



THE BEST PERFORMANCE GOLF BRAND IN THE WORLD.

January 5, 2009

2520090770855

VIA REGISTERED MAIL
RETURN RECEIPT REQUESTED

JAN 27 2009

Top Hat Plan Exemption
Employee Benefits Security Administration
Room N-1513
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Alternative Method of Compliance Under DOL Reg. Section 2520.104-23

Dear Sir or Madam:

The purpose of this letter is to comply with the "Alternative Method of Compliance" for reporting and disclosure (as set forth in DOL Reg. Section 2520.104-23) with respect to the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II (the "Plan") established by Taylor Made Golf Company, Inc. (the "Company").

In accordance with that Section, we provide you with the following:

1. Name and Address of the Company.

Taylor Made Golf Company, Inc.
5545 Fermi Court
Carlsbad, CA 92008

2. Employer Identification Number.

33-0831814

3. Declaration.

The Company established the Plan on December 22, 2008, to be maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees of the Company. The Company maintains two such plans. Currently, 45 employees participate in the Plan.

4. Documents.



With respect to the Plan, the Company will provide to the Secretary of Labor, upon request, copies of the Plan document, as required by Section 104(a)(1) of the Employee Retirement Income Security Act of 1974.

Enclosed is a copy of this letter, which we ask that you date stamp and return to us in the enclosed self-addressed, stamped envelope.

If you should have any questions about this letter, please do not hesitate to contact us at the above address.

Sincerely,

TAYLOR MADE GOLF COMPANY, INC.

By: *Karna Jurek*

Its: Director, Human Resources



January 5, 2009

VIA REGISTERED MAIL
RETURN RECEIPT REQUESTED

Top Hat Plan Exemption
Employee Benefits Security Administration
Room N-1513
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Alternative Method of Compliance Under DOL Reg. Section 2520.104-23

Dear Sir or Madam:

The purpose of this letter is to comply with the "Alternative Method of Compliance" for reporting and disclosure (as set forth in DOL Reg. Section 2520.104-23) with respect to the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II (the "Plan") established by Taylor Made Golf Company, Inc. (the "Company").

In accordance with that Section, we provide you with the following:

1. Name and Address of the Company.

Taylor Made Golf Company, Inc.
5545 Fermi Court
Carlsbad, CA 92008

2. Employer Identification Number.

33-0831814

3. Declaration.

The Company established the Plan on December 22, 2008, to be maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees of the Company. The Company maintains two such plans. Currently, 45 employees participate in the Plan.

4. Documents.



With respect to the Plan, the Company will provide to the Secretary of Labor, upon request, copies of the Plan document, as required by Section 104(a)(1) of the Employee Retirement Income Security Act of 1974.

Enclosed is a copy of this letter, which we ask that you date stamp and return to us in the enclosed self-addressed, stamped envelope.

If you should have any questions about this letter, please do not hesitate to contact us at the above address.

Sincerely,

TAYLOR MADE GOLF COMPANY, INC.

By: *Karna Garrett*

Its: Director, Human Resources

COPY

**TAYLOR MADE GOLF COMPANY, INC.
NONQUALIFIED DEFERRED COMPENSATION PLAN II
(Effective January 1, 2005)**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS	1
ARTICLE 2 SELECTION, ENROLLMENT, ELIGIBILITY	7
2.1. Selection by Committee	7
2.2. Enrollment and Eligibility Requirements; Commencement of Participation.	7
ARTICLE 3 DEFERRAL COMMITMENTS/COMPANY CONTRIBUTION AMOUNTS/ VESTING/CREDITING/TAXES	8
3.1. Maximum Deferral.....	8
3.2. Timing of Deferral Elections; Effect of Election Form.	8
3.3. Withholding and Crediting of Annual Deferral Amounts	10
3.4. Company Contribution Amount	10
3.5. Vesting.	10
3.6. Crediting/Debiting of Account Balances	11
3.7. FICA and Other Taxes.	12
ARTICLE 4 SCHEDULED DISTRIBUTION; UNFORESEEABLE EMERGENCIES	13
4.1. Scheduled Distributions.....	13
4.2. Postponing Scheduled Distributions	13
4.3. Other Benefits Take Precedence Over Scheduled Distributions.....	14
4.4. Unforeseeable Emergencies.	14
ARTICLE 5 CHANGE IN CONTROL BENEFIT	14
5.1. Change in Control Benefit	14
5.2. Payment of Change in Control Benefit	14
ARTICLE 6 TERMINATION BENEFIT	15
6.1. Termination Benefit	15

6.2.	Payment of Termination Benefit.....	15
ARTICLE 7 DEATH BENEFIT		16
7.1.	Death Benefit	16
7.2.	Payment of Death Benefit	16
ARTICLE 8 BENEFICIARY DESIGNATION.....		16
8.1.	Beneficiary.....	16
8.2.	Beneficiary Designation; Change; Spousal Consent.....	16
8.3.	Acknowledgment	16
8.4.	No Beneficiary Designation.....	16
8.5.	Doubt as to Beneficiary.....	17
8.6.	Discharge of Obligations	17
ARTICLE 9 LEAVE OF ABSENCE.....		17
9.1.	Paid Leave of Absence.....	17
9.2.	Unpaid Leave of Absence	17
ARTICLE 10 TERMINATION OF PLAN, AMENDMENT OR MODIFICATION		17
10.1.	Termination of Plan	17
10.2.	Amendment.....	18
10.3.	Plan Agreement.....	18
10.4.	Effect of Payment.....	18
ARTICLE 11 ADMINISTRATION		18
11.1.	Committee Duties	18
11.2.	Administration Upon Change In Control.....	18
11.3.	Agents	19
11.4.	Binding Effect of Decisions.....	19
11.5.	Indemnity of Committee	19

11.6. Employer Information.....	19
ARTICLE 12 OTHER BENEFITS AND AGREEMENTS	19
12.1. Coordination with Other Benefits.....	19
ARTICLE 13 CLAIMS PROCEDURES	20
13.1. Presentation of Claim.....	20
13.2. Notification of Decision.....	20
13.3. Review of a Denied Claim	20
13.4. Decision on Review	21
13.5. Legal Action.....	21
ARTICLE 14 TRUST	21
14.1. Establishment of the Trust	21
14.2. Interrelationship of the Plan and the Trust.....	22
14.3. Distributions From the Trust.....	22
ARTICLE 15 MISCELLANEOUS.....	22
15.1. Status of Plan	22
15.2. Unsecured General Creditor.....	22
15.3. Employer's Liability	22
15.4. Nonassignability.....	22
15.5. Not a Contract of Employment	23
15.6. Furnishing Information	23
15.7. Terms	23
15.8. Captions	23
15.9. Governing Law	23
15.10. Notice.....	23
15.11. Successors.....	24

15.12. Spouse's Interest.....	24
15.13. Validity.....	24
15.14. Incompetent.....	24
15.15. Domestic Relations Orders	24
15.16. Distribution in the Event of Income Inclusion Under Code Section 409A.....	24
15.17. Deduction Limitation on Benefit Payments	24
15.18. adidas AG.....	25
15.19. Limited Cashout.....	25

PURPOSE

The purpose of this Plan is to provide specified benefits to a select group of management or highly compensated Employees who contribute materially to the continued growth, development and future business success of Taylor Made Golf Company, Inc., a Delaware corporation, and its subsidiaries, if any, that sponsor this Plan. This Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA.

This Plan is intended to comply with all applicable law, including Code Section 409A and related Treasury guidance and Regulations, and shall be operated and interpreted in accordance with this intention. In order to transition to the requirements of Code Section 409A and related Treasury Regulations, the Committee may make available to Participants certain transition relief provided under Notice 2007-86, as described more fully in Appendix A of this Plan.

ARTICLE 1 **DEFINITIONS**

For the purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

"Account Balance" shall mean, with respect to a Participant, an entry on the records of the Employer equal to the sum of the Participant's Annual Accounts. The Account Balance shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.

"Annual Account" shall mean, with respect to a Participant, an entry on the records of the Employer equal to (a) the sum of the Participant's Annual Deferral Amount and Company Contribution Amount for any one Plan Year, plus (b) amounts credited or debited to such amounts pursuant to this Plan, less (c) all distributions made to the Participant or his or her Beneficiary pursuant to this Plan that relate to the Annual Account for such Plan Year. The Annual Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.

"Annual Base Salary Deferral Amount" shall mean that portion of a Participant's Base Salary and Commissions that a Participant defers in accordance with Article 3 for any one Plan Year, without regard to whether such amounts are withheld and credited during such Plan Year.

"Annual Bonus Deferral Amount" shall mean that portion of a Participant's Bonus and Incentive Bonus Amounts that a Participant defers in accordance with Article 3 for any one Plan Year, without regard to whether such amounts are withheld and credited during such Plan Year.

"Annual Deferral Amount" shall mean that portion of a Participant's Base Salary, Bonus, Commissions, and Incentive Bonus Amounts that a Participant defers in accordance with Article

3 for any one Plan Year, without regard to whether such amounts are withheld and credited during such Plan Year.

"Annual Installment Method" shall mean the method used to determine the amount of each payment due to a Participant who has elected to receive a benefit over a period of years in accordance with the applicable provisions of the Plan. The amount of each annual payment due to the Participant shall be calculated by multiplying the balance of the Participant's benefit by a fraction, the numerator of which is one and the denominator of which is the remaining number of annual payments due to the Participant. The amount of the first annual payment shall be calculated as of the close of business on or around the Participant's Benefit Distribution Date, and the amount of each subsequent annual payment shall be calculated on or around each anniversary of such Benefit Distribution Date. For purposes of this Plan, the right to receive a benefit payment in annual installments shall be treated as the entitlement to a single payment.

"Base Salary" shall mean the annual cash compensation relating to services performed during any calendar year, excluding distributions from nonqualified deferred compensation plans, Company Contribution Amount, bonuses, commissions, overtime, fringe benefits, stock options, relocation expenses, incentive payments, non-monetary awards, director fees and other fees, and automobile and other allowances paid to a Participant for employment services rendered (whether or not such allowances are included in the Employee's gross income). Base Salary shall be calculated before reduction for compensation voluntarily deferred or contributed by the Participant pursuant to all qualified or nonqualified plans of any Employer and shall be calculated to include amounts not otherwise included in the Participant's gross income under Code Sections 125, 402(e)(3), 402(h), or 403(b) pursuant to plans established by any Employer; provided, however, that all such amounts will be included in compensation only to the extent that had there been no such plan, the amount would have been payable in cash to the Employee.

"Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated in accordance with Article 8, that are entitled to receive benefits under this Plan upon the death of a Participant.

"Beneficiary Designation Form" shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to designate one or more Beneficiaries.

"Benefit Distribution Date" shall mean the date upon which all or an objectively determinable portion of a Participant's vested benefits will become eligible for distribution. Except as otherwise provided in the Plan, a Participant's Benefit Distribution Date shall be determined based on the earliest to occur of an event or scheduled date set forth in Articles 4 through 7, as applicable.

"Board" shall mean the board of directors of the Company.

"Bonus" shall mean any cash compensation, in addition to Base Salary, Commissions, Company Contribution Amount, and Incentive Bonus Amounts, earned by a Participant under any Employer's annual bonus and cash incentive plans.

"Change in Control" shall mean the occurrence of a "change in the ownership," a "change in the effective control" or a "change in the ownership of a substantial portion of the assets" of a corporation, as determined in accordance with this Section.

