



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions



1. PARTIES: The parties to this contract are FINANCE OF AMERICA REVERSE LLC (Seller) and DOYLE ASSET MANAGEMENT, LLC (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the Property (Property).

A. LAND: Lot 2 Block 3, REDIN HEIGHTS Addition, City of Iowa Park, County of Wichita, Texas, known as 1009 W LOUISA AVENUE, Iowa Park, TX 76367 (address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: NONE

E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ 72,750.00 The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.

B. Sum of all financing described in the attached: [ ] Third Party Financing Addendum, [ ] Loan Assumption Addendum, [ ] Seller Financing Addendum \$

C. Sales Price (Sum of A and B) \$ 72,750.00

4. LEASES: Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

[ ] A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.

[ ] B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.

[ ] C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.

[ ] (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.

[ ] (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within \_\_\_ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.



Initialed for identification by Buyer and Seller


TREC NO. 20-17

**5. EARNEST MONEY AND TERMINATION OPTION:**

- A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to Continental Real Estate Service (Escrow Agent) at 9390 OLIVE BLVD, ST LOUIS, MO 63132 (address): \$ 7,275.00 as earnest money and \$ N/A as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.
  - (1) Buyer shall deliver additional earnest money of \$ \_\_\_\_\_ to Escrow Agent within \_\_\_\_\_ days after the Effective Date of this contract.
  - (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
  - (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
  - (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
- B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 0 days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.
- C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.
- D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.
- E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**6. TITLE POLICY AND SURVEY:**

- A. TITLE POLICY: Seller shall furnish to Buyer at  Seller's  Buyer's expense an owner policy of title insurance (Title Policy) issued by Continental Real Estate Service (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
  - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
  - (2) The standard printed exception for standby fees, taxes and assessments.
  - (3) Liens created as part of the financing described in Paragraph 3.
  - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
  - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
  - (6) The standard printed exception as to marital rights.
  - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
    - (i) will not be amended or deleted from the title policy; or
    - (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

Initialed for identification by Buyer  and Seller \_\_\_\_\_ TREC NO. 20-17

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within \_\_\_\_\_ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (9) above; or which prohibit the following use or activity: N/A

Buyer must object the earlier of (i) the Closing Date or (ii) 3 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association(s) should be used.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- (11) REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, MUD, WCID, PID notices): N/A

**7. PROPERTY CONDITION:**

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.
- B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):  
(Check one box only)
  - (1) Buyer has received the Notice.
  - (2) Buyer has not received the Notice. Within \_\_\_\_\_ days after the Effective Date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
  - (3) The Seller is not required to furnish the notice under the Texas Property Code.
- C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.
- D. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

Initialed for identification by Buyer [Signature] and Seller \_\_\_\_\_ TREC NO. 20-17

- (Check one box only)
- (1) Buyer accepts the Property As Is.
  - (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: \_\_\_\_\_

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs and treatments to Buyer at closing. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete the repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a provider or administrator licensed by the Texas Department of Licensing and Regulation. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ N/A. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

**8. BROKERS AND SALES AGENTS:**

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: N/A

B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before Sep 12, 2024, 20\_\_\_\_, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
  - (2) Buyer shall pay the Sales Price in good funds acceptable to the Escrow Agent.
  - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents, transfer of any warranties, and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
  - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
  - (5) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

**10. POSSESSION:**

- A. BUYER'S POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**
- B. SMART DEVICES: "Smart Device" means a device that connects to the internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:
  - (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
  - (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

**11. SPECIAL PROVISIONS:** (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney.) N/A

**12. SETTLEMENT AND OTHER EXPENSES:**

- A. The following expenses must be paid at or prior to closing:
  - (1) Expenses payable by Seller (Seller's Expenses):
    - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
    - (b) Seller shall also pay an amount not to exceed \$ N/A to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
  - (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.
- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money

will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or Escrow Agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The Escrow Agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as Escrow Agent. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to Escrow Agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, Escrow Agent may: (i) require a written release of liability of the Escrow Agent from all parties before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.

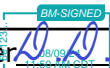
C. DEMAND: Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow Agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by Escrow Agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.



Initialed for identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_

TREC NO. 20-17

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

**To Buyer at:** \_\_\_\_\_

**To Seller at:** \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: \_\_\_\_\_

E-mail/Fax: ddoyle@doyleinvestmentgroup.net

E-mail/Fax: \_\_\_\_\_

With a copy to Buyer's agent at: \_\_\_\_\_

With a copy to Seller's agent at: \_\_\_\_\_

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- Third Party Financing Addendum
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Loan Assumption Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Reservation of Oil, Gas and Other Minerals
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender's Appraisal
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum

- Seller's Temporary Residential Lease
- Short Sale Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Addendum for Property in a Propane Gas System Service Area
- Addendum Regarding Residential Leases
- Addendum Regarding Fixture Leases
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- Other (list): REAL ESTATE PURCHASE ADDENDUM

**23. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_





**EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

Buyer  Seller  
**DAVID DOYLE**

Buyer \_\_\_\_\_ Seller \_\_\_\_\_



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-17. This form replaces TREC NO. 20-16.

