

**THE YOUNG MEN'S CHRISTIAN ASSOCIATION  
RETIREMENT FUND**

**RETIREMENT PLAN**

Restated Effective June 30, 2006

(Including Amendments through October 1, 2011)

Note: The plans of the Retirement Fund are church plans that are not subject to registration, regulation, or reporting under the Investment Company Act of 1940, the Securities Exchange Act of 1934, Title 15 of the United States Code, or State securities laws. Similarly, the plan administrator and trustee and the entities maintaining any investment funds under the plans are not subject to those provisions of those Acts or laws. Therefore, plan participants and beneficiaries will not be afforded the protection of those provisions.

# TABLE OF CONTENTS

	<b>Page</b>
INTRODUCTION.....	1
SECTION 1 – DEFINITIONS.....	2
SECTION 2 – ELIGIBILITY FOR PARTICIPATION.....	6
SECTION 3 – VESTING SERVICE.....	10
SECTION 4 – CONTRIBUTIONS.....	11
SECTION 5 – RETIREMENT BENEFITS.....	18
SECTION 6 – DISTRIBUTION OF PARTICIPANT CONTRIBUTIONS.....	21
SECTION 7 – PRE-RETIREMENT DEATH BENEFITS.....	25
SECTION 8 – OPTIONAL FORMS OF RETIREMENT BENEFITS.....	28
SECTION 9 – JOINT AND SURVIVOR & PRE-RETIREMENT SURVIVOR ANNUITY REQUIREMENTS.....	37
SECTION 10 – PAYMENT OF RETIREMENT BENEFITS.....	39
SECTION 11 – RETIRED DEATH BENEFIT.....	41
SECTION 12 – ADMINISTRATION OF RETIREMENT PLAN.....	42
SECTION 13 – AMENDMENTS AND TERMINATION.....	44
SECTION 14 – OTHER PROVISIONS.....	45
APPENDIX A- ACTUARIAL FACTORS.....	49

## INTRODUCTION

The Board of Trustees of the YMCA Retirement Fund, acting in accordance with its Constitution, established the Young Men's Christian Association Retirement Fund Retirement Plan (the "Retirement Plan") as of July 1, 1922 (formerly known as the Secretarial Plan), and also the Young Men's Christian Association Retirement Fund Savings & Security Plan as of July 1, 1937 (the "Savings & Security Plan"). Effective July 1, 1989, the Savings & Security Plan was merged into the Retirement Plan. The Retirement Plan has been amended and restated from time to time. The most recent restatement was as of July 1, 1989. This amendment and restatement of the Retirement Plan sets forth the terms of the Retirement Plan as of June 30, 2006.

The Retirement Plan is a multiple employer, defined contribution, money purchase pension plan that is intended to satisfy the qualification requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"). It is sponsored by the Young Men's Christian Association Retirement Fund, a not-for-profit corporation which is tax-exempt under Section 501(c)(3) of the Code and which is a pension fund organized and operated for the purpose of providing retirement annuities and related benefits for employees of YMCAs throughout the United States. The Young Men's Christian Association Retirement Fund maintains, as a separate plan, the YMCA Retirement Fund Tax-Deferred Savings Plan which is a retirement income account plan as defined in Section 403(b)(9) of the Code. On December 21, 2004, President George W. Bush signed U.S. Public Law 108-476, permanently classifying the plans sponsored by the YMCA Retirement Fund as of January 1, 2003 as church plans under Section 414(e) of the Code. As part of this legislation, the Retirement Plan will be treated as having made an election to comply with Title I of ERISA and certain additional provisions of the Code effective July 1, 2006. On March 24, 2009, the Internal Revenue Service issued a favorable determination letter with respect to the qualification of the Retirement Plan and tax-exemption of its related trust under Sections 401(a) and 501(a) of the Code, respectively.

Notwithstanding the general effective date of June 30, 2006, the following provisions will be effective as of the dates indicated:

Section 1 Definition of Compensation	January 1, 2007
Section 2.2(b) (i), (ii), (vi) and (vii)	July 1, 2006
Section 4.9	July 1, 2006
Section 5.7 (a) and (b)	July 1, 2006
Section 6.4(c)	March 1, 2006
Section 6.6(b) (ii)e, (v)c and (vi)	January 1, 2008
Section 6.6(b) (v)a	July 1, 2007
Section 6.8	July 1, 2006
Section 7.1	July 1, 2006
Section 8.9	January 1, 2003
Section 10.4	March 1, 2006
Section 11.2	January 1, 2006
Section 13.2	July 1, 2006
Section 14.7	July 1, 2006
Section 14.9 (d), (e) and (f)	September 1, 2009

The following defined terms, as amended or added in Section 1 - Definitions, shall be effective as of July 1, 2009: Accumulated Additional YMCA Contributions, Accumulated Basic Participant Contributions, Accumulated YMCA Contributions (Legacy) , Accumulated Rollover Contributions, Accumulated Voluntary After-Tax Contributions, Accumulated YMCA Contributions, Additional YMCA Contributions, YMCA Contributions (Legacy) , YMCA Contributions, Basic YMCA Account Balance, Participant Account Balance, and Total Account Balance. The Minimum Distribution Requirements as set forth in the previous Appendix A have been moved to Section 8.9 and are effective as of January 1, 2003 pursuant to the Internal Revenue Service's favorable determination letter.

## SECTION 1 – DEFINITIONS

The following words and phrases as used in the Retirement Plan shall have the following meanings unless a different meaning is plainly required by the context.

**“Accumulated Additional YMCA Contributions”** shall mean the total of Additional YMCA Contributions, if any, contributed to the Retirement Plan, together with Interest Credit added from time to time thereto and held in the Total Account Balance on behalf of a Participant.

**“Accumulated Basic Participant Contributions”** shall mean the total of Basic Participant Contributions, together with Interest Credit added from time to time thereto, and held in the Participant Account Balance.

**“Accumulated Rollover Contributions”** shall mean the total of the Rollover Contributions to the Retirement Plan by a Participant, together with Interest Credit added from time to time thereto, and held in the Participant Account Balance.

**“Accumulated Voluntary After-Tax Contributions”** shall mean the total of any Voluntary After-Tax Contributions prior to January 1, 2011 by a Participant, together with Interest Credit added from time to time thereto, and held in the Participant Account Balance.

**“Accumulated YMCA Contributions”** shall mean the total YMCA Contributions together with Interest Credits added from time to time thereto, and held in the Basic YMCA Account Balance on behalf of a Participant.

**“Accumulated YMCA Contributions (Legacy)”** shall mean the total of YMCA Contributions (Legacy), together with Interest Credit added from time to time thereto, and held in the Basic YMCA Account Balance on behalf of a Participant.

**“Actuarial Equivalent”** shall mean a benefit of equal value when computed upon the basis of the mortality tables and interest rate as set forth in Appendix A hereto or on such other mortality tables and interest rates as are adopted by the Board from time to time.

**“Additional YMCA Contributions”** shall mean contributions made to the Retirement Plan under Section 4.4. with respect to Plan Years beginning prior to July 1, 2009.

**“Basic Participant Contributions”** shall mean the contributions made to (or otherwise deemed made to) the Retirement Plan by Participants pursuant to Sections 4.2 and 4.6.

**“Basic YMCA Account Balance”** shall mean the Accumulated YMCA Contributions plus the Accumulated YMCA Contributions (Legacy) made to the Retirement Plan.

**“Beneficiary”** shall mean such person or persons as may be designated by a Participant or as may otherwise be entitled upon his/her death to receive any benefits or payments under the terms of the Retirement Plan; provided that for purposes of the Retirement Plan the term person shall include a trust or other entity.

**“Board”** shall mean the Board of Trustees of the Young Men’s Christian Association Retirement Fund.

**“Code”** shall mean the Internal Revenue Code of 1986, as from time to time amended.

**“Compensation”** beginning January 1, 2007, shall mean the amount of a Participant’s wages (within the meaning of Code Section 3401(a)) and all other payments of compensation which a Participating YMCA is required to report in Box 1 (“wages, tips, other compensation”) of IRS Form W-2, subject to the following provisions:

- (a) Compensation shall include any amount which is contributed by the Participating YMCA pursuant to a salary reduction agreement and which is not includible in the income of the Employee under Code Sections 125, 132(f), 401(k), 402(h), 403(b) and 457(b).

- (b) Compensation shall exclude amounts paid or reimbursed by the Participating YMCA for moving expenses incurred by the Participant, but only to the extent that, at the time of the payment, it is reasonable to believe that these amounts are deductible by the Participant under Code Section 217.
- (c) Compensation shall include only that compensation that is actually paid to the Participant during the applicable period prior to his/her severance from employment, except for payments made by reason of qualified military service (under Code Section 414(u)). Except as provided elsewhere in this Retirement Plan, the applicable period will be the Plan Year.
- (d) No more than \$200,000 annually shall be taken into consideration for the purposes herein, with this amount to be applied and adjusted in accordance with Code Section 401(a)(17)(B).
- (e) Compensation must be determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2)).

Prior to January 1, 2007, "Compensation" shall mean the regular annual salary or wages of a Participant paid each calendar year by a Participating YMCA, inclusive of bonuses, vacation pay, sick leave pay, disability pay, severance pay (when paid to a Participant prior to the date of termination of employment), salary reduction amounts elected by a Participant which are excluded from current federal income tax, and other compensation considered as a part of such salary or wages as certified to the Board by his/her YMCA, provided no more than \$200,000 annually shall be taken into consideration for the purposes herein, with this amount to be applied and adjusted in accordance with Code Section 401(a)(17)(B).

- (f) Pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"), and notwithstanding anything herein to the contrary, effective January 1, 2009, Compensation shall include differential wage payments (as defined in the HEART Act) that a Participant receives from a Participating YMCA. To the extent that Participants receive differential wage payments from a Participating YMCA and are eligible to participate in the Retirement Plan, such Participants shall be entitled to have contributions made to the Retirement Plan on their behalf based on such differential wage payments on reasonably equivalent terms in accordance with the HEART Act and any regulations or guidance issued thereunder.

**"Deferred Vested Retirement Benefit"** shall mean the benefit described at Section 5.5.

**"Employee"** shall mean all persons employed by a Participating YMCA including full time, part-time and seasonal employees.

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

**"Highly Compensated Employee"** shall mean any Participant who: (1) was a 5-percent owner at any time during the Plan Year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of \$80,000 and, if the employer so elects, was in the top paid group for the preceding year. The \$80,000 amount is adjusted at the same time and in the same manner under Section 415(d) of the Code, except that the base period is the calendar quarter ending September 30, 1996.

For this purpose, the applicable year of the Retirement Plan for which a determination is being made is called a determination year and the preceding 12 month period is called a look-back year.

For this purpose, top paid group means for any year a group of employees consisting of the top 20% of Employees of the employer when ranked on the basis of compensation paid during such year.

**"Hour of Service"** shall mean:

- (1) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Participating YMCA. These hours will be credited to the Employee for the computation period in which the duties are performed; and

- (2) Each hour for which an Employee is paid, or entitled to payment, by the Participating YMCA on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and
- (3) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service will not be credited both under paragraph (1) or under paragraph (2), as the case may be, and also under this paragraph (3). These hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Hours of service will be credited for employment with other members of an affiliated service group (under Section 414(m)), a controlled group of corporations (under Section 414(b)), or a group of trades or businesses under common control (under Section 414(c)) of which the adopting employer is a member, and any other entity required to be aggregated with the employer pursuant to Section 414(o).

Hours of service will also be credited for any individual considered an Employee for purposes of this Retirement Plan under Section 414(n) or Section 414(o).

The Retirement Plan shall be treated as satisfying the break in service rules related to maternity and paternity leaves, as long as the Retirement Plan provides for a six-year break in service as provided under Treasury Regulation Section 1.410(a)-9(b).

**“Interest Credit”** shall, for the period determined by the Board, mean 3% per annum or interest at such other rate as set forth in resolutions adopted by the Board, in its sole discretion, from time to time and incorporated herein by reference. For Participants with account balances in the Retirement Plan prior to January 1, 1996, Interest Credit shall, in accordance with Resolutions adopted by the Board, mean no less than 5% per annum and shall be applied to their account balances as of December 31, 1995.

**“Internal Revenue Code”** or **“Code”** means the Internal Revenue Code of 1986, as amended.

**“Leased Employee”** shall mean any person (other than an employee of the recipient) who, pursuant to an agreement between the YMCA and any other person (“leasing organization”), has performed services for the YMCA (or for the YMCA and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the YMCA. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the YMCA shall be treated as provided by the YMCA.

A leased employee shall not be considered an employee of the YMCA if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee’s gross income under Section 125, Section 402(e)(3), Section 402(h)(1)(B) or Section 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20 percent of the YMCA’s non-highly compensated work force.

**“Non-highly Compensated Employee”** shall mean a Participant who is not a Highly Compensated Employee.

**“Normal Retirement Benefit”** means a single life annuity from the Retirement Fund payable monthly and terminating with the payment due for the last month of the Participant’s life.

**“Normal Retirement Date”** shall mean the first day of the calendar month coincident with or next following the date on which the Participant shall have attained age sixty (60).

**“Participant”** shall mean an Employee who meets the eligibility requirements for Participation set forth in Section 2, and who makes Basic Participant Contributions under the Retirement Plan or for whom Basic Participant Contributions are deemed made under the Retirement Plan.

**“Participant Account Balance”** shall mean the account to which all Accumulated Basic Participant Contributions, Accumulated Voluntary After-Tax Contributions and Accumulated Rollover Contributions are credited.

**“Participating YMCA”** shall mean a YMCA which pursuant to a Participation Agreement with the Board has elected to make participation in the Retirement Plan a condition of employment for all Employees subject to the provisions of Section 2, and has agreed to make and is making the Basic YMCA Contributions required by the Retirement Plan on behalf of all its participating Employees.

**“Participation”** shall mean periods of Service by a Participant during which mandatory Participant contributions to the Retirement Plan were made.

**“Participation Agreement”** shall mean the written agreement between a YMCA and the Board setting forth the terms and conditions under which the YMCA will participate as an employer in the Retirement Plan and enroll and cover its Employees under the Retirement Plan.

**“Period of Severance”** shall mean a twelve (12) month consecutive period commencing on the date of the Employee’s severance from service by reason of resignation, discharge, retirement or death or any anniversary thereof, and ending on the date he or she again performs an Hour of Service as defined in 29 CFR § 2530.200b-2(a)(1) for a Participating YMCA.

**“Permanent Disability Retirement Benefit”** shall mean the benefit described at Section 5.4(c).

**“Plan Year”** shall mean a period of twelve consecutive months commencing on July 1st and ending on the next following June 30th.

**“Retirement Benefit”** shall mean periodic payments for life in the form of an Actuarial Equivalent annuity payable from the Retirement Fund as provided hereunder.

**“Retirement Fund” or “Fund”** shall mean the Young Men’s Christian Association Retirement Fund, a not-for-profit corporation organized under the laws of the State of New York.

**“Retirement Plan”** shall mean the Young Men’s Christian Association Retirement Fund Retirement Plan, established as of July 1, 1922 and as amended from time to time.

**“Rollover Contributions”** shall mean contributions made to the Retirement Plan under Section 4.8.

**“Service”** shall have the meaning assigned to it in Section 3.

**“Spouse”** shall mean a person of the opposite sex who is a husband or wife and married to the Participant for one year or more immediately preceding the date on which his/her benefit payments are to commence.

**“Tax-Deferred Savings Plan”** shall mean the Young Men’s Christian Association Retirement Fund Tax-Deferred Savings Plan as amended from time to time.

**“Total Account Balance”** shall mean the sum of the Participant Account Balance, the Basic YMCA Account Balance and the Accumulated Additional YMCA Contributions.

**“Transition Period”** shall mean the period following a Participant’s severance from employment as an Employee and prior to the date on which the Participant has had a six (6) year Period of Severance.

**“Trust”** shall mean the trust document for the Retirement Plan, as amended from time to time.

**“Voluntary After-Tax Contributions”** shall mean contributions made to the Retirement Plan under Section 4.7 prior to January 1, 2011.

**“YMCA”** shall mean any Young Men’s Christian Association chartered or designated by the National Council of the Young Men’s Christian Associations of the United States of America (YMCA of the USA) in the United States or commonwealths of the United States, including accredited educational institutions and county, state, national, and other agencies in the United States supporting Young Men’s Christian Associations as designated by the YMCA of the USA.