In order for an event described below to constitute a Change in Control with respect to a Participant, except as otherwise provided in part (b)(ii) of this Section, the applicable event must relate to the corporation for which the Participant is providing services, the corporation that is liable for payment of the Participant's Account Balance (or all corporations liable for payment if more than one), as identified by the Committee in accordance with Treas. Reg. §1.409A-3(i)(5)(ii)(A)(2), or such other corporation identified by the Committee in accordance with Treas. Reg. §1.409A-3(i)(5)(ii)(A)(3).

In determining whether an event shall be considered a "change in the ownership," a "change in the effective control" or a "change in the ownership of a substantial portion of the assets" of a corporation, the following provisions shall apply:

(a) A "change in the ownership" of the applicable corporation shall occur on the date on which any one person, or more than one person acting as a group, acquires ownership of stock of such corporation that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of such corporation, as determined in accordance with Treas. Reg. §1.409A-3(i)(5)(v). If a person or group is considered either to own more than 50% of the total fair market value or total voting power of the stock of such corporation, or to have effective control of such corporation within the meaning of part (b) of this Section, and such person or group acquires additional stock of such corporation, the acquisition of additional stock by such person or group shall not be considered to cause a "change in the ownership" of such corporation.

(b) A "change in the effective control" of the applicable corporation shall occur on either of the following dates:

(i) The date on which any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of such corporation possessing 30% or more of the total voting power of the stock of such corporation, as determined in accordance with Treas. Reg. §1.409A-3(i)(5)(vi). If a person or group is considered to possess 30% or more of the total voting power of the stock of a corporation, and such person or group acquires additional stock of such corporation, the acquisition of additional stock by such person or group shall not be considered to cause a "change in the effective control" of such corporation; or

(ii) The date on which a majority of the members of the applicable corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of such corporation's board of directors before the date of the appointment or election, as determined in accordance with Treas. Reg. §1.409A-3(i)(5)(vi). In determining whether the event described in the preceding sentence has occurred, the applicable corporation to which the event must relate shall only

include a corporation identified in accordance with Treas. Reg. §1.409A-3(i)(5)(ii) for which no other corporation is a majority shareholder.

(c) A "change in the ownership of a substantial portion of the assets" of the applicable corporation shall occur on the date on which any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the corporation immediately before such acquisition or acquisitions, as determined in accordance with Treas. Reg. §1.409A-3(i)(5)(vii). A transfer of assets shall not be treated as a "change in the ownership of a substantial portion of the assets" when such transfer is made to an entity that is controlled by the shareholders of the transferor corporation, as determined in accordance with Treas. Reg. §1.409A-3(i)(5)(vii)(B).

"Code" shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.

"Commissions" shall mean the cash commissions earned by a Participant during a Plan Year, as determined in accordance with Code Section 409A and related Treasury Regulations.

"Committee" shall mean the committee described in Article 11.

"Company" shall mean Taylor Made Golf Company, Inc., a Delaware corporation, and any successor to all or substantially all of the Company's assets or business.

"Company Contribution Amount" shall mean, for any one Plan Year, the amount determined in accordance with Section 3.4.

"Election Form" shall mean the form, which may be in electronic format, established from time to time by the Committee that a Participant completes, signs and returns to the Committee to make an election under the Plan.

"Employee" shall mean a person who is an employee of an Employer.

"Employer(s)" shall be defined as follows:

(a) Except as otherwise provided in part (b) of this Section, the term "Employer" shall mean the Company and/or any of its subsidiaries (now in existence or hereafter formed or acquired) that have been selected by the Board to participate in the Plan and have adopted the Plan as a sponsor.

(b) For the purpose of determining whether a Participant has experienced a Separation from Service, the term "Employer" shall mean:

(i) The entity for which the Participant performs services and with respect to which the legally binding right to compensation deferred or contributed under this Plan arises; and

(ii) All other entities with which the entity described above would be aggregated and treated as a single employer under Code Section 414(b) (controlled group of corporations) and Code Section 414(c) (a group of trades or businesses, whether or not incorporated, under common control), as applicable. In order to identify the group of entities described in the preceding sentence, the Committee shall use an ownership threshold of at least 50% as a substitute for the 80% minimum ownership threshold that appears in, and otherwise must be used when applying, the applicable provisions of (A) Code Section 1563 for determining a controlled group of corporations under Code Section 414(b), and (B) Treas. Reg. §1.414(c)-2 for determining the trades or businesses that are under common control under Code Section 414(c).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

"401(k) Plan" shall mean, with respect to an Employer, a plan qualified under Code Section 401(a) that contains a cash or deferral arrangement described in Code Section 401(k), adopted by the Employer, as it may be amended from time to time, or any successor thereto.

"Incentive Bonus Amounts" shall mean any portion of the compensation attributable to a Plan Year that is earned by a Participant under any Employer's long-term incentive plan or any other long-term incentive arrangement designated by the Committee.

"Participant" shall mean any Employee (a) who is selected to participate in the Plan, and (b) whose executed Election Form, Beneficiary Designation Form, and Plan Agreement (if requested by the Committee) are accepted by the Committee.

"Performance-Based Compensation" shall mean compensation the entitlement to or amount of which is contingent on the satisfaction of pre-established organizational or individual performance criteria relating to a performance period of at least 12 consecutive months, as determined by the Committee in accordance with Treas. Reg. §1.409A-1(e).

"Plan" shall mean the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II, which shall be evidenced by this instrument, as it may be amended from time to time, and by any other documents that together with this instrument define a Participant's rights to amounts credited to his or her Account Balance.

"Plan Agreement" shall mean a written agreement in the form prescribed by or acceptable to the Committee that evidences a Participant's agreement to the terms of the Plan and which may establish additional terms or conditions of Plan participation for a Participant. Unless otherwise determined by the Committee, the most recent Plan Agreement accepted with respect to a Participant shall supersede any prior Plan Agreements for such Participant. Plan Agreements may vary among Participants and may provide additional benefits not set forth in the Plan or limit the benefits otherwise provided under the Plan.

"Plan Year" shall mean a period beginning on January 1 of each calendar year and continuing through December 31 of such calendar year.

"Separation from Service" shall mean a termination of services provided by a Participant to his or her Employer, whether voluntarily or involuntarily, other than by reason of death, as determined by the Committee in accordance with Treas. Reg. §1.409A-1(h). In determining whether a Participant has experienced a Separation from Service, the following provisions shall apply:

(a) For a Participant who provides services to an Employer as an Employee, except as otherwise provided in part (c) of this Section, a Separation from Service shall occur when such Participant has experienced a termination of employment with such Employer. A Participant shall be considered to have experienced a termination of employment when the facts and circumstances indicate that the Participant and his or her Employer reasonably anticipate that either (i) no further services will be performed for the Employer after a certain date, or (ii) that the level of bona fide services the Participant will perform for the Employer after such date (whether as an Employee or as an independent contractor) will permanently decrease to no more than 20% of the average level of bona fide services performed by such Participant (whether as an Employee or an independent contractor) over the immediately preceding 36-month period (or the full period of services to the Employer if the Participant has been providing services to the Employer less than 36 months).

If a Participant is on military leave, sick leave, or other bona fide leave of absence, the employment relationship between the Participant and the Employer shall be treated as continuing intact, provided that the period of such leave does not exceed 6 months, or if longer, so long as the Participant retains a right to reemployment with the Employer under an applicable statute or by contract. If the period of a military leave, sick leave, or other bona fide leave of absence exceeds 6 months and the Participant does not retain a right to reemployment under an applicable statute or by contract, the employment relationship shall be considered to be terminated for purposes of this Plan as of the first day immediately following the end of such 6-month period. In applying the provisions of this paragraph, a leave of absence shall be considered a bona fide leave of absence only if there is a reasonable expectation that the Participant will return to perform services for the Employer.

(b) For a Participant who provides services to an Employer as an independent contractor, except as otherwise provided in part (c) of this Section, a Separation from Service shall occur upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for such Employer, provided that the expiration of such contract(s) is determined by the Committee to constitute a good-faith and complete termination of the contractual relationship between the Participant and such Employer.

(c) For a Participant who provides services to an Employer as both an Employee and an independent contractor, a Separation from Service generally shall not occur until the Participant has ceased providing services for such Employer as both as an Employee and as an independent contractor, as determined in accordance with the provisions set forth in parts (a) and (b) of this Section, respectively. Similarly, if a Participant either (i) ceases providing services for an Employer as an independent contractor and begins providing services for such Employer as an Employee, or (ii) ceases providing services for an Employer as an Employee and begins providing services for such Employer as an independent contractor, the

Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services for such Employer in both capacities, as determined in accordance with the applicable provisions set forth in parts (a) and (b) of this Section.

"Trust" shall mean one or more trusts established by the Company in accordance with Article 14.

"Unforeseeable Emergency" shall mean a severe financial hardship of the Participant resulting from (a) an illness or accident of the Participant, the Participant's spouse, the Participant's Beneficiary or the Participant's dependent (as defined in Code Section 152 without regard to paragraphs (b)(1), (b)(2) and (d)(1)(b) thereof), (b) a loss of the Participant's property due to casualty, or (c) such other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, all as determined by the Committee based on the relevant facts and circumstances.

ARTICLE 2

SELECTION, ENROLLMENT, ELIGIBILITY

2.1. Selection by Committee. Participation in the Plan shall be limited to a select group of management or highly compensated Employees, as determined by the Committee in its sole discretion. From that group, the Committee shall select, in its sole discretion, those individuals who may actually participate in this Plan.

2.2. Enrollment and Eligibility Requirements; Commencement of Participation.

(a) As a condition to participation, each selected Employee shall complete, execute and return to the Committee an Election Form, a Beneficiary Designation Form, and Plan Agreement (if required by the Committee) by the deadline(s) established by the Committee in accordance with the applicable provisions of this Plan. In addition, the Committee shall establish from time to time such other enrollment requirements as it determines, in its sole discretion, are necessary.

(b) Each selected Employee who is eligible to participate in the Plan shall commence participation in the Plan on the date that the Committee determines that the Employee has met all enrollment requirements set forth in this Plan and required by the Committee, including returning all required documents to the Committee within the specified time period.

(c) If an Employee fails to meet all requirements established by the Committee within the period required, that Employee shall not be eligible to participate in the Plan during such Plan Year.

ARTICLE 3
DEFERRAL COMMITMENTS/COMPANY CONTRIBUTION AMOUNTS/
VESTING/CREDITING/TAXES

3.1. Maximum Deferral.

(a) **Annual Deferral Amount.** For each Plan Year, a Participant may elect to defer, as his or her Annual Deferral Amount, Base Salary, Bonus, Commissions, and/or Incentive Bonus Amounts up to the following maximum percentages for each deferral elected:

Deferral	Maximum Percentage
Base Salary	90%
Bonus	100%
Commissions	100%
Incentive Bonus Amounts	100%

(b) **Short Plan Year.** Notwithstanding the foregoing, if a Participant first becomes a Participant after the first day of a Plan Year, then to the extent required by Section 3.2 and Code Section 409A and related Treasury Regulations, the maximum amount of the Participant's Base Salary, Bonus, Commissions, or Incentive Bonus Amounts that may be deferred by the Participant for the Plan Year shall be determined by applying the percentages set forth in Section 3.1(a) to the portion of such compensation attributable to services performed after the date that the Participant's deferral election is made.

3.2. Timing of Deferral Elections; Effect of Election Form.

(a) **General Timing Rule for Deferral Elections.** Except as otherwise provided in this Section 3.2, in order for a Participant to make a valid election to defer Base Salary, Bonus, Commissions, and/or Incentive Bonus Amounts, the Participant must submit an Election Form on or before the deadline established by the Committee, which in no event shall be later than the December 31st preceding the Plan Year in which such compensation will be earned.