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Other Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Buyer only as Buyer's agent  
 Seller as Listing Broker's subagent

Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Associate \_\_\_\_\_ License No. \_\_\_\_\_

Other Broker's Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**SL REAL ESTATE** **608838**  
 Listing Broker Firm \_\_\_\_\_ License No. \_\_\_\_\_

represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

**LOU EYALIS** **608838**  
 Listing Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

**LOUALLEN76@GMAIL.COM** **940-257-3875**  
 Listing Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Listing Associate \_\_\_\_\_ License No. \_\_\_\_\_

**4200 Fairway Boulevard** **940-689-7900**  
 Listing Broker's Office Address \_\_\_\_\_ Phone \_\_\_\_\_

**Wichita Falls, Texas 76308**  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Selling Associate's Name \_\_\_\_\_ License No. \_\_\_\_\_

Team Name \_\_\_\_\_

Selling Associate's Email Address \_\_\_\_\_ Phone \_\_\_\_\_

Licensed Supervisor of Selling Associate \_\_\_\_\_ License No. \_\_\_\_\_

Selling Associate's Office Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (3%). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

**OPTION FEE RECEIPT**

Receipt of \$ \_\_\_\_\_ (Option Fee) in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Date \_\_\_\_\_

**EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
is acknowledged.

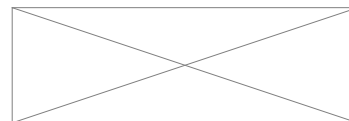
Escrow Agent \_\_\_\_\_ Received by \_\_\_\_\_ Email Address \_\_\_\_\_ Date/Time \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax \_\_\_\_\_

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

### Instruction Sheet

To: Luz Eytalis [ louallen76@gmail.com ]  
From: Lucia Daddario [ ldaddario@ascribeval.com ]  
Date: August 08, 2024  
Subject: 1009 W Louisa AVENUE, Iowa Park, TX 76367

### **These instructions are for the listing agent only**

Present the Ascribe Counter Offer Real Estate Purchase Addendum to the buyer(s). This counter offer is subject to Seller approval following receipt of the completed package as noted below.

Should the buyer(s) wish to counter, enter the new counter offer directly into Res.net or via your assigned asset manager.

Should the buyer agree to the price and terms of the Real Estate Purchase Addendum, execute the Counter Offer Addendum Process as follows:

UPLOAD the following documents AT THE SAME TIME and in ONE ATTACHMENT ONLY via the Res.net "submit offer section" of the Agent Portal.

**State Contract/Purchase Agreement** - with any Addendums signed by all buyer(s).

**Real Estate Purchase Addendum** - Initialed and signed ABSOLUTELY NO CHANGES SHOULD BE MADE TO THIS DOCUMENT

**Proof of Earnest Money** - Earnest Money must be deposited within 48 hours into the Listing Agent's Escrow Account; the buyer's closing agent account; or the seller's closing agent account. Include a copy of the EM check, or a confirmation of the wire, in the contract package. Do not copy cash.

**Pre-Approval Letter** - Buyer's submission of proof of Pre-Approval for a mortgage loan in an amount and under terms sufficient for Buyer to perform its obligations under the Agreement is a condition precedent to Seller's acceptance of Buyer's offer. Letter to include:

- o Lender's review of a satisfactory credit report and proof of funds sufficient
- o Letter must be LESS THAN 30 days old at the time of submission with the name of the lender visible and must be for the correct sales price and loan amount.

**Proof of Available Funds** - Proof of funds must be supplied for cash deals and be dated within 30 days from the date the offer was acceptance.

**Articles of Organization or Incorporation** - If a company is purchasing the property a complete copy of the Articles of Organization or Incorporation and a letter of signing authority must be provided. The LLC docs must name the members of and one of the named members must be the authorized signer for the LLC.

Changes to the Closing Agent, Title Company, or Escrow Agent can result in a decreased or zero Seller paid closing cost. Changes to the Buyer(s) names can result in delayed closing dates.

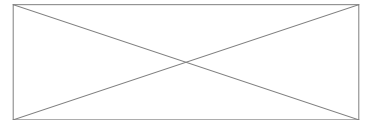
Requests for Closing Date Extensions must be in writing and include any applicable per diem. This provision is not applicable for delays caused solely by Seller.

Thank you,

Ascribe

**COUNTER OFFER/ADDENDUM Loan # 3115552**

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**REAL ESTATE PURCHASE ADDENDUM**

This Real Estate Purchase Addendum ("Addendum") is to be made part of, and incorporated into, the Real Estate Purchase Contract ("Contract") dated August 08, 2024 by and between Finance of America Reverse LLC ("Seller") and Doyle Asset Management LLC ("Buyer") for the property and improvements located at the following address: 1009 W Louisa AVENUE, Iowa Park, TX 76367 ("Property"). Buyer and Seller may each be referred to herein as a "Party" and collectively as the "Parties." The Contract and this Addendum together constitute the "Agreement".

Seller and Buyer agree as follows:

**1. Terms.**

- (A) Purchase Price: \$ 72,750
- (B) This Agreement (check one): ( ) is  is not contingent on Buyer obtaining financing for the purchase of the Property.
- (C) Other Financial Terms:

**Requested Closing Costs & Other Items to Be Paid by Seller on Behalf of Buyer:**

(Limited to loan guidelines)

Closing Costs:	\$
Repairs:	\$
Home Warranty:	\$
Inspection Fee:	\$
Survey Fee:	\$
Termite Fee:	\$
Other Costs:	\$
Other Costs	\$0
Other Costs	\$ _____

- **Offer Processing Fee of \$150.00 shall be paid by buyer's agent from buyer's agent net commission per the RES.NET Offer Submission Fee Agreement.**  
**Please ensure the Property ID: 1795866 is noted on the payment check**  
**Closing Agent: Deliver payment to RES.NET, 27442 Portola PKWY STE 300, Foothill Ranch, CA 92610**

Notwithstanding any provision in the Agreement to the contrary, if Seller agrees in the Agreement to pay any of Buyer's closing costs (the "Closing Costs"), then Seller shall only pay the lesser of Buyer's actual Closing Costs and the Closing Costs that Seller has agreed to pay in the Agreement. Section 15 has additional provisions pertaining to Closing Costs.