**“YMCA Contributions”** shall mean the contributions made by a Participating YMCA to the Retirement Plan for Plan Years beginning on or after July 1, 2009 pursuant to Section 4.5.

**“YMCA Contributions (Legacy)”** shall mean the contributions made by Participating YMCAs to the Retirement Plan for Plan Years beginning prior to July 1, 2009 pursuant to Section 4.3.

## SECTION 2 – ELIGIBILITY FOR PARTICIPATION

**2.1 Participants as of June 30, 2006.** Every Participant in the Retirement Plan who is employed by a Participating YMCA on June 30, 2006, or whose YMCA employment has been severed prior to June 30, 2006 and who returns to employment with a Participating YMCA before the end of his/her Transition Period, or who returns after his/her Transition Period but was previously a vested Participant in his/her Basic YMCA Contributions, Additional YMCA Contributions, or non-contributory YMCA contributions shall automatically continue as a Participant in the Retirement Plan.

**2.2 Other Employees.** Every person who was an Employee prior to June 30, 2006 but who was not a Participant on such date or who shall first become an Employee on or after June 30, 2006, or who is reemployed on or after that date and after the end of his/her Transition Period and was not previously a vested Participant in his/her Basic YMCA Contributions, Additional YMCA Contributions, or non-contributory YMCA contributions in the Retirement Plan, shall become eligible to be enrolled as a Participant in the Retirement Plan subject to the following:

(a) Age Requirements.

- (i) If at the time of employment he/she had attained age 21 and had not attained age 60, he/she shall agree as a condition of employment to be enrolled upon completion of the service requirements in Section 2.2(b), and make the Basic Participant Contributions required in Section 4.2.
- (ii) If at the time of employment he/she had not attained age 21, he/she shall agree as a condition of employment to be enrolled as a Participant in the Retirement Plan, and to make the Basic Participant Contributions required in Section 4.2, upon the later of the first day of the month coincident with or next following the date on which the Employee: 1/ satisfies the service requirements of Section 2.2(b); or 2/ attains age 21.
- (iii) If at the time of employment he/she had attained age 60 and is employed by a contributory YMCA, he/she shall be eligible to elect out of participation in the Retirement Plan upon completion of the service requirements in Section 2.2(b) provided, however, such person may, if he/she otherwise meets eligibility requirements for the Retirement Plan, elect, on a prospective basis only, to commence participation in the Retirement Plan.

(b) Service Requirements.

- (i) Effective July 1, 2006, each Employee who has already satisfied the eligibility requirements under the Retirement Plan as of June 30, 2006, and is enrolled in the Retirement Plan, shall remain a Participant in the Retirement Plan and the vesting schedule provided in Section 5.7(a) shall apply. Every Employee hired on or before July 1, 2005 who is not a Participant in the Retirement Plan on July 1, 2006 shall be required to satisfy the requirements of Section 2.2(b)(ii).

- (ii) Effective for Plan Years beginning on or after July 1, 2006, each other Employee who satisfies the age requirement of Section 2.2(a) shall be enrolled as a Participant in the Retirement Plan on the first day of the month coincident with or next succeeding two 12 month periods during each of which he/she completes 1,000 Hours of Service or, if later, the date on which the Retirement Plan is first maintained with respect to such Employee. Such 12 month periods shall commence on the date of his/her employment or reemployment and on any anniversary thereof. Effective July 1, 2006, the vesting schedule provided in Section 5.7(a) shall apply.
- (iii) Employees for whom Hours of Service are not or cannot be recorded by their Participating YMCAs shall be deemed to have completed the following Hours of Service (with the equivalency method to be used determined based on the payroll frequency applicable to the Employee):
  - (a) 10 Hours of Service for each daily period of employment in which the Employee completed at least one Hour of Service;
  - (b) 45 Hours of Service for each weekly period of employment in which the Employee completed at least one Hour of Service;
  - (c) 90 Hours of Service for each bi-weekly period of employment in which the Employee completed at least one Hour of Service;
  - (d) 95 Hours of Service for each semi-monthly period of employment in which the Employee completed at least one Hour of Service; and
  - (e) 190 Hours of Service for each monthly period of employment in which the Employee completed at least one Hour of Service.
- (iv) If an Employee's employment is severed but he/she resumes employment within a twelve (12) month period commencing on the date of severance, his/her employment date for purposes of (ii) above will not be affected by such severance.
- (v) An Employee who has completed 1,000 Hours of Service during one twelve (12) month period commencing on the date of his/her employment or any anniversary thereof, whose YMCA employment is severed and who has not yet satisfied the service requirements of Section 2.2(b)(ii), shall receive credit for such service upon reemployment with a Participating YMCA, provided that he or she has not had a six (6) year Period of Severance. This Section 2.2(b)(iv) shall apply to Employees whose six (6) year Period of Severance commences on or after January 1, 2003.
- (vi) Participants whose employment is severed and who have any vested interest in their Basic YMCA Contributions, Additional YMCA Contributions or non-contributory YMCA contributions in the Retirement Plan shall not have to satisfy the requirements of Section 2.2(b)(ii) again upon returning to employment with a Participating YMCA. Participants whose employment is severed without any vested interest in their Basic YMCA Contributions, Additional YMCA Contributions or non-contributory YMCA contributions in the Retirement Plan shall not have to satisfy the requirements of Section 2.2(b)(ii) again upon return to employment with a Participating YMCA, provided they return to employment with a Participating YMCA before the end of his/her Transition Period.
- (vii) For purposes of determining Hours of Service in Section 2.2(b), when a Participating YMCA acquires or has merged with another YMCA (whether participating or non-participating), and such Participating YMCA becomes the employer of employees formerly employed by such other YMCA, on the date of the acquisition or merger, there shall be taken into account and credited as Hours of Service, on a non-discriminatory basis (without double counting such service), such "Employees" prior employment with such other YMCA, provided such employees are actively employed by the other YMCA on the date of acquisition or merger. Following a written request

by a Participating YMCA, the Benefits and Operations Committee of the Board may grant service credit for purposes of eligibility to Participate in the Retirement Plan in the case of acquisitions, mergers, affiliations or programs between such Participating YMCA and another organization other than a YMCA (where the acquirer or surviving entity is the YMCA) provided that such service crediting is granted on a non-discriminatory basis.

- (viii) Prior to July 1, 2006, an Employee who has satisfied the requirements of Section 2.2(a) shall be enrolled as a Participant in the Retirement Plan on the first day of the month coincident with or next succeeding the date on which he/she completes, as his/her Participating YMCA shall so elect, (1) 1,000 Hours of Service during the twelve (12) month period commencing on the date of his/her employment or reemployment, or on any anniversary thereof, or if later, the date on which the Retirement Plan is first maintained with respect to such Employee or (2), effective January 1, 2003 or thereafter if elected by a Participating YMCA, 1,000 Hours of Service in each of two twelve (12) month periods commencing on the date of his/her employment or reemployment, and on any anniversary thereof, or if later, the date on which the Retirement Plan is first maintained with respect to such Employee.
- (ix) For purposes of determining Hours of Service in Section 2.2(b) when: (A) a YMCA first becomes a Participating YMCA, there shall be taken into account and credited as Hours of Service on a non-discriminatory basis (with-out double counting such service), the service of Employees during the YMCA's period of non-participation in the Retirement Plan, and (B) a Participating YMCA discontinues Retirement Plan participation and resumes Retirement Plan participation at a later date, the Retirement Fund shall take into account and credit as Hours of Service on a non-discriminatory basis (without double counting such service), the service of Employees during the YMCA's period of non-participation in the Retirement Plan.

(c) Ineligible Employees.

The following Employees are ineligible to participate in the Retirement Plan:

- (i) Leased Employees, unless the Participating YMCA has entered into an agreement with the Board providing for the inclusion of Leased Employees.
- (ii) Employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers, unless the employee representatives negotiated an agreement requiring the Participating YMCA to make contributions on behalf of such employees to the Retirement Plan.
- (iii) Employees who are eligible for or currently participating in the YMCA of Metropolitan Chicago Employees' Retirement Plan, or in another retirement plan represented by the Participating YMCA to be comparable to the Retirement Plan and acceptable to the Retirement Fund, to the extent that such employees' exclusion does not cause the Retirement Plan to violate Code Sections 401(a)(4) or 410.
- (iv) Employees who are nonresident aliens and who receive no earned income (within the meaning of Code Section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)).
- (v) If, for any reason, individuals treated by a Participating YMCA as independent contractors are subsequently finally determined by a court or governmental body or otherwise to be, and are re-designated as, common-law employees of the Participating YMCA, their coverage as Employees eligible to participate in the Retirement Plan (to the extent they otherwise meet the

requirements for eligibility to participate) shall only begin prospectively from the date such final determination is made.

- (vi) Employees who are eligible for or currently participating in the YMCA Retirement Plan provided that such employees' exclusion from participation in the Retirement Plan does not violate Code Section 401(a)(4) or 410.

**2.3** Participation until Severance. Every person who becomes eligible and is enrolled in the Retirement Plan shall remain a Participant in the Retirement Plan, and Basic Participant Contributions and Basic YMCA Contributions shall be made to the Retirement Plan until the end of the month in which his/her YMCA employment is severed.

### SECTION 3 – VESTING SERVICE

**3.1 Vesting Service.** Subject to the exceptions set forth in Section 3.4, for purposes of determining a Participant's vested interest in his/her Accumulated Basic YMCA Contributions, Service shall mean periods of employment with a Participating YMCA.

**3.2 Elapsed Time Service Counting.** Service shall be measured in years and months from the date on which employment of an Employee commences to the earliest date on which his/her employment is severed, due to a quit, discharge, death or retirement or the first anniversary of the date the employee is absent from service for any other reason (e.g., disability, vacation, leave of absence, layoff, etc.). All Service as a Leased Employee shall be credited for the purpose of determining an individual's total vesting Service. Notwithstanding any provisions of this Retirement Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u) and the regulations thereunder.

**3.3 Period of Severance.** In the event that an Employee's employment is severed but he/she is reemployed within the 12 consecutive month period commencing on the date of severance, the period of severance shall constitute Service for purposes of vesting of benefits.

**3.4 Exclusion of Certain Periods of Service.** For purposes of determining a Participant's total vesting Service, all periods of Service shall be credited and aggregated, except that the following periods shall be disregarded:

- (a) Periods for which the Employee has declined to make mandatory contributions to the Retirement Plan.
- (b) Periods during which the Employee was employed by a YMCA that was not a Participating YMCA and that does not thereafter become a Participating YMCA.
- (c) Periods prior to July 1, 1985 that would have been disregarded under the break-in-service rules of the Retirement Plan in existence at that time.
- (d) Periods prior to a Period of Severance after June 30, 1976, if the Employee was not vested in YMCA contributions at the time of such severance and has a six (6) year Period of Severance.
- (e) Periods prior to attaining age eighteen (18).
- (f) Periods subsequent to a six (6) year Period of Severance but only for the purposes of determining:
  - (i) the balance which accrued in the Basic YMCA Account Balance prior to the Period of Severance, and
  - (ii) the percentage of vesting of a Participant in such balance.
- (g) Periods subsequent to a distribution from the Basic YMCA Account Balance but only for purposes of determining the vested amount within the Basic YMCA Account Balance that accrued prior to such distribution.

## SECTION 4 – CONTRIBUTIONS

**4.1 Contribution Agreements.** Each Participating YMCA under a Participation Agreement made by the Participating YMCA with the Board shall select contribution rates for its Participants and itself as set forth in this Section 4.1.

(a) For Plan Years beginning on or after July 1, 2009 and Modification Effective July 1, 2009. Effective July 1, 2009, a Participating YMCA may select any of the below contribution rates and schedules:

8%		9%		10%		11%		12%	
YMCA Contr	Basic Part Contr	YMCA Contr	Basic Part Contr	YMCA Contr	Basic Part Contr	YMCA Contr	Basic Part Contr	YMCA Contr	Basic Part Contr
8%	0%	9%	0%	10%	0%	11%	0%	12%	0%
7%	1%	8%	1%	9%	1%	10%	1%	11%	1%
6%	2%	7%	2%	8%	2%	9%	2%	10%	2%
5%	3%	6%	3%	7%	3%	8%	3%	9%	3%
				6%	4%	7%	4%	8%	4%
								7%	5%

Also effective July 1, 2009, and in accordance with the authority of the Board to amend the Retirement Plan and the agreement of each Participating YMCA to participate in the Retirement Plan in accordance with the provisions of the Retirement Plan as the same may be amended from time to time, each Participating YMCA's Participation Agreement shall, to the extent necessary to comply with the contribution rate percentages described in this Section 4.1(a), be modified so as to provide that amounts contributed by the Participating YMCA shall be designated as YMCA Contributions and held in the Basic YMCA Account Balance together with the YMCA Contributions (Legacy) made with respect to periods prior to July 1, 2009 (together with Interest Credits thereon). Unless otherwise elected by a Participating YMCA in accordance with the contribution rate schedule above and such rules and procedures as may be prescribed by the Board, the contribution rate in effect with respect to the Participating YMCA as of June 30, 2009 shall continue in effect with respect to periods on and after July 1, 2009. Subject to applicable law and procedures, Participating YMCAs may in advance (in compliance with, as applicable, Code Section 4980F) change contribution rates once in any Plan Year.

(b) Plan Year Beginning July 1, 2008. Effective for the Plan Year beginning on July 1, 2008, a Participating YMCA may select (i) 12% comprised of 5% Basic Participant Contributions and 7% Basic YMCA Contributions, (ii) 10% comprised of 4% Basic Participant Contributions and 6% Basic YMCA Contributions, or (iii) 8% comprised of 3% Basic Participant Contributions and 5% Basic YMCA Contributions. Subject to applicable law and procedures, Participating YMCAs may in advance (in compliance with, as applicable, Code Section 4980F), change contribution rates once in any Plan Year.

(c) Modification Effective July 1, 2008. Effective July 1, 2008, and in accordance with the authority of the Board to amend the Retirement Plan and the agreement of each Participating YMCA to participate in the Retirement Plan in accordance with the provisions of the Retirement Plan as the same may be amended from time to time, each Participating YMCA's Participation Agreement shall, to the extent necessary to comply with the available contribution rate percentages, be modified to reflect such applicable percentages as follows: (i) if the total contribution percentage in the Participation Agreement of the Participating YMCA is 9.6%, the total contribution percentage shall be modified to be 10% (whether or not such Participating YMCA participates on a contributory or non-contributory basis), with (in the case of a Participating YMCA that participates on a contributory basis) the Basic YMCA Contribution percentage equal to 6% and the Basic Participant Contribution percentage equal to 4%; and (ii) if the total contribution percentage in the Participation Agreement of the Participating YMCA is 7.2%, the total contribution percentage shall be modified to be 8% (whether or not such Participating YMCA participates on a contributory or non-

contributory basis), with (in the case of a Participating YMCA that participates on a contributory basis) the Basic YMCA Contribution percentage equal to 5% and the Basic Participant Contribution percentage equal to 3%.

**4.2 Basic Participant Contributions.** Each Participant is required to contribute not less frequently than monthly to the Retirement Plan, a percentage of his/her Compensation as specified in the Participation Agreement made by his/her Participating YMCA and the Board (as provided in Section 4.1), until he/she ceases to be an eligible Employee. The amounts so required are designated as Basic Participant Contributions. A Participant is always 100% vested in his/her Basic Participant Contributions.

**4.3 YMCA Contributions (Legacy).** For Plan Years beginning prior to July 1, 2009, each Participating YMCA is required to contribute not less frequently than monthly to the Retirement Plan, on behalf of its participating Employees, contributions equal to a percentage of each Participant's Compensation as specified in the Participation Agreement with the Board (as provided in Section 4.1). The amounts so required are designated as YMCA Contributions (Legacy) and shall be held in the Basic YMCA Account Balance.

**4.4 Additional YMCA Contributions.** In addition to required contributions made pursuant to Section 4.1, a Participating YMCA may, for Plan Years beginning prior to July 1, 2009, make Additional YMCA Contributions on behalf of all of its Participants for the purpose of providing them additional benefits under the Retirement Plan in accordance with a Participation Agreement and under nondiscriminatory rules uniformly applicable to all persons similarly situated, and said Additional YMCA Contributions shall include the special benefit credit made by the Retirement Fund in 1989. Such Additional YMCA Contributions shall be allocated uniformly on the basis of Compensation and shall be held in the Total Account Balance. A Participant is always 100% vested in Additional YMCA Contributions made on his/her behalf. There shall be no separately characterized Additional YMCA Contributions made to the Retirement Plan for Plan Years beginning on or after July 1, 2009.