Any deferral election made in accordance with this Section 3.2(a) shall be irrevocable; provided, however, that if the Committee permits or requires Participants to make a deferral election by the deadline described above for an amount that qualifies as Performance-Based Compensation, the Committee may permit a Participant to subsequently change his or her deferral election for such compensation by submitting a new Election Form in accordance with Section 3.2(c) below.

(b) **Timing of Deferral Elections for Newly Eligible Plan Participants.** A selected Employee who first becomes eligible to participate in the Plan on or after the beginning of a Plan Year, as determined in accordance with Treas. Reg. §1.409A-2(a)(7)(ii) and the "plan aggregation" rules provided in Treas. Reg. §1.409A-1(c)(2), may be permitted to make an election to defer the portion of Base Salary, Bonus, Commissions, and/or Incentive Bonus Amounts attributable to services to be performed after such election, provided that the Participant

submits an Election Form on or before the deadline established by the Committee, which in no event shall be later than 30 days after the Participant first becomes eligible to participate in the Plan.

If a deferral election made in accordance with this Section 3.2(b) relates to compensation earned based upon a specified performance period, the amount eligible for deferral shall be equal to (i) the total amount of compensation for the performance period, multiplied by (ii) a fraction, the numerator of which is the number of days remaining in the service period after the Participant's deferral election is made, and the denominator of which is the total number of days in the performance period.

Any deferral election made in accordance with this Section 3.2(b) shall become irrevocable no later than the 30th day after the date the selected Employee becomes eligible to participate in the Plan.

(c) **Timing of Deferral Elections for Performance-Based Compensation.**

Subject to the limitations described below, the Committee may determine that an irrevocable deferral election for an amount that qualifies as Performance-Based Compensation may be made by submitting an Election Form on or before the deadline established by the Committee, which in no event shall be later than 6 months before the end of the performance period.

In order for a Participant to be eligible to make a deferral election for Performance-Based Compensation in accordance with the deadline established pursuant to this Section 3.2(c), the Participant must have performed services continuously from the later of (i) the beginning of the performance period for such compensation, or (ii) the date upon which the performance criteria for such compensation are established, through the date upon which the Participant makes the deferral election for such compensation. In no event shall a deferral election submitted under this Section 3.2(c) be permitted to apply to any amount of Performance-Based Compensation that has become readily ascertainable.

(d) **Timing Rule for Deferral of Compensation Subject to Risk of Forfeiture.** With respect to compensation (i) to which a Participant has a legally binding right to payment in a subsequent year, and (ii) that is subject to a forfeiture condition requiring the Participant's continued services for a period of at least 12 months from the date the Participant obtains the legally binding right, the Committee may determine that an irrevocable deferral election for such compensation may be made by timely delivering an Election Form to the Committee in accordance with its rules and procedures, no later than the 30th day after the Participant obtains the legally binding right to the compensation, provided that the election is made at least 12 months in advance of the earliest date at which the forfeiture condition could lapse, as determined in accordance with Treas. Reg. §1.409A-2(a)(5).

Any deferral election(s) made in accordance with this Section 3.2(d) shall become irrevocable no later than the 30th day after the Participant obtains the legally binding right to the compensation subject to such deferral election(s).

3.3. Withholding and Crediting of Annual Deferral Amounts. For each Plan Year, the Base Salary portion of the Annual Deferral Amount shall be withheld from each regularly scheduled Base Salary payroll in equal amounts, as adjusted from time to time for increases and decreases in Base Salary. The Bonus, Commissions, and/or Incentive Bonus Amounts portion of the Annual Deferral Amount shall be withheld at the time the Bonus, Commissions, or Incentive Bonus Amounts are or otherwise would be paid to the Participant, whether or not this occurs during the Plan Year itself. Annual Deferral Amounts shall be credited to the Participant's Annual Account for such Plan Year at the time such amounts would otherwise have been paid to the Participant.

3.4. Company Contribution Amount

(a) For each Plan Year, an Employer may be required to credit amounts to a Participant's Annual Account in accordance with employment or other agreements entered into between the Participant and the Employer, which amounts shall be part of the Participant's Company Contribution Amount for that Plan Year. Such amounts shall be credited to the Participant's Annual Account for the applicable Plan Year on the date or dates prescribed by such agreements.

(b) For each Plan Year, an Employer, in its sole discretion, may, but is not required to, credit any amount it desires to any Participant's Annual Account under this Plan, which amount shall be part of the Participant's Company Contribution Amount for that Plan Year. The amount so credited to a Participant may be smaller or larger than the amount credited to any other Participant, and the amount credited to any Participant for a Plan Year may be zero, even though one or more other Participants receive a Company Contribution Amount for that Plan Year. The Company Contribution Amount described in this Section 3.4(b), if any, shall be credited to the Participant's Annual Account for the applicable Plan Year on a date or dates to be determined by the Committee.

(c) If not otherwise specified in the Participant's employment or other agreement entered into between the Participant and the Employer, the amount (or the method or formula for determining the amount) of a Participant's Company Contribution Amount shall be set forth in writing in one or more documents, which shall be deemed to be incorporated into this Plan, no later than the date on which such Company Contribution Amount is credited to the applicable Annual Account of the Participant.

3.5. Vesting.

(a) A Participant shall at all times be 100% vested in the portion of his or her Account Balance attributable to Annual Deferral Amounts, plus amounts credited or debited on such amounts pursuant to Section 3.6.

(b) A Participant shall be vested in the portion of his or her Account Balance attributable to any Company Contribution Amounts, plus amounts credited or debited on such amounts pursuant to Section 3.6, in accordance with the vesting schedule(s) set forth in his or her Plan Agreement (if any), employment agreement or any other agreement entered into between the

Participant and his or her Employer. If not addressed in such agreements, a Participant shall vest in the portion of his or her Account Balance attributable to any Company Contribution Amounts, plus amounts credited or debited on such amounts pursuant to Section 3.6, in accordance with the vesting schedule determined by the Employer and set forth in writing in one or more documents, which shall be deemed to be incorporated into this Plan, no later than the date on which such Company Contribution Amount is credited to the applicable Annual Account of the Participant.

3.6. Crediting/Debiting of Account Balances. In accordance with, and subject to, the rules and procedures that are established from time to time by the Committee, in its sole discretion, amounts shall be credited or debited to a Participant's Account Balance in accordance with the following rules:

(a) **Measurement Funds.** The Participant may elect one or more of the measurement funds selected by the Committee, in its sole discretion, which are based on certain mutual funds (the "Measurement Funds"), for the purpose of crediting or debiting additional amounts to his or her Account Balance. As necessary, the Committee may, in its sole discretion, discontinue, substitute or add a Measurement Fund. Each such action will take effect as of the first day of the first calendar quarter that begins at least 30 days after the day on which the Committee gives Participants advance written notice of such change.

(b) **Election of Measurement Funds.** A Participant, in connection with his or her initial deferral election in accordance with Section 3.2 above, shall elect, on the Election Form, one or more Measurement Fund(s) (as described in Section 3.6(a) above) to be used to determine the amounts to be credited or debited to his or her Account Balance. If a Participant does not elect any of the Measurement Funds as described in the previous sentence, the Participant's Account Balance shall automatically be allocated into the lowest-risk Measurement Fund, as determined by the Committee, in its sole discretion. The Participant may (but is not required to) elect, by submitting an Election Form to the Committee that is accepted by the Committee, to add or delete one or more Measurement Fund(s) to be used to determine the amounts to be credited or debited to his or her Account Balance, or to change the portion of his or her Account Balance allocated to each previously or newly elected Measurement Fund. If an election is made in accordance with the previous sentence, it shall apply as of the first business day deemed reasonably practicable by the Committee, in its sole discretion, and shall continue thereafter for each subsequent day in which the Participant participates in the Plan, unless changed in accordance with the previous sentence. Notwithstanding the foregoing, the Committee, in its sole discretion, may impose limitations on the frequency with which one or more of the Measurement Funds elected in accordance with this Section 3.6(b) may be added or deleted by such Participant; furthermore, the Committee, in its sole discretion, may impose limitations on the frequency with which the Participant may change the portion of his or her Account Balance allocated to each previously or newly elected Measurement Fund.

(c) **Proportionate Allocation.** In making any election described in Section 3.6(b) above, the Participant shall specify on the Election Form, in increments of one percent (1%), the percentage of his or her Account Balance or Measurement Fund, as applicable, to be allocated/reallocated.

(d) **Crediting or Debiting Method.** The performance of each Measurement Fund (either positive or negative) will be determined on a daily basis based on the manner in which such Participant's Account Balance has been hypothetically allocated among the Measurement Funds by the Participant.

(e) **No Actual Investment.** Notwithstanding any other provision of this Plan that may be interpreted to the contrary, the Measurement Funds are to be used for measurement purposes only, and a Participant's election of any such Measurement Fund, the allocation of his or her Account Balance thereto, the calculation of additional amounts and the crediting or debiting of such amounts to a Participant's Account Balance shall not be considered or construed in any manner as an actual investment of his or her Account Balance in any such Measurement Fund. In the event that the Company or the Trustee (as that term is defined in the Trust), in its own discretion, decides to invest funds in any or all of the investments on which the Measurement Funds are based, no Participant shall have any rights in or to such investments themselves. Without limiting the foregoing, a Participant's Account Balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his or her behalf by the Company or the Trust; the Participant shall at all times remain an unsecured creditor of the Company.

3.7. **FICA and Other Taxes.**

(a) **Annual Deferral Amounts.** For each Plan Year in which an Annual Deferral Amount is being withheld from a Participant, the Participant's Employer(s) shall withhold from that portion of the Participant's Base Salary, Bonus, Commissions and/or Incentive Bonus Amounts that is not being deferred, in a manner determined by the Employer(s), the Participant's share of FICA and other employment taxes on such Annual Deferral Amount. If necessary, the Committee may reduce the Annual Deferral Amount in order to comply with this Section 3.7.

(b) **Company Contribution Amounts.** When a Participant becomes vested in a portion of his or her Account Balance attributable to any Company Contribution Amounts, the Participant's Employer(s) shall withhold from that portion of the Participant's Base Salary, Bonus, Commissions and/or Incentive Bonus Amounts that is not deferred, in a manner determined by the Employer(s), the Participant's share of FICA and other employment taxes on such amounts. If necessary, the Committee may reduce the vested portion of the Participant's Company Contribution Amount, as applicable, in order to comply with this Section 3.7.

(c) **Distributions.** The Participant's Employer(s), or the trustee of the Trust, shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld by the Employer(s), or the trustee of the Trust, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Employer(s) and the trustee of the Trust.

ARTICLE 4
SCHEDULED DISTRIBUTION; UNFORESEEABLE EMERGENCIES

4.1. Scheduled Distributions. Effective beginning with the 2007 Plan Year, in connection with each election to defer an Annual Deferral Amount, a Participant may elect to receive all or a portion of his or her Annual Base Salary Deferral Amount, Annual Bonus Deferral Amount, and vested Company Contribution Amount for such Plan Year, plus amounts credited or debited on those amounts pursuant to Section 3.6, in the form of a lump sum payment, calculated as of the close of business on or around the Benefit Distribution Date designated by the Participant in accordance with this Section. The Participant may elect a separate Benefit Distribution Date for the Annual Base Salary Deferral Amount, Annual Bonus Deferral Amount, and Company Contribution Amount (each such election shall be a "Scheduled Distribution"). The Benefit Distribution Date for the amount subject to a Scheduled Distribution election shall be the first day of any Plan Year designated by the Participant, which may be no sooner than five Plan Years after the end of the Plan Year to which the Participant's deferral election relates, unless otherwise provided on an Election Form approved by the Committee.

