

RIVERSIDE SHERIFFS' ASSOCIATION

BENEFIT TRUST

TRUST AGREEMENT



Restated and Adopted

May 9, 2012

ORIGINAL

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ORIGINAL

**TRUST AGREEMENT OF THE
RIVERSIDE SHERIFFS' ASSOCIATION
BENEFIT TRUST**

I. INTRODUCTION

A. Name. The official name of the Trust created hereby (which is generally referred to hereafter as the "Trust") is the RIVERSIDE SHERIFFS' ASSOCIATION BENEFIT TRUST. The trust was established on January 6, 1994.

B. Purpose. It is the purpose of this Trust to use and invest the contributions received by it for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administration. This purpose shall be accomplished in accordance with all applicable laws.

C. Trust Irrevocable. The Trust shall be irrevocable (although it may be terminated as hereafter provided). No part of the Trust's corpus or income shall ever revert to or inure to the benefit of the County or of any employer, except for the return of mistaken contributions as provided by section C of Article III of this trust agreement.

D. Benefits. The type of benefits which may be provided, which are referred to hereafter as the "benefits", include the payment of hospital, medical, dental, drug, vision care, disability life insurance and other benefits incidental thereto. The specific benefits from time to time provided, and the eligibility requirements therefore, are set forth in one or more plan documents referred to hereafter as the "Plan." The Plan may include more than one set of benefits and eligibility rules to take account of different contribution rates or other pertinent factors. The Plan as amended from time to time is incorporated herein by reference and is a part of this trust agreement.

II. DEFINITIONS

The following words and phrases have the special meanings indicated. Other words and phrases with special meanings are defined where they first appear unless their meaning is apparent from the context.

A. "Association" means the Riverside Sheriffs' Association or any successor thereto.

B. "Board of Trustees" means the group of individuals appointed to administer the Trust as provided below. As a group they are referred to as the "Board." The individual members, including any alternates when acting in place of regular members, are referred to as "Trustee".

C. "County" means the County of Riverside.

D. "Participant" means any person who directly contributes to the Trust or on whose behalf contributions have been properly paid to the Trust and who either (1) is currently eligible for benefits or (2) has contributions credited to his or her account by the Trust to be used in determining the participant's or Beneficiaries' eligibility for benefits.

E. "Beneficiary" means any person designated in accordance with the Plan who is or may become entitled to benefits there under.

F. "Plan Year" means the fiscal year on which the records of the Plan and Trust are kept.

G. "Fund Custodian" means any bank or other institution, which may be designated by the Board of Trustees as custodian of Trust assets in accordance with Article VII.

H. "Investment Manager" means any person who is appointed as such by the Board of Trustees in accordance with Article VIII.

III. COUNTY OBLIGATIONS

A. Obligation to Contribute. The County's obligation to contribute, the due date for those contributions, and the penalty for non-payment or late payment of contributions shall be as set forth in the applicable memorandum(s) of understanding.

B. Mistaken Contributions. Within the discretion of the Board of Trustees and to the extent permitted under the Internal Revenue Code, regulations issued there under, mistaken County contributions shall be used to offset the amount of the County contribution next due the Trust after the County in writing notifies the Trust of the mistake. A mistaken contribution may not be used as an offset by the County unless a written refund request has been submitted to the Trust by the County within two (2) years from the end of the month for which the contributions were paid.

C. Limitation on Liability of the County. The County and its bargaining representatives shall have only such liabilities to the Trust as are set forth or authorized under a memorandum of understanding. They shall have no other liability for the operation or obligations of the Trust.

IV. FIDUCIARIES

A. General Rules. The Board of Trustees shall be a fiduciary. Any other person shall be a fiduciary only to the extent he or she has discretionary authority or discretionary control respecting management of the Trust or Plan; or exercises any authority or control respecting management or disposition of Trust assets; or has any discretionary authority or discretionary responsibility in the administration of the Plan; or renders investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan and Trust. It is not intended that the Association or any attorney, accountant, broker, actuary, office personnel, professional administrator or consultant (other than an Investment Manager) shall itself be a "fiduciary" simply as a result of performing services for the Trust pursuant to agreement with the Board of Trustees. Therefore, such persons shall not perform acts of the type set forth above, which would make them fiduciaries except as specifically authorized by the Board of Trustees.

