretically, a participant could take a loan in the amount of his/her entire balance with one administrator because the loan is collateralized by the balance with another administrator. And the participant may elect to allocate loan repayments either between administrators or to an administrator other than the administrator who made the loan. Unless a loan is unique to one of the administrators, both in amount and repayment terms, only you, the employer, will be able to track loan repayments, especially if repayments are being made to more than one administrator.

3. <u>Multiple Types of Retirement Plans/Multiple Providers</u>

If you make loans available to your employees from all of your retirement plans (e.g. Section 457 deferred compensation plan and Section 401 qualified plan), each plan administrator should be able to administer loans because these are distinct plans and the loan provision applies at the plan level. However, no administrator will be able to calculate, by itself, the maximum amount that a participant may borrow at any point in time. This is because the Code sets a maximum on the aggregate of all loans from all 401 and 457 plans in which the participant participates. Since only you, the employer, can determine the current outstanding loan balance and the highest outstanding loan balance in the past 12 months from all loans from any 401 or 457 plans, you will have to calculate the maximum amount that may be borrowed. This will involve obtaining all loan amounts currently outstanding and repaid in the last 12 months. For your convenience, RC has developed a worksheet to illustrate the maximum loan amount available. [See Page 7, "Calculating the Amount Available for a Loan."]

Many 457 plans are what are referred to as "co-administered" plans. There are actually two different types of arrangement both of which are referred to as co-administered or co-provider plans:

(1) multiple 457 plans offered by an employer through two or more administrators, each administrator having its own plan document and features.

(2) a single 457 plan with multiple administrators providing essentially different investment options.

In both of these situations, it will be difficult for an administrator to correctly administer a loan provision across multiple plans. It will also be difficult for you to correctly administer a loan's provisions in situations where you make loans available to employees from your 457 plan(s) and another retirement plan (e.g. Section 401 money purchase or profit sharing plan).

CONCLUSION

You may be able to minimize your involvement in administering a loan program under either a single plan/multiple provider arrangement or a multiple plan arrangement. However, you cannot avoid having to determine whether each loan amount requested is consistent with the aggregate maximum.

The above information is intended to provide an overview of the issues and complexities of establishing and maintaining a loan program under the most common types of retirement plan arrangements. It is not intended to be all inclusive. Other issues may arise and some issues may be mitigated by a plan's individual design. Special situations and/or solutions not discussed above will have to be analyzed on a case-by-case basis. Please contact ICMA-RC's Client Services Team at 1-800-326-7272 with any questions related to these issues.

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CALCULATING THE AMOUNT AVAILABLE FOR A LOAN

The minimum loan amount is $1,000.

The maximum amount of all loans to the participant from the Plan and all other plans sponsored by the Employer that are qualified employer plans under section 72(p)(4) of the Code is the lesser of:

(1) $50,000, reduced by the highest outstanding balance of all loans from any 401 or 457 plans for that participant during the one-year period ending on the day before the date a loan is to be made, or

(2) 50% of the participant's vested account balance, reduced by the current outstanding balance of all 401 and 457 loans from all plans for that participant.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

In addition, each loan must be collateralized, at the time it is made, by one half of the participant's vested account balance in the plan from which the loan is being made. Therefore, the actual amount a participant may take as a loan is the LESSER of the maximum dollar amount described above or 50 percent of the account balance.

Maximum Loan Amount Worksheet (Required under the Internal Revenue Code)

To estimate the maximum amount of a loan for which a participant may be eligible, calculate each step and select the ***lesser*** of the total of Step 1 or Step 2. If the participant has had no outstanding 401 or 457 plan loans in the last 12 months, you may enter $50,000 as the total in Step 1 and proceed to Step 2.

Step 1.	**$50,000**	A. $50,000 is the maximum.
	________	B. Enter the highest outstanding loan balance during the previous 12 months from 457 and 401 plan loans.
Step 1 Total	________	**Subtract Line B from Line A.**
Step 2.	________	C. Enter 50% of the present value of the total account balance in the plan from which the loan will be issued, including any outstanding loan balance.
	________	D. Enter the current outstanding 401 and/or 457 plan loan balance(s).
Step 2 Total	________	**Subtract Line D from Line C.**
Step 3.	________	E. Enter the lesser of Step 1 and Step 2 totals.
		Maximum Loan Amount = Line E

The actual amount that may be borrowed will be calculated using the participant's account balance on the day the loan is made.

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RESOLUTION NO. 2009-________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING A REVISED 457 DEFERRED COMPENSATION PLAN AND TRUST WITH THE ICMA RETIREMENT CORPORATION AND RESCINDING RESOLUTION NO. 2000-1742

WHEREAS, the City of Moorpark ("City") permits regular employees to participate in a 457 deferred compensation retirement savings plan administered by the International City Managers Association Retirement Corporation (ICMA-RC); and

WHEREAS, a deferred compensation plan for such employees serves the interests of the City by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by improving the attraction and retention of competent personnel; and

WHEREAS, the City of Moorpark wishes to adopt a revised Deferred Compensation Plan and Trust document, which includes provisions for loans to participants; and

WHEREAS, Nationwide Retirement Solutions is able to administer the deferred compensation plan for the City of Moorpark in accordance with the terms of this agreement; and

WHEREAS, Resolution No. 2000-1742 is proposed to be rescinded, and this resolution adopted, the City of Moorpark has determined that permitting participants in the retirement plan to take loans from the Plan will serve these objectives.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City of Moorpark hereby adopts the deferred compensation plan (the "Plan") in the form of the ICMA Retirement Corporation Deferred Compensation Plan and Trust, attached hereto as Exhibit A.