Subject to the other terms and conditions of this Plan, each Scheduled Distribution elected shall be paid out during a 60 day period commencing immediately after the Benefit Distribution Date. By way of example, if a Scheduled Distribution is elected for an Annual Base Salary Deferral Amount that is earned in the Plan Year commencing January 1, 2008, the earliest Benefit Distribution Date that may be designated by a Participant would be January 1, 2014, and the Scheduled Distribution would be paid out during the 60 day period commencing immediately after such Benefit Distribution Date.

4.2. Postponing Scheduled Distributions. A Participant may elect to postpone a Scheduled Distribution described in Section 4.1 above, and have such amount paid out during a 60 day period commencing immediately after an allowable alternative Benefit Distribution Date designated in accordance with this Section 4.2. In order to make such an election, the Participant must submit an Election Form to the Committee in accordance with the following criteria:

(a) The election of the new Benefit Distribution Date shall have no effect until at least 12 months after the date on which the election is made;

(b) The new Benefit Distribution Date selected by the Participant for such Scheduled Distribution must be the first day of a Plan Year that is no sooner than 5 years after the previously designated Benefit Distribution Date; and

(c) The election must be made at least 12 months prior to the Participant's previously designated Benefit Distribution Date for such Scheduled Distribution.

For purposes of applying the provisions of this Section 4.2, a Participant's election to postpone a Scheduled Distribution shall not be considered to be made until the date on which the election becomes irrevocable. Such an election shall become irrevocable no later than the date that is 12 months prior to the Participant's previously designated Benefit Distribution Date for such Scheduled Distribution.

4.3. Other Benefits Take Precedence Over Scheduled Distributions. Should an event occur prior to any Benefit Distribution Date designated for a Scheduled Distribution that would trigger a benefit under Articles 5 through 7, as applicable, all amounts subject to a Scheduled Distribution election shall be paid in accordance with the other applicable provisions of the Plan and not in accordance with this Article 4.

4.4. Unforeseeable Emergencies.

(a) If a Participant experiences an Unforeseeable Emergency prior to the occurrence of a distribution event described in Articles 5 through 7, as applicable, the Participant may petition the Committee to receive a partial or full payout from the Plan. The payout, if any, from the Plan shall not exceed the lesser of (i) the Participant's vested Account Balance, calculated as of the close of business on or around the Benefit Distribution Date for such payout, as determined by the Committee in accordance with provisions set forth below, or (ii) the amount necessary to satisfy the Unforeseeable Emergency, plus amounts necessary to pay Federal, state, or local income taxes or penalties reasonably anticipated as a result of the distribution. A Participant shall not be eligible to receive a payout from the Plan to the extent that the Unforeseeable Emergency is or may be relieved (A) through reimbursement or compensation by insurance or otherwise, (B) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship or (C) by cessation of deferrals under this Plan.

If the Committee, in its sole discretion, approves a Participant's petition for payout from the Plan, the Participant's Benefit Distribution Date for such payout shall be the date on which such Committee approval occurs and such payout shall be distributed to the Participant in a lump sum no later than 60 days after such Benefit Distribution Date. In addition, in the event of such approval the Participant's outstanding deferral elections under the Plan shall be cancelled.

(b) A Participant's deferral elections under this Plan shall also be cancelled to the extent the Committee determines that such action is required for the Participant to obtain a hardship distribution from an Employer's 401(k) Plan pursuant to Treas. Reg. §1.401(k)-1(d)(3).

ARTICLE 5
CHANGE IN CONTROL BENEFIT

5.1. Change in Control Benefit. In the event that a Change in Control occurs prior to the Participant's Separation from Service or death, the Participant shall receive his or her vested Account Balance in the form of a lump sum payment (the "Change in Control Benefit"). The Benefit Distribution Date for the Change in Control Benefit shall be the date on which the Change in Control occurs.

5.2. Payment of Change in Control Benefit. The Change in Control Benefit shall be calculated as of the close of business on or around the Participant's Benefit Distribution Date, as determined by the Committee, and paid to the Participant no later than 60 days after the Participant's Benefit Distribution Date.

ARTICLE 6
TERMINATION BENEFIT

6.1. Termination Benefit. If a Participant experiences a Separation from Service, the Participant shall be eligible to receive his or her vested Account Balance in either a lump sum or annual installment payments, as elected by the Participant in accordance with Section 6.2 (the "Termination Benefit"). A Participant's Termination Benefit shall be calculated as of the close of business on or around the applicable Benefit Distribution Date for such benefit, which shall be the first day of the seventh month following the date on which the Participant experiences such Separation from Service; provided, however, if a Participant changes the form of distribution for one or more Annual Accounts in accordance with Section 6.2(b), the Benefit Distribution Date for the Annual Account(s) subject to such change shall be determined in accordance with Section 6.2(b).

6.2. Payment of Termination Benefit.

(a) In connection with a Participant's election to defer an Annual Deferral Amount, the Participant shall elect the form in which his or her Annual Account for such Plan Year will be paid. The Participant may elect to receive each Annual Account in the form of a lump sum or pursuant to an Annual Installment Method of 3, 5 or 10 years. If a Participant does not make any election with respect to the payment of an Annual Account, then the Participant shall be deemed to have elected to receive such Annual Account as a lump sum.

(b) A Participant may change the form of payment for an Annual Account by submitting an Election Form to the Committee in accordance with the following criteria:

(i) The election shall not take effect until at least 12 months after the date on which the election is made;

(ii) The new Benefit Distribution Date for such Annual Account shall be five years after the Benefit Distribution Date that would otherwise have been applicable to such Annual Account; and

(iii) The election must be made at least 12 months prior to the Benefit Distribution Date that would otherwise have been applicable to such Annual Account.

For purposes of applying the provisions of this Section 6.2(b), a Participant's election to change the form of payment for an Annual Account shall not be considered to be made until the date on which the election becomes irrevocable. Such an election shall become irrevocable no later than the date that is 12 months prior to the Benefit Distribution Date that would otherwise have been applicable to such Annual Account. Subject to the requirements of this Section 6.2(b), the Election Form most recently accepted by the Committee that has become effective for an Annual Account shall govern the form of payout of such Annual Account.

(c) The lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the applicable Benefit Distribution Date. Remaining installments, if any, shall continue in accordance with the Participant's election for each Annual

Account and shall be paid no later than 60 days after each anniversary of the Benefit Distribution Date.

ARTICLE 7
DEATH BENEFIT

7.1. Death Benefit. In the event of a Participant's death prior to the complete distribution of his or her vested Account Balance, the Participant's Beneficiary(ies) shall receive the Participant's unpaid vested Account Balance in a lump sum payment (the "Death Benefit"). The Death Benefit shall be calculated as of the close of business on or around the Benefit Distribution Date for such benefit, which shall be the date on which the Committee is provided with proof that is satisfactory to the Committee of the Participant's death.

7.2. Payment of Death Benefit. The Death Benefit shall be paid to the Participant's Beneficiary(ies) no later than 60 days after the Participant's Benefit Distribution Date.

ARTICLE 8
BENEFICIARY DESIGNATION

8.1. Beneficiary. Each Participant shall have the right, at any time, to designate his or her Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of an Employer in which the Participant participates.

8.2. Beneficiary Designation; Change; Spousal Consent. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time. If the Participant names someone other than his or her spouse as a Beneficiary, the Committee may, in its sole discretion, determine that spousal consent is required to be provided in a form designated by the Committee, executed by such Participant's spouse and returned to the Committee. Upon the acceptance by the Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee prior to his or her death.

8.3. Acknowledgment. No designation or change in designation of a Beneficiary shall be effective until received and acknowledged in writing by the Committee or its designated agent.

8.4. No Beneficiary Designation. If a Participant fails to designate a Beneficiary as provided in Sections 8.1, 8.2 and 8.3 above or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has

no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the executor or personal representative of the Participant's estate.

8.5. Doubt as to Beneficiary. If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its discretion, to cause the Participant's Employer to withhold such payments until this matter is resolved to the Committee's satisfaction.

8.6. Discharge of Obligations. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and that Participant's Plan Agreement (if any) shall terminate upon such full payment of benefits.

ARTICLE 9 **LEAVE OF ABSENCE**

9.1. Paid Leave of Absence. If a Participant is authorized by the Participant's Employer to take a paid leave of absence from the employment of the Employer, and such leave of absence does not constitute a Separation from Service, (a) the Participant shall continue to be considered eligible for the benefits provided under the Plan, and (b) the Annual Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.2.

9.2. Unpaid Leave of Absence. If a Participant is authorized by the Participant's Employer to take an unpaid leave of absence from the employment of the Employer for any reason, and such leave of absence does not constitute a Separation from Service, such Participant shall continue to be eligible for the benefits provided under the Plan. During the unpaid leave of absence, the Participant shall not be allowed to make any additional deferral elections. However, if the Participant returns to employment, the Participant may elect to defer an Annual Deferral Amount for the Plan Year following his or her return to employment and for every Plan Year thereafter while a Participant in the Plan, provided such deferral elections are otherwise allowed and an Election Form is delivered to and accepted by the Committee for each such election in accordance with Section 3.2 above.

ARTICLE 10 **TERMINATION OF PLAN, AMENDMENT OR MODIFICATION**

10.1. Termination of Plan. Although each Employer anticipates that it will continue the Plan for an indefinite period of time, there is no guarantee that any Employer will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, each Employer reserves the right to terminate the Plan with respect to all of its Participants. In the event of a Plan termination no new deferral elections shall be permitted for the affected Participants and such Participants shall no longer be eligible to receive new company contributions. However, after the Plan termination the Account Balances of such Participants shall continue to be credited with Annual Deferral Amounts attributable to a deferral election that was in effect prior to the Plan termination to the extent deemed necessary to comply with Code Section 409A and related Treasury Regulations, and additional amounts shall continue to be credited or debited to such

Participants' Account Balances pursuant to Section 3.6. The Measurement Funds available to Participants following the termination of the Plan shall be comparable in number and type to those Measurement Funds available to Participants in the Plan Year preceding the Plan Year in which the Plan termination is effective. In addition, following a Plan termination, Participant Account Balances shall remain in the Plan and shall not be distributed until such amounts become eligible for distribution in accordance with the other applicable provisions of the Plan. Notwithstanding the preceding sentence, to the extent permitted by Treas. Reg. §1.409A-3(j)(4)(ix), the Employer may provide that upon termination of the Plan, all Account Balances of the Participants shall be distributed, subject to and in accordance with any rules established by such Employer deemed necessary to comply with the applicable requirements and limitations of Treas. Reg. §1.409A-3(j)(4)(ix).

10.2. Amendment. Any Employer may, at any time, amend or modify the Plan in whole or in part with respect to that Employer. Notwithstanding the foregoing, no amendment or modification shall be effective to decrease the value of a Participant's vested Account Balance in existence at the time the amendment or modification is made.

10.3. Plan Agreement. Despite the provisions of Sections 10.1 and 10.2, if a Participant's Plan Agreement (if any) contains benefits or limitations that are not in this Plan document, the Employer may only amend or terminate such provisions with the written consent of the Participant.