B. Fiduciary Standards. All fiduciaries with respect to the Plan (whether or not "named fiduciaries") shall discharge their duties solely in the interest of the Participants and Beneficiaries in furtherance of the Trust's purpose as set forth in Article I above and in

accordance with the requirements of this trust agreement, and the Plan. In so doing, they shall use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

C. Allocation of Fiduciary Responsibilities. Fiduciary responsibilities may be allocated or delegated as follows, so long as the allocation or delegation meets the fiduciary standards set forth above and is evidenced by an appropriate resolution of the Board of Trustees:

(1) Any responsibility to manage or control Plan assets may be allocated only among the Trustees, except insofar as such responsibility is delegated to an Investment Manager as provided hereafter.

(2) Other responsibilities may be allocated or delegated to any person, but any Participant or Beneficiary whose claim for benefits is denied shall have the right to have the denial ultimately reviewed by the Board of Trustees itself.

D. Liability of Fiduciaries. In no event will a fiduciary be liable with respect to a breach of a fiduciary duty if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary. Furthermore, to the fullest extent permitted by law, no fiduciary shall be liable for any act or omission of any other person. Specifically:

(1) If a specific responsibility, obligation or duty relating to control or management of Plan assets is allocated among the Trustees or any Investment Manager, then one to whom such a function has not been allocated shall not be liable either individually or as a trustee for any loss to the Trust arising from any acts or omissions on the part of those to whom such function has been allocated.

(2) Upon the proper allocation or delegation of any other fiduciary responsibility, neither the Board of Trustees nor any Trustee shall be liable for the acts or omissions of the person or persons to whom such responsibility has been allocated or delegated, provided that there has been no violation of the fiduciary standards set forth above with respect to such allocation or delegation, nor with respect to the establishment or implementation of procedures relative thereto, nor in continuing the delegation. Nothing herein shall be construed as limiting a fiduciary's liability for a breach of fiduciary responsibility of another fiduciary with respect to the Plan if:

(a) he or she knowingly participates in or undertakes to conceal an act or omission of such other fiduciary knowing it is a breach;

(b) by his or her failure to comply with fiduciary standards in the administration of his or her responsibilities making him or her a fiduciary, he or she has enabled such other fiduciary to commit a breach; or

(c) he or she has knowledge of a breach by such other fiduciary and he or she fails to make reasonable efforts under the circumstances to remedy the breach.

E. Compensation and Expenses. To the extent approved by the Board of Trustees, fiduciaries may receive reasonable compensation for services rendered by them. However, no fiduciary who already receives full-time pay from the County of Riverside or the Association

shall receive compensation for his or her services. To the extent authorized by the Board of Trustees, all fiduciaries may be reimbursed for expenses actually and properly incurred in accordance with the performance of their duties hereunder, or given an appropriate advance against such reimbursement subject to immediate repayment if the advance should exceed the amount to which they are entitled hereunder. Expenses for which reimbursement may be authorized shall include, without limitation, those incurred in attendance at meetings and other functions of the Board of Trustees or its committees, or in attendance at institutes, seminars, conferences or workshops relating to matters of common interest to trusts such as this, or in defending against legal actions which do not result in a judgment that the Board of Trustees has violated any responsibility, obligation or duty.

F. Bonds and Insurance. The Board of Trustees may direct that such bonds be obtained, as it deems appropriate for itself or others. The Board of Trustees may also direct that such insurance be purchased, as it deems appropriate to protect itself, the Trust, or others. The cost of such bonds or insurance shall be paid by the Trust; provided, however, that any bonds or insurance purchased with Trust funds which insure against liability or losses occurring by reason of the act or omission of a fiduciary shall permit recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary. In addition, any fiduciary may acquire such additional insurance as it deems appropriate to protect itself (including, if available, a waiver of the carrier's retained right of recourse in any insurance policy purchased with Trust funds), as long as the cost of such insurance is not paid by the Trust.

V. COMPOSITION AND PROCEDURES OF THE BOARD OF TRUSTEES

A. Composition of the Board of Trustees. The Board of Trustees shall be composed of six (6) members of the RSA Board of Directors and the RSA Executive Director. The Executive Director shall act as the Trust's Administrative Officer and only vote on motions of the Board in the event of a tie. In the event that the Association does not employ an Executive Director, the Association President or other designee appointed by the Association Board of Directors shall assume all duties and responsibilities of the Executive Director as herein stated.