**4.5 YMCA Contributions.** Effective for Plan Years beginning on or after July 1, 2009 (with respect to Participating YMCA payroll dates occurring after June 30, 2009), each Participating YMCA is required to contribute not less frequently than monthly to the Retirement Plan, on behalf of its participating Employees, contributions equal to a percentage of each Participant's Compensation as specified in the Participation Agreement with the Board (as provided in Section 4.1). The amounts so required are designated as YMCA Contributions and shall be held in the Basic YMCA Account Balance. For Plan Years beginning on or after July 1, 2009, a Participating YMCA may elect to make YMCA Contributions in addition to the amount contributed by the Participating YMCA in accordance with the first sentence of this Section 4.5. The additional contributions so made, if any, shall be designated as YMCA Contributions and shall be held in the Basic YMCA Account Balance.

**4.6 Non-Contributory Participating YMCAs.** For Plan Years beginning prior to July 1, 2009, notwithstanding the provisions of Section 4.2 above, Participating YMCAs may, in advance, provide for the participation of their Employees on a non-contributory basis pursuant to such YMCAs Participation Agreement. Such contributions may be made on a fully non-contributory basis or on a partially non-contributory basis in 1% increments. The contributions received from such non-contributory Participating YMCAs for Plan Years beginning prior to July 1, 2009, which are otherwise attributable to Participant contributions that would have been made under Section 4.2 had the YMCA participated on a fully contributory basis, shall be designated as non-contributory payments and treated as if they were Basic Participant Contributions under the Retirement Plan except for purposes of Section 4.9. A Participant is always 100% vested in such non-contributory amounts that are deemed to be part of the Basic Participant Contributions.

**4.7 Voluntary After-Tax Contributions.** Prior to January 1, 2011, employees who are Participants that elected to contribute additional after-tax amounts within the limits provided by the Code for the purpose of providing additional annuity benefits for themselves under the Retirement Plan shall be subject to the provisions of this Retirement Plan, including Section 4.11, and the requirements of Code Section 401(m). The elective after-tax amounts contributed are designated as Voluntary After-Tax Contributions. A

Participant is always 100% vested in his/her Voluntary After-Tax Contributions. On or after January 1, 2011, the Retirement Plan shall no longer accept Voluntary After-Tax Contributions.

**4.8 Rollover Contributions Prior to March 1, 2003.** Subject to applicable law, any eligible Employee who receives an eligible rollover distribution (as defined in Section 6.6(b)(i)) from any other eligible retirement plan (as defined in Section 6.6(b)(ii)) may roll over all or part of such distribution to the Retirement Plan. Effective March 1, 2003, eligible rollover distributions shall be rolled over to the Tax-Deferred Savings Plan as provided in that plan, and not to the Retirement Plan. The Board shall make the determination as to whether the distribution sought to be rolled over so qualifies as an eligible rollover distribution. Such amounts that constitute an eligible rollover distribution shall not be subject to Section 4.11.

**4.9 Timing of Contributions.** Effective July 1, 2006, except as provided in Section 4.6, a Participant's contributions to the Retirement Plan shall be made by payroll deduction. All Basic Participant Contributions and Voluntary After-Tax Contributions shall be remitted by each Participating YMCA to the Retirement Plan as of the earliest date on which such contributions can reasonably be segregated from the Participating YMCA's general assets, provided that in no event shall such date be later than the fifteenth (15<sup>th</sup>) business day of the month following the month in which the amounts would otherwise have been payable to the Participant in cash. All other contributions, including YMCA Contributions, YMCA Contributions (Legacy), Additional YMCA Contributions under Section 4.4 and non-contributory YMCA contributions under Section 4.6, shall be forwarded to the Retirement Plan by the fifteenth (15<sup>th</sup>) business day after the end of the month to which such contributions relate.

**4.10 Mistake of Fact Contributions.** Notwithstanding any other provision, any Participating YMCA contribution which is made as a result of a mistake of fact shall be refunded to the Participating YMCA, provided a claim for the refund is made by such Participating YMCA within one year after its payment and such refund is permitted by the Code and ERISA.

**4.11 Special Limitations.**

- (a) For purposes of this Section, the term "Annual Addition" with respect to any Participant shall mean, for any calendar year, the sum of the following amounts:
  - (i) YMCA Contributions
  - (ii) YMCA Contributions (Legacy)
  - (iii) Additional YMCA Contributions
  - (iv) Basic Participant Contributions
  - (v) Voluntary After-Tax Contributions (made prior to January 1, 2011)
  - (vi) Contributions to the Tax-Deferred Savings Plan
  - (vii) that portion of any amounts credited to him/her in the Participant's Total Account Balance which is attributable to forfeitures; and
  - (viii) amounts allocated after March 31, 1984 to an individual medical benefit account, as defined in Code Section 415(l)(2), that is part of a pension or annuity plan maintained by the employer, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the employer.
- (b) The maximum Annual Addition on behalf of a Participant in any calendar year shall in no event exceed the lesser of:
  - (i) \$40,000 (as adjusted under Code Section 415(d)) or

- (ii) 100% of the amount of his/her Section 415 Compensation for the limitation year. For purposes of this Section, the limitation year for the Retirement Plan is the calendar year. "Section 415 Compensation" shall mean wages within the meaning of Section 3401(a) and all other payments of compensation to an Employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation paid or made available during such limitation year shall include any elective deferrals (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the YMCA at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(l)(B), 402(k) or 457(b). Section 415 Compensation shall include compensation (described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) that is paid after a Participant's severance from YMCA employment, but solely to the extent such compensation payments meet the requirements under Treasury Regulation Section 1.415(c)-2(e)(3)(i) (which rules are incorporated herein by reference), and in any event, Section 415 Compensation shall not exceed for any limitation year the limit described in Code Section 401(a)(17).
- (c) Combination with Other Plans. This Section 4.11(c) applies if, in addition to this Retirement Plan, the Participant is covered under another qualified defined contribution plan maintained by the employer (including the Tax-Deferred Savings Plan), a welfare benefit fund, as defined in Code Section 419(e) maintained by the employer, or an individual medical account, as defined in Code Section 415(l)(2), maintained by the employer, which provides an annual addition as defined in Section 4.11(c), during any limitation year. The annual addition which may be credited to a Participant's Total Account Balance under this Retirement Plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's accounts under the other plans and welfare benefit funds for the same limitation year. If the annual additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the employer are less than the maximum permissible amount and the employer contribution that would otherwise be contributed or allocated to the Participant's accounts under this Retirement Plan would cause the annual addition for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual addition with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's accounts under this Retirement Plan for the limitation year.

Prior to determining the Participant's actual Section 415 Compensation for the limitation year, the employer may determine the maximum permissible amount for a Participant in the manner described in Section 4.11(b). As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Section 415 Compensation for the limitation year. If as a result of forfeitures or as a result of exceeding the maximum permissible amount, a Participant's annual additions under this Retirement Plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date. If an excess amount was allocated to a Participant on an allocation date of this Retirement Plan which coincides with an allocation date of another plan, the excess amount attributed to this Retirement Plan will be the product of:

- (a) the total excess amount allocated as of such date; multiplied by
- (b) the ratio of (i) the annual additions allocated to the Participant for the limitation year as of such date under this Retirement Plan to (ii) the total annual additions allocated to the Participant for the limitation year as of such date under this and all the other qualified defined contribution plans.

#### 4.12 ACP Test.

- (a) Testing Method. With respect to Plan Years commencing prior to July 1, 2010, the Actual Contribution Percentage (“ACP”) for a Plan Year for Participants who are Highly Compensated Employees for each Plan Year and the prior year’s ACP for Participants who were Non-highly Compensated Employees for the prior Plan Year (Prior Year Testing Method) must satisfy one of the following tests:
- (i) The ACP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year’s ACP for Participants who were Non-highly Compensated Employees for the prior Plan Year multiplied by 1.25; or
  - (ii) The ACP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year ACP for Participants who were Non-highly Compensated Employees for the prior Plan Year multiplied by 2, provided that the ACP for Participants who are Highly Compensated Employees does not exceed the prior year’s ACP testing for Participants who were Non-highly Compensated Employees in the prior Plan Year by more than two (2) percentage points.

With respect to Plan Years commencing on or after July 1, 2010, the ACP for a Plan Year for Participants who are Highly Compensated Employees for such Plan Year and the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year (Current Year Testing Method) shall satisfy one of the following tests:

- (iii) The ACP for the Plan Year for Participants who are Highly Compensated Employees for such Plan Year shall not exceed the ACP for the same Plan Year for Participants who are Non-highly Compensated Employees for such Plan Year multiplied by 1.25; or
  - (iv) The ACP for the Plan Year for Participants who are Highly Compensated Employees for such Plan Year shall not exceed the ACP for the same Plan Year for Participants who are Non-highly Compensated Employees for such Plan Year multiplied by 2, provided that the ACP for such Plan Year for Participants who are Highly Compensated Employees does not exceed the ACP for the same Plan Year for Participants who are Non-highly Compensated Employees by more than two (2) percentage points.
- (b) Special Rules.
- (i) For purposes of this Section, the Contribution Percentage for any Participant who is a Highly Compensated Employee and who is eligible to have Contribution Percentage Amounts allocated to his/her account under two or more plans described in Code Section 401(a), or arrangements described in Code Section 401(k) that are maintained by the Employer, shall be determined as if the total of such Contribution Percentage Amounts was made under each plan and arrangement. If a Highly Compensated Employee participates in two or more such plans or arrangements that have different Plan Years, all Contribution Percentage Amounts made during the Plan Year under all such plans and arrangements shall be aggregated. For Plan Years beginning before 2006, all such plans and arrangements ending with or within the same calendar year shall be treated as a single plan or arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(m).
  - (ii) In no event shall this Retirement Plan be aggregated with one or more other plans for purposes of determining the ACP of Employees.

- (iii) For purposes of the ACP test, Employee contributions are considered to have been made in the Plan Year in which they were contributed to the Retirement Plan. Matching Contributions and Qualified Non-elective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the day after the close of the Plan Year.

(c) Definitions.

- (i) “Actual Contribution Percentage” (“ACP”) shall mean, for a specified group of Participants (either Highly Compensated Employees or Non-highly Compensated Employees) for a Plan Year, the average of the Contribution Percentages of the Eligible Participants in the group.
- (ii) “Contribution Percentage” shall mean the ratio (expressed as a percentage) of the Participant’s Contribution Percentage Amounts to the Participant’s Compensation for the Plan Year.
- (iii) “Contribution Percentage Amounts” shall mean the sum of the Employee contributions, Matching Contributions, and Qualified Matching Contributions made under the Retirement Plan on behalf of the Participant for the Plan Year. Such Contribution Percentage Amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions. The employer may include Qualified Non-elective Contributions in the Contribution Percentage Amounts.
- (iv) “Eligible Participant” shall mean any Employee who is eligible to make an Employee Contribution, or an Elective Deferral (if the Employer takes such contributions into account in the calculation of the Contribution Percentage), or to receive a Matching Contribution (including forfeitures) or a Qualified Matching Contribution. If an Employee Contribution is required as a condition of participation in the Retirement Plan, any Employee who would be a Participant in the Retirement Plan if such Employee made such a contribution shall be treated as an eligible Participant on behalf of whom no Employee Contributions are made.
- (v) “Employee Contribution” shall mean any contribution (other than Roth Elective Deferrals, if any) made to the Retirement Plan by or on behalf of a Participant that is included in the Participant’s gross income in the year in which made and that is maintained under a separate account to which Interest Credits are allocated.
- (vi) “Matching Contributions” shall mean (within the meaning of Treasury Regulation Section 1.401(m)-1(a)(2)) an employer contribution made to this or any other defined contribution plan that is made on account of (or is allocated on the basis of) an Employee Contribution by a Participant. Notwithstanding anything in this Section 4.12(c)(vi) to the contrary, and in accordance with IRS Regulation Section 1.401(m)-2(a)(5), no Matching Contributions shall be made or allocated with respect to any Participant under the Plan to the extent it exceeds for such Participant the greatest of (i) 5% of the Participant’s Compensation for the Plan Year, (ii) 100% of the Participant’s Employee Contributions for the Plan Year and (iii) the product of (A) two times the “Plan’s representative matching rate” (within the meaning of IRS Regulation Section 1.401(m)-2(a)(5)(ii)) and (B) the Participant’s Employee Contributions for the Plan Year.
- (vii) Excess Deferrals shall mean excess deferrals as defined in Section 1.402(g)-1(e)(3).
- (viii) “Qualified Non-elective Contributions” shall mean employer contributions, other than elective contributions or matching contributions, that satisfy the requirements of Treasury Regulation Section 1.401(k)-1(c) and (d) at the time the contribution is made, without regard to whether

the contributions are actually taken into account under the actual deferral percentage test under Treasury Regulation Section 1.401(k)-2(a)(6) or the actual contribution percentage test under Treasury Regulation Section 1.401(m)-2(a)(6).

Notwithstanding anything in this Section 4.12(c)(viii) to the contrary, and in accordance with IRS Regulation Section 1.401(m)-2(a)(6)(v), no Qualified Non-elective Contributions shall be made or allocated with respect to any Participant under the Plan to the extent they exceed for such Participant the greater of (i) 5% of the Participant's Compensation for the Plan Year and (ii) the product of (A) two times the "Plan's representative contribution rate" (within the meaning of IRS Regulation Section 1.401(m)-2(a)(6)(v) and (B) the Participant's compensation (as defined in Code Section 414(s)).

- (ix) Qualified Matching Contributions shall mean Matching Contributions that further satisfy the nonforfeitability requirements of Treasury Regulation Section 1.401(k)-1(c) and the limits on distributions under Treasury Regulation Section 1.401(k)-1(d) at the time the contributions are made, without regard to whether the contributions are actually taken into account as elective contributions in determining an eligible Employee's actual deferral ration under Treasury Regulation Section 1.401(k)-2(a)(6) or the ACP test under Treasury Regulation Section 1.401(m)-2(a)(6).
- (x) "Excess Aggregate Contributions" shall mean, with respect to any Plan Year, the excess of:
  - 1/ The aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over
  - 2/ The maximum Contribution Percentage Amounts permitted by the ACP test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages).
- (d) Excess Aggregate Contributions. Notwithstanding any other provision of the Retirement Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable or, if not forfeitable, shall be distributed no later than 2½ months after the last day of the Plan Year in which such excess amounts arose and shall be from such Excess Aggregate Contributions that were allocated for such Plan Year. Excess Aggregate Contributions shall be treated as annual additions under the Retirement Plan even if distributed.
- (e) Determination of Income or Loss. With respect to Plan Years commencing on and after July 1, 2006 and prior to July 1, 2008, Excess Aggregate Contributions shall be adjusted for any income or loss up to the date of distribution, which shall equal the Interest Credits allocable to Excess Aggregate Contributions. With respect to Plan Years commencing on or after July 1, 2008, there shall be no adjustment for any income or loss or Interest Credits occurring during the period between the end of the Plan Year to which the Excess Aggregate Contributions relate and the date of distribution of such Excess Aggregate Contributions.
- (f) Accounting for Excess Aggregate Contributions. Excess Aggregate Contributions allocated to a Participant shall be forfeited, if forfeitable, or distributed on a pro-rata basis from the Participant's Employee Contribution account, Matching Contribution account, and Qualified Matching Contribution account (and, if applicable, the Participant's Qualified Non-elective Contribution account or Elective Deferral account, or both).

**4.13 Top Heavy Rules.** For any Plan Year in which the top-heavy rules provided under Code Section 416 may apply, the applicable minimum contribution and vesting requirements shall be satisfied.

## SECTION 5 – RETIREMENT BENEFITS

**5.1 Application for Retirement Benefits.** A Participant's eligibility to receive benefits under the Retirement Plan and the amount of such benefits, shall be determined as described in this Section, subject to the exceptions and definitions set forth elsewhere in the Retirement Plan. Application for any Retirement Benefit must be made by the Participant, except as otherwise provided under Section 5.4 and Section 8.1, on forms provided by the Board, and must be filed in the office of the Retirement Fund not later than the last day of the month in which such Retirement Benefit is to become effective. Except as provided in Section 5.4, the applicable effective date must be the first day of a month subsequent to the cessation of Compensation and the severance from YMCA employment.