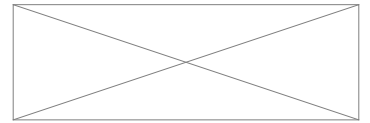
- (D) Closing Date. The closing of transactions contemplated by the Agreement (the "Closing") shall take place on or before 9/12/24 or within five (5) calendar days of final loan approval by the lender, whichever is earlier ("Closing Date"), unless the Closing Date is extended in writing signed by Seller and Buyer or extended by Seller under the terms of the Agreement.
- (E) Per Diem Interest. Any request for extension of the Closing Date by Buyer must be: (i) in writing and include a statement by Buyer that Buyer agrees to pay to Seller a per diem of \$ 50 per day, towards Seller's carrying costs, through and including the Closing Date, and (ii) be approved by Seller in its sole and separate discretion

**2. LIMITATION OF SELLER'S LIABILITY AND BUYER'S WAIVER OF IMPORTANT RIGHTS:**

- (A) **BUYER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER HAS (i) ACQUIRED THE PROPERTY THROUGH FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORFEITURE, TAX SALE OR SIMILAR PROCESS, (ii) NEVER OCCUPIED THE PROPERTY, AND (iii) LITTLE OR NO**

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



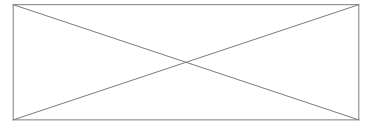
400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**DIRECT KNOWLEDGE ABOUT THE CONDITION OF THE PROPERTY. BUYER AGREES THAT BUYER IS BUYING THE PROPERTY "AS IS" (AS MORE FULLY SET FORTH IN SECTION 11 OF THIS ADDENDUM).**

- (B) notwithstanding any provision to the contrary in THE AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES AND FOR ALL CLAIM(S) (as the term is defined in Section 24 hereof) arising out of or relating in ANY WAY TO THE AGREEMENT and/or THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO, SELLER'S BREACH OR TERMINATION OF THE AGREEMENT, any defects (latent or apparent) RELATING TO THE CONDITION OF THE PROPERTY, SELLER'S TITLE TO THE PROPERTY, THE OCCUPANCY STATUS OF THE PROPERTY, the size, square footage, boundaries or location of the property, any cost or expense incurred by Buyer in selling a current or prior residence or terminating a lease on a current or prior residence, obtaining other living accommodations, moving, storage or relocation expenses or any other costs or expenses incurred by buyer IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO no more than THE RETURN OF BUYER'S EARNEST MONEY DEPOSIT IF PERMITTED BY APPLICABLE LAW. IF NOT PERMITTED BY APPLICABLE LAW THEN BUYER'S REMEDY SHALL BE LIMITED TO ACTUAL DAMAGES.**
- (C) BUYER SHALL NOT BE ENTITLED TO A RETURN OF BUYER'S EARNEST MONEY DEPOSIT IF BUYER MATERIALLY BREACHES THE AGREEMENT OR AS OTHERWISE SET FORTH IN THIS AGREEMENT.**
- (D) BUYER AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR STRICT LIABILITY), OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE, THEORY OR CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO ANY CLAIM, INCLUDING BUT NOT LIMITED TO, THE AFOREMENTIONED CLAIMS.**
- (E) ANY REFERENCE TO A RETURN OF BUYER'S EARNEST MONEY DEPOSIT CONTAINED IN THE AGREEMENT SHALL MEAN A RETURN OF THE EARNEST MONEY DEPOSIT, LESS ANY ESCROW CANCELLATION FEES APPLICABLE TO BUYER UNDER THE AGREEMENT AND LESS FEES AND COSTS PAYABLE FOR SERVICES AND PRODUCTS PROVIDED DURING ESCROW AT BUYER'S REQUEST. TO THE FULLEST EXTENT PERMITTED BY LAW BUYER WAIVES ANY CLAIMS THAT THE PROPERTY IS UNIQUE AND BUYER ACKNOWLEDGES THAT A RETURN OF ITS EARNEST MONEY DEPOSIT CAN ADEQUATELY AND FAIRLY COMPENSATE BUYER FOR ALL CLAIMS. IN ANY SUCH INSTANCE AND UPON RETURN OF THE EARNEST MONEY DEPOSIT TO BUYER, THE AGREEMENT SHALL BE TERMINATED AND BUYER AND SELLER SHALL HAVE NO FURTHER RIGHTS UNDER OR LIABILITY, OBLIGATION OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THE AGREEMENT.**
- (F) SELLER'S LIMITATION OF LIABILITY AND BUYER'S EXPRESS WAIVERS PROVIDED HEREIN ARE A MATERIAL PART OF THE CONSIDERATION TO SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY AND BETWEEN BUYER AND SELLER.**
- (G) Buyer further expressly waives the following, IF AND TO THE FULLEST EXTENT PERMITTED BY LAW:**
- I. ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE;**
  - II. THE RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THE AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;**
  - III. RIGHT TO INVOKE ANY EQUITABLE REMEDY THAT WOULD PREVENT OR DELAY SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY BUYER;**
  - IV. ANY CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING UNLESS SUCH CLAIMS ARE MATERIAL AND BUYER NOTIFIES SELLER IN WRITING OF SUCH CLAIMS WITHIN THIRTY (30) DAYS OF THE CLOSING DATE;**
  - V. ANY REMEDY OF ANY KIND THAT BUYER MIGHT OTHERWISE BE ENTITLED TO AT LAW OR EQUITY (INCLUDING, BUT NOT LIMITED TO, RESCISSION OF THE AGREEMENT OR SPECIFIC PERFORMANCE), EXCEPT AS EXPRESSLY PROVIDED IN THIS ADDENDUM;**

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

- VI. ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT;**
- VII. ANY RIGHT TO (a) AVOID THE SALE OF THE PROPERTY, (b) REDUCE THE PRICE OR (c) HOLD SELLER LIABLE FOR ANY CLAIMS ARISING OUT OF OR RELATED IN ANY WAY TO THE CONDITION, CONSTRUCTION, REPAIR, OR TREATMENT OF THE PROPERTY, OR ANY DEFECTS, APPARENT OR LATENT, THAT MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY;**
- VIII. ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO ZONING, ENCROACHMENTS, EASEMENTS, BOUNDARIES, SHORTAGES IN AREA OR ANY OTHER MATTER THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS; AND**
- IX. ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO THE SQUARE FOOTAGE, SIZE, LOCATION OF THE PROPERTY OR ANY INFORMATION PROVIDED ON THE MULTIPLE LISTING SERVICE, BROCHURES OR WEB SITES OF SELLER, SELLER'S AGENT OR BROKER.**

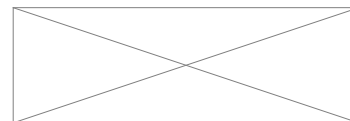
References to the "Seller" in Section 2 of this Addendum shall also include Indemnified Parties (as defined in Section 24 of this Addendum).