B. Selection of Trustees. In the event of a vacant Trustee position, the remaining Trustees shall nominate a person to be appointed Trustee to fill the vacancy. Persons nominated as Trustee shall be a sitting RSA Director or Officer at the time of nomination and be confirmed by a majority vote of the RSA Board of Directors during a regular or special meeting. In the event that no RSA Director or Officer is willing to accept the appointment, then the Trustees may nominate a person who is a Plan participant and RSA member in good standing.

C. Rules of Procedure of the Board of Trustees. The Board of Trustees shall operate pursuant to the same rules as are applicable to the Association Board of Directors, including as those rules are amended, modified, or interpreted. These rules of operation include but are not limited to rules for voting, determining a quorum, proxies, and removal from trusteeship.

D. Term of Office. A Trustee shall serve until the Trustee dies, resigns, no longer is a Plan Participant, or is removed by a two-thirds (2/3) majority vote during a regular meeting of the RSA Board of Directors.

E. Acceptance of Office. Each Trustee assuming office as a Trustee shall sign a written acceptance of his or her appointment as a Trustee. The signature shall constitute an

acknowledgment and acceptance of the obligations and responsibilities as a Trustee under this trust agreement.

F. Return of Books and Records. In the event of the removal, resignation, or death of a Trustee, the Trustee or Trustee's legal guardian, conservator, heirs, executor, or personal representative shall forthwith turn over to the Chair any and all records, books, documents, monies, and other property in the possession of the Trustee or under his or her control that belong to the Trust or that were received in his or her capacity as Trustee.

G. Officers. The Chair of the Trust shall be selected by majority vote of the Board of Trustees during a regular meeting in January of each year and shall preside at all meetings of the Board of Trustees. In the absence of the Chair, the Trustees shall select an acting Chair who shall assume the duties of the Chair.

H. Action without a Meeting. The Trustees may act without a meeting through a written instrument executed by a majority of the Trustees. Said action may be accomplished through an electronic medium to facilitate timely action on time-sensitive issues.

I. Establishment of Administrative Office. The Board of Trustees may establish an administrative office and shall staff such office in such manner, as it deems appropriate, including by contract with such entity as it may select.

J. Execution of Instruments. The Board of Trustees shall authorize two (2) or more persons, as it deems appropriate, to execute checks drawn on any bank accounts maintained by it, or to issue checks bearing facsimile signatures of such persons. Furthermore, any two (2) Trustees, one of whom is the Chair or RSA Executive Director, may execute any contracts or other legal documents on behalf of the Trust if so authorized by the Board of Trustees. Instructions to any Investment Manager or other communications shall be similarly executed or may be executed in such other manner as the Board of Trustees may have previously authorized. Any person may rely on any documents executed in accordance with this provision as having been duly authorized by the Board of Trustees and executed in accordance with the terms of this trust agreement. Legal title to Trust assets may be held in the name of the Fund Custodian, and, if it is, only the Fund Custodian need execute any documents to acquire or dispose of such assets.

VI. AUTHORITY OF THE BOARD OF TRUSTEES

A. General Authority. Subject to its powers of allocation and delegation set forth elsewhere hereunder, the Board of Trustees shall have exclusive authority to control and manage the operation and administration of the Trust and its assets.

B. Establishment of Plan and Claim Procedures. The Board of Trustees shall establish the benefits to be provided, the eligibility requirements therefore, and all other matters appropriate to the Plan. It may from time to time amend any or all of the provisions of the Plan in the manner set forth hereafter.

C. Records and Reports. The Board of Trustees shall keep on file at the administrative office and in such other places as may be necessary to make available all pertinent information to Participants and Beneficiaries, a copy of this trust agreement, the Plan and all annual and interim

reports made in connection therewith; and shall cause to be furnished to each Participant and Beneficiary such descriptions and information as is deemed appropriate by the Board of Trustees. It shall also file with the appropriate governmental agency any required forms, reports and information. The Board of Trustees shall make copies of all documents described *above* and other documents under which the Plan is established or operated available for examination by any Participant or Beneficiary and shall furnish copies of such documents to any Participant or Beneficiary upon written request, and may in its discretion charge such reasonable amounts therefore.

D. Audit. The Board of Trustees shall engage on behalf of all Participants an independent certified public accountant to prepare an annual audit and give his or her opinion as to whether the financial statements of the Trust are presented fairly and in conformity with generally accepted accounting principles applied on a consistent basis with that of the preceding year.