SECTION 2. That the City hereby executes the Declaration of Trust of the ICMA Retirement Trust, attached hereto as Exhibit B, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the City, if the assets of the plan are to be invested in the ICMA Retirement Trust.

SECTION 3. That the assets of the Plan shall be held in trust, with the City serving as trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose. The Trustee's beneficial ownership of Plan assets held in ICMA's Retirement Trust shall be held for the further exclusive benefit of the Plan participants and their beneficiaries.

SECTION 4. Loans to participants shall be made in accordance with the provisions of the Loan Guidelines Agreement (Exhibit C).

SECTION 5. That the City hereby agrees to serve as trustee under the Plan.

SECTION 6. That the City Manager is hereby authorized to designate the City staff member to act as coordinator for this program and to receive necessary reports, notices, and related documents from the ICMA Retirement Corporation or the ICMA Retirement Trust; and the City Manager or his/her designee shall cast, on behalf of the City, any required votes under the ICMA Retirement Trust, and the City Manager or his/her designee is authorized to execute all necessary agreements with ICMA Retirement Corporation incidental to the administration of the Plan. Administrative duties to carry out the plan may be assigned to the appropriate City staff member.

SECTION 7. Resolution No. 2000-1742 is hereby rescinded in its entirety.

SECTION 8. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this 1st day of April 2009.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibits
A. ICMA Deferred Compensation Plan and Trust
B. Declaration of Trust
C. Loan Guidelines Agreement for a Retirement Plan

EXHIBIT A

DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective January 1, 2006

Article I. Purpose

The Employer hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

2.01 **Account**. The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 **Accounting Date**. Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

2.03 **Administrator**. The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 75 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 75 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

2.04 **Automatic Distribution Date**. April 1 of the calendar year after the Plan Year the Participant attains age 70-1/2 or, if later, has a Severance Event.

2.05 **Beneficiary**. The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.

2.06 **Deemed IRA**. A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

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2.07 Deferred Compensation. The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.

2.08 Dollar Limitation. The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

2.09 Employee. Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.10 Employer. CITY OF MOORPARK, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of CALIFORNIA, described in Section 457(e)(1)(A) of the Code.

2.11 457 Catch-Up Dollar Limitation. Twice the Dollar Limitation.

2.12 Includible Compensation. Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include any employer contributions to an integral part trust of the employer providing retiree health care benefits.

2.13 Joinder Agreement. An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.14 Normal Limitation. The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).

2.15 Normal Retirement Age. Age 70-1/2, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70-1/2. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70-1/2. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70-1/2. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70-1/2.

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2.16 Participant. Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes an employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.

2.17 Percentage Limitation. 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

2.18 Plan Year. The calendar year.

2.19 Retirement. The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.

2.20 Severance Event. A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

2.21 Trust. The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

3.01 Duties of the Employer. The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 Duties of Administrator. The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

4.01 Initial Participation. An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

4.02 Amendment of Joinder Agreement. A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

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Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

(a) *Catch-up Contributions for Participants Age 50 and Over*: A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:

(1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or

(2) The excess (if any) of

(i) The Participant's Includible Compensation for the year, or

(ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

(b) *Last Three Years Catch-up Contribution*: For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:

(1) The 457 Catch-Up Dollar Limitation, or

(2) The sum of

(i) The Normal Limitation for the taxable year, and

(ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

Pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2 ½ months following severance from employment and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

5.04 **Other Plans**. Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 **Excess Deferrals**. Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.

5.06 **Protection of Person Who Serves in a Uniformed Service**. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article VI. Trust and Investment of Accounts

6.01 **Investment of Deferred Compensation**. A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.

6.02 **Investment Powers**. The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.

(a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

(f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.

(i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

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6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts. The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

(a) *Incoming Transfers*: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;

(2) The other employer's plan provides that such transfer will be made; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

(b) *Outgoing Transfers*: An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:

(1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;

(2) The other employer's plan provides that such transfer will be accepted;

(3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

(4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section

457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

(a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be made;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.

(b) *Outgoing Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be accepted;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

(a) *Incoming Rollovers*: An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan.

(b) *Outgoing Rollovers*: Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(c) *Definitions*:

(1) *Eligible Rollover Distribution*: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections

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401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(2) *Eligible Retirement Plan*: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.

(3) *Distributee*: A distributee includes an employee or former employee. 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.

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

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

(a) *General Rule*: Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70-1/2, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

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(b) *Loans*: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;

(d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;

(g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options. No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than $100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

7.05 Post-Retirement Death Benefits.

(a) Should the Participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

(b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the Beneficiary shall, subject to the requirements set forth in Section 7.04, be paid to an additional beneficiary designated by the Beneficiary. If no additional beneficiary is named, payment shall be made to the Beneficiary's estate in a lump sum.

(c) In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Pre-Retirement Death Benefits.

(a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

(b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.07 Unforeseeable Emergencies.

(a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the participant or beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.07(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

7.08 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time request a distribution of all or any portion of the amount attributable to his or her rollover contribution.

7.09 In-Service Distribution to Participants Age 70-1/2 or Older. A Participant who has reached age 70 ½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account. A Participant may only receive two (2) such distributions pursuant to this Section 7.09 in any calendar year.

7.10 Distribution De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

(a) *Mandatory Distribution.* If the value of a Participant's Account is less than $1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:

(1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.

(b) *Voluntary Distribution.* If the value of the Participant's Account is at least $1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:

(1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

(a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article. However, no loans are available from Deemed IRAs.