- 3. Effective Date:** The date of Seller's execution of this Addendum shall be the "Effective Date" of the Agreement, notwithstanding any prior understanding or agreement with respect to the financial terms set forth herein. The Agreement must be approved by Seller or Seller's representative and it must be executed by all Parties in order to be binding on Seller.
- 4. Earnest Money Deposit:** If applicable, an escrow (the "Escrow") will be opened by both Parties immediately following the Effective Date with an escrow agent or company (the "Escrow Agent") selected as set forth in Section 29 of this Addendum. Buyer's earnest money deposit of \$ 7,275 is to be delivered to and deposited with the Escrow Agent in no event later than (48) hours from the Effective Date or this Agreement shall be null and void. If this Agreement is not otherwise terminated, the Earnest Money shall be applied to the Purchase Price at Closing (as hereinafter defined).
- 5. Financing:** If the Agreement is contingent on financing, the type of financing shall be the following: Cash
- (a) If the Agreement is contingent on financing, Buyer shall apply for a loan in the amount of \$ 0, at prevailing rates, terms and conditions. Buyer shall complete and submit to a mortgage lender an application for a mortgage loan containing the terms set forth in this paragraph within three (3) business days of the Effective Date and shall use diligent efforts to obtain a mortgage loan commitment within fifteen (15) days from the application submittal date. If, despite Buyer's diligent efforts, Buyer cannot obtain a mortgage loan commitment by the expiration of the fifteen (15) day period, then either Buyer or Seller may terminate the Agreement by giving written notice to the other Party. In such event, Buyer's notice must include a copy of the loan application, proof of the application date and a copy of the denial letter from the prospective lender. In the event of a proper termination of the Agreement by Buyer under this paragraph, the Earnest Money shall be returned to Buyer and the Parties shall have no further obligation to each other under the Agreement. Buyer agrees to cooperate and comply with all requests for documents and information from Buyer's chosen lender during the loan application process. Failure of Buyer to comply with such requests from the lender that results in the denial of the mortgage loan shall be considered a material breach of the Agreement and Seller shall be entitled to retain the Earnest Money.
- (b) If the Agreement is contingent on financing as a sales condition, Buyer must obtain pre-approval ("Pre-Approval") via a Pre-Approval letter (the "Pre-Approval Letter") for a mortgage loan in an amount and under terms sufficient for Buyer to perform its obligations under the Agreement and such Pre-Approval Letter must accompany the Agreement. Pre-Approval shall include, but is not limited to, the Pre-Approval Letter, a satisfactory credit report and proof of funds sufficient to meet Buyer's obligations under the Agreement. Buyer's submission of proof of Pre-Approval is a condition precedent to Seller's acceptance of Buyer's offer. Seller may require Buyer to obtain, at no cost to Buyer, Pre-Approval as Seller may require.
- (c) If the Agreement is based on a cash offer from Buyer, then Buyer shall provide Seller proof of liquid funds on deposit in the United States sufficient to close this transaction.
- (d) Buyer is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by Buyer. Any change of the loan type, loan terms, financing or Buyer's lender after the Agreement has been entered into shall be subject to Seller's approval and may require, at Seller's sole discretion, renegotiation of all or some of the terms of the Agreement.
- 6. Time is of the Essence; Closing:**
- (a) It is agreed that time is of the essence with respect to all dates specified in the Agreement and any addenda, riders or

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

amendments thereto, meaning that all deadlines are intended to be strict and absolute. The Agreement shall terminate automatically and without notice, if the transactions contemplated by the Agreement are not concluded by the Closing Date or any extension thereof (which termination shall not be deemed a waiver of the remedies available to the parties hereunder upon a default by the other party, as applicable).

- (b) The Closing shall be held in the offices of Seller's attorney or agent (the "Seller's Agent") or at a place so designated and approved by Seller, unless otherwise required by applicable law. If the Closing does not occur (through no fault of Seller) by the date specified in this Addendum or in any extension executed by all Parties hereto, the Agreement shall be automatically terminated and Seller shall retain any Earnest Money as liquidated damages.

7. Extension of Closing Date; Per Diem Interest: If the sale does not close by the date specified in the approved written extension agreement, Seller may retain the Earnest Money and the accrued per diem payment as liquidated damages. This provision is not applicable for delays caused solely by Seller.

8. Utility Transfer. As a condition of the Agreement, Buyer(s) hereby agree to have all utility services including water, sewer, electricity, gas and homeowner's association dues, if applicable, transferred into Buyer(s) name no later than the first (1st) business day following Closing. Buyer(s) also agree to accept responsibility for payment of any utility charges accrued after the Closing Date. All or some of the utility services are in the name of the Seller or the Listing Broker. It is the Buyer(s) sole and absolute responsibility to make any arrangements necessary for the transfer of utilities into their name.

9. Exhibits:

Exhibit A - Earnest Money Receipt and Funds Verification Form to be completed by Listing Agent

The exhibits to this Addendum are hereby incorporated and made a part hereof and are an integral part of the Agreement.

