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August 10, 1995

*A private,  
family  
foundation  
since 1937*

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-5638  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: Top Hat Statement for  
Lilly Endowment Retirement Restoration Plan

Dear Sir:

Department of Labor Regulations § 2520.104-23 prescribes an alternative method of compliance with ERISA's reporting and disclosure requirements for unfunded pension plans maintained for a select group of management or highly compensated employees. In accordance with that regulation, Lilly Endowment declares the following:

Employer's Federal Identification  
Number Assigned by the Internal  
Revenue Service:

35-0868122

Employer's Name and Address:


Lilly Endowment, Inc.  
2801 North Meridian Street  
Indianapolis, Indiana 46208

Purpose and Number of  
Employees in Plan:

Lilly Endowment, Inc., maintains one top hat (copy enclosed) plan primarily for the purpose of providing deferred compensation to a select group of 2 management employees.

LILLY ENDOWMENT, INC.

By:

  
N. Clay Robbins, President

Enclosure  
NCR/eam

2801 North Meridian Street  
Post Office Box 88068  
Indianapolis, IN 46208-0068  
(317) 924-5471 Fax: (317) 926-4431

**LILLY ENDOWMENT  
RETIREMENT RESTORATION PLAN**

**COPY**

**ARTICLE I  
PURPOSE**

The Lilly Endowment Retirement Restoration Plan is effective January 1, 1994. The purpose of the Plan is to provide supplemental annuity benefits to a select group of key management Employees of Lilly Endowment, Inc., to replace retirement income that would otherwise be provided through the Endowment's Retirement Plan were it not for the limitations imposed by Internal Revenue Code sections 401(a)(17) and 415.

**ARTICLE II  
DEFINITIONS AND RULES OF CONSTRUCTION**

**2.01. Definitions.** As used in the Plan, the following words and phrases, when capitalized, have the following meanings except when used in a context that plainly requires a different meaning:

- (a) "Accrued Benefit" has the same meaning given to that term in Subsection 2.01(a) of the Retirement Plan.
- (b) "Beneficiary" has the same meaning given to that term in Subsection 2.01(h) of the Retirement Plan.
- (c) "Board of Directors" means the Endowment's Board of Directors.
- (d) "Committee" means the Deferred Compensation Committee established pursuant to Article V to administer the Plan.
- (e) "Employee" means a key management employee of the Endowment who has the opportunity to impact significantly the annual operating success of the Endowment.
- (f) "Endowment" means Lilly Endowment, Inc.
- (g) "Participant" means an Employee selected by the Board of Directors to participate in the Plan.
- (h) "Plan" means the Lilly Endowment Retirement Restoration Plan.
- (i) "Plan Year" means the calendar year.
- (j) "Retirement Plan" means the Lilly Endowment Employees' Retirement Plan.

2.02. Rules of Construction. The following rules of construction shall govern in interpreting the Plan:

(a) The provisions of the Plan shall be construed and governed in all respects under and by the internal laws of the State of Indiana, to the extent not preempted by federal law.

(b) Words used in the masculine gender shall be construed to include the feminine gender, where appropriate, and vice versa.

(c) Words used in the singular shall be construed to include the plural, where appropriate, and vice versa.

(d) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(e) If any provision of the Plan shall be held to be illegal or invalid for any reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

### ARTICLE III PARTICIPATION

3.01. Date of Participation. The Employees listed in Addendum A, attached to this Plan, are Participants as of January 1, 1994. Any other Employee shall become a Participant on the date as of which he is designated a Participant by the Board of Directors.

3.02. Termination of Participation. A Participant shall remain a Participant until all amounts to which he is entitled under the Plan have been distributed to him.

### ARTICLE IV BENEFITS

4.01. Determination of Benefits. Effective January 1, 1994, the Endowment shall provide to each Participant an annuity benefit, commencing at the Participant's normal retirement age under the Retirement Plan, that is reasonably calculated to equal, in after-tax value, the amount by which

(a) the Participant's Accrued Benefit under the Retirement Plan, determined without the application of the limitations imposed by Code subsection 401(a)(17) and Code section 415, exceeds

(b) the amount of the Participant's Accrued Benefit determined under the Retirement Plan after application of the limitations imposed by Code subsection 401(a)(17) and Code section 415.

To the extent that the Endowment does not pay that benefit to the Participant in the year it is accrued, the Endowment shall purchase an annuity contract or contracts, in the name of each Participant, to provide that benefit, calculated on the basis of tax rates in effect at the time of purchase.

4.02. Vesting. A Participant's benefit shall become nonforfeitable to the same extent, on the same basis, and at the same time as the Participant's Accrued Benefit under the Retirement Plan.

4.03. Alternative Forms of Benefit. A Participant's benefit under this Plan shall be paid to the Participant beginning at the same time and in the same form as the Participant's benefits under the Retirement Plan. The amount of such payments under the annuity contract or contracts shall be subject to such factors, assumptions, and adjustments that are used to determine actuarial equivalent value by the insurer and that are determined by the Endowment, in its discretion, to be reasonably equivalent, in the aggregate, to the comparable factors, assumptions, and adjustments used under the Retirement Plan.

4.04. Survivor Benefits. If a Participant dies before he has commenced receiving benefits under the Retirement Plan, and if that Participant is survived by a spouse who is entitled to receive a survivor benefit under the Retirement Plan, the benefit under this Plan shall be payable to the surviving spouse at the same times as, and in amounts subject to the same factors, assumptions, and adjustments used to determine, survivor benefits under the Retirement Plan.