**5.2 Normal Retirement.** After a Participant severs YMCA employment, he or she may retire and commence his/her Normal Retirement Benefit upon reaching his/her Normal Retirement Date. Upon actual retirement, a Participant shall receive a Retirement Benefit paid by the Retirement Fund to the extent vested in the form of an annuity which is the Actuarial Equivalent of his/her Total Account Balance on the effective date of the Retirement Benefit.

**5.3 Early Retirement.** After a Participant severs YMCA employment, he or she may retire on an early Retirement Benefit upon reaching age fifty-five (55). Upon actual retirement, a Participant shall receive a Retirement Benefit paid by the Retirement Fund to the extent vested in the form of an annuity which is the Actuarial Equivalent of his/her Total Account Balance on the effective date of the Retirement Benefit.

**5.4 Permanent and Total Disability Retirement.** Upon application made personally or by one entitled to act in his/her behalf or made by his/her employing Participating YMCA, an eligible Participant who has not attained age sixty (60) but who has at least five (5) full years (sixty (60) calendar months) of Participation shall, subject to all the conditions and provisions set forth below, retire on a Permanent Disability Retirement Benefit as defined herein to become effective on the first day of a calendar month following his/her severance from YMCA employment.

- (a) For purposes of this Section 5.4, the term "eligible Participant" shall include a Participant who either:
  - (i) is in YMCA employment at a Participating YMCA at the time of application for his/her Permanent Disability Retirement Benefit; or
  - (ii) has severed YMCA employment at a Participating YMCA within less than six (6) calendar months at the time of application for his/her Permanent Disability Retirement Benefit, unless prior to the time of application for permanent disability retirement he/she shall have been reemployed and shall have made Basic Participant Contributions for a period of at least twelve (12) consecutive calendar months after his/her reemployment, in which case "eligible Participant" status shall be based upon the Participant's period of reemployment or severance from such reemployment. A Participant who elects a distribution of his/her Accumulated Basic Participant Contributions pursuant to Section 5 shall not be eligible for a Permanent Disability Retirement Benefit unless, after reemployment, he/she later satisfies the requirements of this Section 5.4 with respect to such reemployment period.
- (b) The physician or physicians designated by the insurer selected by the Board shall certify to said Board, after a medical examination at his/her place of residence or other place agreed upon, that the Participant is totally and permanently physically or mentally incapacitated for the performance of duty and cannot engage in any gainful employment, that such incapacity commenced while in YMCA employment, and that he/she should be granted a Permanent Disability Retirement Benefit.
- (c) A Permanent Disability Retirement Benefit shall consist of an annuity paid by the Retirement Fund which:
  - (i) shall be the Actuarial Equivalent of the Participant Account Balance on the effective date of the Permanent Disability Retirement Benefit; and
  - (ii) shall be the Actuarial Equivalent of an amount which, when combined with his/her Basic Participant Contributions, shall be sufficient to produce a benefit that shall be equal to the

amount of his/her Normal Retirement Benefit attributable to Basic Participant Contribution, YMCA Contributions and YMCA Contributions (Legacy) to which he/she would have been entitled had he/she continued to serve to age sixty (60), making such Basic Participant Contributions on the basis of his/her average Compensation for the five (5) years immediately prior to the effective date of his/her Permanent Disability Retirement Benefit, assuming an Interest Credit rate (but in no event more than three percent (3%) per annum) had been credited on his/her account until age sixty (60); and

(iii) shall be the Actuarial Equivalent of his/her Accumulated Additional YMCA Contributions.

With respect to the Permanent Disability Retirement Benefit described in this Section 5.4(c), if the Participant elects a principal guarantee annuity option described in Section 8.2(b), only the portion of the benefit described in (i) above is subject to the guarantee provided by that annuity form.

(d) Continuing Permanent and Total Disability Requirement.

(i) Once each Plan Year, the insurance company named as disability claims reviewer by the Board may require any Participant receiving a Permanent Disability Retirement Benefit while still under the age of sixty (60) to undergo medical examinations by a physician or physicians designated by it, said examinations to be made at the place of residence of said Participant or other place mutually agreed upon.

(ii) The insurance company named as disability claims reviewer by the Board may also require Participants receiving a Permanent Disability Retirement Benefit to provide the insurance company with authorization to review their Social Security earnings records (or similar records). If these records show such a Participant is engaged in a gainful occupation, then the Participant's Permanent Disability Retirement Benefit shall be terminated as provided in Section 5.4(e).

(iii) Should any disabled Participant while under the age of sixty (60) years refuse to submit to at least one medical examination in any Plan Year by a physician designated by the insurance company named as disability claims reviewer by the Board or refuse to provide an authorization as described in Section 5.4(d)(ii), the value of his/her Permanent Disability Retirement Benefit derived from Basic and Additional YMCA Contributions shall be discontinued until the withdrawal of such refusal.

(e) Any Participant receiving a Permanent Disability Retirement Benefit who fails to meet the continuing permanent and total disability requirements of Section 5.4(d) shall have his/her Permanent Disability Retirement Benefit terminated the first of the month after said determination by the insurance company named as disability claims reviewer by the Board, and will have his/her Total Account Balance reinstated as of the effective date of his/her Permanent Disability Retirement Benefit (including applicable Interest Credits). If such Participant does not return to employment with a Participating YMCA, he or she shall receive a Deferred Vested Retirement Benefit as provided in Section 5.5, subject to applicable Participant and spousal elections and consents provided in Section 9. Any such Participant who returns to employment with a Participating YMCA shall again be eligible for a Permanent Disability Retirement Benefit after he/she has been reemployed and has made Basic Participant Contributions for a period of at least twelve (12) consecutive calendar months and shall otherwise be treated as a Participant.

**5.5 Deferred Vested Retirement.** Subject to the provisions of Section 6.4, a Participant who is not eligible to or does not elect to retire under the provisions of Section 5.2, 5.3, or 5.4, and who severs YMCA employment with any vested interest in his/her Total Account Balance, shall be eligible to retire on a Deferred Vested Retirement Benefit to become effective and commence at the Participant's option on the first day of any month following such Participant's 55th birthday. Said Deferred Vested Retirement Benefit shall consist of an annuity paid by the Retirement Fund that is the Actuarial Equivalent of his/her vested Total Account Balance. Participants shall vest in their Accumulated YMCA Contributions and Accumulated

YMCA Contributions (Legacy) in accordance with the applicable vesting provisions provided in Section 5.7. Participants shall always be fully and immediately vested in any Accumulated Additional YMCA Contributions made on behalf of a Participant under the Retirement Plan.

**5.6 Death of Deferred Vested Participant.** A Participant who is entitled to a Deferred Vested Retirement Benefit in accordance with Section 5.5 shall remain as a Participant until payment of his/her Retirement Benefit commences. If death should occur prior to the due date of the first payment of his/her Retirement Benefit, the death benefit payable on his/her account shall be determined under the applicable provisions of Section 7, subject to the conditions of Section 8.6 and Section 10.3.

**5.7 Vested Interest.**

- (a) Except as provided in the following sentence, effective for Plan Years beginning on or after July 1, 2006, any Employee who becomes a Participant on or after such date shall be immediately and fully (100%) vested in his/her Accumulated YMCA Contributions and Accumulated YMCA Contributions (Legacy) upon his/her commencement of participation in the Retirement Plan. Also effective July 1, 2006, any Employee who was a Participant in the Retirement Plan and who was eligible to participate in the Retirement Plan under the eligibility service provisions of Section 2.2(b)(viii)(1) as of July 1, 2006 and continues to be in Service on or after July 1, 2006 shall be fully (100%) vested in his/her Basic YMCA Account Balance upon the completion of two (2) years of Service. Any other Employee who became a Participant prior to July 1, 2006 and who continues in service on or after such date and who was vested in his/her Basic YMCA Account Balance (including Participants who became eligible in accordance with the eligibility service provisions of Section 2.2(b)(viii)(2) and consistent therewith are fully and immediately vested) shall continue to be vested in such contributions on and after such date.
- (b) Effective for Plan Years beginning on or after July 1, 2006, Participating YMCAs shall not be permitted to elect vesting schedules, and the vesting schedule provided in Section 5.7(a) shall automatically apply to all Participating YMCAs.
- (c) Notwithstanding any other provision, a Participant is fully vested in his/her Total Account Balance under the Retirement Plan upon attainment of his/her Normal Retirement Date.
- (d) Prior to July 1, 2006, the following provisions shall apply with respect to vesting:
  - (i) A Participant who is in Service on or after July 1, 2002 shall be fully (100%) vested in his/her Accumulated Basic YMCA Contributions after completing three (3) years of Service, and until three (3) years of Service are completed shall have no vested interest in such accounts.
  - (ii) Effective January 1, 2003 through April 30, 2006, a Participating YMCA may elect, in accordance with rules and procedures prescribed by the Board that, with respect to Participants in Service on or after the effective date of such vesting schedule change, their Employees' Accumulated Basic YMCA Contributions shall vest in accordance with either of the following vesting schedules: (i) full (100%) vesting after the completion of three (3) years of Service or (ii) full (100%) immediate vesting, provided that the vesting schedule set forth in clause (ii) shall apply only if the YMCA has elected the eligibility service requirements provided in Section 2.2(b)(viii)(2).
  - (iii) If a Participating YMCA elects to change the vesting schedule for amounts thereafter allocated to a Participant's Accumulated Basic YMCA Contributions, such change (including a vesting schedule change that occurs when an Employee transfers employment from one Participating YMCA to another Participating YMCA, where the vesting schedules are different) shall apply to all Employees of such YMCA. However, with respect to those Employees of such YMCA who had, as of the effective date of the vesting schedule change, satisfied the requirements for participation in the Retirement Plan (taking into account any reduction in the eligibility service requirement as a result of the vesting schedule change), such Employees will vest in their Accumulated Basic YMCA Contributions based on either (i) the vesting schedule that applied to such Employees prior to the vesting schedule change or (ii) the vesting schedule that applies following the vesting schedule change, whichever such vesting schedule provides the greater

vested interest. In no event, however, may a Participant's vested percentage (determined as of the effective date of the vesting schedule change) in his/her Accumulated Basic YMCA Contributions, if any (determined with respect to amounts contributed as of the effective date of the vesting schedule change), be less than his/her vested percentage determined at such time without regard to such vesting schedule change.

## **SECTION 6 – DISTRIBUTION OF PARTICIPANT CONTRIBUTIONS**

**6.1 Single Sum Distributions.** Subject to the conditions and limitations described in this Section and Section 8, a Participant may receive, or become entitled to receive, in a single lump sum the amount of his/her Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, or Accumulated Rollover Contributions.

**6.2 Distributions Following Severance from Employment.** Any Participant who severs YMCA employment may request an amount equal to his/her Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, and Accumulated Rollover Contributions in a single lump sum, provided that, except as provided below in this Section 6.2, if the Participant has attained age 55, a qualified joint and survivor annuity with respect to the Participant's Total Account Balance is then offered and waived, and spousal consent under Section 9 is obtained. Any Participant receiving such amount shall not forfeit his/her vested interest in his/her Basic YMCA Account Balance, but shall not be eligible for the disability benefit under Section 5.4 or the YMCA death benefit under Section 7.1(a), unless and until he/she is later reemployed and again becomes eligible for such benefits based on his/her participation after reemployment. Notwithstanding the foregoing, effective for requests for distributions from the Retirement Plan that are received by the Fund on or after October 1, 2009, in the event that a Participant who has severed from YMCA employment is eligible to elect to receive a single lump sum distribution of his or her Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, and Accumulated Rollover Contributions as otherwise provided for under this Section 6.2, such Participant may elect to receive a partial lump sum distribution of his or her Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, and/or Accumulated Rollover Contributions, provided that (i) the Participant's Total Account Balance is equal to at least \$10,000 at the time of such partial lump sum distribution; (ii) such partial lump sum distribution is equal to at least \$5,000; (iii) no more than one (1) partial lump sum distribution from the Retirement Plan shall be made to the Participant in any six (6)-month period; and (iv) for each such partial lump sum distribution request by a Participant, except as provided in the last sentence of this Section 6.2, if the Participant has attained age 55, a qualified joint and survivor annuity is then offered and waived, and spousal consent under Section 9 is obtained. For purposes of such partial lump sum distributions, to the extent applicable, such distributions shall be withdrawn from a Participant's Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, and Accumulated Rollover Contributions on a pro-rata basis. In the event a Participant elects a distribution of his/her Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions, or Accumulated Rollover Contributions in accordance with the foregoing, he/she may not repay any part thereof even though he/she is subsequently reemployed by a Participating YMCA. Notwithstanding anything in the Retirement Plan to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any distribution of a Participant's Accumulated Basic Participant Contributions, Accumulated Additional YMCA Contributions, Accumulated Voluntary After-Tax Contributions or Accumulated Rollover Contributions pursuant to this Section 6.2 that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form.

**6.3 Restriction on In-Service Withdrawals.** In no event shall any Participant who is employed by a Participating YMCA have the right to a withdrawal of his/her Accumulated Basic Participant Contributions or his/her Basic YMCA Account Balance.

**6.4 Rollovers/Mandatory Distributions from the Retirement Plan.**

- (a) In the event that the Participant's Total Account Balance (including Accumulated Rollover Contributions) is \$5,000 or less on the date the Participant severs YMCA employment, the person entitled to such amounts may elect to be paid a single sum distribution of those amounts.
- (b) In the event that the Participant's Total Account Balance (including Accumulated Rollover Contributions) is greater than \$50 but less than or equal to \$5,000 on the date the Participant severs YMCA employment, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover in accordance with Section 6.6, or to receive the distribution directly in a single sum distribution, then the Board will pay the distribution (including Accumulated Rollover Contributions) in a direct rollover to an individual retirement plan and a respective trustee or issuer thereof designated by the Board or its designee.
- (c) In the event that the Participant's Total Account Balance (including Accumulated Rollover Contributions) is more than \$5,000 on the date such amounts are to be paid as a single lump sum (or, effective for requests for distributions from the Retirement Plan that are received by the Fund on or after October 1, 2009, partial lump sum) under this Section 6 or on the date of any other distribution event, no portion thereof may be paid from the Retirement Plan without the consent of the Participant prior to the earlier of (i) the Participant's attainment of age sixty-two (62) or (ii) his/her death; and only if such consent is provided not more than ninety (90) days prior to the date of the distribution.
- (d) Effective March 1, 2006, in the event that the Participant's Total Account Balance is \$50 or less on the date the Participant severs employment, such amounts shall be paid to the Participant in a single lump sum as soon as practicable following such event.

**6.5 Distribution or Withdrawal of Voluntary After-Tax Contributions or Rollovers.** Any Participant who has an amount of Accumulated Voluntary After-Tax Contributions or Accumulated Rollover Contributions standing to his/her credit in the Participant Account Balance may request that a full distribution (or, effective for requests for distributions from the Retirement Plan that are received by the Fund on or after October 1, 2009, partial distribution, as provided for under Section 6) of such amount following his/her severance from YMCA employment or a full withdrawal of such amount while employed by a Participating YMCA be made to him/her in a single lump sum, provided that, subject to the following sentence, a qualified joint and survivor annuity (with respect to the Total Account Balance in the case of a post-severance distribution or with respect to the amount withdrawn in the case of a withdrawal while in YMCA employment) is then offered and waived, and spousal consent under Section 9 is obtained. Notwithstanding anything in the Retirement Plan to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any such single lump sum distribution (or, as applicable, partial lump sum distribution) of a Participant's Accumulated Voluntary After-Tax Contributions or Accumulated Rollover Contributions pursuant to this Section 6.5 that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form.