E. Miscellaneous Powers. The Board of Trustees may exercise all other lawful powers appropriate to the exercise of its authority hereunder, including the following:

- (1) To pay all Trust expenses;
- (2) To establish such rules and regulations as may be necessary in the administration of the Trust;
- (3) To sue or be sued on behalf of this Trust. The Board of Trustees shall be the only necessary party plaintiff or defendant in any legal action, and service of process upon it may be made upon any Trustee;
- (4) To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving this Trust, including, but not by way of limitation, any claim for contributions or other sums payable hereto, and to enforce or contest any other obligation, liability or claim by appropriate legal proceedings if, in its sole discretion, it is in the interest of the Trust to do so, or to assign any such claim and allow the assignee to institute legal proceedings in its own name to enforce collection;
- (5) To require any person with obligations or rights hereunder to furnish, or permit an audit of, any reasonable information, data, and documents which are pertinent in verifying the accuracy of contributions and acting upon claims for benefits, or which are otherwise pertinent in administering this Trust;
- (6) To publish, file and distribute any reports, to the extent required by law;
- (7) To construe any of the terms or provisions of the Trust or Plan; and any such construction shall be binding on all persons concerned;
- (8) To determine all questions relating to eligibility for benefits, how they will be provided, and similar questions, including the establishment of rules relating to the extent, if any, for which credit will be given for required contributions not actually received by the Trust, and the Board of Trustees' decisions on such questions shall be binding on all persons, except as may be otherwise specifically provided herein or in regulations duly adopted by the Board of Trustees;
- (9) To retain or employ attorneys, accountants, actuaries, office personnel, professional administrators and consultants and other suitable agents and employees, and it

shall be immaterial that the persons so retained or employed have been retained or employed by anyone else with rights or obligations hereunder. Any agreement with such persons may be for any period of time the Board of Trustees deems appropriate, but it may terminate any such agreement at any time, even if by so doing this Trust might be liable for breach of contract;

(10) To establish such reserves as it deems appropriate;

(11) To provide Plan benefits either directly from Trust assets or through one or more contracts with organizations legally qualified to enter into contracts providing Plan Benefits (including insurance companies), or partly by direct payment and partly through such contracts. The Board of Trustees shall exercise all powers granted to contract holders under any such contract except and until it relinquishes them in writing. (Nothing in this Trust shall be construed as making any organization with which this Trust contracts a party to this trust agreement, nor as imposing any obligations on it; instead, such organization's obligations shall be only such as are contained in its agreements with the Board of Trustees);

(12) To decline or terminate the participation of individuals if there are repeated failures to comply with the terms of the Plan or Trust Agreement by those individuals; and

(13) To enforce all obligations of the County or other persons, if any, to make contributions to the Trust by any means the Board of Trustees deems appropriate, including hiring attorneys to pursue such claims or assigning them to a collection agency.

F. Limitation on Powers. The Board of Trustees shall not have authority to negotiate with representatives of the County of Riverside on matters pertaining to wages, hours, or other conditions of employment.

G. Limitation on Liability. Each Trustee shall discharge his or her duties hereunder in accordance with the provisions and standards set forth herein. It is to be noted, however, that trusts of this type are relatively recent in origin, and their management presents problems concerning which there has been only limited experience. Also, individuals serving as Trustees hereunder generally do so by virtue of their regular employment and without compensation. For these reasons, the parties desire to limit the obligations of the Trustees, and to hold them harmless against any liabilities hereunder, to the fullest extent permitted by law. Therefore, a Trustee shall not be liable for any act or omission to act, so long as it is not committed intentionally or with indifference to the best interests of Participants or their Beneficiaries, and the Trust shall exonerate, defend, reimburse and hold him or her harmless against any such act or omission to act. As examples, a Trustee shall be protected:

(1) In acting upon any papers, documents, data, or information reasonably believed by him or her to be true and accurate and to be made, executed, delivered, or assembled by the proper parties;

(2) For any act concerning which he or she reasonably relies upon the opinion of legal counsel;

(3) For the act of any agent, employee, consultant or attorney chosen and retained with reasonable care; or

(4) For any act or omission of another Trustee in which he or she does not join.

If any of the foregoing provisions should be held by a court of competent jurisdiction to go beyond what is legally permissible, the remaining provisions shall nevertheless be given effect insofar as the law permits, it being the intention that any invalid provisions be severable from the others.