(b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

(a) *Availability.* Loans shall be made available to all Participants on a reasonably equivalent basis.

(b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.

(c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.

(d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.

(e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.

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(f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

(1) $50,000, reduced by the excess (if any) of

(i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; or

(ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

(g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

(h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

(i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

(j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

(k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.

(l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.

(m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

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8.03 Participant Loan Accounts.

(a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

(b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.

(c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account.

(d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Deemed IRAs

9.01 General. This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supersede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 Voluntary Employee Contributions. For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

9.03 Deemed IRA Trust Requirements. This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

9.04 Reporting Duties. The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

9.05 Deemed Traditional IRA Requirements. Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

(a) *Exclusive Benefit.* The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) *Maximum Annual Contributions.*

(1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

$3,000 for any taxable year beginning in 2002 through 2004;
$4,000 for any taxable year beginning in 2005 through 2007; and
$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of $500.

(2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

$500 for any taxable year beginning in 2002 through 2005; and
$1,000 for any taxable year beginning in 2006 and thereafter.

(3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(c) *Collectibles.* If the Deemed IRA Trust acquires collectibles with within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) *Minimum Required Distributions.*

(1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.401(a)(9)-6T of the Income Tax Regulations (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than paragraphs (2), (3) and (4) below and Section 9.05(f). The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of Section 1.408-8 of the Income Tax Regulations.

(2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which

such Employee attains age 70-1/2 (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.

(3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70-1/2 and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 401(a)(9)-9 of the Income Tax Regulations, using the Employee's age of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

(4) The required minimum distribution for the year the Employee attains age 70-1/2 can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

(f) *Distribution Upon Death.*

(1) *Death On or After Required Beginning Date.* If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

(i) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(iii) below if longer.

(ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(iii) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(iii) below, over such period.

(iii) If there is no Beneficiary, or if applicable by operation of paragraph (1)(i) or (1)(ii) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.

(iv) The amount to be distributed each year under paragraph (1)(i), (ii), or (iii), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph 1(i), (ii), or (iii) and reduced by 1 for each subsequent year.

(2) *Death Before Required Beginning Date.* If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.

(ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(ii) above).

(iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.

(v) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.

(vi) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) *Nonforfeitable.* The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.

(h) *Reporting.* The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

(i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations

9.06 Deemed Roth IRA Requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

(a) *Exclusive Benefit.* The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) *Maximum Annual Contributions.*

(1) *Maximum Permissible Amount.* Except in the case of a qualified rollover contribution or recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (2) below), or the Employee's compensation (as defined in (8) below) if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of Section 408(d)(3) of the Code, except the one-rollover-per-year rule of Section 408(d)(3)(B) does not apply if the rollover contribution is from another IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (3) through (5) below.

(2) *Applicable Amount.* The applicable amount is determined under (i) or (ii) below:

(i) If the Employee is under age 50, the applicable amount is:

$3,000 for any taxable year beginning in 2002 through 2004;
$4,000 for any taxable year beginning in 2005 through 2007; and
$5,000 for any taxable year beginning in 2008 and years thereafter.

(ii) If the Employee is 50 or older, the applicable amount is:

$3,500 for any taxable year beginning in 2002 through 2004;
$4,500 for any taxable year beginning in 2005;
$5,000 for any taxable year beginning in 2006 through 2007; and
$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of $500.

(3) If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the Employee's Roth IRAs for the taxable year is the smaller amount determined under (i) or (ii).

(i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (7) below) in accordance with the following table:

Filing Status	Modified AGI: Full Contribution	Modified AGI: Phase-out Range	Modified AGI: No Contribution
Single or Head of Household	$95,000 or less	Between $95,000 and $110,000	$110,000 or more
Joint Return or Qualifying Widower	$150,000 or less	Between $150,000 and $160,000	$160,000 or more
Married-Separate Return	$0	Between $0 and $10,000	$10,000 or more

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of $10 and not reduced below $200.

(ii) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.

(4) *Qualified Rollover Contribution Limit.* A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA,(i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of $100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of $100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

(5) *SIMPLE IRA Limits* . No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(6) *Recharacterization.* A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.

(7) *Modified AGI.* For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").

(8) *Compensation.* For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual

takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of Section 1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

(c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) *Distributions Before Death.* No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.

(f) *Minimum Required Distributions.*

(1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code) (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than the distribution rules in paragraphs (2), (3) and (4) below.

(2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.

(ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph 2(ii) above).

(iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.

(3) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.

(4) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) *Nonforfeitable.* The interest of an Employee in the balance in his or her account is nonforfeitable at all times.

(h) *Reporting.* The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

(i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders.

(a) *Allowance of Transfers*: To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of

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the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.

(b) *Release from Liability to Participant*: The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

(c) *Participation in Legal Proceedings*: The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

(d) *Determination of Validity of Domestic Relations Orders*: The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.04 Mistaken Contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable if giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person.

Article XI. R elationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan (other than Deemed IRAs) are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

EXHIBIT B

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

(a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and

2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.

(b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.

(c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.

(d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: Angela C. Montez

Name: Angela Montez

Title: Assistant Secretary

EXHIBIT C

LOAN GUIDELINES AGREEMENT FOR A RETIREMENT PLAN

ICMARC

Building Retirement Security

INSTRUCTIONS

(Please refer to the previous section, "A Guide to Implementing a Loan Program")

These Loan Guidelines must be completed before loans can be made from your retirement plan. You should consider each option carefully before making your selections because your selections will apply to all loans made while the selection is in effect. If you later change any provision, the changes will apply only to loans made after the change is adopted. Loans in existence at the time of any future changes will continue to operate under the guidelines that were in effect at the time the loan was originally made.