**6.6 Rollovers.**

- (a) Notwithstanding any provision of the Retirement Plan to the contrary, a Distributee may elect, at the time and on forms and in the manner prescribed by the Board, as applicable, to have any portion of an Eligible Rollover Distribution under the Retirement Plan paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) For purposes of this Section, the terms set forth below shall have the following meanings:

- (i) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any distribution that is not includible in gross income except as provided in Section 6.6(b)(v) below, and any amount withdrawn by a Participant on account of hardship.
- (ii) Eligible Retirement Plan. An eligible retirement plan is:
  - a. a qualified plan described in Code Section 401(a) or 403(a),
  - b. a qualified plan described in Code Section 403(b),
  - c. an individual retirement account plan described in Code Section 408, or
  - d. a deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and that agrees to accept the distributee's eligible rollover distribution and separately accounts for such amounts and the earnings thereon.
  - e. to the extent permitted by applicable law, a Roth IRA described in Code Section 408A.
- (iii) Distributee. A distributee includes the following individuals with respect to his or her interest in the Retirement Plan: (i) an Employee, (ii) a former Employee, (iii) the Employee's or former Employee's surviving spouse, (iv) the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, and (v) any non-spouse beneficiary designated by the Employee.
- (iv) Direct Rollover. A direct rollover is a payment by the Retirement Plan to the eligible retirement plan specified by the distributee.
- (v) After-Tax Rollovers from the Retirement Plan. After-tax Employee contributions distributed from the Retirement Plan may be rolled over to:
  - a. an Eligible Retirement Plan described in Section 6.6(b)(ii)a or 6.6(b)(ii)b, provided such plan accepts after-tax Employee contributions and separately accounts for such amounts and the earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
  - b. an Eligible Retirement Plan described in 6.6(b)(ii)c; or
  - c. an Eligible Retirement Plan described in 6.6(b)(ii)e.
- (vi) Rollover by Non-Spouse Beneficiaries. Non-spouse beneficiaries may rollover, in the form of a direct trustee to trustee transfer, an Eligible Rollover Distribution only to an eligible retirement plan described in Section 6.6(b)(ii)c or, to the extent allowable by applicable law, Section 6.6(b)(ii)e.

## **6.7 Permanent and Total Disability Distribution.**

A Participant who is not eligible to receive a Permanent Disability Retirement Benefit under Section 5.4 above but is determined by the physician or physicians designated by the insurer selected by the Board to be totally and permanently physically or mentally incapacitated for the performance of duty and incapable of engaging in any gainful employment may request to be paid a single lump sum of her/his Total Account Balance notwithstanding the limitations on lump sums contained in Section 10.4, provided that, subject to the last sentence of this Section 6.7, a qualified joint and survivor annuity is then offered and waived, and spousal consent under Section 9 is obtained. Notwithstanding the foregoing, effective for requests for distributions from the Retirement Plan that are received by the Fund on or after October 1, 2009, in the event that a

Participant who has severed from YMCA employment is eligible to elect to receive a single lump sum distribution of her/his Total Account Balance as otherwise provided for under this Section 6.7, such Participant may elect to receive a partial lump sum distribution of her/his Total Account Balance, provided that (i) the Participant's Total Account Balance is equal to at least \$10,000 at the time of such partial lump sum distribution; (ii) such partial lump sum distribution is equal to at least \$5,000; (iii) no more than one (1) partial lump sum distribution from the Retirement Plan shall be made to the Participant in any six (6)-month period; and (iv) for each such partial lump sum distribution request by a Participant, except as provided in the last sentence of this Section 6.7, if the Participant has attained age 55, a qualified joint and survivor annuity is then offered and waived, and spousal consent under Section 9 is obtained. For purposes of such partial lump sum distributions, to the extent applicable, such distributions shall be withdrawn from a Participant's Total Account Balance on a pro-rata basis. Notwithstanding anything in the Retirement Plan to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any distribution of a Participant's Total Account Balance pursuant to this Section 6.7 that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form.

#### **6.8 Forfeitures.**

- (a) Any Participant who severs YMCA employment and incurs a six (6) year Period of Severance, shall forfeit his/her nonvested interest in his/her Accumulated YMCA Contributions and Accumulated YMCA Contributions (Legacy) .
- (b) The portion of Accumulated YMCA Contributions and Accumulated YMCA Contributions (Legacy) that is forfeited as provided in Section 6.8(a) shall be applied to reduce YMCA contributions required under Section 4.3, 4.5 or 4.6 with respect to the Participating YMCA that employed such Participant while the contributions were made. Any forfeitures not used by a YMCA in the current Plan Year in which they apply shall be carried over to succeeding Plan Years and applied as provided in this Section 6.8(b).

## SECTION 7 – PRE-RETIREMENT DEATH BENEFITS

**7.1 Pre-Retirement Death Benefit.** If a Participant of a Participating YMCA dies before retirement or if he/she dies after having elected a form of Retirement Benefit and before the due date of the first payment of his/her Retirement Benefit, and subject to all the applicable provisions and conditions specified in this Section, and except as otherwise provided under Section 10.3, there shall be paid, in a lump sum, to the person or persons he/she shall have nominated by written designation duly executed and filed with the Board, or if no such person survives him/her, as provided in Section 14.5, the following death benefit:

- (a) If the Participant dies before retirement while in YMCA employment, the sum of:
  - (i) The greater of:
    - 1/ \$10,000; or
    - 2/ the total value of the Accumulated Basic Participant Contributions, the Accumulated YMCA Contributions and the Accumulated YMCA Contributions (Legacy) as of the last day of the month in which the Participant dies with an Interest Credit thereto for up to three months after the month in which the Participant dies; and
  - (ii) The Participant's Accumulated Voluntary After-Tax Contributions, Accumulated Additional YMCA Contributions and Accumulated Rollover Contributions as of the last day of the month in which the Participant dies, with an Interest Credit thereto for up to three months after the month in which the Participant dies.

If the Participant dies and the pre-retirement death benefit under Section 7.1(a)1 is payable with respect to him/her, the Fund shall pay the excess of the amount under Section 7.1(a)1 over the amount under Section 7.1(a)2, and no Interest Credit shall accrue thereon after the last day of the month in which the Participant dies.

- (b) If the Participant dies after severance of YMCA employment but before the due date of the first payment of his/her Retirement Benefit, the sum of:
  - (i) The total value of the Accumulated Basic Participant Contributions, the Accumulated YMCA Contributions and the Accumulated YMCA Contributions (Legacy) to the extent vested as of the last day of the month in which the Participant dies with an Interest Credit thereto for up to three months after the month in which the Participant dies; and
  - (ii) The Participant's Accumulated Voluntary After-Tax Contributions, Accumulated Additional YMCA Contributions and Accumulated Rollover Contributions as of the last day of the month in which the Participant dies, with an Interest Credit thereto for up to three months after the month in which the Participant dies.
- (c) For deaths occurring prior to July 1, 2006, the following death benefit provisions apply in lieu of (a) and (b) above:
  - (i) The total amount standing to the Participant's credit in the Participant's Account Balance; and
  - (ii) A YMCA death benefit, if any, from YMCA contributions computed as follows:
    - 1/ If the Participant had less than five (5) full years (sixty (60) calendar months) of Participation credited to him/her at the time of death, and provided any such Participant had twelve or more monthly Basic Participant Contributions due and paid prior to his/her death, the amount of such death benefit, if any, shall be equal to ten (10) times the amount of Basic Participant Contributions due and paid by him/her during the twelve consecutive months immediately prior to the month in which death occurred. For purposes of this Section, Participation shall not include periods for which Accumulated Basic Participant Contributions are withdrawn.

- 2/ If the Participant had five (5) full years (sixty (60) calendar months) or more of Participation credited to him/her at the time of death, the amount of such death benefit, if any, shall be equal to twenty (20) times the amount of Basic Participant Contributions due and paid by him/her during the twelve (12) consecutive months immediately prior to the month in which death occurred.

**7.2 Beneficiary Election To Convert Lump Sum Death Benefit or Account Balance.** In lieu of any lump sum payment available under Section 7.1(a) or 7.1(b) above, the duly nominated Beneficiary or Beneficiaries of a deceased Participant described in Section 7.1 may elect to convert such lump sum (as of the last day of the month in which the Participant dies) or the Total Account Balance plus any balance under the Tax-Deferred Savings Plan of the deceased Participant, in whole or in part, into an immediate single life annuity ceasing at death described in Section 8.2(a), or into an immediate principal guarantee annuity option described in Section 8.2(b), which is the Actuarial Equivalent of the lump sum or Total Account Balance otherwise payable. The effective date of any such annuity shall be the first day of the month next following the month in which the Participant's death occurred. Such election shall be available only to a named Beneficiary who is a living person, and not to any trust (other than a trust described in Section 14.6), estate, institution, organization, or other non-living person.

**7.3 Multiple Beneficiaries.** In the event a Participant described in Section 7.1 has nominated more than one Beneficiary, then each Beneficiary shall be entitled to elect for themselves one of the benefits described in Sections 7.1, or 7.2 with respect to their proportionate share of such death benefit as if all of the Beneficiaries elected such benefit. However, in the case of a named Beneficiary that is a trust (other than a trust described in Section 14.6), estate, institution, organization, or other non-living person, such Beneficiary, in lieu of any other benefit described in this Section 7, shall receive as a death benefit its proportionate share of the benefits described in Section 7.1.

**7.4 Death Benefits for Certain Spouses.**

- (a) In lieu of the benefits described in Sections 7.1 or 7.2, the surviving Spouse of a deceased Participant described in Section 7.1 may elect, within a reasonable time after Participant's death, to receive an immediate or deferred single life annuity described in Section 8.2(a) or an immediate or deferred principal guarantee annuity described in Section 8.2(b) in the form of a qualified pre-retirement survivor annuity as described in Section 9.3, unless waived in accordance with the requirements of Section 9.4(d). The effective date of any such immediate annuity shall be the first day of the month next following the month in which the Participant's death occurred.

(b) Where Surviving Spouse is the Beneficiary.

- (i) Subject to Section 7.4(b)(ii) below, if the surviving Spouse, described in Section 7.4(a), is also the deceased Participant's named Beneficiary (as to all or a portion of such Participant's death benefit) and does not elect to waive the pre-retirement death benefit described in Section 7.4(a), and in lieu of the death benefits described in Sections 7.1 or 7.2, the remaining amounts standing to the Participant's credit in the Participant's Total Account Balance shall be paid to the deceased Participant's named Beneficiary (or, as applicable, named Beneficiaries in accordance with their respective shares thereof), other than any named Beneficiary that is a trust (other than a trust described in Section 14.6), estate, institution, organization, or other non-living person, in the form of an immediate single life annuity described in Section 8.2(a) or an immediate principal guarantee annuity described in Section 8.2(b), whichever the named Beneficiary so elects.
- (ii) Notwithstanding anything in Section 7.4(b)(i) above to the contrary, the surviving Spouse (and, as applicable, such other named Beneficiaries) may elect to receive in a lump sum or in an immediate or deferred single life annuity described in Section 8.2(a) or immediate or deferred principal guarantee annuity described in Section 8.2(b), the surviving Spouse's (and, as applicable, such other named Beneficiaries') proportionate share of the portion of such remaining death benefit as is equal to one-half of the Participant's Total Account Balance attributable to the

deceased Participant's Accumulated Basic Participant Contributions, Accumulated Voluntary After-Tax Contributions and Accumulated Rollover Contributions plus one-half of the deceased Participant's Accumulated Additional YMCA Contributions, and to the extent such lump sum or annuity benefit, described in this Section 7.4(b)(ii), is elected and paid to the surviving Spouse (or other named Beneficiary or Beneficiaries), the surviving Spouse's (or other named Beneficiaries') proportionate share of the remaining death benefit that would be payable to the surviving Spouse (or other named Beneficiary or Beneficiaries) under Section 7.4(b)(i) above shall be reduced by the Actuarial Equivalent of such lump sum or annuity benefit payment so elected under this Section 7.4(b)(ii) but not below the value of the qualified Pre-retirement Survivor Annuity described in Section 9.3. The effective date of any immediate annuity payment under this Section 7.4(b) shall be the first day of the month next following the month in which the Participant's death occurred.

(c) Where Surviving Spouse is Not the Beneficiary.

- (i) Subject to Section 7.4(c)(ii) below, if the surviving Spouse, described in Section 7.4(a), is not a named Beneficiary of the deceased Participant (as to any portion of such Participant's death benefit) and does not elect to waive the pre-retirement death benefit described in Section 7.5, in lieu of the death benefits described in Sections 7.1, 7.2, and 7.3, the remaining one-half of the amounts standing to the Participant's credit in the Participant's Total Account Balance shall be paid to the deceased Participant's named Beneficiary, (or, as applicable, named Beneficiaries in accordance with their respective shares thereof), other than any named Beneficiary that is a trust (other than a trust described in Section 14.6), estate, institution, organization, or other non-living person, in the form of an immediate single life annuity described in Section 8.2(a) or an immediate principal guarantee annuity described in Section 8.2(b), whichever the named Beneficiary so elects.
  - (ii) Notwithstanding anything in Section 7.4(c)(i) above to the contrary, said named Beneficiary (or, as applicable, named Beneficiaries) may elect to receive in a lump sum or in an immediate single life annuity described in Section 8.2(a) or immediate principal guarantee annuity described in Section 8.2(b), their share of the portion of such remaining death benefit as is equal to one-half of the Participant's Total Account Balance attributable to the deceased Participant's Accumulated Basic Participant Contributions, Accumulated Voluntary After-Tax Contributions and Accumulated Rollover Contributions plus one-half of the deceased Participant's Accumulated Additional YMCA Contributions, and to the extent such lump sum or annuity benefit, described in this Section 7.4(c)(ii), is elected and paid to such Beneficiary (or Beneficiaries), their proportionate share of the remaining death benefit that would be payable under Section 7.4(c)(i) above shall be reduced by the Actuarial Equivalent of such lump sum or annuity benefit payment so elected under this Section 7.4(c)(ii). The effective date of any annuity payment under this Section 7.4(c) shall be the first day of the month next following the month in which the Participant's death occurred.
- (d) If the surviving Spouse of a deceased Participant, described in Section 7.4(a), elects, as provided in Section 7.5, to waive the surviving Spouse death benefit described in this Section 7.4, the deceased Participant's named Beneficiary (or, as applicable, named Beneficiaries) shall be eligible to receive, in lieu of any benefit otherwise payable under this Section 7.4, the pre-retirement death benefit provided under Section 7.1, or 7.2, whichever shall apply.

**7.5 Waiver of Surviving Spousal Benefit.** A Participant may, with the consent of his/her Spouse, revocably waive the surviving Spouse death benefit described in Section 7.4(a) on or after the first day of the Plan Year in which he/she attains age 35 or as of the severance of his/her employment with a Participating YMCA as provided in Section 9 below.

**7.6 Survivor Benefits Regarding Participants Performing Military Service.** Pursuant to the HEART Act, effective for deaths occurring on or after January 1, 2007, in the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)) the survivors of the Participant are entitled to any additional benefits provided under the Retirement Plan (other than benefit accruals relating to the period of qualified military service) that they would have been entitled to receive had the Participant resumed employment and then terminated employment on account of death.

## **SECTION 8 – OPTIONAL FORMS OF RETIREMENT BENEFITS**

**8.1 Application for Retirement Benefit.** At the time an application is made for any Retirement Benefit available under Section 5, but not later than the date the first payment of his/her Benefit is due, any Participant, or if he/she is incompetent in the judgment of the Board or as determined by a court of competent jurisdiction, his/her spouse or a committee of his/her estate, may by formal application elect any optional form of benefit provided under this Section. Any Beneficiary who is entitled to convert a lump sum payment into an annuity, may by formal application elect either a single life annuity or a lesser principal guarantee annuity as described in Sections 8.2(a) or 8.2(b) below, subject to Section 11.3.