H. Standard of Review. No action of the Board of Trustees may be revised, changed or modified by any arbitrator, court or other entity unless the party seeking such action has exhausted all of its administrative remedies under this trust agreement, and is able to show by clear and convincing evidence that the Board of Trustees' decision was arbitrary and capricious in light of the information actually available to it, and considered by it, at the time of its decision. The purpose of this provision is to make the actions of the Board of Trustees binding on all persons to the fullest extent permitted by law. Therefore, if any of the foregoing provisions should be held to go beyond what is legally permissible, the remaining provisions shall nevertheless be given effect insofar as the law permits.

VII. FUND CUSTODIAN

A. Appointment. The Board of Trustees may select a bank, trust company, insurance company or other qualified institution to act as Fund Custodian hereunder and, if a bank or trust company is selected, may designate it as a corporate co-trustee. The selection shall be evidenced by one or more separate written agreements in which the Fund Custodian agrees to act, which shall specify the Fund Custodian's fees and other charges and such other matters as may be agreed upon; said agreements are incorporated herein by reference and made a part hereof, and if there is any inconsistency between their provisions and the provisions of this document, the former shall govern to the extent that they are lawful. If no Fund Custodian is selected or acting, any powers given it below shall remain with the Board of Trustees, subject to its power of delegation.

B. Resignation or Removal. Any Fund Custodian may be removed by the Board of Trustees at any time upon delivery to the Fund Custodian of a written notice of removal, and any Fund Custodian may resign at any time by delivering a written notice of resignation to the Board. The removal or resignation shall be effective on the date specified in the notice, but, in the case of the resignation of the Fund Custodian, such date shall be not less than ninety (90) days from the date the notice is delivered unless the other party consents to an earlier date.

VIII. FUNDING AND INVESTMENTS

A. Funding and Investment Policies. The Board of Trustees shall establish and carry out funding and investment policies and methods consistent with the objectives of the Trust, shall review such policies and methods at appropriate intervals, and shall communicate them to any Investment Manager.

B. Investment Decisions. The Board of Trustees shall manage Plan assets through either a Fund Custodian or any other person, provided that such Fund Custodian or person acknowledges in writing that it is a fiduciary with respect to the Plan and Trust. The appointment, selection, and retention of any Investment Manager shall be solely the responsibility of the Board of Trustees and shall be revocable by it at any time. Any person to whom management powers are delegated shall exercise its powers in accordance with the

funding and investment policies established by the Board of Trustees, but shall have no responsibility for the establishment or adequacy of such policies.

C. Investment Standards. Investments shall be prudent ones and shall be diversified so as to minimize the risk of large losses unless it is clearly prudent not to do so. No fiduciary shall cause the Trust to engage in transactions, which violate these requirements.

D. Investment Powers.

(1) **General Powers.** The Trust assets, or any part thereof, may be invested in securities issued by the United States Government; in bonds; in common or preferred stocks; in other securities listed on any exchange or traded in any over-the-counter market, including shares of mutual investment companies; in pooled investment portfolios managed by insurance companies; in real estate; in annuities; in notes; in mortgages; in certificates of deposit of any bank (including those of any Fund Custodian); in commercial paper; in bankers' acceptances (excluding those of any Fund Custodian); or in any other properties in which this Trust may lawfully invest. If any assets are ever held in which this Trust may not properly invest, they shall be disposed of as promptly as is prudent under the circumstances. The indicia of ownership of Trust assets shall at all times be held within the jurisdiction of a District Court of the United States.

(2) **Specific Powers.** Whoever holds title to Trust assets shall have all rights and powers with respect to investing the Trust property that an absolute owner would have, subject only to any written directions previously received from another fiduciary authorized hereunder to give such directions. These investment powers shall include, without limitation, the following powers in addition to those set forth elsewhere hereunder and others given by law:

(a) To hold in cash in a non-interest bearing account such portion of the Trust assets as may be reasonably required for the day-to-day administration of the Trust and disbursement of benefits, by depositing the same in any bank (including any bank acting as Fund Custodian hereunder), subject to the rules and regulations governing such deposits. Additional cash shall be placed in interest-bearing accounts and/or obligations until such time as it is otherwise invested;

(b) To participate in any plan of lease, merger, consolidation, exchange, foreclosure or reorganization affecting securities held hereunder at any time;