Note: If loans are available to your employees from other plans (e.g. other Section 457 deferred compensation plans or other Section 401 plans), calculation of the maximum loan amount must consider the aggregate of all loans from all 401 and 457 plans in which the employee participates. See the Maximum Loan Amount Worksheet on page 7 of *A Guide to Implementing a Loan Program,* found in this packet.

Name of Plan (please state the Employer's complete name, including state): CITY OF MOORPARK, CALIFORNIA

Plan Type: ☐ 401(a) Money Purchase Plan ☐ 401 Profit-Sharing Plan ☒ 457 Deferred Compensation Plan

ICMA-RC Plan Number: 304625

I. Purpose

The purpose of these guidelines is to establish the terms and conditions under which the Employer will grant loans to participants. This is the only official Loan Provision Document of the above named Plan.

II. Eligibility

Loans are available to all active employees. Loans will not be granted to participants who have an existing loan in default. Loans will be pro-rated among all the funds in which the participant is invested at the time the loan is made.

For 401 plans only:

Loans are available from the following sources: [select one or both]

☐ Employer Contribution Account (vested balances only)

☐ Participant Contribution Accounts (pre- and post-tax, if applicable, including Employee Mandatory, Employee Voluntary, Employer Rollover, and Portable Benefits Accounts, but excluding the Deductible Employee Contribution/Qualified Voluntary Employee Contribution Account)

For all plan types:

Loans are available for the following purposes: [select one]

☒ All purposes

☐ Loans shall only be granted in the event of a participant's hardship or for the purpose of enabling a participant to meet certain specified financial situations. The employer shall approve the participant's loan application after determining, based on all relevant facts and circumstances, that the amount of the loan is not in excess of the amount required to relieve the financial need. For this purpose, financial need shall include, but not be limited to: unreimbursed medical expenses of the participant or members of the participant's immediate family, establishing or substantially rehabilitating the principal residence of the participant, or paying for a college education (including graduate studies) for the participant or his/her dependents.

III. Frequency of loans [select one]

☒ Participants may receive one loan per calendar year. Moreover, participants may have only one (1) outstanding loan at a time.

☐ Participants may receive one loan per calendar year. Moreover, no participant may have more than five (5) loans outstanding at one time.

IV. Loan amount

The minimum loan amount is $1,000.

The maximum amount of all loans to the participant from the plan and all other plans sponsored by the Employer that are qualified employer plans under section 72(p)(4) of the Code is the ***lesser*** of:

(1) $50,000, reduced by the highest outstanding balance of all loans from any 401 or 457 plans for that participant during the one-year period ending on the day before the date a loan is to be made, or

(2) one half of the participant's vested account balance, reduced by the current outstanding balance of all 401 and 457 loans from all plans for that participant.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

A loan cannot be issued for more than the above amount. The participant's requested loan amount is subject to downward adjustment without notice due to market fluctuation between the time of application and the time the loan is made.

V. Length of loan

A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years.

Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed 30 [state number of years] years (maximum 30 years).

VI. Loan repayment process

Loan repayments for active employees must be through **(choose one)**:

- ☒ Payroll deduction only.
  PL642(2) = 2
- ☐ ACH debit only.
  PL642(2) = 0
- ☐ Employee may choose either payroll deduction or ACH debit.
  PL642(2) 1

If payroll deduction repayment is allowed, and the employee wishes to use this method, the employee must notify the Employer so that the Employer can ensure that repayment will begin as soon as practicable on a date determined by the Employer's payroll cycle. Failure to begin payroll deduction in a timely way could lead to the employee's loan entering delinquency status. Payroll deduction should begin within two payroll cycles following the employee's receipt of the loan.

Repayments through payroll deduction will be sent via check or wire by the Employer to ICMA-RC on the following cycle **(choose one)**:

- ☐ Weekly (52 per year)
- ☒ Bi-weekly (26 per year)
- ☐ Semi-monthly (24 per year)
- ☐ Monthly (12 per year)

If ACH debit repayment is allowed, debits from the employee's designated bank account will begin approximately one month following the date the employee's signed ACH authorization form is received and processed by ICMA-RC, or, in the case of online loans, approximately one month following the date the loan check has been cleared for payment. Debits will normally be made on a monthly basis.

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Loans outstanding for former employees or employees on a leave of absence must be repaid on the same schedule as if payroll deductions were still being made unless they reamortize their loans and establish a new repayment schedule that provides that substantially equal payments are made at least monthly over the remaining period of the loan.

Loan payments, including loan payments from former employees, are allocated to the participant's current election of investment options on file with ICMA-RC.

The participant may pay off all or a portion of the principal and interest early without penalty or additional fee. Extra payments are applied forward to both principal and interest as specified in the original repayment schedule, unless the additional payment is for the balance due.

VII. Loan interest rate

The rate of interest for loans of five (5) years or less will be based on prime plus 0.5%.

The rate of interest for loans for a principal residence will be based on the FHA/VA rate.

Interest rates are determined on the last business day of the month preceding the month the loan is disbursed. The interest rate is locked in at the time a loan is approved and remains constant throughout the life of the loan.

The prime interest rate is determined on the last business day of each month using www.nfsn.com as the source. The FHA/VA interest rate is also determined on the last business day of each month using www/bankofamerica.com as the source.

Loan interest rates for new loans taken in different months may fluctuate upward or downward monthly, depending on the movement of the prime and FHA/VA interest rates.