**8.2 Optional Forms.** Any such Participant may elect one of the following optional forms of distribution described in this Section 8.2(a), (b), or (c), including any further modification as permitted in Section 8.2(d), but subject to the provisions of Sections 8.3 and 8.4:

- (a) To receive the Actuarial Equivalent of the amount standing to his/her credit in the Participant's Total Account Balance as a single life annuity from the Retirement Fund, payable monthly and terminating with the payment due for the last month of his/her life (this annuity is the Normal Retirement Benefit, also referred to as the single life annuity); or
- (b) To receive the Actuarial Equivalent of his/her Normal Retirement Benefit at the time it becomes effective in the form of a lesser Retirement Benefit, payable monthly through the last month of his/her life and, upon his/her death, an amount shall be paid to such person as he/she may have nominated as Beneficiary, equal to the Participant's Total Account Balance at the time the annuity goes into effect minus the sum total amount of the annuity payments based upon such Participant's Total Account Balance which he/she shall have received prior to his/her death (also referred to as the principal guarantee annuity option); or
- (c) To receive the Actuarial Equivalent of his/her Normal Retirement Benefit at the time it becomes effective in the form of a lesser Retirement Benefit, payable monthly through the last month of his/her life and, upon his/her death, said reduced Retirement Benefit shall be continued and paid during the life of, and to, the person he/she shall have nominated at the time he/she elected this option in such amount and under such conditions as described below (also referred to as the joint and survivor annuity).
  - (i) The reduced Retirement Benefit described under this joint and survivor annuity option which is payable to the Participant shall be called the Participant annuity, and the amount continued and paid to the nominated Beneficiary shall be called the survivor annuity. The Participant may elect a reduced Retirement Benefit described in this Section 8.2(c) with a survivor annuity payable:
    - 1/ in the same amount as the Participant annuity (100% joint and survivor annuity),
    - 2/ at the rate of 75% of the Participant annuity (75% joint and survivor annuity), or
    - 3/ at the rate of 50% of the Participant annuity (50% joint and survivor annuity).
  - (ii) The Participant may elect to further modify his/her reduced Retirement Benefit described in this Section 8.2(c) to provide that, should the person nominated to receive the survivor annuity at his/her death predecease him/her, the amount of his/her Retirement Benefit shall revert to the

amount of his/her Normal Retirement Benefit as described in Section 8.2(a) on the first of the month following the date of death of the person so nominated.

- (d) Any Participant may elect to modify the optional form of his/her Retirement Benefit described in Sections 8.2(a) single life annuity, 8.2(b) principal guarantee annuity option, or 8.2(c) joint and survivor annuity to provide that, if his/her Retirement Benefit is effective before he/she has attained age 62, his/her Retirement Benefit shall be increased by the amount of his/her estimated federal Social Security benefit at age 62 and 2 months, actuarially reduced to the age his/her Retirement Benefit is effective, provided his/her Retirement Benefit (both his/her Participant annuity and any survivor annuity payable) is greater than his/her estimated federal Social Security benefit at age 62 and 2 months, and further provided that at age 62 and 2 months his/her Retirement Benefit (Participant annuity only) shall be reduced on a dollar for dollar basis by the amount of his/her estimated federal Social Security benefit at age 62 and 2 months. The modification provided under this Section 8.2(d) may not be combined with the modification under Section 8.2(c)(ii).

**8.3 Required Beginning Date.** Every Participant entitled to a Retirement Benefit or annuity must begin to take a distribution by April 1st of the year after the year in which he/she attains age 70½ or his/her Participating YMCA employment is severed, whichever is later. A surviving Spouse entitled to a death benefit described in Section 7.4 must begin to take a distribution by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later. Notwithstanding any other provision, the timing and commencement of benefits, unless benefits are otherwise payable pursuant to Sections 6, 7, 8, 9 and 10.4, shall be subject to the provisions set forth in Section 8.9.

**8.4 Additional Retirement Benefit.** Any Participant or Beneficiary receiving a Retirement Benefit or annuity who becomes entitled to an additional Retirement Benefit or annuity prior to the year in which he/she attains age 70½, may choose to receive the additional Retirement Benefit or annuity under any optional form of distribution described in this Section 8 that applies to him/her. Participants and Beneficiaries who become entitled to an additional Retirement Benefit or annuity during or after the year in which they attain age 70½ must receive such additional Retirement Benefit or annuity under the same optional form of distribution as their first Retirement Benefit or annuity if the annuity starting date for such earlier Retirement Benefit or annuity occurred on or after the Participant attained age 60. However, if a Participant had chosen a joint and survivor annuity and the person nominated to receive the survivor annuity predeceased him/her, then his/her additional Retirement Benefit or annuity shall be paid as a Normal Retirement Benefit (maximum life annuity). Any Participant or Beneficiary receiving a Retirement Benefit or annuity that commenced prior to age 60 and who becomes entitled to an additional Retirement Benefit or annuity may choose to receive the additional Retirement Benefit or annuity under any optional form of distribution described in this Section 8 that applies to him/her.

**8.5 Automatic Spousal Benefit.** Notwithstanding any other provision except Section 10.4, a Participant entitled to receive a Retirement Benefit under Section 5 who has not made an election under Section 8, or a vested Participant entitled to a distribution, shall be deemed to have automatically made an election to receive his/her Retirement Benefit as a 50% joint and survivor annuity under Section 8.2(c)(i)3 above, and has nominated his/her Spouse as Beneficiary thereunder. Such Participant may opt to cancel the aforesaid automatic election within 90 days prior to the commencement of such Retirement Benefit and receive his/her benefits in any other available optional form as described in Section 8.2, or, as appropriate, Section 6. Any election of a single life annuity, principal guarantee single life annuity, or any optional form which modifies a joint and survivor annuity as described in Section 8.2(c)(ii) or 8.2(d), or a distribution described in Section 6.2, by such Participant, shall require the consent of his/her Spouse.

**8.6 Death Before Commencement.** Except as otherwise provided under Section 10.3, any option election made under this Section shall not become effective unless both the Participant and the person he/she nominated for purposes of such election shall survive until the date benefits are to commence.

### **8.7 Restrictions on Immediate Distributions.**

- (a) If payment in the form of a qualified joint and survivor annuity is required with respect to a Participant and either the value of a Participant's vested Total Account Balance including Rollover Contributions exceeds \$5,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the Total Account Balance is immediately distributable, the Participant and the Participant's Spouse, if applicable, must consent to any distribution of such Total Account Balance, as provided in Section 9.
- (b) If payment in the form of a qualified joint and survivor annuity is not required with respect to a Participant and the value of a Participant's vested Total Account Balance derived from employer and Employee contributions exceeds \$5,000, and the Total Account Balance is immediately distributable, the Participant must consent to any distribution of such Total Account Balance, as provided in Section 10.4(c).

### **8.8 Commencement of Benefits.**

- (a) Unless the Participant elects otherwise, in accordance with applicable Retirement Plan provisions, and provided that the Participant files all required applications and notices with the Board to commence such distribution, distributions of benefits will begin no later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:
  - (i) the Participant attains age 60;
  - (ii) occurs the 10<sup>th</sup> anniversary of the year in which the Participant commenced participation in the Retirement Plan; or
  - (iii) the Participant terminates service with the employer.
- (b) Notwithstanding the foregoing, the failure of a Participant and Spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 8.7 of the Retirement Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section 8.8.

### **8.9 Minimum Distribution Requirements**

- (a) **Effective Date.** The provisions of the Section 8.9 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) **Precedence.** The requirements of this Section 8.9 will take precedence over any inconsistent provisions of the Retirement Plan.
- (c) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 8.9 will be determined in accordance with Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code and the minimum distribution incidental death benefit requirement of Section 401(a)(9)(G) of the Code.
- (d) **Limits on Distribution Periods.** As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:
  - (i) the life of the Participant
  - (ii) the joint lives of the Participant and a designated Beneficiary
  - (iii) a period certain not extending beyond the life expectancy of the Participant, or

- (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and designated Beneficiary
- (e) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (f) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - (ii) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse are required to begin, this Section 8.9(f), other than 8.9(f)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 8.9(f) and Section 8.9(j) unless Section 8.9(f)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 8.9(f)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 8.9(f)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required to begin to the surviving Spouse under Section 8.9(f)(i), the date distributions are considered to begin is the date distributions actually commence.

- (g) Forms of Distributions. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 8.9(h),(i),(j) and (k). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the applicable Treasury Regulations.
- (h) Amount of Required Minimum Distribution for each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (i) The quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the Treasury Regulation, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (ii) If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and the Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.
- (i) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Section 8.9(h) above and this Section 8.9(i) beginning

with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(j) Death On or After Date Distributions Begin

- (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
  - a. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - b. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
  - c. If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(k) Death before Date Distributions Begin.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 8.8(j) above.
  - (ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 8.9(f)(i), then this Section 8.9(k) will apply as if the surviving Spouse were the Participant.
- (l) Designated Beneficiary. The "designated Beneficiary" is the individual who is designated as the Beneficiary under the terms of the Retirement Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4, Q&A-1, of the Treasury Regulations.

- (m) **Distribution Calendar Year.** The “distribution calendar year” is the calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 8.9(f). The required minimum distribution for the Participant’s first distribution calendar year will be made on or before the Participant’s required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant’s required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (n) **Life Expectancy.** “Life expectancy” is the life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 Q&A-1, of the Treasury Regulations.
- (o) **Participant’s Account Balances.** The “Participant’s account balance” is the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Retirement Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (p) **Required Beginning Date.** The Participant’s “required beginning date” is April 1st of the calendar year after the calendar year in which he/she attains age 70½ or his/ her YMCA employment is severed, whichever is later. Distributions to a 5-percent (5%) owner (as described below) must commence by the April 1 of the calendar year following the calendar year in which the Participant attains age 70½. Notwithstanding the foregoing, in the case of a Participant who attained age 70½ in a year prior to 1997, and who began his/her Retirement Benefit or annuity by April 1st of the calendar year after the calendar year in which he/she attained age 70½ while remaining in YMCA employment, such Participant may continue to receive such Retirement Benefit or annuity while in YMCA employment.
- (q) **5-percent Owner.** A Participant is treated as a 5-percent owner for purposes of Section 8.9(p) if such Participant is a 5-percent (5%) owner as defined in Section 416 of the Code at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70½. Once distributions have begun to a 5-percent (5%) owner under Section 8.9(p) they must continue to be distributed, even if the Participant ceases to be a 5-percent (5%) owner in a subsequent year.
- (r) **Determination of the Amount to be Distributed Each Year.**
  - (i) If the Participant’s interest is to be paid in the form of an annuity distribution under the Retirement Plan paid by the Retirement Fund, payments under the annuity shall satisfy the following requirements:
    - a. the annuity distributions must be paid in periodic payments made at intervals not longer than one year;
    - b. the distribution period must be over a life (or lives) or over a period certain not longer than the life expectancy (or joint life and last survivor expectancy) described in Section 401(a)(9)(A)(ii) or Section 401(a)(9)(B)(iii) of the Code whichever is applicable;
    - c. once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum period permitted.;
    - d. payments must be either non-increasing or increase only as follows:

1. by an annual percentage increase that does not exceed the annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  2. to the extent of the reduction of the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the designated Beneficiary whose life was being used to determine the distribution period described in Section 8.9(d) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
  3. to provide cash refunds of Employee contributions upon the Participant's death; or
  4. pay increased benefits that result from a Plan amendment.
- (ii) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 8.3) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g. bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- (iii) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (s) Requirements For Annuity Distributions That Commence During Participant's Lifetime.
- (i) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
  - (ii) Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the Applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Section 8.9(s)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in

section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(t) TEFRA Section 242(b)(2) Elections.

Notwithstanding the other requirements of this Section distribution on behalf of any Participant, including a 5-percent owner, who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (i) The distribution by the Retirement Plan is one which would not have disqualified such Retirement Plan under Section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (ii) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Retirement Plan is being distributed or, if the Participant is deceased, by a designated Beneficiary of such Participant.
  - (iii) Such designation was in writing, was signed by the Participant or the designated Beneficiary, and was made before January 1, 1984.
  - (iv) The Participant had accrued a benefit under the Retirement Plan as of December 31, 1983.
  - (v) The method of distribution designated by the Participant or the designated Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the designated Beneficiaries of the Participant listed in order of priority.
- (u) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described in Section 8.9(r) with respect to the distributions to be made upon the death of the Participant.
- (v) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the designated Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Sections 8.9(t)(i) and (v).
- (w) If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Retirement Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
- (x) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treasury Regulations 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.
- (y) Transitional Rules.
- (i) For plans in existence before 2003 required minimum distributions before 2003 were made pursuant to Sections 8.9(t) through (x) if applicable, and subsections (ii) through (iv) below.

- (ii) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Section 401(a)(9) of the Code and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the “1987 Proposed Regulations”).
  - (iii) 2001. Required minimum distributions for calendar year 2001 were made in accordance with Section 401(a)(9) of the Code and the 1987 Proposed Regulations. If distributions were made in 2001 under the 1987 Proposed Regulations prior to the date in 2001 the Retirement Plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.
  - (iv) 2002. Required minimum distributions for calendar year 2002 were made in accordance with Section 401(a)(9) and the 1987 Proposed Regulations.
  - (v) 2009. Notwithstanding Sections 8.3 and 8.9, a Participant or Beneficiary who would have been required to receive a required minimum distribution for calendar year 2009 but for the enactment of Section 401(a)(9)(H) of the Code (“2009 RMDs”) will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. In addition, notwithstanding Section 6.6(b)(i), and solely for purposes of applying the direct rollover provisions of the Retirement Plan, 2009 RMDs will be treated as eligible rollover distributions only if paid with an additional amount that is an eligible rollover distribution without regard to Section 401(a)(9)(H).
- (z) YMCA Retirement Fund Legislation.

Notwithstanding anything in the Retirement Plan to the contrary, and in accordance with U.S. Public Law 108-476 (including the provision thereof that treats accounts under the Retirement Plan as Code Section 403(b)(9) church retirement income accounts for purposes of Code Section 401(a)(9)) and Treasury Regulation Section 1.403(b)-6(e)(5), benefits under the Retirement Plan, unless otherwise payable pursuant to Sections 6, 7, 8, 9 and 10.4, shall be distributed in accordance with Section 8.9 and Treasury Regulations under Code Section 401(a)(9), as applicable.

## SECTION 9 – JOINT AND SURVIVOR & PRE-RETIREMENT SURVIVOR ANNUITY REQUIREMENTS

**9.1** Application of Joint & Survivor Rules. The provisions of this Section 9 shall apply to any Participant who is credited with at least one Hour of Service with the employer on or after August 23, 1984.

**9.2** Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a qualified election within the 90-day period ending on the annuity starting date, a married Participant's vested Total Account Balance will be paid in the form of a qualified joint and survivor annuity and an unmarried Participant's vested Total Account Balance will be paid in the form of a life annuity. The Participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the Retirement Plan.

**9.3** Qualified Pre-retirement Survivor Annuity. Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a Participant dies before the annuity starting date, then at least 50% of the Participant's vested Total Account Balance as of the date of the Participant's death shall be applied toward the purchase of an annuity for the life of the surviving Spouse. In determining the portion of the Participant's vested Total Account Balance attributable to the qualified pre-retirement survivor annuity, the portion of the Participant's vested Total Account Balance, as is equal to the fraction of which the numerator is the Participant's vested Total Account Balance and the denominator is the Participant's Total Account Balance, shall be allocated to the qualified pre-retirement survivor annuity. The surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

**9.4** Definitions. For purposes of this Section 9, the following definitions will apply:

- (a) Election period. The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age 35 is attained, with respect to the Total Account Balance as of the date of separation, the election period shall begin on the date of separation.
- (b) Pre-age 35 waiver. A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the qualified pre-retirement survivor annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives a written explanation of the qualified pre-retirement survivor annuity in such terms as are comparable to the explanation required under Section 9.5. Qualified pre-retirement survivor annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this Section.
- (c) Earliest retirement age. The earliest date on which, under the Retirement Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified election. A qualified election is a waiver of a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity. Any waiver of a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a notary public. Additionally, a Participant's waiver of the qualified joint and survivor annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without

spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Retirement Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a qualified election. Any consent by a Spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 9.5 below.

- (e) Qualified joint and survivor annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's vested Total Account Balance. The percentage of the survivor annuity under the Retirement Plan shall be 50.
- (f) Spouse (surviving Spouse). For purposes of this Section 9, shall mean the Spouse or surviving Spouse of the Participant as defined in this Plan, provided that a former spouse will be treated as the Spouse or surviving Spouse, and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.
- (g) Annuity starting date. The first day of the first period for which an amount is paid as an annuity or any other form.

#### **9.5 Notice Requirements.**

- (a) In the case of a qualified joint and survivor annuity, the Board shall, no less than 30 days and no more than 90 days prior to the annuity starting date, provide each Participant a written explanation of: (i) the terms and conditions of a qualified joint and survivor annuity; (ii) the Participant's right to make and the effect of an election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of a revocation of a previous election to waive the qualified joint and survivor annuity.

The annuity starting date for a distribution in a form other than a qualified joint and survivor annuity may be less than 30 days after receipt of the written explanation described above in this Section 9.5(a) provided: (i) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the qualified joint and survivor annuity and elect (with spousal consent) a form of distribution other than a qualified joint and survivor annuity; (ii) the Participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the qualified joint and survivor annuity is provided to the Participant; and (iii) the annuity starting date is a date after the date that the written explanation was provided to the Participant.