10. Inspections:

- (a) On or before 0 calendar days from the Effective Date, Buyer shall inspect the Property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the Property or Buyer shall be deemed to have 1) waived such inspections and any objections to the condition of the Property and 2) accepted the condition of the Property. Buyer shall keep the Property free and clear of liens and encumbrances, and agrees to indemnify and hold Seller and the Indemnified Parties harmless from all Claims arising out of or relating in any way to Buyer's inspections, and Buyer shall repair any damages to the Property resulting from Buyer's inspections at Buyer's sole expense. Buyer shall not directly or indirectly cause any inspections to be made by any government building or zoning inspectors or government employees without the prior written consent of Seller, unless required by law, in which case Buyer shall provide reasonable notice to Seller but in any event at least twenty-four (24) hours prior to any such inspection.

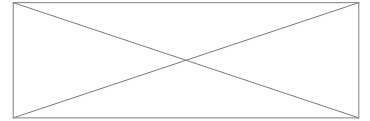
If and to the extent applicable, if Seller has winterized the Property and Buyer desires to have the Property inspected, the listing agent will arrange a onetime de-winterization of the property through the Seller's property preservation company prior to inspection and may have the property re-winterized after the inspection (if Seller deems necessary, in its sole and absolute discretion).

- (b) Within five (5) calendar days of receipt of any inspection report prepared by or for Buyer, but not later than 0 calendar days from the Effective Date, whichever first occurs, Buyer shall provide written notice to Seller of any items disapproved or problems with the condition of the Property. Buyer's failure to provide such written notice to Seller shall be deemed as Buyer's acceptance of the condition of the Property. Buyer shall immediately provide to Seller, at no cost, upon request by Seller, complete copies of all inspection reports conducted by or on behalf of Buyer if the Buyer provides such written notice of disapproval or problems. In no event shall Seller be obligated to make any repairs or replacements, or correct any problems or defects that may be indicated in Buyer's inspection reports. Notwithstanding the foregoing, Seller may, in its sole discretion, make such repairs, replacements or corrections to the Property. If Seller elects not to repair or correct the Property, Buyer may terminate the Agreement within five (5) calendar days of receiving notice from Seller that Seller elects not to repair, replace or correct the Property by providing Seller with written notice of such intent to terminate the Agreement. If Buyer timely notifies Seller of such election to terminate the Agreement, then Buyer shall receive a return of the Earnest Money. If Seller elects to make any repairs, replacements or corrections to the Property, Seller shall notify Buyer upon completion of such repairs, replacements or corrections. Buyer shall have five (5) calendar days from the date of such notice to inspect the repairs, replacements or corrections and notify Seller in writing of any items disapproved by Buyer. Buyer's failure to notify Seller of any items disapproved shall be deemed acceptance by Buyer of the condition of the Property. Seller shall have no obligation to take any further action with respect to any disapproved items.
- (c) In situations that are applicable, a structural, electrical, mechanical or termite inspection report may have been prepared for the benefit of Seller. Upon Buyer's request, Buyer may review such reports but Buyer acknowledges that such inspection reports were prepared for the sole use and benefit of Seller. Buyer shall not rely upon any such inspection reports obtained by Seller in making a decision to purchase the Property and such reports are for informational purposes only and shall not serve as a basis for Buyer to terminate the Agreement.
- (d) If the Property is a condominium or planned unit development with a home owners association or cooperative, unless



## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

otherwise required by law, Buyer, at Buyer's own expense, is responsible for obtaining and reviewing the covenants, conditions and restrictions (the "Declarations") and bylaws (the "Bylaws") of the condominium or planned unit development or cooperative within ten (10) calendar days of the Effective Date. Seller agrees to use reasonable efforts, as determined in Seller's sole discretion, to assist Buyer in obtaining a copy of the Declarations and Bylaws. Buyer will be deemed to have accepted the Declarations and Bylaws if Buyer does not notify Seller in writing within fifteen (15) calendar days of the Effective Date of Buyer's objection to the Declarations and/or Bylaws.

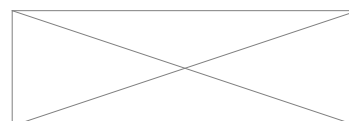
### 11. CONDITION OF PROPERTY:

- (A) **BUYER UNDERSTANDS THAT SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORFEITURE, TAX SALE OR SIMILAR PROCESS, AND CONSEQUENTLY, SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY SELLER UNDER THE AGREEMENT AS NEGOTIATED AND AGREED TO BY BUYER AND SELLER, BUYER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY LATENT OR APPARENT DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN, WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW. BUYER ACKNOWLEDGES THAT SELLER AND ITS AGENTS, BROKERS AND REPRESENTATIVES HAVE NOT MADE, AND SELLER SPECIFICALLY NEGATES AND DISCLAIMS, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN, WITH RESPECT TO:**
- (i) **THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL INTEGRITY OR THE QUALITY OR CHARACTER OF MATERIALS USED IN CONSTRUCTION OF ANY IMPROVEMENTS, AVAILABILITY AND QUANTITY OR QUALITY OF WATER, STABILITY OF THE SOIL, SUSCEPTIBILITY TO LANDSLIDE OR FLOODING, SUFFICIENCY OF DRAINAGE, WATER LEAKS, WATER DAMAGE, MOLD OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY;**
  - (ii) **THE CONFORMITY OF THE PROPERTY TO ANY ZONING, LAND USE, LOT SIZE, OR BUILDING CODE REQUIREMENTS OR COMPLIANCE WITH ANY LAWS, STATUTES, RULES, ORDINANCES OR REGULATIONS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AUTHORITY, OR THE GRANTING OF ANY REQUIRED PERMITS OR APPROVALS, IF ANY, OF ANY GOVERNMENTAL BODIES THAT HAD JURISDICTION OVER THE CONSTRUCTION OF THE ORIGINAL STRUCTURE, ANY IMPROVEMENTS, AND/OR ANY REMODELING OF THE STRUCTURE AND/OR ANY IMPROVEMENTS;**
  - (iii) **THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, INCLUDING REDHIBITORY VICIES AND DEFECTS, APPARENT, NON-APPARENT OR LATENT, THAT NOW EXIST OR MAY HEREAFTER EXIST AND THAT, IF KNOWN TO BUYER, WOULD CAUSE BUYER TO REFUSE TO PURCHASE THE PROPERTY; AND**
  - (iv) **THE EXISTENCE, LOCATION, SIZE, OR CONDITION OF ANY OUTBUILDINGS OR SHEDS ON THE PROPERTY.**
- (B) Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to herein as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in young children, elderly persons, persons with immune system problems, allergies or respiratory problems and pets. Mold has also been reported to cause extensive damage to personal and real property. Buyer is advised to thoroughly inspect the Property for Mold. Mold may appear as discolored patches or cottony or speckled growth on walls, furniture or floors, behind walls and above ceilings. Any and all presence of moisture, water stains, mildew odors, condensation and obvious Mold growth are all possible indicators of a Mold condition, which may or may not be toxic. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. Buyer acknowledges that, if Seller or any of Seller's employees, contractors, representatives, brokers or agents cleaned or repaired the Property or remediated the Mold contamination, that Seller does not in any way warrant the cleaning, repairs or remediation, or that the Property is free of Mold. Buyer is further advised to have the Property thoroughly inspected for Mold, any hidden defects and/or environmental conditions or hazards affecting the Property. Buyer is also advised that all areas contaminated with Mold should be properly and thoroughly remediated. Buyer represents and warrants that: (i) Buyer accepts full responsibility and liability for all hazards and claims that may result from the presence of Mold in or around the Property; (ii) if Buyer proceeds to Closing on the purchase of the Property, Buyer has inspected and evaluated the condition of the Property to Buyer's complete satisfaction and Buyer is satisfied with the condition of the Property notwithstanding the past or present existence of Mold, if any, in or around the

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

Property; and (iii) Buyer has not, in any way, relied upon any representations or warranties of Seller, Seller's employees, officers, directors, contractors, representatives, brokers or agents concerning the past or present existence of Mold or any environmental hazards in or around the Property.

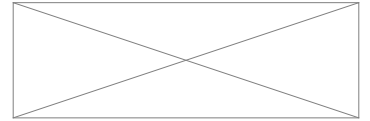
- (C) In the event the Property is affected by an environmental hazard either Party may terminate the Agreement without penalty upon providing the other Party with five (5) calendar days' written notice. In the event Seller decides to sell the Property to Buyer and Buyer agrees to purchase the Property (as evidenced by Buyer and Seller proceeding to Close) despite the presence of an environmental hazard, Buyer releases and forever discharges Seller and the Indemnified Parties from any and all Claims arising out of or relating in any way to the environmental hazard or condition of the Property.
- (D) In the event Seller has received official notice that the Property is in violation of building codes or similar laws or regulations ("Code Violations"), Seller may terminate the Agreement or delay the date of Closing, or Buyer may terminate the Agreement without penalty upon five (5) calendar days' written notice. In the event the Agreement is terminated by either Buyer or Seller pursuant to this Section 11, any Earnest Money will be returned to Buyer. If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court or similar enforcement body and neither Buyer nor Seller terminate the Agreement, Buyer agrees (i) to accept the Property subject to the violations, and (ii) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceedings. In connection with such Code Violations, if the Agreement is not terminated by either Party pursuant to this Section 11, Buyer agrees to execute for Closing, any and all documents necessary or required by any agency with jurisdiction over the Property and further to resolve the deficiencies as soon as possible after the Closing or as otherwise required by applicable laws or regulations. Buyer releases and forever discharges Seller and the Indemnified Parties from any and all Claims arising out of or relating in any way to the Code Violations if Buyer proceeds to Closing.
- (E) In the event Seller has not received official notice that the Property is subject to any Code Violations, Buyer acknowledges the possibility that there still may exist Code Violations. Buyer acknowledges that Buyer has had the opportunity to investigate, research and verify whether or not there exist any Code Violations and further that the Buyer has had the opportunity to consult with inspectors, contractors, attorneys, or other experts concerning these matters. Additionally, except as otherwise expressly set forth in this Agreement, (i) Buyer acknowledges that Sellers have not made and will not make any representations or warranties, expressed or implied, regarding the existence of any Code Violations or the condition of the Property, and (ii) Buyer acknowledges that Seller has specifically disclaimed any representations or warranties regarding compliance with the conformity of the Property to any zoning, land use or building code requirement or compliance with any laws, statutes, rules, ordinances, or regulations of any federal, state or local governmental authority, or the granting of any requirement permits or approvals, if any, of any governmental bodies that had jurisdiction over the construction nor the original structure, any improvement and/or any remodeling of the any structures and/or improvements on the Property. Further, Buyer agrees to accept the Property with regard to any current or future Code Violations, if any, and agrees to indemnify and hold harmless Seller from any and all losses, costs, expenses, liabilities, damages or penalties, including attorneys fees (if any) incurred by Buyer as a result of any Code Violations or the condition of the Property and/or compliance with any laws, codes, ordinances, with regard to the Property including those with respect to Code Violations.
- (F) Seller shall only be obligated to pay fees, charges and/or other costs that are required pursuant to applicable state statute(s), for homeowner's association related fees incurred prior to the Closing Date, or that the Seller has otherwise agreed in writing to pay. Buyer shall pay and be solely responsible for all other related current or outstanding homeowner's association fees or costs of any nature to complete the purchase transaction.
- (G) The Closing of this transaction shall constitute acknowledgement by Buyer that Buyer had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to Buyer at the time of Closing. Buyer agrees that Seller and the Indemnified Parties shall have no liability for any Claims that Buyer or Buyer's successors or assigns may incur as a result of construction or other defects that may now or hereafter exist with respect to the Property.
- (H) Seller may be exempt from filing a disclosure statement regarding the condition of the Property because the Property was acquired through foreclosure, deed-in-lieu of foreclosure, forfeiture, tax sale, eminent domain or similar process. To the fullest extent allowed by law, Buyer waives any right to receive a disclosure statement from Seller and Buyer agrees to execute a separate waiver, in a form acceptable to Seller, if the law requires the waiver to be in a separate form.