The employer may modify the manner in which loan interest rates will be determined, but only with respect to future loans.

VIII. Loan application procedure

Loans must be requested using the following method (**check one**):

☒ **Online only:** All loans must be requested online by employees through ICMA-RC's Account Access site at www.icmarc.org, with Employer pre-authorization as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access.

The promissory note, truth-in-lending rescission notice and disclosure statement are presented to the employee online through Account Access at the time the employee submits the loan request. The employee confirms receipt and acceptance of these documents by clicking on the affirmative buttons on the Account Access program.

The employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.

The loan amount will generally be redeemed from the employee's account on the same day as the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

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☐ **Online and through Direct Loan application:** All loans must be requested either online by employees through ICMA-RC's Account Access site at www.icmarc.org, or through the Direct Loan application, both of which require pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access. In the case of the Direct Loan Application, spousal consent should be sent along with the application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents and terms at the time the endorsed check is presented for payment.

The Employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.

The loan amount will generally be redeemed from the employee's account on the same day as either ICMA-RC's receipt of a loan application (complete and in good order), or the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

☐ **Direct Loan application only:** All loans must be requested through the Direct Loan application, which requires pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC along with the Direct Loan Application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents at the time the endorsed check is presented for payment.

The employer hereby authorizes all future loans requested on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.

The loan amount will generally be redeemed from the employee's account on the same day as ICMA-RC's receipt of a loan application (complete and in good order).

The loan check will generally be issued from the employee's account on the next business day following redemption. The loan check will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

☐ **Loan application through the Employer:** All loans must be requested in writing on an application approved by the plan administrator. The application must be signed by the participant. The Employer must review and approve each participant's application.

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The participant will be required to sign a promissory note evidencing the loan and a disclosure statement that includes an amortization schedule prior to receiving a loan check. Loan checks will generally be issued on the next business day following ICMA-RC's receipt of a complete loan application. The loan check, promissory note, disclosure statement and truth-in-lending rescission notice will be sent to the employer, who will obtain the necessary signatures and deliver the check to the participant. All executed documents must be returned to ICMA-RC within 10 calendar days from the date the check is issued.

IX. Security/Collateral

That portion of a participant's account balance that is equal to the amount of the loan is used as collateral for the loan. The collateral amount may not exceed 50 percent of the participant's account balance at the time the loan is taken. Only the portion of the account-balance that corresponds to the amount of the outstanding loan balance is used as collateral.

X. Acceleration [select one]

☒ All loans are due and payable in full upon separation from service.

☐ All loans are due and payable when a participant receives a distribution of **all** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

☐ All loans are due and payable when a participant receives a distribution of **part** of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

XI. Reamortization

Any outstanding loan may be reamortized. Reamortization means changing the terms of a loan, such as length of repayment period, interest rate, and frequency of repayments. A loan may not be reamortized to extend the length of the loan repayment period to more than five (5) years from the date the loan was originally made, or in the case of a loan to secure a principal residence, beyond the number of years specified by the employer in Section V above.

A participant must request the reamortization of a loan in writing on a reamortization application acceptable to the plan administrator. Upon processing the request, a new disclosure statement will be sent to the employer for endorsement by the participant and approval by the employer. The executed disclosure statement must be returned to the plan administrator within 10 calendar days from the date it is signed. The new disclosure statement is considered an amendment to the original promissory note, therefore a new promissory note will not be required.

A reamortization will not be considered a new loan for purposes of calculating the number of loans outstanding or the one loan per calendar year limit.

XII. Refinancing existing loans

If a participant has one outstanding loan, that loan may be refinanced. If a participant has more than one outstanding loan, no loans may be refinanced. Refinancing means concurrently repaying an existing loan and borrowing an additional amount through a new loan. Refinancing includes any situation in which one loan replaces another loan and the term of the replacement loan does not exceed the latest permissable term of the replaced loan.

In order to refinance an existing loan, a participant must request this in writing on an application approved by the plan administrator. Such request must be made at a time when the participant is eligible to obtain a loan as defined by the employer in Section III above. The amount of the additional loan amount requested for the purpose of refinancing is subject to the loan limits specified in Section IV above.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan.

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XIII. Reduction of Loan

If a participant dies prior to full repayment of the outstanding loan(s), the outstanding loan balance(s) will be deducted from the account prior to distribution to the beneficiary(ies). The unpaid loan amount is a taxable distribution and may be subject to early withdrawal penalties. The participant's estate is responsible for taxes or penalties on the unpaid loan amount, if any. A beneficiary is responsible for taxes due on the amount he or she receives. A Form 1099 will be issued to both the beneficiary and the estate for these purposes.

XIV. Deemed Distribution

Loan repayments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. If a scheduled payment is not paid within 30, 60, and/or 90 days of the due date, a notice will be sent to both the employee and the employer.

A loan will be deemed distributed when a scheduled payment is still unpaid at the end of the calendar quarter following the calendar quarter in which the payment was due. If the total amount of any delinquent payment is not received by ICMA-RC by the end of the calendar quarter following the calendar quarter in which they payment was due, the loan is considered a taxable distribution, and the principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, no money is paid in this distribution, because the participant already has the loan proceeds.

The loan is deemed distributed for tax purposes, but it is not an actual distribution and therefore remains an asset of the participant's account. Interest continues to accrue. The outstanding loan balance and accrued interest are reported on the participant's account statement.

Repayment of a deemed distribution will not change or reverse the taxable event.

The loan continues to be outstanding, and to accrue interest, until it is repaid or offset using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in the plan document.