## ARTICLE V ADMINISTRATION

5.01. Administrator. The Deferred Compensation Committee shall be the administrator of the Plan. The Committee shall hold membership at the pleasure of the Board of Directors and shall consist of the number of members that is specified from time to time by the Board of Directors. When not otherwise specified by the Board of Directors, the Employee Benefits Committee of the Endowment shall constitute the Deferred Compensation Committee. Members of the Deferred Compensation Committee shall be eligible to participate in the Plan; provided, however, that a Committee member shall not vote or act upon any matter that relates solely to that member's interest in the Plan.

5.03. Powers and Duties of the Committee. Subject to the specific limitations stated in this Plan, the Committee shall have the following powers, duties, and responsibilities:

- (a) to carry out the general administration of the Plan;
- (b) to cause to be prepared all forms necessary or appropriate for the administration of the Plan;
- (c) to keep appropriate books and records;
- (d) to determine amounts to be disbursed to Participants and others under the provisions of the Plan;
- (e) to determine, consistent with the provisions of the Plan, all questions of eligibility, rights, and status of Participants and others under the Plan;
- (f) to exercise all other powers and duties specifically conferred upon the Committee elsewhere in the Plan; and
- (g) to interpret, with discretionary authority, the provisions of this Plan and to resolve, with discretionary authority, all disputed questions of Plan interpretation and benefit eligibility.

All decisions of the Committee shall be by vote of a majority of its members and shall be final and binding unless the Board of Directors determines otherwise.

#### ARTICLE VI CLAIMS PROCEDURE

6.01. Written Claim. Benefits shall be paid in accordance with the provisions of this Plan. A Participant or any other person claiming through the Participant may make a written request for benefits under this Plan. The written claim shall be mailed or delivered to the Committee and shall be reviewed by the Committee or its delegate.

6.02. Denied Claim. If a claim is denied, in full or in part, the Committee shall provide a written notice within ninety (90) days of receipt of the claim setting forth the specific reasons for denial; identifying any additional material or information necessary to perfect the claim; explaining why such material or information is necessary; and describing the steps to be taken if a review of the denial is desired. A claim

shall be deemed denied if the Committee does not take any action within the ninety (90) day period.

6.03. Review Procedures. If a claim is denied and a review is desired, the Participant or other person claiming through the Participant shall notify the Committee in writing within the earlier of sixty (60) days after receipt of the written notice of denial or one hundred fifty (150) days after receipt of the claim by the Committee. In requesting a review, the Participant or such other person may request a review of the Plan document, may submit any written issues and comments, may request an extension of time for such written submission of issues and comments and may request that a hearing be held, but the decision to hold a hearing shall be within the sole discretion of the Committee.

6.04. Committee Review. The decision on the review of the denied claim shall be rendered by the Committee within sixty (60) days after the receipt of the request for review (if no hearing is held) or within sixty (60) days after the hearing if one is held. The decision shall be written and shall state the specific reasons for the decision including reference to specific provisions of the Plan on which the decision is based.

## ARTICLE VII MISCELLANEOUS

7.01. Right to Payment. Notwithstanding any other provision of this Plan, the right of the Participant or a Beneficiary to receive payment of deferred compensation under the Plan is strictly a contractual right to payment against the insurer under the Participant's annuity contract or contracts, and this Plan does not grant nor shall it be deemed to grant a Participant, a Beneficiary, or any other person any contractual right against the Endowment or any property interest in any of the property of the Endowment.

7.02. Other Benefits and Plans. Nothing in the Plan shall be deemed to prevent the Participant from receiving, in addition to the benefits provided under this Plan, any funds that may be distributable to him at any time under any other present or future retirement or incentive plan of the Endowment.

7.03. Anticipation of Benefits. Neither a Participant nor any Beneficiary shall have the power to transfer, assign, anticipate, pledge, alienate, or otherwise encumber in advance any of the payments that may become due under the Plan, and any attempt to do so shall be void. Any payments that may become due under the Plan shall not be subject to attachment, garnishment, or execution or be transferrable by operation of law in the event of bankruptcy, insolvency, or otherwise.

7.04. Benefit. This Plan shall be binding upon and inure to the benefit of the Endowment and its successors and assigns.

7.05. Tax Withholding. The Endowment may withhold from a Participant's compensation any federal, state, or local taxes required by law to be withheld on account of the Endowment's purchase of an annuity contract in the name of that Employee.

**ARTICLE VIII**  
**AMENDMENT AND TERMINATION**

8.01. Amendment. The Endowment reserves the right to amend the Plan at any time by action of its Board of Directors. No amendment shall reduce any benefit accrued under this Plan prior to the effective date of the amendment.

8.02. Termination. The Endowment reserves the right to terminate the Plan at any time as it deems appropriate. Upon termination of the Plan, the value of a Participant's benefit shall be determined as of the date of the Plan's termination, and as soon as practicable, the Endowment shall purchase any additional annuity contracts necessary to provide the benefits accrued as of the date of termination.

Lilly Endowment, Inc., has caused this Plan to be executed by its duly authorized officers, as of the 2<sup>nd</sup> day of August, 1995.

LILLY ENDOWMENT, INC.

By: N. Clay Rabbitt  
Signature  
President  
Office

ATTEST:

William M. Tolson  
Signature

Treasurer  
Office

**ADDENDUM A**

Thomas H. Lake

Thomas M. Lofton