12. Repairs: All treatments for wood-infesting organisms and all repairs shall be completed by a vendor approved by Seller prior to such repairs being made and shall be subject to Seller's satisfaction in Seller's discretion. If Seller has agreed to pay for treatment of wood-infesting organisms, Seller shall treat only active infestation.

**Neither Buyer, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to Closing without the prior written consent of Seller. To the extent that Buyer, or its representatives, make repairs and/or treatments to the Property prior to Closing, Buyer hereby agrees to release and indemnify Seller and the Indemnified Parties from and against any and all Claims related in any way to such repairs and/or treatments and Buyer further agrees, at Seller's request, to execute a separate release and indemnification in a form acceptable to Seller prior to the**

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**commencement of any such repairs or treatments.** Buyer shall not permit any liens or encumbrances to be placed against the Property in connection with any repairs and/or treatments performed by or at the instruction of Buyer or its representatives, and shall indemnify and hold Seller and the Indemnified Parties harmless from and against any and all Claims related thereto. Notwithstanding anything contained herein to the contrary and regardless of who initiates such repairs and treatments, Buyer acknowledges that all repairs and treatments are done for the benefit of Seller and not for the benefit of Buyer unless and until the Closing has occurred in accordance with the Agreement, and if Buyer proceeds to Closing, Buyer acknowledges that Buyer has inspected or has been given the opportunity to inspect all repairs and treatments and has accepted the same. Any repairs or treatments made, or caused to be made by Seller, shall be completed prior to the Closing. Under no circumstances shall Seller be required to make any repairs or treatments after the Closing Date. **Buyer acknowledges that the Closing of this transaction shall be deemed to be Buyer's reaffirmation that Buyer is satisfied with the condition of and all repairs and treatments to the Property. Further, if Buyer proceeds to Closing, Buyer waives all Claims arising out of relating in any way to the condition of, or treatments or repairs to, the Property.** Any repairs or treatments performed by Seller shall be performed for functional purposes only and exact restoration of appearance or cosmetic items following any repairs or treatments shall not be required. Seller shall not be obligated to obtain or provide to Buyer any receipts for repairs or treatments, written statements indicating dates or types of repairs and/or treatments, copies of such receipts or statements, or any other documentation regarding any repairs and treatments to the Property. **Seller does not warrant or guarantee any work, repairs or treatments to the Property.**

13. Occupancy Status of Property: Buyer acknowledges that neither Seller nor any of its representatives, brokers, agents or assigns has made any warranties or representations, implied or express, relating to the existence of any tenants or occupants at the Property. Seller, and its representatives, brokers, agents, and assigns, shall not be responsible for evicting or relocating any tenants, occupants or personal property at the Property prior to or subsequent to Closing.

Buyer further acknowledges that Seller (A) is not holding any security deposits from former or current tenants, and (B) has no information as to any security deposits that may have been paid by former or current tenants to anyone. Buyer agrees that no sums representing such tenant security deposits or any rights, title, or interest in such deposits shall be transferred to Buyer as part of this transaction. Buyer further agrees to assume all responsibility and liability for the refund of any such security deposits to any tenants pursuant to the provisions of applicable laws and regulations. All rents that are due and payable and collected from tenants for the month in which Closing occurs will be prorated between Seller and Buyer according to the provisions of Section 15 of this Addendum.

Buyer acknowledges that this Property may be subject to the provisions of local rent control ordinances and regulations, if any. Buyer agrees that upon the Closing all eviction proceedings and other duties and responsibilities of a property owner and landlord, including, but not limited to, those proceedings required for compliance with such local rent control ordinances and regulations, will be Buyer's sole responsibility, regardless of whether arising prior to, on or after the Closing Date.

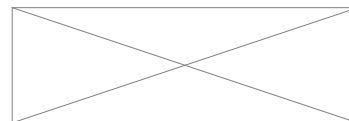
Buyer understands that the Property may be subject to a right of redemption by the prior owner upon payment of certain sums, and Buyer may be dispossessed of the Property. Buyer is advised to consult with an attorney to fully understand the import and impact of the foregoing. Buyer agrees Buyer shall have no recourse against Seller in the event any such right of redemption is exercised by an eligible prior owner.

14. Personal Property: Items of personal property, including but not limited to, window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes, and garage door openers, now or hereafter located on the Property, are not included in the sale of the Property or reflected in the Purchase Price. Any personal property at or on the Property may be subject to claims by third parties, and therefore, may be removed from the Property prior to or after the Closing Date. Seller makes no representations or warranties as to the condition of any personal property, title thereto, or whether any personal property is encumbered by any liens. Buyer assumes responsibility for any personal property remaining on the Property at the time of Closing.
15. Closing Costs and Adjustments:
- (a) Buyer and Seller agree to prorate the following expenses as of the Closing Date: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. In determining prorations, all expenses accruing after the Closing Date shall be allocated to Buyer. Payment of special assessment district bonds and assessments, and payment of homeowner's association or special assessments shall be paid current and prorated between Buyer and Seller as of the Closing Date with payments not yet due and owing to be assumed by Buyer without credit toward the Purchase Price. The Property taxes shall be prorated based on an estimate or actual taxes from the previous year on the Property. All prorations shall be based upon a 30-day month and all such prorations shall be final. Seller shall not be responsible for any amounts due, paid, or to be paid after the Closing Date, including, but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised or assessed value of the Property. If the Property is heated by, or has storage tanks for fuel oil, liquefied petroleum gases, or similar fuels, Buyer will buy the fuel in the tank at Closing at the current price as calculated by the supplier. In the event Seller has paid any taxes, special assessments, or other fees and there is a refund of any such taxes, assessments, or fees after Closing, Buyer, as the then current owner of the Property, or the closing agent, in the event of a holdback for payment of

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

such items, shall immediately remit the refund to Seller.