Participants are required to repay any outstanding loan which has been deemed distributed before they can be eligible for a new loan. The deemed distribution and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan. New loans must be repaid through payroll deduction.

The employer is obligated by federal regulation to comply with the loan guideline requirements applicable to participant loans, and to ensure against deemed distribution by monitoring loan repayments, regardless of the method of repayment, and by advising employees if loans are in danger of being deemed distributed. The tax-qualified status or eligibility of the entire plan may be revoked in cases of frequent repayment delinquency or deemed distribution.

XV. Fees

Fees may be charged for various services associated with the application for and issuance of loans. All applicable fees will be debited from the participant's account balance and/or from the participant's loan repayments prior to crediting the repayment of principal and interest to the participant's account. A schedule of fees applicable to this plan is specified in ICMA-RC's current publication of *Making Sound Investment Decisions: A Retirement Investment Guide.*

XVI. Other

The employer has the right to set other terms and conditions as it deems necessary for loans from the plan in order to comply with any legal requirements. All terms and conditions will be administered in a uniform and non-discriminatory manner.

In Witness Whereof, the employer hereby caused these Guidelines to be executed this ______________________________ day

of ___________________________ , 20 ___________.

EMPLOYER

By: ____

Title: ____

Attest: ____

Accepted: ICMA RETIREMENT CORPORATION

By: ____

Title: ____

Attest: ____

000151

RESOLUTION NO. 2009-______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING RESOLUTION NO. 2001-1931, TO REVISE THE DEFERRED COMPENSATION PLAN AND TRUST/CUSTODIAL DOCUMENT FOR A 457 DEFERRED COMPENSATION PLAN ADMINISTERED BY NATIONWIDE RETIREMENT SOLUTIONS

WHEREAS, the City of Moorpark permits regular employees to participate in a 457 deferred compensation retirement savings plan administered by Nationwide Retirement Solutions; and

WHEREAS, a deferred compensation plan for such employees serves the interests of the City by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by improving the attraction and retention of competent personnel; and

WHEREAS, the City of Moorpark wishes to revise the Plan and Trust/Custodial Document to reflect the current statutory requirements for eligible deferred compensation plans and to permit loans to participants; and

WHEREAS, Nationwide Retirement Solutions is able to administer the deferred compensation plan for the City of Moorpark in accordance with the terms of this agreement; and

WHEREAS, Resolution No. 2001-1931 adopted a 457 Plan and Trust administered by Nationwide Retirement Solutions, and that Plan and Trust is now proposed to be amended to permit participants in the retirement plan to take loans from the Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

<u>SECTION 1</u>. The City of Moorpark hereby amends Resolution No. 2001-1931 to revise the Nationwide Retirement Solutions Deferred Compensation Plan and Trust/Custodial Document, consistent with the Restated and Amended Deferred Compensation Plan and Trust/Custodial Document for Public Employees, attached hereto as Exhibit A.

<u>SECTION 2</u>. The assets of the plan shall be held in a Trust/Custodial Fund, with the City of Moorpark or its designated officer appointed as serving as trust/custodian, for the exclusive benefit of the Plan participants and beneficiaries, and the assets shall not be diverted for any other purpose. The City of Moorpark's beneficial ownership of Plan assets shall be held for the further exclusive benefit of the Plan participants and beneficiaries.

SECTION 3. The City Manager or his/her designee is hereby authorized to execute all necessary agreements with Nationwide Retirement Solutions incidental to the administration of the Plan, and shall do all things necessary and proper to implement this Resolution.

SECTION 4. Loans to participants shall be made in accordance with the procedures attached hereto as Exhibit B.

SECTION 5. That the City Manager is hereby authorized to designate the City staff member to act as coordinator for this program and to receive necessary reports, notices, and related documents from the Nationwide Retirement Solutions; and the City Manager or his/her designee shall cast, on behalf of the City, any required votes under the Nationwide Retirement Solutions Retirement Trust, and the City Manager or his/her designee is authorized to execute all necessary agreements with Nationwide Retirement Solutions incidental to the administration of the Plan. Administrative duties to carry out the plan may be assigned to the appropriate City staff member.

SECTION 6. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 1st day of April 2009.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibits:

A. Restated and Amended Deferred Compensation Plan and Trust/Custodial Document for Public Employees

B. The City of Moorpark Participant Loan Program Procedures

EXHIBIT A

THE CITY OF MOORPARK 457 PLAN AND TRUST RESTATED AND AMENDED NATIONWIDE RETIREMENT SOLUTIONS DEFERRED COMPENSATION PLAN AND TRUST/CUSTODIAL DOCUMENT FOR PUBLIC EMPLOYEES

LOANS TO PARTICIPANTS AMENDMENT TO PLAN DOCUMENT

WHEREAS, The City of Moorpark ("Plan Sponsor") executed the above referenced Plan Document, as amended; and

WHEREAS, effective _____________, the Plan Sponsor now desires to further amend the plan document.

The following Section 16.1 is hereby added:

16.1 Loans to Participants

(a) The Authority has elected to make loans available to Participants and has delegated certain administrative duties regarding loans from the Plan to the Administrator.

(b) Any loan by the Plan to a Participant under this Section shall be subject to the loan administrative procedures established by the Administrator as well as the following requirements:

(i) Loan Eligibility. Any Participant may apply for a loan from the Plan. A Participant who has defaulted on a previous loan from the Plan shall not be eligible for another loan from the Plan until all defaulted loans are repaid in full, including accrued interest and fees.