10.4. Effect of Payment. The full payment of the Participant's vested Account Balance in accordance with the applicable provisions of the Plan shall completely discharge all obligations to a Participant and his or her designated Beneficiaries under this Plan, and the Participant and his or her designated Beneficiaries' participation in the Plan and his or her Plan Agreement (if any) shall terminate.

ARTICLE 11 **ADMINISTRATION**

11.1. Committee Duties. Except as otherwise provided in this Article 11, this Plan shall be administered by a Committee, which shall consist of the Board, or such committee as the Board shall appoint. Members of the Committee may be Participants under this Plan. The Committee shall also have the discretion and authority to (a) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan, and (b) decide or resolve any and all questions, including benefit entitlement determinations and interpretations of this Plan, as may arise in connection with the Plan. Any individual serving on the Committee who is a Participant shall not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Committee shall be entitled to rely on information furnished by a Participant or the Company.

11.2. Administration Upon Change In Control. Within 120 days following a Change in Control, the individuals who comprised the Committee immediately prior to the Change in Control (whether or not such individuals are members of the Committee following the Change in Control) may, by written consent of the majority of such individuals, appoint an independent

third party administrator (the "Administrator") to perform any or all of the Committee's duties described in Section 11.1 above, including without limitation, the power to determine any questions arising in connection with the administration or interpretation of the Plan, and the power to make benefit entitlement determinations. Upon and after the effective date of such appointment, (a) the Company must pay all reasonable administrative expenses and fees of the Administrator, and (b) the Administrator may only be terminated with the written consent of the majority of Participants with an Account Balance in the Plan as of the date of such proposed termination.

11.3. Agents. In the administration of this Plan, the Committee or the Administrator, as applicable, may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel.

11.4. Binding Effect of Decisions. The decision or action of the Committee or Administrator, as applicable, with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

11.5. Indemnity of Committee. All Employers shall indemnify and hold harmless the members of the Committee, any Employee to whom the duties of the Committee may be delegated, and the Administrator against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct by the Committee, any of its members, any such Employee or the Administrator.

11.6. Employer Information. To enable the Committee and/or Administrator to perform its functions, the Company and each Employer shall supply full and timely information to the Committee and/or Administrator, as the case may be, on all matters relating to the Plan, the Trust, the Participants and their Beneficiaries, the Account Balances of the Participants, the compensation of its Participants, the date and circumstances of the Separation from Service or death of its Participants, and such other pertinent information as the Committee or Administrator may reasonably require.

ARTICLE 12

OTHER BENEFITS AND AGREEMENTS

12.1. Coordination with Other Benefits. The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Participant's Employer. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

ARTICLE 13
CLAIMS PROCEDURES

13.1. Presentation of Claim. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

13.2. Notification of Decision. The Committee shall consider a Claimant's claim within a reasonable time, but no later than 90 days after receiving the claim. If the Committee determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 90 day period. In no event shall such extension exceed a period of 90 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination. The Committee shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;

(iv) an explanation of the claim review procedure set forth in Section 13.3 below; and

(v) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review.

13.3. Review of a Denied Claim. On or before 60 days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. The Claimant (or the Claimant's duly authorized representative):

(a) may, upon request and free of charge, have reasonable access to, and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the claim for benefits;

(b) may submit written comments or other documents; and/or

(c) may request a hearing, which the Committee, in its sole discretion, may grant.

13.4. Decision on Review. The Committee shall render its decision on review promptly, and no later than 60 days after the Committee receives the Claimant's written request for a review of the denial of the claim. If the Committee determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 60 day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination. In rendering its decision, the Committee shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based;

(c) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the Claimant's claim for benefits; and

(d) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

13.5. Legal Action. A Claimant's compliance with the foregoing provisions of this Article 13 is a mandatory prerequisite to a Claimant's right to commence any legal action with respect to any claim for benefits under this Plan.

ARTICLE 14 **TRUST**

14.1. Establishment of the Trust. In order to provide assets from which to fulfill its obligations to the Participants and their Beneficiaries under the Plan, the Company may establish a trust by a trust agreement with a third party, the trustee, to which each Employer may, in its discretion, contribute cash or other property, including securities issued by the Company, to provide for the benefit payments under the Plan (the "Trust").

14.2. Interrelationship of the Plan and the Trust. The provisions of the Plan and the Plan Agreement (if any) shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Employers, Participants and the creditors of the Employers to the assets transferred to the Trust. Each Employer shall at all times remain liable to carry out its obligations under the Plan.

14.3. Distributions From the Trust. Each Employer's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Employer's obligations under this Plan.

ARTICLE 15 **MISCELLANEOUS**

15.1. Status of Plan. The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of ERISA Sections 201(2), 301(a)(3) and 401(a)(1). The Plan shall be administered and interpreted (a) to the extent possible in a manner consistent with the intent described in the preceding sentence, and (b) in accordance with Code Section 409A and related Treasury guidance and Regulations.

15.2. Unsecured General Creditor. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of an Employer or adidas AG. For purposes of the payment of benefits under this Plan, any and all of an Employer and adidas AG's assets shall be, and remain, the general, unpledged unrestricted assets of the Employer and adidas AG. An Employer and adidas AG's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

15.3. Employer's Liability. An Employer and adidas AG's liability for the payment of benefits shall be defined only by the Plan and the Plan Agreement (if any), as entered into between the Employer and a Participant. An Employer and adidas AG shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his or her Plan Agreement (if any).

15.4. Nonassignability. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency or be transferable to a spouse as a result of a property settlement or otherwise.

15.5. Not a Contract of Employment. The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be retained in the service of any Employer, either as an Employee, or to interfere with the right of any Employer to discipline or discharge the Participant at any time.

15.6. Furnishing Information. A Participant or his or her Beneficiary will cooperate with the Committee by furnishing any and all information requested by the Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

15.7. Terms. Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.

15.8. Captions. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

15.9. Governing Law. Subject to ERISA, the provisions of this Plan shall be construed and interpreted according to the internal laws of the State of California without regard to its conflicts of laws principles.

15.10. Notice. Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

Taylor Made Golf Company, Inc.
Attn: Ms. Laura Garrett
5545 Fermi Court
Carlsbad, CA 92008-7324

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

15.11. Successors. The provisions of this Plan shall bind and inure to the benefit of the Participant's Employer and its successors and assigns and the Participant and the Participant's designated Beneficiaries.

15.12. Spouse's Interest. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

15.13. Validity. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

15.14. Incompetent. If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

15.15. Domestic Relations Orders. If necessary to comply with a domestic relations order, as defined in Code Section 414(p)(1)(B), pursuant to which a court has determined that a spouse or former spouse of a Participant has an interest in the Participant's benefits under the Plan, the Committee shall have the right to immediately distribute the spouse's or former spouse's interest in the Participant's benefits under the Plan to such spouse or former spouse.

15.16. Distribution in the Event of Income Inclusion Under Code Section 409A. If any portion of a Participant's Account Balance under this Plan is required to be included in income by the Participant prior to receipt due to a failure of this Plan to comply with the requirements of Code Section 409A and related Treasury Regulations, the Committee may determine that such Participant shall receive a distribution from the Plan in an amount equal to the lesser of (i) the portion of his or her Account Balance required to be included in income as a result of the failure of the Plan to comply with the requirements of Code Section 409A and related Treasury Regulations, or (ii) the unpaid vested Account Balance.

15.17. Deduction Limitation on Benefit Payments. If an Employer reasonably anticipates that the Employer's deduction with respect to any distribution from this Plan would be limited or eliminated by application of Code Section 162(m), then to the extent permitted by Treas. Reg. §1.409A-2(b)(7)(i), payment shall be delayed as deemed necessary to ensure that the entire amount of any distribution from this Plan is deductible. Any amounts for which distribution is delayed pursuant to this Section shall continue to be credited/debited with additional amounts in accordance with Section 3.6. The delayed amounts (and any amounts credited thereon) shall be distributed to the Participant (or his or her Beneficiary in the event of

the Participant's death) at the earliest date the Employer reasonably anticipates that the deduction of the payment of the amount will not be limited or eliminated by application of Code Section 162(m). In the event that such date is determined to be after a Participant's Separation from Service, the delayed payment shall not be made before the first day of the seventh month following such Participant's Separation from Service.

15.18. adidas AG. Subject to Section 15.2, adidas AG hereby agrees that each Employer shall perform and observe each and every agreement, covenant, term and condition under the Plan, and upon an Employer's failure to do so, adidas AG will promptly perform and observe each such agreement, covenant, term and condition or cause the same promptly to be performed and observed.

15.19. Limited Cashout. Notwithstanding anything herein to the contrary, the Committee may, in its discretion, automatically pay out a Participant's vested Account Balance in a lump sum, provided that such payment satisfies the requirements in (a) through (c) below:

(a) Such payment results in the termination and liquidation of the entirety of the Participant's interest under the Plan, including all agreements, methods, programs, or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under Treas. Reg. §1.409A-1(c)(2);

(b) Such payment is not greater than the applicable dollar amount under Code Section 402(g)(1)(B); and

(c) Such exercise of Committee discretion is evidenced in writing no later than the date of such payment.

IN WITNESS WHEREOF, the Company has signed this Plan document effective as of January 1, 2005.

"Company"

Taylor Made Golf Company, Inc., a Delaware corporation

By:  _____

Title: _____

IN WITNESS WHEREOF, adidas AG has signed this Plan document effective as of January 1, 2005.

adidas AG

By: _____

Title: _____

APPENDIX A

LIMITED TRANSITION RELIEF FOR DISTRIBUTION ELECTIONS MADE AVAILABLE IN ACCORDANCE WITH NOTICE 2007-86

The capitalized terms below shall have the same meaning as provided in Article 1 of the Plan.

Opportunity to Make New (or Revise Existing) Distribution Elections. Notwithstanding the required deadline for the submission of an initial distribution election under Article 6 of the Plan, the Committee may, to the extent permitted by Notice 2007-86, provide a limited period in which Participants may make new distribution elections, or revise existing distribution elections, with respect to amounts subject to the terms of the Plan, by submitting an Election Form on or before the deadline established by the Committee, which in no event shall be later than December 31, 2008. Any distribution election(s) made by a Participant, and accepted by the Committee, in accordance with this Appendix A shall not be treated as a change in either the form or timing of a Participant's benefit payment for purposes of Code Section 409A or the Plan.

The Committee shall interpret all provisions relating to an election submitted in accordance with this Appendix in a manner that is consistent with Code Section 409A and related Treasury guidance or Regulations. By way of example, if any distribution election submitted by a Participant in 2007 either (i) relates to an amount that would otherwise be paid to the Participant in 2007, or (ii) would cause an amount to be paid to the Participant in 2007, such election shall not be effective. Similarly, if any distribution election submitted by a Participant in 2008 either (a) relates to an amount that would otherwise be paid to the Participant in 2008, or (b) would cause an amount to be paid to the Participant in 2008, such election shall not be effective.

UNANIMOUS WRITTEN CONSENT OF
THE DIRECTORS OF
TAYLOR MADE GOLF COMPANY, INC.