- (b) In the case of a qualified pre-retirement survivor annuity as described in Section 9.3, the Board shall provide each Participant, within the applicable period for such Participant, a written explanation of the qualified pre-retirement survivor annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of this Section 9 applicable to a qualified joint and survivor annuity.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (ii) a reasonable period ending after the individual becomes a Participant; (iii) a reasonable period ending after this Section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

For purposes of applying this Section 9.5(b) above, a reasonable period ending after the enumerated events described in Section 9.5(b)(i), (ii) and (iii) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the employer, the applicable period for such Participant shall be redetermined.

## **SECTION 10 – PAYMENT OF RETIREMENT BENEFITS**

**10.1 Effective Date of Retirement Benefits.** All Retirement Benefits and annuities shall be effective on the first day of a given month chosen in accordance with the applicable provisions of the Retirement Plan and its administrative rules, and shall be payable monthly.

**10.2 Termination Upon Death.** All Retirement Benefits payable in the form of a monthly annuity shall terminate after payment is made for the last month of the recipient's life, and payments, if any, due under an elected optional form of benefit that has become effective, shall commence on the first day of the following month, provided that if a Participant had elected an optional form of benefit but died before the first payment commenced pursuant to Section 10.3 or was retired for disability pursuant to Section 5.4, or has elected an optional form of benefit pursuant to Section 8 that has become effective, the provisions applicable to such circumstances or such forms of benefit shall apply.

**10.3 Death Before Initial Payment.** After the initial monthly payment is due, the Retirement Benefit or annuity shall be in full force and irrevocable. However, if the person entitled to such Retirement Benefit or annuity dies before the initial payment is due, the Retirement Benefit or annuity, including any elected optional form of benefit, shall not be in force. In such case, the Participant's Total Account Balance shall be distributed as though the deceased had not retired or applied for retirement, provided, however, that if the deceased had elected a joint and survivor annuity in favor of his/her Spouse, and had died within one month of the effective date of such Retirement Benefit or annuity, and such Spouse is the only person entitled to a distribution, such Spouse may elect that the deceased's retirement be validated as of the applicable effective date, on the basis of the optional form elected by the deceased, and the Retirement Benefit payable to the Spouse under said optional form shall thereupon be in full force and irrevocable. After any such election by such Spouse, the Death Benefit provided in Section 11 shall also be paid to the Spouse.

**10.4 Lump Sum Distributions.**

- (a) In the event that the Participant's vested Total Account Balance (including Accumulated Rollover Contributions) is greater than \$50 but less than or equal to \$5,000 (greater than \$1,000 but less than or equal to \$5,000 for March 28, 2005 through February 28, 2006) on the date the Participant severs Participating YMCA employment, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover in accordance with Section 6.6 or to receive the distribution directly, then the Board will pay the distribution (including the Accumulated Rollover Contributions) in a direct rollover to an individual retirement plan and a respective trustee or issuer thereof designated by the Board or its designee.

- (b) (i) In the event that the Participant's vested Accumulated YMCA Contributions (Legacy) to be converted into a Retirement Benefit or annuity is greater than \$5,000 but not more than \$25,000 on the date of severance from employment, the Participant or his Beneficiary may elect to receive said Retirement Benefit or annuity, or to be paid a single lump sum of those amounts, provided that, subject to the following sentence, a qualified joint and survivor annuity is then offered and waived, and spousal consent under Section 9 is obtained. Notwithstanding anything in the Retirement Plan to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any single lump sum distribution pursuant to this Section that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form.
- (ii) In the event that a Participant has severed YMCA employment and has attained age 55, if the Participant's vested Accumulated YMCA Contributions to be converted into a Retirement Allowance or annuity is greater than \$5,000 but not more than \$25,000 on the date the request for a distribution is received by the Fund, the Participant may elect to receive such Retirement Benefit or annuity, or to be paid a single lump sum of such amounts, provided that, a qualified joint and survivor annuity with respect to the Participant's Total Account Balance is then offered and waived, and spousal consent under Section 9 is obtained. Notwithstanding anything in the Plan to the contrary, the lump sum distribution option described in the preceding sentence shall only be available with respect to distribution requests received by the Fund prior to July 1, 2012. Notwithstanding anything in the Retirement Plan to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any single lump sum distribution pursuant to this Section that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form.
- (iii) Effective for requests for distributions from the Retirement Plan that are received by the Fund on or after October 1, 2009, in the event that a Participant who has severed from YMCA employment is eligible to elect to receive a single lump sum distribution of his or her Accumulated YMCA Contributions (Legacy) and/or Accumulated YMCA Contributions, as applicable, as otherwise provided for under this Section 10.4(b), a Participant may elect to receive a partial lump sum distribution of his or her Accumulated YMCA Contributions (Legacy) or Accumulated YMCA Contributions, as applicable, provided that (i) the Participant's Total Account Balance is equal to at least \$10,000 at the time of such partial lump sum distribution; (ii) such partial lump sum distribution is equal to at least \$5,000; (iii) no more than one (1) partial lump sum distribution from the Retirement Plan shall be made to the Participant in any six (6)-month period; and (iv) for each such partial lump sum distribution request by a Participant, except as provided in the following sentence, if the Participant has attained age 55, a qualified joint and survivor annuity is then offered and waived, and spousal consent under Section 9 is obtained. Notwithstanding anything to the contrary or Sections 401(a)(11) and 417 of the Code and Section 205 of ERISA, and in accordance with certain federal legislation (Public Law 108-476) enacted with respect to the Fund and the Retirement Plan, any partial lump sum distribution pursuant to this Section 10.4 that is made to a Participant prior to the Participant's attainment of age 55 shall not be required to be made available in an annuity form. For purposes of such partial lump sum distributions, to the extent applicable, such distributions shall be withdrawn from a Participant's Accumulated YMCA Contributions (Legacy) and Accumulated YMCA Contributions on a pro-rata basis.
- (c) In the event that the Participant's vested Total Account Balance (including Accumulated Rollover Contributions) is more than \$5,000 on the date such amounts are converted into a Retirement Benefit or annuity, on the date all or a portion of such amounts are distributed, or on the date of any other distribution event, (\$3,500 for conversions and distributions prior to July 1, 1998), no portion thereof may be paid from the Retirement Plan without the consent of the Participant prior to the earlier of (i)

the Participant's attainment of age 62 or (ii) his/her death; and only if such consent is provided not more than 90 days prior to the date of the distribution.

- (d) Effective March 1, 2006, in the event that the Participant's Total Account Balance is \$50 or less on the date the Participant severs employment, such amounts shall be paid to the Participant in a single lump sum as soon as practicable following such event.
- (e) Effective March 28, 2005 through February 28, 2006, notwithstanding anything in this Retirement Plan to the contrary, in the event that the Participant's vested Total Account Balance (including Accumulated Rollover Contributions) equals \$1,000 or less (\$5,000 from January 1, 2003 through March 27, 2005 and \$1,000 from May 16, 2002 through December 31, 2002) on the date the Participant severs Participating YMCA employment, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover in accordance with Section 6.6 or to receive the distribution directly, then such amounts shall be paid to the Participant in a lump sum as soon as practicable following such event.
- (f) With respect to any amounts under the Retirement Plan payable to an "alternate payee" as defined by Section 414(p)(8) of the Code pursuant to a domestic relations order determined by the Retirement Fund to be a qualified domestic relations order, as defined by Section 414(p) of the Code, the alternate payee may elect to have such amounts payable in a single lump sum, except to the extent that the Participant is receiving retirement benefits. In the event that the Alternate Payee's assigned amount is \$5,000 or less on the date the Retirement Fund determines a domestic relations order to be a qualified domestic relations order, such amounts shall be paid to the Alternate Payee in a single lump sum as soon as practicable following such determination by the Retirement Fund.

## **SECTION 11 – RETIRED DEATH BENEFIT**

**11.1 Death After Retirement.** Upon the death of a retired Participant, a YMCA Retired Death Benefit (referred to as the "Retired Death Benefit") shall be paid by the Retirement Fund in a single lump sum to the person or persons he/she shall have nominated by written designation duly executed and filed with the Board, or as provided in Section 14.5 if no such person survives him/her. Said Retired Death Benefit shall be equal to the annual amount of his/her Retirement Benefit from the Retirement Fund without optional modification, attributable to Accumulated Basic Participant Contributions, Accumulated YMCA Contributions and Accumulated YMCA Contributions (Legacy) reduced by any amounts he/she elected to add to his/her Retirement Benefit under the provisions of Section 11.2, and further reduced by any annuity payments paid by the Retirement Fund after the date of the retired Participant's death that the retiree was not entitled to. Except as provided in Section 11.3, said Death Benefit shall be paid in a single lump sum.

**11.2 Conversion of Death Benefit.** A Participant may, at the time an application is made for any Retirement Benefit available under Section 5, elect to receive up to ninety percent (90%) of the amount of his/her Retired Death Benefit described in Section 11.1 in the form of an increase to their annuity payable from the Retirement Fund which increase shall be in the form of a single life annuity for Participants who elected the payment options described in 8.2(a) or 8.2(b), or the applicable joint and survivor annuity option (J&S 100%, J&S 75% or J&S 50%) for Participants who elected option 8.2(c), and in either case no other adjustments will be made and no optional forms will be available. Effective January 1, 2006, a Participant whose Retirement Benefit commenced prior to January 1, 2000 may elect once during the election period beginning January 1, 2006 and ending March 1, 2006 to receive up to ninety percent (90%) of the amount of his/her Retired Death Benefit, described in Section 11.1, in the form of an increase to their annuity payable from the Retirement Fund (as described above), provided that such special election period shall only be offered to such Participants who did not previously elect to receive any amount of his/her Retired Death Benefit in the form

of an increased annuity or as a lump sum. Such Participants who make such election shall commence to receive such additional annuity effective April 1, 2006.

**11.3 Annuity for Beneficiaries.** A duly nominated Beneficiary or Beneficiaries of a deceased Participant described in Section 11.1 may, in lieu of taking the aforesaid Retired Death Benefit as a single lump sum, provided such lump sum is greater than \$5,000 at the time of the death of the retired Participant, convert the lump sum into an immediate single life annuity (Normal Retirement Benefit) ceasing at death described in Section 8.2(a) which shall be the Actuarial Equivalent thereof. In the case of multiple Beneficiaries, the lump sum payable with respect to each Beneficiary shall be the total lump sum benefit divided by the number of Beneficiaries before conversion into annuity form.

**11.4 Death Prior to July 1, 2006.** For deaths occurring prior to July 1, 2006, in addition to the Retired Death Benefit provided under Section 11.1 above, any benefit a retired Participant may have had or may have as an active Participant under Section 7.1(c)(2) shall continue, on the diminishing basis as computed thereunder. However, the amount payable thereunder shall be limited to the amount by which the aforesaid Section 7.1(b) benefit may exceed the Retired Death Benefit amount described in Section 11.1 above.

## **SECTION 12 – ADMINISTRATION OF RETIREMENT PLAN**

### **12.1 Responsibility for Administration.**

- (a) The Board shall be responsible for and have full discretionary authority with respect to the administration and interpretation of the Retirement Plan, and be the named fiduciary and plan administrator.
- (b) The Board shall be constituted and have the responsibilities assigned to it by the Constitution and Bylaws of the Retirement Fund.
- (c) The Board shall authorize all transfers of funds and all payments from the Retirement Plan.

### **12.2 Allocation of Duties and Indemnification.**

- (a) The Board may retain the services of, and delegate duties to, an accountant, corporate trustee, insurance company, legal counsel, actuary or other experts, as may be necessary or beneficial to the administration of the Retirement Plan. Upon acceptance by such an expert of delegated duties, the Board shall not be liable for the acts and omissions of the expert in carrying out his/her allocated duties, and may rely on tables, valuations, certificates, opinions and reports, that may be provided by such expert. Additionally, the Board may designate officers and employees of the Retirement Fund and other individuals or entities to carry out their responsibilities, obligations and duties with respect to the Retirement Plan, except to the extent prohibited by law. The Board shall not be liable for the acts and omissions of any individual or entity who has been designated to carry out any responsibilities, obligations or duties in connection with the Fund, but shall be fully protected by any action taken or not taken by it in good faith in reliance upon the advice or opinion of any such individual or entity.
- (b) The YMCA Retirement Fund shall, to the extent permitted and upon the conditions prescribed by law, indemnify each person made, or threatened to be made, a party to any action or proceeding by reason of the fact that such person, or his/her or her executor or administrator is or was a member of the Board or of a committee or an officer of the Retirement Fund, or, while serving as any of the foregoing, served any other corporation or any partnership, joint venture, trust, employee benefit plan or other entity in any capacity at the request of the Retirement Fund, against liabilities, costs, judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such person acted in good faith for a purpose which he/she reasonably believed to be in or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other entity, not opposed to, the best interests of the Retirement Fund and in criminal actions or proceedings, in

addition, had no reasonable cause to believe that his/her conduct was unlawful. Expenses incurred by such person in defending such action or proceeding shall be advanced by the Retirement Fund to the extent permitted by law. The foregoing rights of indemnification and advancement of expenses shall not be exclusive of any other rights to which any such person may be entitled as a matter of law, or which may be lawfully granted to him or her; and the indemnification hereby granted by the Retirement Fund shall be in addition to and not in limitation of any other privilege or power which the Retirement Fund may lawfully exercise with respect to indemnification or reimbursement of members of the Board or of committees, or its officers. The Retirement Fund may, to the extent permitted by law and upon such conditions as may be prescribed by the Board, indemnify and advance expenses to employees of the Retirement Fund other than officers.

### **12.3 Plan Assets.**

- (a) The Board shall have full power to invest and reinvest all money in any of the accounts of the Retirement Plan and to purchase, hold, sell, assign transfer or dispose of any of the securities and investments in which any of the funds attributable to the Retirement Plan shall have been invested, as well as the proceeds of said investments. Unless delegated to its Investment Committee or one or more investment managers or to some other fiduciary or fiduciaries, the Board shall have sole investment responsibility, and no other fiduciary shall have any responsibility, for the investment of any asset of the Retirement Plan for which such Board is so responsible, nor shall any other fiduciary or fiduciaries be liable for any loss to or diminishing in value of the Retirement Plan assets resulting from any action taken or omitted by the Board with respect to assets of the Retirement Plan for which the Board is responsible.
- (b) For convenience of administration, the Board may delegate to its Investment Committee the authority to perform the investment functions of the Board, with such Investment Committee to act on its own accord without approval from the Board. In the event such delegation is made, said Investment Committee shall serve as a fiduciary, and the other members of the Board shall not be liable for any loss to the Retirement Plan resulting from any action directed, taken or omitted by the Investment Committee. The Board may revoke the delegation at any time.
- (c) For convenience of administration, the Board may appoint one or more investment managers to manage all or any part of the assets of the Retirement Plan. Every investment manager appointed by the Board must meet the applicable requirements of ERISA. The Board shall be under no duty to question any direction or lack of direction of any investment manager. An investment manager shall have sole investment responsibility for that portion of the Retirement Plan assets which it is appointed to manage, and no other fiduciary shall have any responsibility for the investment of any asset of any portion of the Retirement Plan, the management of which has been delegated to an investment manager, or liability for any loss to or diminishing in value of the Retirement Plan assets resulting from any action directed, taken or omitted by an investment manager.
- (d) No member of the Board, member of its committees, officer or employee of the Retirement Fund shall have any interest, direct or indirect, in the gains or profits of any investment of the Retirement Plan, nor shall he/she, directly or indirectly, receive any pay or emolument for his/her services, except for the compensation of employees approved by the Board. No member of the Board, member of its committees, officer or employee of the Retirement Fund, directly or indirectly, for him/herself or an agent, partner or others, shall borrow any of its funds or assets, or in any manner use the same except to make payments authorized by the Board; nor shall he/she become an endorser of surety or in any manner an obligor for monies loaned by or borrowed from the Retirement Plan.

### **12.4 Discharge of Fiduciary Duties.**

- (a) The Board or any other fiduciary of the Retirement Plan as provided by ERISA, whether specifically designated or not, must:
  - (i) Discharge all duties solely in the interest of Participants and Beneficiaries and for the exclusive purpose of providing Retirement Plan benefits and defraying reasonable administrative expenses; and
  - (ii) Discharge his/her responsibilities with the care, skill, prudence, and diligence a prudent man would use in similar circumstances; and
  - (iii) Diversify investments so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so; and
  - (iv) Conform to the provisions of the Retirement Plan.
- (b) The foregoing shall not prevent the return within one year after payment of a contribution by a YMCA by a mistake of fact as provided in Section 4.10, or the distribution of assets of the Retirement Plan in accordance with the provisions of the Code and ERISA.