(ii) Loan Application and Loan Agreement. A Participant must complete and return to the Administrator a loan application. A non-refundable application fee established by the Administrator will be deducted from the Participant's Account(s) at the time of loan origination. Before a loan is issued, the Participant must enter into a legally enforceable loan agreement as provided for by the Administrator.

(iii) Loan Repayment. The Participant receiving a loan shall be required to furnish to the Administrator any information and authorization necessary to effectuate repayment of the loan prior to the commencement of a loan. In the event that a payment cannot be processed because of lack of sufficient funds, the Administrator shall assess an insufficient funds charge, which will be deducted from the Participant's Account(s).

(iv) Loan Term and Interest Rate. The maximum term over which a loan may be repaid is five (5) years (or fifteen (15) years if The Sweetwater Authority permits loans for the purchase of a Participant's principal residence). Each loan shall be amortized in substantially equal payments consisting of principal and interest during the term of the loan, except that the amount of the final payment may be higher or lower. The Administrator shall establish the interest rate for any loan.

(v) Loan Frequency. Each Participant may have only one (1) Plan loan outstanding at any given time. A Plan loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such Participant's account balance is offset by the amount of principal and accrued interest under the loan.

(vi) Default. The Participant must pay the full amount of each loan payment (principal and interest) on the date that it is due. Failure to make such a payment by the due date, or within any cure period established by the Administrator, shall cause the Participant to be in default for the entire amount of the loan, including any accrued interest. A loan will also be in default if the Participant either refuses to execute, revoke, or rescind any agreement necessary to comply with the provisions of this Section or the loan administrative procedures established by the Administrator, commences or has commenced against Participant a bankruptcy case, or upon the death of the Participant.

(vii) Loan Security. By accepting a loan, the Participant is giving a security interest in their vested Plan balance as of the loan process date, together with all additions thereof, to the Plan that shall at all times be equal to one hundred percent (100%) of the unpaid principal balance of the loan together with accrued interest.

(viii) Loan Amount. The maximum amount of any loan permitted under the Plan is the lesser of (i) fifty percent (50%) of the Participant's vested account balance less any outstanding loan balances under the Plan or (ii) $50,000.00 less the highest outstanding loan balance during the preceding one-year period. The minimum loan amount shall be $1,000.00. The Participant and not the Administrator shall at all times remain responsible for ensuring that any loan received under the Plan is in accordance with these limits with regard to any other loans received by the Participant under any other plans of the Authority.

(ix) Loan Maintenance Fee. Until a loan is repaid in full, an annual loan maintenance fee established by the Administrator will be deducted from the Participant's Account(s).

(x) Loan Default Fee. At the time when a default occurs, a Loan Default Fee established by the Administrator will be deducted from the Participant's Account(s). This Loan Default Fee will be applied on an annual basis thereafter on the anniversary of the default date until the loan is repaid upon the occurrence of a distributable event.

(c) The Administrator shall fix such other terms and conditions necessary to the administrative maintenance of the provisions of this Section and as necessary to comply with the IRC and regulations there under.

IN WITNESS WHEREOF, the undersigned has executed this Amendment this _______ day of ______________, 2009.

The City of Moorpark:

____

By:
Plan Sponsor Name
(Title)

EXHIBIT B

The City of Moorpark
Participant Loan Program Procedures

Pursuant to the terms of the City of Moorpark, loans to Participants shall be made in accordance with the following procedures:

1. **Loan Administration**. The City of Moorpark and/or the custodian or trustee or investment committee shall be authorized to administer the loan program. However, certain administrative duties and responsibilities have been delegated to Nationwide Retirement Solutions (NRS), the administrator of the Plan.

2. **Loan Eligibility**. Any Plan Participant may apply for a loan. Each Participant is entitled to one (1) loan(s) at a time. In addition, a Participant who has defaulted on a previous loan shall not be eligible for another loan from the Plan at any time.

3. **Loan Application**. In order to receive a loan from the Plan, an eligible Participant must complete a loan application and return it to NRS. A loan application fee of $50.00 will be deducted from the Participant's account.

4. **Loan Repayment/Maximum Loan Term**. Repayment of any loan made to a Participant shall be deducted automatically from the account in a financial institution designated by the Participant and approved by NRS for payment of the loan through the ACH process. The Participant receiving a loan shall be required to furnish the information and authorization necessary to effectuate the foregoing deductions prior to the commencement of a loan.

The maximum term over which a loan may be repaid is five (5) years (fifteen years if the loan is to purchase the participant's principal residence). A loan must be repaid at termination of employment.

In the event that a Participant or his or her Beneficiary or spouse elects to receive a distribution from the Plan (other than a distribution due to an unforeseeable emergency or other in-service withdrawal) at a time when such person has a Plan loan outstanding, the principal and any accrued interest with respect to such loan shall be deducted from the amount of the distribution. If the amount of such distribution is not sufficient to repay the outstanding balance of the loan (including principal and accrued interest), the Participant, or his or her estate, if applicable, shall be liable for and shall continue to make payments on any balance still due from him or her.

5. **Loan Amortization**. Each loan shall be amortized in substantially level payments consisting of principal and interest during the term of the loan. Payments of principal and interest shall be deducted automatically through the ACH process on a monthly basis in equal amounts, except that the amount of the final payment may be higher or lower. Before the loan is made, the Participant will be notified of the date on which the first payment will be deducted and the dates on which subsequent payments are due.