(c) To deposit stocks under voting agreements;

(d) To subscribe for stock or bond privileges;

(e) To vote with respect to all securities or other assets in person or by proxy, except that where an Investment Manager has been appointed and is acting, proxies and other shareholder material with respect to assets under its supervision will be forwarded to it, and it shall be the Investment Manager's responsibility to vote the proxies;

(f) To register securities in the name of a nominee, or to hold the same unregistered and in such form that they will pass by delivery;

(g) To lease, repair, alter, or improve real estate or other assets;

(h) To sell any securities, real estate, or other assets at public or private sale for such prices and upon such terms as it may deem proper, without liability on the part of the purchasers to see to the application of the purchase money; and

(i) To invest Trust assets collectively with funds of other trusts in one or more of the investment funds for employee benefit trusts; and, if any portion of the Trust is so invested, the declaration creating such funds shall be deemed to be incorporated into this trust agreement the same as if fully set forth herein.

IX. AMENDMENT AND TERMINATION

A. Amendments. The trust agreement or Plan may be amended at any time by a majority vote of the Association Board of Directors. It may amend them in whole or in part, and at any time, and all persons with rights or obligations hereunder shall be bound thereby. However, no amendment shall alter or negate the Trust purpose set forth in Article I or any applicable and lawful provision of a Contribution Agreement. Amendments shall be made by written instrument, which must be signed by at least two (2) Association Directors or Officers. Only amendments affecting the rights or obligations of a Fund Custodian shall require its consent.

B. Mandatory Amendments. Amendment of the Trust or Plan shall be mandatory in the following situations:

- (1) When necessary to assure compliance with applicable laws;
- (2) When necessary to assure, if possible, the tax- deductibility of contributions hereto under federal and state income tax laws; and
- (3) When necessary to assure if possible that this Trust remains tax exempt.

C. Termination. The Board of Trustees may terminate the Plan or this Trust at any time. The Trust shall not be terminated without terminating the Plan, but the Plan may be wholly or partially terminated without terminating the Trust. Termination shall be accomplished in the same manner as amendment. Upon termination of the Trust, all obligations shall first be satisfied. The Board of Trustees shall thereupon use the remaining Trust assets to provide Plan benefits in such manner as the Plan may provide, or, in the absence of a Plan provision, to continue to provide Plan benefits in a manner determined by the Board of Trustees for so long as Trust assets permit.

D. Transfer of Assets to Another Benefit Trust. Notwithstanding anything above to the contrary, the Board of Trustees may, if the Trust is wholly or partially terminated, transfer the Trust assets or any portion thereof to the Trustees of any other trust or trusts which provide similar benefits, or may receive assets from any other such Trust which is wholly or partially terminated.

E. Merger. By action of the Board of Trustees, this Trust may be merged, consolidated with, or otherwise combined with any other welfare benefit plan.

X. MISCELLANEOUS

A. Limitation of Liability of Association. The Association and its officers, agents, and attorneys shall not be liable for the operation or obligations of the Trust.

B. Rights and Remedies Limited. No person shall have any right, title, or interest in or to Trust benefits or assets. Nor shall any person have any right to benefits that are otherwise barred by the statute of limitations, unless the person requests payment during his or her lifetime and the Board of Trustees in its sole discretion determines that there are extenuating circumstances justifying payment.

C. Rights Not Transferable. Unless approved in advance by the Board of Trustees, all benefits provided to persons under the Plan shall be paid directly to them or their assignees; shall not be subject to their debts or other obligations; may not be assigned, alienated or used as security by them; and shall not be subject to attachment, execution or other legal proceedings. Notwithstanding the foregoing sentence, if at any time any person entitled to receive future payments from the Trust has already received from the Trust payments in excess of what he or she was entitled to receive as of that date, then the Board of Trustees may withhold from future payments due to his or her Beneficiary such amounts as are necessary to reimburse the Trust for such excess payments.

D. Payments During Incapacity. Notwithstanding any other provisions hereof, if in the judgment of the Board of Trustees any mental, physical or other incapacity prevents a person entitled to benefits from properly handling his or her own affairs, then until any benefits to which he or she is entitled have been claimed by a legally appointed representative, these benefits may, in the discretion of the Board of Trustees, either be held for his or her benefit or paid to any one or more persons or institutions responsible for providing for his or her care and maintenance. The person entitled to the benefits shall promptly be sent notice of any such action.