**12.5 Retirement Plan Administration.** The Board and the Benefits and Operations Committee of the Board shall each severally have sole and discretionary authority (a) to interpret the provisions of the Retirement Plan (including, without limitation, by supplying omission from, correcting deficiencies in, or resolving inconsistencies or ambiguities in, the language of the Retirement Plan), (b) to make factual findings with respect to any issue arising under the Retirement Plan, (c) to determine the rights and status under the Retirement Plan of Participants, Beneficiaries and other persons including but not limited to eligibility to participate in and eligibility for benefits under the Retirement Plan, and (d) to decide disputes arising under the Retirement Plan and to make determinations and findings (including factual findings) with respect to the benefits payable thereunder and the persons entitled thereto, as may be required for purposes of the Retirement Plan. In furtherance thereof, but without limiting the foregoing, the Board and the Benefits and Operations Committee of the Board shall each severally have the following specific authorities, that it will discharge in its sole discretion in accordance with the terms of the Retirement Plan (as interpreted, to the extent necessary, by the Board or the Benefits and Operations Committee of the Board): (i) to resolve all questions (including factual questions) arising under the Retirement Plan as to any individual's entitlement to become a Participant and (ii) to determine the benefits payable with respect to any person under the Retirement Plan (including, to the extent necessary, making any factual findings with respect thereto). The Benefits and Operations Committee of the Board shall have the sole and absolute discretion to administer the claims review appeal procedures with respect to the Retirement Plan. All decisions of the Board or the Benefits and Operations Committee of the Board as to the facts of any case and the application thereof to any case, as to the interpretation of any provision of the Retirement Plan or its application to any case, and as to any other interpretative matter or other determination or question related to the Retirement Plan, will be final and binding on all parties affected thereby, subject to the claims and review procedures with respect to the Retirement Plan. The Board or the Benefits and Operations Committee of the Board may rely upon the records of the Board or upon any certificate, statement or other representation made to it by a YMCA, an Employee, a Participant, a Beneficiary, any committee of the Board or Fund officer concerning any fact required to be determined under any of the provisions of the Retirement Plan, and will not be required to make inquiry into the propriety of any action of the Fund.

## **SECTION 13 – AMENDMENTS AND TERMINATION**

**13.1 Continuation of Retirement Plan.** It is the intention of the Board to continue the Retirement Plan, subject to the continuing support of the Participating YMCAs. Each Participating YMCA reserves the right under the Retirement Plan for any reason to discontinue its participation, subject to the applicable provisions contained herein and in compliance with the requirements of the Code and ERISA.

**13.2 Amendment of Plan.** The Retirement Plan may be amended, altered or modified at any time, or from time to time, by a two-thirds vote of those members of the Board present at a meeting. The Benefits and Operations Committee of the Board is authorized to amend the Retirement Plan if (i) an amendment is required by law or regulation; (ii) an amendment is due to technical, conforming or ministerial changes or (iii) any amendment will not have a significant impact upon the Retirement Plan, provided, however, that the power to amend the Retirement Plan in any way that materially increases the cost of the plan shall be reserved solely to the Board. The Benefits and Operations Committee in consultation with management of the Retirement Fund shall determine whether an amendment will have a significant impact upon the Retirement Plan.

No amendment shall be made to the Retirement Plan, which shall:

- (a) Deprive any Participant or Beneficiary without his/her consent of any Retirement Benefit or other benefit that accrued prior to the date of such action and which was provided by contributions made prior to the date of such action except to the extent permitted by the Code or ERISA; or
- (b) Make it possible for any part of the assets of the Retirement Plan to be used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries.

**13.3 Termination of Participation.** Any Participating YMCA may terminate its participation by appropriate action of such YMCA and by giving written notice to the Board at least three (3) months in advance of the termination date. A Participating YMCA that is terminating participation must provide Participants with notification that benefit accruals will cease in accordance with Code Section 4980F and the regulations thereunder. In addition, in the event any other circumstances occur that result in a termination of participation of a Participating YMCA or otherwise would result in a significant reduction in the rate of future benefit accruals with respect to a Participating YMCA, such Participating YMCA shall provide Participants with the foregoing notification, as applicable.

**13.4 Retroactive Amendment.** Notwithstanding the foregoing provisions of this Section or any other provisions of the Retirement Plan, any modification or amendment of the Retirement Plan may be made retroactively if necessary or appropriate to conform the Retirement Plan to or satisfy the conditions of any applicable law, governmental regulation or ruling including the Code and ERISA.

## **SECTION 14 – OTHER PROVISIONS**

**14.1 Participation Does Not Enlarge Employment Rights.** Participation in the Retirement Plan shall not give any right to an Employee to be retained in the employ of the YMCAs nor shall it interfere with the right of the YMCAs to discharge any Employee and to deal with him/her without regard to the existence of the Retirement Plan and without regard to the effect which such treatment might have upon him/her as a Participant in the Retirement Plan. No Participant shall have any right or claim to benefits unless the right to such benefits shall become vested in him/her under the provisions of the Retirement Plan.

**14.2 No Further YMCA Obligation.** The Young Men's Christian Association Movement in general, the YMCA of the USA and the Participating YMCAs assume no obligation for the payment of benefits under the Retirement Plan. All benefits under the Retirement Plan are based upon the Participant's Total Account Balance and are paid by the Retirement Fund.

**14.3 YMCA Plan Compliance.**

- (a) Each Participating YMCA agrees to participate in the Retirement Plan in accordance with the Constitution and Bylaws of the YMCA Retirement Fund, the provisions of the Retirement Plan and the terms of its Participation Agreement now in effect and as may be amended from time to time. Subject to due notice from the Board or the Benefits and Operations Committee of the Board, failure of a YMCA to make the payments required to be made for its participating Employees to the Retirement Plan in accordance with the provisions of the Retirement Plan shall, in the discretion of the

Board or the Benefits and Operations Committee of the Board result in termination of the participation of such YMCA in the Retirement Plan, provided, however, any termination of participation by a YMCA shall in no way excuse or otherwise forgive or release such YMCA from its obligation to the Retirement Plan and the Fund for all amounts (including, but not limited to, outstanding contributions) due from such YMCA with respect to its participation in the Retirement Plan.

- (b) Participation by each Participating YMCA includes, but is not limited to, timely enrolling its eligible Employees, making timely contributions, notifying the Board of all name changes, salary changes, and other pertinent changes, and filing appropriate reports as may be required from time to time.
- (c) Each Participating YMCA agrees to allow auditors selected by the Board or officers or employees of the Retirement Fund to examine the books and records of the YMCA upon notice by the Board to determine whether the YMCA is participating in accordance with the Constitution and Bylaws of the Retirement Fund and the provisions of the Retirement Plan and applicable law.
- (d) Should a YMCA or Participating YMCA fail to participate in the Retirement Plan in accordance with the Constitution and Bylaws of the Retirement Fund and the provisions of the Retirement Plan, and applicable law and should such failure result in the Retirement Fund, the Retirement Plan, the Board, or an officer or employee of the Retirement Fund being made or threatened to be made a party to any action or proceeding whether civil or criminal, said YMCA or Participating YMCA shall indemnify and hold harmless the Retirement Fund, the Retirement Plan, the Board, and each officer and employee of the Retirement Fund against any liabilities, damages, costs, judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, as a result of such action or proceeding or any appeal therein. The foregoing shall not be exclusive of any other rights to which the Retirement Fund, the Retirement Plan, the Board, and each officer or employee of the Retirement Fund may be entitled as a matter of law, and the indemnification hereby provided by YMCAs and Participating YMCAs shall be in addition to and not a limitation of any other right, privilege or power the Retirement Fund, the Retirement Plan, the Board, and each officer or Employee of the Retirement Fund may lawfully exercise with respect to the same.

#### **14.4 Assignment of Benefits.**

- (a) No benefit or account under the Retirement Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; nor shall any such benefit be, in any manner, liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.
- (b) Prior to July 1, 2006, if any Participant, Beneficiary or annuitant under the Retirement Fund becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge any benefit under the Retirement Plan, such benefit shall, in the discretion of the Board, cease and terminate, and in that event the Board shall hold or apply the same to or for the benefit of such Participant or annuitant, his/her spouse, children, or other dependents, or any of them, in such proportion as the Board may deem proper.
- (c) Notwithstanding the foregoing provisions of this Section, benefits under the Retirement Plan shall be subject to qualified domestic relations orders described in Code Section 414(p) and determined to be so qualified by the Board. The Retirement Fund may charge Participants or Beneficiaries, or their accounts or benefits due, certain reasonable fees for processing qualified domestic relations orders which are outside of standardized forms as established by the Fund from time to time, or which require more than two reviews by legal counsel.

**14.5 Payment of Death Benefits Where No Named Beneficiary Survives.** If a Participant dies and no named beneficiary survives him/her, the Pre-Retirement Death Benefits under Section 7, or any other benefits payable on account of the Participant's death shall, subject to Sections 7.3 and 7.4, become payable to the

following, in order: a) the Participant's estate, and if no estate is established or it is terminated before payment, then to b) the Participant's naturally born and legally adopted children in equal shares, and if none survive him/her, then to c) the Participant's parents in equal shares, and if none survive him/her, then to d) the Participant's siblings in equal shares, and if none survive him/her, then to e) the Participant's siblings' children in equal shares, and if none survive him/her, then to f) his/her nearest living next-of-kin, and if there are more than one with the same degree of relationship to the Participant, then to them in equal shares.

**14.6 Payment of Survivor Benefits Through a Trust.** Any Participant who may nominate a person or persons to receive any optional form of Retirement Benefit as provided under Sections 5, 8, and 10; or immediate or deferred annuity under Section 7 or 11, may also designate that said benefits shall be payable to that person through a trust provided:

- (a) the trust is a valid trust under applicable state law or would be but for the lack of corpus,
- (b) the trust is irrevocable (or will, by its terms, become irrevocable upon death of the Participant),
- (c) the trust beneficiary or beneficiaries who are to receive said benefits are identifiable in the trust document and would be eligible to receive benefits directly under the Retirement Plan,
- (d) the Participant obtains an opinion of his/her counsel that the trust meets the requirements in clauses (a) through (c) above,
- (e) the nomination of the trust to receive said benefits shall be on forms provided by the Retirement Fund or acceptable to the Retirement Fund, and
- (f) the nomination of the trust to receive said benefits, the trust document, and the opinion of counsel shall be submitted to and acceptable by the Retirement Fund prior to the date said benefits would be payable.

**14.7 Claims Procedures.**

- (a) With respect to claims initially made on or after July 1, 2006, the claims procedures shall be as set forth in the Separate Procedures, Summary Plan Description or Summary of Material Modification of the Retirement Plan and shall be construed and interpreted in accordance with Department of Labor Regulation Section 2560.503-1. Also with respect to Permanent Disability Retirement Benefit claims initially made on or after July 1, 2006, such claims shall be determined by an insurance company appointed by the Board to be ERISA disability retirement claims reviewer.
- (b) With respect to claims initially made prior to July 1, 2006, a Participant or Beneficiary may make a claim for benefits upon forms provided by the Board within the time period specified in the Retirement Plan or as set forth in resolutions adopted by the Board from time to time. If the claim is denied, the Participant or Beneficiary shall receive a written determination within 90 days. Appeals from a determination of benefits may be made in writing to the Benefits and Operations Committee of the Board within 60 days of such determination. The Benefits and Operations Committee of the Board will review the determination at its next quarterly meeting if such appeal is received in the Retirement Fund office within 30 days prior to such meeting, otherwise at the following meeting of the Committee. The Benefits and Operations Committee of the Board will provide the Participant or Beneficiary with a written decision. Appeals from a decision of the Benefits and Operations Committee of the Board may be made to the Board within 60 days of such decision. The Board will review the decision at its next quarterly meeting if such appeal is received in the Retirement Fund office within 30 days prior to the meeting, otherwise at the following meeting of the Board. The Board will provide the Participant or Beneficiary with a written final decision.

**14.8 Unclaimed Accounts or Benefits.**

- (a) Should an account or benefit remain unclaimed for two (2) years after it becomes payable and remain unclaimed after diligent efforts by the Retirement Fund to locate the Participant or Beneficiary, the account or benefit shall be segregated and transferred to a sub-account of the Retirement Plan for the

Participant or Beneficiary. Should a Participant or Beneficiary later claim the account or benefit, upon proper verification the account or benefit shall be paid to the Participant or Beneficiary, provided that from the time of the transfer to such sub-account, the account or benefit shall be treated as accruing interest at the Interest Credit rate.

- (b) In order to locate Participants and Beneficiaries for whom the Retirement Fund has no current address, telephone number, or email address, so as to pay any accounts or benefits due, after diligent efforts to locate such Participants or Beneficiaries, the Retirement Fund may employ a commercial search facility to locate any specific Participant or Beneficiary or class of Participants or Beneficiaries, and charge to their accounts or benefits due, a reasonable amount for such efforts no more frequently than annually, which charge shall not be returned to them for any reason.

**14.9 Per Capita Administrative Expenses.** The Retirement Fund may charge Participants or Beneficiaries, or their accounts or benefits due, certain reasonable fees as determined by the Benefits and Operations Committee of the Board for services as provided in Section 14.4, 14.8, and in this Section 14.9. Such fees shall be on an established schedule published in advance and distributed to all Participants and Beneficiaries.

A per capita fee may be charged where:

- (a) a Participant has requested a distribution of an account and a replacement check has been prepared and mailed by the Retirement Fund as requested by the Participant, or
- (b) a check has been prepared and mailed by the Retirement Fund in the case of a single lump sum as provided in Section 6.6 and subsequently the Participant returns the check to be made payable to a different payee, or
- (c) a Participant's request requires that a special mailing service be used, or
- (d) a Participant's check has been returned from a financial institution due to insufficient funds, or
- (e) a Participant has requested a wire transfer, or
- (f) the Retirement Fund is required to retrieve the Participant's death certificate from a governmental agency.
- (g) a Participant requests, in accordance with the terms and conditions of the Retirement Plan, a partial lump sum distribution from the Retirement Plan.

**14.10 Prohibition on Merger of Plans.** There shall be no merger, consolidation, or transfer of assets and liabilities (within the meaning of Code Section 414(l)) between the Retirement Plan and any other plan.

**14.11 Governing Law.** The provisions of this Retirement Plan shall be construed in accordance with the laws of the State of New York, except to the extent preempted by ERISA.

**14.12 Exclusive Benefit.** No part of the assets of the Retirement Plan trust attributable to the Retirement Plan may be used for other than the exclusive benefit of the Participants or their Beneficiaries.

**14.13 Gender and Number.** The masculine pronoun, wherever used, shall be deemed to include the corresponding feminine pronoun, and the singular shall include the plural.

**14.14 Incapacity.** If at any time any Participant or Beneficiary is in the judgment of the Board legally, physically or mentally incapable of personally receiving and receipting for any payment due to him/her from the Retirement Plan, payment may, in the discretion of the Board, be made to the guardian or legal representative of such Participant or Beneficiary or, if none exists, to any other person or institution which, in the judgment of the Board then maintains or has custody of such Participant or Beneficiary.

## APPENDIX A-ACTUARIAL FACTORS

The interest rate and mortality assumption used for the purpose of converting a Participant's Total Account Balance into a Retirement Benefit payable in an annuity form by the Retirement Fund shall be as follows:

**Normal Retirement, Early Retirement, Deferred Vested Retirement.** "Old balances" shall be converted into Retirement Benefits using the 1951 Group Annuity Table for males rated back three years with an eight percent (8%) interest rate assumption. "New balances" shall be converted into Retirement Benefits or annuities using the 1995 Buck Mortality Table with combined 50% male and 50% female factors with a seven percent (7%) interest rate assumption. "Old balances" shall mean a Participant's Total Account Balance as of December 31, 1995 (including five (5%) interest per annum thereon). The remaining portion of a Participant's Total Account Balance shall be the "New balances."

**Permanent Disability Retirement Benefits.** Total Account Balances shall be converted into Permanent Disability Retirement Benefits using the 1995 Buck Mortality Table with combined 50% male and 50% female factors with a seven percent (7%) interest rate assumption.