6. **Loan Frequency/Renegotiations**. Each Participant may have only one (1) Plan loan outstanding at any given time. A Plan loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such Participant's account balance is offset by the amount of principal and accrued interest under the loan (generally, after the Participant terminates employment with the City of Moorpark or requests a distribution from the Plan.) A Participant will be granted a loan no more frequently than two (2) times in any twelve (12) month period. Under no circumstances may loan terms be renegotiated. A new loan shall not be granted prior to the repayment of an outstanding loan.

7. **Default**. The Participant must pay the full amount of each payment (principal and interest) on the date that it is due by having sufficient funds in the account designated for loan payments through the ACH process. If NRS is unable to process a payment on the date due because the Participant fails to have sufficient funds in the account on that date, NRS will send written notification to the Participant. The Participant shall be in default for the entire amount of the loan UNLESS the Participant does each of the following: 1) contacts NRS at the Deferred Compensation Service Center, 2) mutually agrees with NRS on a date, which is within 30 days of the missed payment on which funds sufficient to cover the missed payment will be in the account and; 3) actually pays the missed payment by having sufficient funds in the account on the agreed upon date so that NRS successfully withdraws the assets through the ACH process. Failure to make such a payment through mutually agreeable terms shall cause the Participant to be in default for the entire amount of the loan.

The Participant shall not be permitted to repay the loan prior to the occurrence of a distributable event once default has occurred. For purposes of federal regulations, a "deemed distribution" shall occur upon default. No additional loans shall be made to a Participant who has defaulted on a Plan loan and who has not repaid the loan in full, including accrued interest.

A deemed distribution is treated as a distribution from the Plan for federal (and possibly state or local) income tax purposes; therefore, amounts treated as a deemed distribution will be subject to federal, state and/or local income taxes, and certain excise taxes and penalties will apply. The Participant will receive a tax form prior to January 31st of the following year reflecting this deemed distribution.

8. **Loan Prepayment**. The entire amount of a loan, including outstanding principal and any accrued interest, may be paid without penalty prior to the end of the term of the loan in the manner prescribed by NRS. However, payments made that are less than the remaining principal amount of the loan and any accrued interest with respect to the loan, or which are not paid in the form prescribed by NRS, are not permitted.

9. **Loan Security**. By accepting a loan, the Participant is giving a security interest in their vested Plan balance as of the date of the Loan Process Date, together with all additions thereof, to the Plan that shall at all times be equal to 100% of the unpaid principal balance of the loan together with accrued interest.

10. **Maximum/Minimum Loan Amount**. The maximum amount of any loan permitted under the Plan is the lesser of (i) 50% of the Participant's vested account balance or (ii) $50,000 less the highest outstanding loan balance during the preceding one-year period. The minimum loan amount permitted is $1,000. Loans shall be made in accordance with these limits and those limits imposed under federal regulations without regard to any other loans received by the Participant from any other investment provider under the Plan or any other plan of the City of Moorpark. Any tax reporting required as a result of the receipt by a Participant of a loan that exceeds the limits imposed by federal regulations shall not be the responsibility of NRS, unless it is determined that such limits were exceeded solely as a result of a loan made through NRS as service provider. Consequently, Nationwide shall not be required to account for loans made pursuant to a plan other than this Plan or loans made under this Plan which are made by an investment provider other than Nationwide Life Insurance Company.

11. **Loan Distribution/Repayment Mix**. The loan amount shall be withdrawn proportionately among the current investment options in which the Participant's account is invested. In no case, however, shall a Participant's investment in life insurance be reduced. Loan payments will be invested according to the investment allocation percentages selected by the Participant with respect to ongoing deferrals (or the latest such investment allocation percentages filed with Nationwide). The entire amount of each loan payment

shall be allocated to the Participant's account.

12. **Loan Interest Rate**. The interest rate for any loan shall be established by NRS at prime + 1%. These interest rates shall commensurate with interest rates being charged by entities in the business of lending money under similar circumstances.

13. **Loan Application Fee**. An application fee of $50.00 will be deducted from the Participant's account at the time of loan origination. This fee is non-refundable.

14. **Annual Loan Maintenance Fee**. An annual loan maintenance fee of $50.00 will also be deducted from the Participant's account until the loan is repaid in full.

15. **Loan Finance Charge**. Until the loan has been repaid in full, that portion of the account designated for loans equal to the Participant's outstanding loan balance shall be credited with interest at the rate fixed by the company for the term of the loan, less the Actuarial Risk Fee. Specific loan terms are disclosed at the time of the loan application and issuance.

16. **Loan Default Fee.** At the time when a default occurs, a $50.00 loan default fee will be deducted from the Participant's account. This default fee will be applied on an annual basis thereafter on the anniversary of the default date, until the loan is repaid upon the occurrence of a distributable event. This charge will only affect Participants who fail to make a required loan payment.

The undersigned hereby adopts this Participant Loan Program, as of the _______ day of______________, 20______, effective for loans made on or after _____ day of _________________, and instructs NRS to administer loans made to Plan Participants in accordance with these terms.

The City of Moorpark acknowledges the following: (i) that it has instructed NRS to offer loans under the plan; (ii) that it understands that, as a result of offering loans under the Plan, the City of Moorpark, its Participants, and/or the Plan could be subject to adverse tax consequences; (iii) that the City of Moorpark has independently weighed this risk and has determined that offering loans under the Plan is in the best interest of the City of Moorpark, its Participants, and the Plan; and (iv) NRS shall not be liable for any adverse tax consequences described in (ii), except as specifically stated under paragraph 10, resulting from the City of Moorpark's decision to offer loans under the Plan.

Employer:
The City of Moorpark

By: ______________________________ Date: ____________________________