E. Governing Law, Severability of Provisions and Interpretation. The provisions of this trust agreement shall be interpreted, administered, and enforced according to the applicable laws of the State of California. If any such provision is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective. When interpreting the provisions of this trust agreement, the intention that the Plan and Trust fully comply with the requirements of such laws shall be taken into account, and any ambiguities shall be resolved in favor of compliance therewith. If any provision unambiguously conflicts with any such law, the provisions of the law shall apply instead of the conflicting provision until such time as the conflicting provision can be appropriately amended.

XI. TRUST POLICY CONCERNING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

A. General Policy. The Trust will use Protected Health Information to the extent of and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPPA), the regulations issued there under by the Department of Health and Human Services (HHS), the Health Information and Technology for Economic and

Clinical Health Act ("HITECH"), and any regulations issued thereunder. The Trust will use and disclose Protected Health Information for:

- (1) Purposes related to health care treatment, payment for health care and health care operations;
- (2) When authorized by a participant or a participant's personal representative; and
- (3) When required by law.

B. Definitions.

(1) Breach shall have the meaning set forth under HITECH Section 13400, and any regulations issued thereunder, and means the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. The term "breach" shall not include:

(a) Any unintentional acquisition, access, or use of Protected Health Information by an employee or individual acting under the authority of a Covered Entity or Business Associate if;

i. Such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and

ii. Such information is not further acquired, accessed or used, or disclosed by any person;

(b) Any inadvertent disclosure from an individual who is otherwise authorized to access Protected Health Information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; or

(c) Any such information received as a result of such disclosure if not further acquired, accessed, used, or disclosed without authorization of any person.

(2) Business Associate shall have the meaning set forth in Section 106.103 of Title 45 of the Code of Federal Regulations ("CFR"), and as expanded under Section 13408 of the HITECH Act, but in general shall mean (1) a person who performs a function involving the use or disclosure of Protected Health Information or provides legal, actuarial, accounting, consulting or other administrative or financial services on behalf of or for the Trust, or (2) an organization that provides data transmission of protected health information to a Covered Entity and that requires access on a routine basis to such Protected Health Information.

(3) Covered Entity shall have the meaning set forth in 45 CFR 160.103, and means a health plan, a health care clearinghouse, or a health care provider who transmits an health information in electronic form in connection with a transaction governed by HIPAA.

(4) Electronic Health Record shall have the meaning set forth under HITECH Section 13400, and means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(5) Health Care Operations shall have the meaning set forth under 45 CFR 164.501, and include, but are not limited to, the following activities:

- (a) Quality assessment and improvement activities;
- (b) Population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;
- (c) Rating provider and plan performance, including accreditation, certification, licensing or credentialing activities;
- (d) Underwriting, premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance);
- (e) Conducting or arranging for medical review, legal services and auditing functions, including fraud and abuse detection and compliance programs;
- (f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Trust, including formulary development and administration, development or improvement of payment methods or coverage policies;
- (g) Business management and general administrative activities of the Trust, including, but not limited to:
 - i. management activities relating to the implementations of and compliance with HIPAA's administrative simplification requirements, or
 - ii. customer service, including the provision of data analyses for policyholders, plan sponsors or other customers; or
 - iii. resolution of grievances.
- (h) The sale, transfer, merger, or consolidation of all or part of the Covered Entity with another Covered Entity, or an entity that following such activity will become a Covered Entity and due diligence related to such activity; and
- (i) Consistent with the applicable requirements of 45 CFR 164.514, creating deidentified health information or a limited data set, and fundraising for the benefit of the Covered Entity.

(6) Individually Identifiable Health Information is health information created or received by the Trust which relates to the (a) past, present or future physical or mental health or condition of an individual, (b) provision of health care to an individual, or (c) past, present or future payment for the provision of health care to an individual that either identifies the individual

or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(7) Payment shall have the meaning set forth under 45 CFR 164.501, and includes activities undertaken by the Trust to obtain premiums or determine or fulfill its responsibility for coverage and provision of plan benefits that relate to an individual to whom health care is provided. These activities include, but are not limited to, the following:

- (a) Determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and copayments as determined for an individual's claim);
- (b) Coordination of benefits;
- (c) Adjudication of health benefit claims (including appeals and other payment disputes);
- (d) Subrogation of health benefit claims and application of third party lien and workers compensation rules;
- (e) Establishing employee contributions;
- (f) Billing, collection activities and related health care data processing;
- (g) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to participant inquiries about payments;
- (h) Obtaining payment under a contract for reinsurance (including stop-loss insurance);
- (i) Medical necessity reviews or reviews of appropriateness of care or justification of changes;
- (j) Utilization review, including precertification, preauthorization, concurrent review and retrospective review;
- (k) Reimbursement to the plan;
- (l) Administration of reciprocity with other plans; and
- (m) Communication with a pension plan concerning payment of retiree health premiums.