COPY

The undersigned, constituting all of the directors of TAYLOR MADE GOLF COMPANY, INC., a Delaware corporation (the "Corporation"), each hereby consents to the following resolutions by unanimous written consent pursuant to Section 141(f) of the Delaware General Corporation Code and the Bylaws of the Corporation which authorize the directors so to act:

WHEREAS, the Corporation maintains the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan (the "Plan") for the benefit of a select group of its employees;

WHEREAS, there has been presented to the Board of Directors (the "Board") of the Company Amendment No. 1 for the Plan;

WHEREAS, the Board desires to adopt the Amendment, effective as of December 31, 2004;

WHEREAS, there has been presented to the Board the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II (the "New Plan");

WHEREAS, the Board desires to adopt the New Plan, effective as of January 1, 2005;

WHEREAS, the Corporation established the Rabbi Trust with Putnam Fiduciary Trust Company, dated November 20, 2002 (the "Putnam Trust");

WHEREAS, the Corporation desires to amend and restate the Putnam Trust;

WHEREAS, there has been presented to the Board the amended and restated Rabbi Trust Agreement with Wachovia Bank, National Association (the "Wachovia Trust"); and

WHEREAS, the Board desires to adopt the Wachovia Trust.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Amendment, effective as of December 31, 2004;

RESOLVED, FURTHER, that the Board hereby adopts the New Plan, effective as of January 1, 2005; and

RESOLVED, FURTHER, that the Board hereby adopts the Wachovia Trust.

Ratification:

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed to execute and deliver the Amendment, the New Plan, and the Wachovia Trust on behalf of the Corporation with such changes therein as the officers executing the same on behalf of the Corporation may approve, in their discretion, as being in the best interest of the Corporation, such approval to be conclusively evidenced by such officers' execution and delivery thereof.

RESOLVED FURTHER, that the officers of the Corporation, and each of them with full authority to act without the others, be, and they hereby are, authorized, directed and empowered to execute and deliver any and all other documents, papers or instruments and to do or cause to be done all acts or things (including payment of all necessary related expenses) as such officers may deem necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions.

This Unanimous Written Consent may be executed in one or more counterparts, which taken together shall be deemed to be a single document, and shall be filed in the minute book of the Corporation.


Dated as of _____, 2008

Herbert Hainer

Dated as of _____, 2008

Erich Stamminger

Dated as of 22, 2008



Mark King

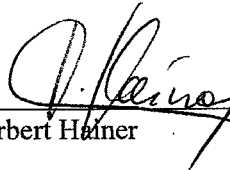
Ratification:

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed to execute and deliver the Amendment, the New Plan, and the Wachovia Trust on behalf of the Corporation with such changes therein as the officers executing the same on behalf of the Corporation may approve, in their discretion, as being in the best interest of the Corporation, such approval to be conclusively evidenced by such officers' execution and delivery thereof.

RESOLVED FURTHER, that the officers of the Corporation, and each of them with full authority to act without the others, be, and they hereby are, authorized, directed and empowered to execute and deliver any and all other documents, papers or instruments and to do or cause to be done all acts or things (including payment of all necessary related expenses) as such officers may deem necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions.

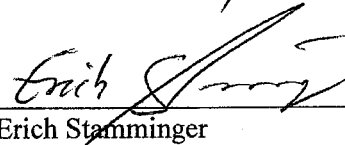
This Unanimous Written Consent may be executed in one or more counterparts, which taken together shall be deemed to be a single document, and shall be filed in the minute book of the Corporation.

Dated as of 22, 2008



Herbert Hainer

Dated as of 22, 2008



Erich Stamminger

Dated as of _____, 2008

Mark King

COPY

**Taylor Made Golf Company, Inc.
GRANTOR TRUST AGREEMENT**

THIS AMENDED AND RESTATED TRUST AGREEMENT (the "Trust Agreement") is made this 22nd day of December, 2008 by and between Taylor Made Golf Company, Inc. ("the Company") and **WACHOVIA BANK, NATIONAL ASSOCIATION** (the "Trustee"), to evidence the amended and restated Trust (the "Trust") to be established, pursuant to those plans now or hereafter existing that require the establishment of a trust, for the benefit of a select group of management and highly compensated employees who contribute materially to the continued growth, development and business success of the Company and those subsidiaries of the Company, if any, that participate in the Plan (collectively, "Subsidiaries", or singularly, "Subsidiary"). This Trust amends and restates the Taylor Made Golf Company, Inc. Nonqualified Deferred Plan Rabbi Trust, which was effective November 20, 2002, by and between Taylor Made Golf Company, Inc. and Putnam Fiduciary Trust Company.

Recitals

- (a) **WHEREAS**, the Company has adopted the nonqualified deferred compensation plans and agreements (the "Arrangements") attached hereto as Attachment A;
- (b) **WHEREAS**, the Company has incurred or expects to incur liability under the terms of such Arrangements with respect to the individuals participating in such Arrangements (the "Participants and Beneficiaries");
- (c) **WHEREAS**, the Company hereby establishes a Trust (the "Trust") and shall contribute to the Trust assets that shall be held therein, subject to the claims of the Company's creditors in the event of the Company's Insolvency, as herein defined, until paid to Participants and their Beneficiaries in such manner and at such times as specified in the Arrangements and in this Trust Agreement;
- (d) **WHEREAS**, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Arrangements as an unfunded plan maintained for the purpose of providing deferred compensation for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Income Security Act of 1974; and
- (e) **WHEREAS**, it is the intention of the Company to make contributions to the Trust to provide itself with a source of funds (the "Fund") to assist it in satisfying its liabilities under the Arrangements.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Establishment of The Trust

- (a) The Trust is intended to be a Grantor Trust, of which the Company is the Grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- (b) The Company shall be considered a Grantor for the purposes of the Trust.
- (c) The Trust hereby established is irrevocable by the Company.
- (d) The Company hereby deposits with the Trustee in the Trust one-thousand dollars and zero cents (\$1,000.00) which shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Trust Agreement.
- (e) The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of the Company and shall be used exclusively for the uses and purposes of Participants and general creditors as herein set forth. Participants and their Beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Arrangements and this Trust Agreement shall be unsecured contractual rights of Participants and their Beneficiaries against the Company. Any assets held by the Trust will be subject to the claims of the general creditors of the Company under federal and state law in the event the Company is Insolvent, as defined in Section 3(a) herein.
- (f) The Company, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property acceptable to the Trustee in the Trust to augment the principal to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. Prior to a Change in Control, neither the Trustee nor any Participant or Beneficiary shall have any right to compel additional deposits.
- (g) In addition to the Initial Contribution, the Company shall make such other contributions as shall from time to time be authorized by due corporate action. Any such payments made by the Company may be in cash, by letter of credit or, prior to the date as of which a Change in Control occurs, in such property (including, without limitation, securities issued by the Company) as the Company may determine. The Company shall keep accurate books and records with respect to the interest of each Participant and Beneficiary in any Arrangement and shall provide copies of such books and records to the Trustee at any time as the Trustee shall request.
- (h) Upon a Change in Control, the Company shall, as soon as possible, but in no event longer than thirty (30) days following the occurrence of a Change in Control, make an irrevocable

contribution to the Trust in an amount that is sufficient (taking into account the Trust assets, if any, resulting from prior contributions) to fund the Trust in an amount equal to no less than 100% but no more than 120% of the amount necessary to pay each Participant or Beneficiary the benefits to which Participants or their Beneficiaries would be entitled pursuant to the terms of the Arrangements as of the date on which the Change in Control occurred. The Company shall also fund an Expense Reserve for the Trustee, which shall be equal to the lesser of: 1) the estimated trustee and record-keeper expenses and fees for one year or 2) seventy-five thousand dollars (\$75,000).

Section 2. Payments to Participants and Their Beneficiaries

- (a) Prior to a Change in Control, distributions from the Trust shall be made by the Trustee to Participants and Beneficiaries at the direction of the Company. Prior to a Change in Control, the entitlement of a Participant or his or her Beneficiaries to benefits under the Arrangements shall be determined by the Committee appointed by the Company under the Arrangements, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Arrangements.
- (b) The Company may make payment of benefits directly to Participants or their Beneficiaries as they become due under the terms of the Arrangements. The Company shall notify the Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to Participants or their Beneficiaries. Before a Change in Control, the Company may direct the Trustee in writing to reimburse the Company from the Trust assets, and debit the account of each Participant or his or her Beneficiary, for amounts paid directly to the Participant or their Beneficiaries by the Company. The Trustee shall reimburse the Company for such payments promptly after receipt by the Trustee of satisfactory evidence that the Company has made the direct payments. No such reimbursement shall be allowed after a Change in Control that would result in Trust assets equaling less than 100% of the Required Funding and Expense Reserve.

In addition, if the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Arrangements, the Company shall make the balance of each such payment as it falls due in accordance with the Arrangements. The Trustee shall notify the Company where principal and earnings are not sufficient. Nothing in this Agreement shall relieve the Company of its liabilities to pay benefits due under the Arrangements except to the extent such liabilities are met by application of assets of the Trust.

- (c) The Company shall deliver to the Trustee a schedule of benefits, to include state and federal tax withholding guidelines, due under the Arrangements on an annual basis. Immediately after a Change in Control, the Company shall deliver to the Trustee an updated schedule of benefits due under the Arrangements. After a Change in Control, the Trustee shall pay benefits due in accordance with such schedule. After a Change in Control, the Committee appointed by the Company shall continue to make the

determination of benefits due to Participants or their Beneficiaries and shall provide the Trustee with an updated schedule, to include state and federal tax withholding guidelines, of benefits due; provided however, a Participant or their Beneficiaries may make application to the Trustee for an independent decision as to the amount or form of their benefits due under the Arrangements. In making any determination required or permitted to be made by the Trustee under this Section, the Trustee shall, in each such case, reach its own independent determination, in its absolute and sole discretion, as to the Participant's or Beneficiary's entitlement to a payment hereunder. In making its determination, the Trustee may consult with and make such inquiries of such persons, including the Participant or Beneficiary, the Company, legal counsel, actuaries or other persons, as the Trustee may reasonably deem necessary. Any reasonable costs incurred by the Trustee in arriving at its determination shall be reimbursed by the Company and, to the extent not paid by the Company within a reasonable time, shall be charged to the Trust. Following a Change in Control, the Company waives any right to contest any amount paid over by the Trustee hereunder pursuant to a good faith determination made by the Trustee notwithstanding any claim by or on behalf of the Company (absent a manifest abuse of discretion by the Trustee) that such payments should not be made.

- (d) The Trustee agrees that it will not itself institute any action at law or at equity, whether in the nature of an accounting, interpleading action, request for a declaratory judgment or otherwise, requesting a court or administrative or quasi-judicial body to make the determination required to be made by the Trustee under this Section 2 in the place and stead of the Trustee. The Trustee may (and, if necessary or appropriate, shall) institute an action to collect a contribution due the Trust following a Change in Control or in the event that the Trust should ever experience a short-fall in the amount of assets necessary to make payments pursuant to the terms of the Arrangements.

**Section 3. Trustee Responsibility Regarding Payments
To The Trust Beneficiary When The Company Is Insolvent**

- (a) The Trustee shall cease payment of benefits to Participants and their Beneficiaries if the Company is Insolvent. The Company shall be considered "Insolvent" for purposes of this Trust Agreement if (i) the Company is unable to pay its debts as they become due, or (ii) the Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.
- (b) At all times during the continuance of this Trust, the principal and income of the Trust shall be subject to claims of general creditors of the Company under federal and state law as set forth below.
- (1) The Board of Directors and the Chief Executive Officer of the Company shall have the duty to inform the Trustee in writing that the Company is Insolvent. If a person claiming to be a creditor of the Company alleges in writing to the Trustee that the Company has become Insolvent, the Trustee

shall determine whether the Company is Insolvent and, pending such determination, the Trustee shall discontinue payment of benefits to Participants or their Beneficiaries.