(8) PHR Identifiable Health Information shall have the meaning set forth under HITECH Section 13407(f)(2), and means individually identifiable health information, and includes information (a) that is provided by or on behalf of the individual, and (b) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(9) Personal Health Record shall have the meaning set forth under HITECH Section 13400, and means an electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

(10) Protected Health Information shall have the meaning set forth under 45 CFR 160.103, and is individually identifiable health information that is transmitted or maintained in any form or medium.

(11) Treatment shall have the meaning set forth under 45 CFR 164.501, and includes the provision, coordination and management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

(12) Use shall have the meaning set forth under 45 CFR 160.103, and means, with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

C. Uses and Disclosure Not Requiring Authorizations. The Trust may use and disclose Protected Health Information:

(1) For treatment, payment and health care operations;

(2) To the individual, or his or her duly authorized personal representative;

(3) Where permitted by law after providing a participant notice and an opportunity to object to disclosure (unless notice is not possible) and no objection has been received, such as, depending on the circumstances, to some or all of the following persons: the spouse, domestic partner, relatives, close friend or other person designated in writing by the participant and involved in the care of the participant or involved in payment related to the participant's health care; and

(4) Where required by law or for purposes of public health activities or judicial and administrative hearings.

D. Consent. The Trust may, but need not, utilize and request the consent of a participant before disclosing Protected Health Information even where an authorization is not required by law.

E. Authorization of the Participant or Beneficiary. In general, with an authorization which complies with both federal and any applicable California privacy laws, the Trust may disclose Protected Health Information for the additional purposes permitted by law and by the authorization.

F. Minimum Necessary Use and Disclosure. In those situations in which it is required, the Trust will make reasonable efforts to limit use and disclosure of Protected Health Information to the minimum necessary to accomplish the intended purpose. Per the requirements of HITECH Section 13405(b), "minimum necessary" shall mean that the Trust will, to the extent practicable, limit such disclosure to a "limited data set" as such terms I defined under 45 CFR 164.514(e)(2)

or, if needed, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. If the Trust finds it necessary to use more than the "limited data set," it will be prepared to justify why use of the limited data set is not practicable.

The Trust shall comply with the "minimum necessary" standard set forth in HITECH Section 13405(b) until such date that the Secretary of the Department of Health and Human Services issues final guidance regarding the "minimum necessary" standard. At such time that the Secretary issues such guidance, the guidance shall be incorporated herein by reference until such time as the Trust is amended, and the Trust will comply with the new minimum necessary guidance.

G. Compliance with the Security Rule. The Trust agrees, per the requirements of HHS Reg. §§164.302-318, with respect to Electronic Protected Health Information to:

- (1) Ensure the confidentiality, integrity, and availability of all Electronic Protected Health Information the plan creates, receives, maintains, or transmits;
- (2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;
- (3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under the regulations; and
- (4) Ensure compliance with the regulations by its workforce.

In addition, the Trust agrees to comply with the Administrative Safeguards required by HHS Reg. §164.308, the Physical Safeguards required by HHS Reg. §164.310, the Technical Safeguards required by §164.312, and the documentation requirements required by HHS Reg. §164.316.

H. The Trust Agrees to Certain Conditions. The Trust agrees to:

- (1) Not use or further disclose Protected Health Information other than as permitted or required by the Trust's rules or as required by law;
- (2) Ensure that any business associate to whom the Trust provides Protected Health Information received by the Trust agrees to the same restrictions and conditions that apply to the Trust with respect to such Protected Health Information;
- (3) Make Protected Health Information available to a participant or beneficiary in accordance with HIPAA's access requirements;
- (4) Make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with HIPAA;
- (5) Make available the information required to provide an accounting of disclosures; and
- (6) Make internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Trust available to the HHS Secretary for the purposes of determining the Trust's compliance with HIPAA.