- (2) Unless the Trustee has actual knowledge that the Company is Insolvent, or has received notice from the Company or a person claiming to be a creditor alleging that the Company is Insolvent, the Trustee shall have no duty to inquire whether the Company is Insolvent. The Trustee may in all events rely on such evidence concerning the Company's solvency as may be furnished to the Trustee and that provides the Trustee with a reasonable basis for making a determination concerning the Company's solvency.
 - (3) If at any time the Trustee has determined that the Company is Insolvent, the Trustee shall discontinue payments to Participants or their Beneficiaries and shall hold the assets of the Trust for the benefit of the Company's general creditors. Nothing in this Trust Agreement shall in any way diminish any rights of Participants or their Beneficiaries to pursue their rights as general creditors of the Company with respect to benefits due under the Arrangements or otherwise.
 - (4) The Trustee shall resume the payment of benefits to Participants or their Beneficiaries in accordance with Section 2 of this Trust Agreement only after the Trustee has determined that the Company is not Insolvent (or is no longer Insolvent).
- (c) Provided that there are sufficient assets, if the Trustee discontinues the payment of benefits from the Trust pursuant to Section 3(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Participants or their Beneficiaries under the terms of the Arrangements for the period of such discontinuance, less the aggregate amount of any payments made to Participants or their Beneficiaries by the Company in lieu of the payments provided for hereunder during any such period of discontinuance.

Section 4. Payments When a Short-Fall of The Trust Assets Occurs

- (a) If there are not sufficient assets for the payment of current and expected future benefits pursuant to Section 2 or Section 3(c) hereof and the Company does not otherwise make such payments within a reasonable time after demand from the Trustee, the Trustee shall allocate the Trust assets among the Participants or their Beneficiaries in the following order of priority:
 - (1) vested Participants (regardless of whether they are actively employed) and their Beneficiaries; and

- (2) non-vested Participants (regardless of whether they are actively employed) and their Beneficiaries
- (b) Within each category, assets shall be allocated pro-rata with respect to the total present value of benefits expected for each Participant or Beneficiary within the category, and payments to each Participant or Beneficiary shall be made to the extent of the assets allocated to each Participant or Beneficiary.
- (c) Upon receipt of a contribution from the Company necessary to make up for a short-fall in the payments due, the Trustee shall resume payments to all the Participants and Beneficiaries under the Arrangements. Following a Change in Control, the Trustee shall have the right and duty to compel a contribution to the Trust from the Company to make-up for any short-fall.

Section 5. Payments to the Company

- (a) Except as provided in Section 1(h), Section 2(b), Section 3, Section 5(b), and Section 8(a) hereof, the Company shall have no right or power to direct the Trustee to return to the Company or to divert to others any of the Trust assets before all payment of benefits have been made to Participants and their Beneficiaries pursuant to the terms of the Arrangements.
- (b) In the event that the Company, prior to a Change in Control, or the Trustee in its sole and absolute discretion, after a Change in Control, determines that the Trust assets exceed one-hundred twenty percent (120%) of the anticipated benefit obligations and administrative expenses that are to be paid under the Arrangements, the Trustee, at the written direction of the Company, prior to a Change in Control, or the Trustee in its sole and absolute discretion, after a Change in Control, shall distribute to the Company such excess portion of Trust assets.

Section 6. Investment Authority

- (a) The Trustee shall not be liable in discharging its duties hereunder, including without limitation its duty to invest and reinvest the Fund, if it acts for the exclusive benefit of the Participants and their Beneficiaries, in good faith and as a prudent person would act in accomplishing a similar task and in accordance with the terms of this Trust Agreement and any applicable federal or state laws, rules or regulations.
- (b) Prior to a Change in Control, the Company shall have the right, subject to this Section, to direct the Trustee with respect to investments.
 - (1) The Company may direct the Trustee to segregate all or a portion of the Fund in a separate investment account or accounts and may appoint one or more investment managers and/or an investment committee established by the Company to direct

the investment and reinvestment of each such investment account or accounts. In such event, the Company shall notify the Trustee of the appointment of each such investment manager and/or investment committee. No such investment manager shall be related, directly or indirectly, to the Company, but members of the investment committee may be employees of the Company.

- (2) Thereafter, until a Change in Control, the Trustee shall make every sale or investment with respect to such investment account as directed in writing by the investment manager or investment committee. It shall be the duty of the Trustee to act strictly in accordance with each direction. The Trustee shall be under no duty to question any such direction of the investment manager or investment committee, to review any securities or other property held in such investment account or accounts acquired by it pursuant to such directions or to make any recommendations to the investment managers or investment committee with respect to such securities or other property.
- (3) Notwithstanding the foregoing, the Trustee, without obtaining prior approval or direction from an investment manager or investment committee, shall invest cash balances held by it from time to time in short term cash equivalents including, but not limited to, through the medium of any short term common, collective or commingled trust fund established and maintained by the Trustee subject to the instrument establishing such trust fund, U.S. Treasury Bills, commercial paper (including such forms of commercial paper as may be available through the Trustee's Trust Department), certificates of deposit (including certificates issued by the Trustee in its separate corporate capacity), and similar type securities, with a maturity not to exceed one year; and, furthermore, sell such short term investments as may be necessary to carry out the instructions of an investment manager or investment committee regarding more permanent type investment and directed distributions.
- (4) The Trustee shall neither be liable nor responsible for any loss resulting to the Fund by reason of any sale or purchase of an investment directed by an investment manager or investment committee nor by reason of the failure to take any action with respect to any investment which was acquired pursuant to any such direction in the absence of further directions of such investment manager or investment committee.
- (5) Notwithstanding anything in this Agreement to the contrary, the Trustee shall be indemnified and saved harmless by the Company from and against any and all personal liability to which the Trustee may be subjected by carrying out any directions of an investment manager or investment committee issued pursuant hereto or for failure to act in the absence of directions of the investment manager or investment committee including all expenses reasonably incurred in its defense in the event the Company fails to provide such defense; provided, however, the

Trustee shall not be so indemnified if it participates knowingly in, or knowingly undertakes to conceal, an act or omission of an investment manager or investment committee, having actual knowledge that such act or omission is a breach of a fiduciary duty; provided further, however, that the Trustee shall not be deemed to have knowingly participated in or knowingly undertaken to conceal an act or omission of an investment manager or investment committee with knowledge that such act or omission was a breach of fiduciary duty by merely complying with directions of an investment manager or investment committee or for failure to act in the absence of directions of an investment manager or investment committee. The Trustee may rely upon any order, certificate, notice, direction or other documentary confirmation purporting to have been issued by the investment manager or investment committee which the Trustee believes to be genuine and to have been issued by the investment manager or investment committee. The Trustee shall not be charged with knowledge of the termination of the appointment of any investment manager or investment committee until it receives written notice thereof from the Company.

- (6) The Company, prior to a Change in Control, may direct the Trustee to invest in securities (including stock and the rights to acquire stock) or obligations issued by the Company.
 - (7) All rights associated with respect to any investment held by the Trust, including but not limited to, exercising or voting of proxies, in person or by general or limited proxy, shall be in accordance with and as directed in writing by the Company or its authorized representative.
- (c) Subsequent to a Change in Control, the Trustee shall have the power in investing and reinvesting the Fund in its sole discretion:
- (1) To invest and reinvest in any readily marketable common and preferred stocks (including any stock or security of the Company), bonds, notes, debentures (including convertible stocks and securities but not including any stock or security of the Trustee other than a de minimus amount held in a collective or mutual fund), certificates of deposit or demand or time deposits (including any such deposits with the Trustee), limited partnerships or limited liability companies, private placements and shares of investment companies, and mutual funds, without being limited to the classes or property in which the Trustees are authorized to invest by any law or any rule of court of any state and without regard to the proportion any such property may bear to the entire amount of the Fund. Without limitation, the Trustee may invest the Trust in any investment company (including any investment company or companies for which Wachovia Bank, N.A. or an affiliated company acts as the investment advisor {"Special Investment Companies"}) or, any insurance contract or contracts issued by an insurance company or companies in each case as the Trustee may determine provided that

the Trustee may in its sole discretion keep such portion of the Trust in cash or cash balances for such reasonable periods as may from time to time be deemed advisable pending investment or in order to meet contemplated payments of benefits;

- (2) To invest and reinvest all or any portion of the Fund collectively through the medium of any proprietary mutual fund that may be established and maintained by the Trustee;
- (3) To commingle for investment purposes all or any portion of the Fund with assets of any other similar trust or trusts established by the Company with the Trustee for the purpose of safeguarding deferred compensation or retirement income benefits of its employees and/or directors;
- (4) To retain any property at any time received by the Trustee;
- (5) To sell or exchange any property held by it at public or private sale, for cash or on credit, to grant and exercise options for the purchase or exchange thereof, to exercise all conversion or subscription rights pertaining to any such property and to enter into any covenant or agreement to purchase any property in the future;
- (6) To participate in any plan of reorganization, consolidation, merger, combination, liquidation or other similar plan relating to property held by it and to consent to or oppose any such plan or any action thereunder or any contract, lease, mortgage, purchase, sale or other action by any person;
- (7) To deposit any property held by it with any protective, reorganization or similar committee, to delegate discretionary power thereto, and to pay part of the expenses and compensation thereof for any assessments levied with respect to any such property to be deposited;
- (8) To extend the time of payment of any obligation held by it;
- (9) To hold uninvested any moneys received by it, without liability for interest thereon, but only in anticipation of payments due for investments, reinvestments, expenses or disbursements;
- (10) To exercise all voting or other rights with respect to any property held by it and to grant proxies, discretionary or otherwise;
- (11) For the purposes of the Trust, to borrow money from others, to issue its promissory note or notes therefor, and to secure the repayment thereof by pledging any property held by it;

- (12) To employ suitable contractors and counsel, who may be counsel to the Company or to the Trustee, and to pay their reasonable expenses and compensation from the Fund to the extent not paid by the Company;
- (13) To register investments in its own name or in the name of a nominee; to hold any investment in bearer form; and to combine certificates representing securities with certificates of the same issue held by it in other fiduciary capacities or to deposit or to arrange for the deposit of such securities with any depository, even though, when so deposited, such securities may be held in the name of the nominee of such depository with other securities deposited therewith by other persons, or to deposit or to arrange for the deposit of any securities issued or guaranteed by the United States government, or any agency or instrumentality thereof, including securities evidenced by book entries rather than by certificates, with the United States Department of the Treasury or a Federal Reserve Bank, even though, when so deposited, such securities may not be held separate from securities deposited therein by other persons; provided, however, that no securities held in the Fund shall be deposited with the United States Department of the Treasury or a Federal Reserve Bank or other depository in the same account as any individual property of the Trustee, and provided, further, that the books and records of the Trustee shall at all times show that all such securities are part of the Trust Fund;
- (14) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, respectively, to commence or defend suits or legal proceedings to protect any interest of the Trust, and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal; provided, however, that the Trustee shall not be required to take any such action unless it shall have been indemnified by the Company to its reasonable satisfaction against liability or expenses it might incur therefrom;
- (15) Subject to Section 7, to hold and retain policies of life insurance, annuity contracts, and other property of any kind which policies are contributed to the Trust by the Company or any subsidiary of the Company or are purchased by the Trustee;
- (16) To hold any other class of assets which may be contributed by the Company and that is deemed reasonable by the Trustee, unless expressly prohibited herein;
- (17) To loan any securities at any time held by it to brokers or dealers upon such security as may be deemed advisable, and during the terms of any such loan to permit the loaned securities to be transferred into the name of and voted by the borrower or others; and
- (18) Generally, to do all acts, whether or not expressly authorized, that the Trustee may deem necessary or desirable for the protection of the Fund.

- (d) Following a Change in Control, the Trustee shall have the sole and absolute discretion in the management of the Trust assets and shall have all the powers set forth under Section 6(c). In investing the Trust assets, the Trustee shall consider:
 - (1) the needs of the Arrangements;
 - (2) the need for matching of the Trust assets with the liabilities of the Arrangements; and
 - (3) the duty of the Trustee to act solely in the best interests of the Participants and their Beneficiaries.
- (e) The Trustee shall have the right, in its sole discretion, to delegate its investment responsibility to an investment manager who may be an affiliate of the Trustee. In the event the Trustee shall exercise this right, the Trustee shall remain, at all times responsible for the acts of an investment manager. The Trustee shall have the right to purchase an insurance policy or an annuity to fund the benefits of the Arrangements.
- (f) The Company shall have the right at any time, and from time to time in its sole discretion, to substitute assets (other than securities issued by the Trustee or the Company) of equal fair market value for any asset held by the Trust. This right is exercisable by the Company in a nonfiduciary capacity without the approval or consent of any person in a fiduciary capacity; provided, however, that, following a Change in Control, no such substitution shall be permitted unless the Trustee determines that the fair market values of the substituted assets are equal.

Section 7. Insurance Contracts

- (a) To the extent that the Trustee is directed by the Company prior to a Change in Control to invest part or all of the Trust Fund in insurance contracts, the type and amount thereof shall be specified by the Company. The Trustee shall be under no duty to make inquiry as to the propriety of the type or amount so specified.
- (b) Each insurance contract issued shall provide that the Trustee shall be the owner thereof with the power to exercise all rights, privileges, options and elections granted by or permitted under such contract or under the rules of the insurer. The exercise by the Trustee of any incidents of ownership under any contract shall, prior to a Change in Control, be subject to the direction of the Company. After a Change in Control, the Trustee shall have all such rights.
- (c) The Trustee shall have no power to name a beneficiary of the policy other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to

a successor Trustee, or to loan to any person the proceeds of any borrowing against an insurance policy held in the Trust Fund.

- (d) No insurer shall be deemed to be a party to the Trust and an insurer's obligations shall be measured and determined solely by the terms of contracts and other agreements executed by the insurer.

Section 8. Disposition of Income

- (a) Prior to a Change in Control, all income received by the Trust, net of expenses and taxes, may be returned to the Company or accumulated and reinvested within the Trust at the direction of the Company.
- (b) Following a Change in Control, all income received by the Trust, net of expenses and taxes payable by the Trust, shall be accumulated and reinvested within the Trust.

Section 9. Accounting by The Trustee

The Trustee shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be made, including such specific records as shall be agreed upon in writing between the Company and the Trustee. Within forty-five (45) days following the close of each calendar year and within forty-five (45) days after the removal or resignation of the Trustee, the Trustee shall deliver to the Company a written account of its administration of the Trust during such year or during the period from the close of the last preceding year to the date of such removal or resignation setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be. The Company may approve such account by an instrument in writing delivered to the Trustee. In the absence of the Company's filing with the Trustee objections to any such account within one hundred eighty (180) days after its receipt, the Company shall be deemed to have so approved such account. In such case, or upon the written approval by the Company of any such account, the Trustee shall, to the extent permitted by law, be discharged from all liability to the Company for its acts or failures to act described by such account. Notwithstanding anything herein to the contrary, the Company shall not be deemed to have approved any account and the Trustee shall not be discharged from any liability for any negligence, willful misconduct, or the breach of any of the Trustee's duties under this Trust Agreement. The foregoing, however, shall not preclude the Trustee from having its accounting settled by a court of competent jurisdiction. The Trustee shall be entitled to hold and to commingle the assets of the Trust in one Fund for investment purposes but at the direction of the Company prior to a Change in Control, the Trustee shall create one or more sub-accounts.

Section 10. Responsibility of The Trustee

- (a) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, provided, however, that the Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by the Company which is contemplated by, and in conformity with, the terms of the Arrangements or this Trust and is given in writing by the Company. In the event of a dispute between the Company and a party, the Trustee may apply to a court of competent jurisdiction to resolve the dispute, subject, however to Section 2(d) hereof.
- (b) The Company hereby indemnifies the Trustee against reasonable losses, liabilities, claims, costs and expenses in connection with the establishment, maintenance and administration of the Trust, unless resulting from the negligence or willful misconduct of Trustee. The Trustee hereby indemnifies the Company against reasonable losses, liabilities, claims, costs and expenses in connection with the Trustee's negligence or willful misconduct with the Trustee's establishment, maintenance, and administration of the Trust. If the Trustee undertakes or defends any litigation arising in connection with this Trust or to protect a Participant's or Beneficiary's rights under the Arrangements, the Company agrees to indemnify the Trustee against the Trustee's reasonable costs, reasonable expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If the Company does not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustee may obtain payment from the Trust.
- (c) Prior to a Change in Control, the Trustee may consult with legal counsel (who may also be counsel for the Company generally) with respect to any of its duties or obligations hereunder. Following a Change in Control the Trustee shall select independent legal counsel and may consult with counsel or other persons with respect to its duties and with respect to the rights of Participants or their Beneficiaries under the Arrangements.
- (d) The Trustee may hire agents, accountants, actuaries, investment advisors, financial consultants or other professionals to assist it in performing any of its duties or obligations hereunder and may rely on any determinations made by such agents and information provided to it by the Company.
- (e) The Trustee shall have, without exclusion, all powers conferred on the Trustee by applicable law, unless expressly provided otherwise herein.
- (f) Notwithstanding any powers granted to the Trustee pursuant to this Trust Agreement or to applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of section

301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Internal Revenue Code.

Section 11. Compensation and Expenses of The Trustee

The Trustee's compensation shall be as agreed in writing from time to time by the Company and the Trustee. The Company shall pay all administrative expenses and the Trustee's fees and shall promptly reimburse the Trustee for any fees and expenses of its agents. If not so paid within thirty (30) days of being invoiced, the fees and expenses shall be paid from the Trust.

Section 12. Resignation and Removal of The Trustee

- (a) Prior to a Change in Control, the Trustee may resign at any time by written notice to the Company, which shall be effective sixty (60) days after receipt of such notice unless the Company and the Trustee agree otherwise. Following a Change in Control, the Trustee may resign only after the appointment of a successor Trustee.
- (b) The Trustee may be removed by the Company on sixty days (60) days notice or upon shorter notice accepted by the Trustee prior to a Change in Control. Subsequent to a Change in Control, the Trustee may only be removed by the Company with the consent of a Majority of the Participants.
- (c) If the Trustee resigns within two years after a Change in Control, as defined herein, the Company, or if the Company fails to act within a reasonable period of time following such resignation, the Trustee, shall apply to a court of competent jurisdiction for the appointment of a successor Trustee which satisfies the requirements of Section 13 or for instructions.
- (d) Upon resignation or removal of the Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within sixty (60) days after receipt of notice of resignation, removal or transfer, unless the Company extends the time limit.
- (e) If the Trustee resigns or is removed, a successor shall be appointed by the Company, in accordance with Section 13 hereof, by the effective date of resignation or removal under paragraph(s) (a) or (b) of this section. If no such appointment has been made, the Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of the Trustee in connection with the proceeding shall be allowed as administrative expenses of the Trust.

Section 13. Appointment of Successor

- (a) If the Trustee resigns or is removed in accordance with Section 12 hereof, the Company may appoint, subject to Section 12, any third party national banking association with a market capitalization exceeding \$100,000,000 to replace the Trustee upon resignation or

removal. The successor Trustee shall have all of the rights and powers of the former Trustee, including ownership rights in the Trust. The former Trustee shall execute any instrument necessary or reasonably requested by the Company or the successor Trustee to evidence the transfer.

- (b) The successor Trustee need not examine the records and acts of any prior Trustee and may retain or dispose of existing Trust assets, subject to Section 8 and 9 hereof. The successor Trustee shall not be responsible for and the Company shall indemnify and defend the successor Trustee from any claim or liability resulting from any action or inaction of any prior Trustee or from any other past event, or any condition existing at the time it becomes successor Trustee.

Section 14. Amendment or Termination

- (a) This Trust Agreement may be amended by a written instrument executed by the Trustee and the Company, except as otherwise provided in this Section 14. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Arrangements or shall make the Trust revocable.
- (b) Following a Change in Control, the Trust shall not terminate until the date on which Participants and their Beneficiaries have received all of the benefits due to them under the terms and conditions of the Arrangements.
- (c) Upon written approval of all Participants or Beneficiaries entitled to payment of benefits pursuant to the terms of the Arrangements, the Company may terminate this Trust prior to the time all benefit payments under the Arrangements have been made. All assets in the Trust at termination shall be returned to the Company.
- (d) This Trust Agreement may not be amended by the Company following a Change in Control without the written consent of a Majority of the Participants.

Section 15. Change in Control

- (a) For purposes of this Trust, the following terms shall be defined as set forth below:
 - (1) Change in Control shall have the same meaning as provided for in the Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II.
 - (2) Majority of Participants shall mean participants whose vested account balance within the Trust exceed 50% of the Trust Assets
- (b) The Chief Executive Officer of the Company shall have the specific authority to determine whether a Change in Control has transpired, and shall be required to give the Trustee notice

of a Change in Control. The Trustee shall be entitled to rely upon such notice, but if the Trustee receives notice of a Change in Control from another source, the Trustee shall make its own independent determination.

Section 16. Miscellaneous

- (a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (b) Benefits payable to Participants and their Beneficiaries under this Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- (c) This Trust Agreement shall be governed by and construed in accordance with the laws of California.

IN WITNESS WHEREOF, this Grantor Trust Agreement has been executed on behalf of the parties hereto on the day and year first above written.

**TAYLOR MADE
GOLF COMPANY, INC**

By: _____

Its: _____

M. M. M.
Chief Executive Officer

**WACHOVIA BANK, NATIONAL
ASSOCIATION as TRUSTEE**

By: _____

Its: _____

Attachment A

The following Arrangements are covered by this Trust:

Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan

Taylor Made Golf Company, Inc. Nonqualified Deferred Compensation Plan II

PLACE STICKER AT TOP OF ENVELOPE OR THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL

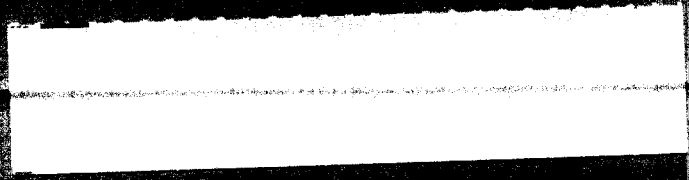
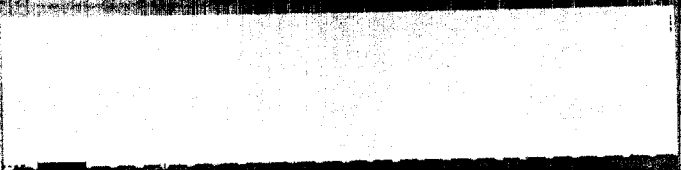
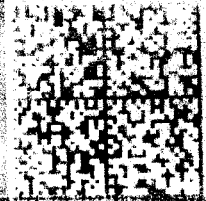


7007 2560 0001 370 6232

Hasler

\$0.43

U.S. POSTAGE



Receipt Requested
Certified Mail

Employee Benefits Security Administration
Room 4450
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20030