- (b) **Seller shall only pay those closing costs and fees associated with the transfer of the Property that local custom or practice clearly allocates to Seller and any closing costs and fees specifically agreed to in Section 6, and Buyer shall pay all remaining fees and costs. Notwithstanding the foregoing, FHA/VA allocation of closing costs shall apply when and if applicable.**
- (c) Seller shall pay the real estate commission per the listing agreement between Seller and Seller's listing broker. Unless disclosed to Seller, Buyer represents that Buyer is not a real estate licensee, and that the real estate licensee representing Buyer is not related to, or affiliated with Buyer.
16. **Delivery of Funds:** Regardless of local custom or practice, Buyer shall deliver all funds due Seller from the sale by wire transfer or in the form of bank check, or certified check to the Escrow Agent prior to delivery and release of the Deed (as hereinafter defined) by Seller to Buyer.
17. **Certificate of Occupancy:** If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification, or any similar certification or permit ("Certificate of Occupancy") or any form of improvement or repair to the Property to obtain such Certificate of Occupancy necessary for the Property to be occupied, Buyer understands that Seller requires the Certificate of Occupancy to be obtained by Buyer at Buyer's sole cost and expense. Buyer shall make application for all required Certificates of Occupancy within ten (10) calendar days of the Effective Date. Buyer shall not have the right to extend the Closing Date due to Buyer's failure or inability to obtain any required Certificate of Occupancy. Failure of Buyer to obtain and furnish the Certificate of Occupancy shall be a material breach of the Agreement and Seller may, in Seller's sole discretion, terminate this Agreement and receive and retain the Earnest Money.
18. **Delivery of Possession of Property:** Seller shall deliver possession of the Property to Buyer at Closing and upon receipt of the Purchase Price. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 13 of this Addendum. If Buyer alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to Closing and payment of the Purchase Price in full without the prior written consent of Seller, then: (i) such event shall constitute a material breach by Buyer under the Agreement; (ii) Seller may terminate the Agreement and retain the Earnest Money; (iii) Buyer shall be liable to Seller for all Claims caused by any such alteration or occupation of the Property prior to Closing and payment of the Purchase Price in full; and (iv) Buyer waives all Claims for inspections at, and/or repairs and/or corrections made by Buyer to the Property including, but not limited to, any Claims for unjust enrichment or specific performance.
19. **Deed:** The deed conveying the Property to Buyer (the "Deed") to be delivered at Closing shall be a deed that covenants that grantor grants only that title that grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which Deed may be known as a Special Warranty, Limited Warranty, Quitclaim or Bargain and Sale Deed). Any reference to the term "Deed" herein shall be construed to refer to such form of Deed as is applicable.
20. **Defects in Title:** If Buyer raises an objection to Seller's title to the Property, which, if valid, would make title to the Property uninsurable, Seller shall have the right unilaterally to terminate the Agreement by giving written notice of the termination to Buyer. However, if Seller is able to correct the problem through reasonable efforts, as Seller determines, in its sole and absolute discretion, prior to the Closing Date set forth in the Agreement, including any written extensions, or if title insurance is available from a reputable title insurance company at regular rates containing affirmative coverage for the title objections, then the Agreement shall remain in full force and Buyer shall perform its obligations pursuant to the terms set forth in the Agreement. Seller is not obligated to (i) remove any exception, (ii) bring any action or proceeding or bear any expense in order to convey title to the Property, or (iii) make the title marketable or insurable. Any attempt or effort by Seller to remove such title exceptions shall not impose an obligation upon Seller to remove those exceptions. Buyer acknowledges that Seller's title to the Property may be subject to court approval of foreclosure or to a mortgagor's or prior owner's right of redemption. In the event Seller is not able to (A) make the title insurable or correct all title problems, or (B) obtain title insurance for the Property from a reputable title insurance company, either Party may terminate the Agreement and any Earnest Money will be returned to Buyer as Buyer's sole remedy at law or in equity.
21. **Representations and Warranties:**

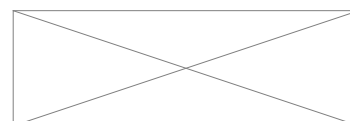
In addition to any other Buyer representations and warranties made in this Agreement, Buyer represents and warrants to Seller the following:

- (a) Buyer is purchasing the Property solely in reliance on its own investigation and inspection of the Property and not on any information, representation or warranty provided or to be provided by Seller, its servicers, representatives, brokers, employees, agents or assigns, including, but not limited to, any information provided on any brochures or websites of Seller or Seller's agents or brokers or any information on the Multiple Listing Service;
- (b) Except as otherwise expressly set forth in this Agreement, neither Seller, nor its servicers, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or express, relating to the condition of the Property or the contents thereof;
- (c) Buyer has not relied on any representation or warranty from Seller, or Seller's agents or brokers, regarding the nature,

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

quality or workmanship of any repairs, corrections and/or improvements made by Seller;

- (d) Buyer will not occupy, or cause or permit others to occupy the Property prior to Closing and payment of the Purchase Price in full, unless the Property is tenant occupied as of the Effective Date of this Agreement.
- (e) Buyer is not an officer, employee, director, or a Business Partner (as defined below) of Computershare Loan Services LLC or its parent company, subsidiaries or affiliated companies. Buyer understands and acknowledges that Seller prohibits such persons from purchasing the Property directly, indirectly, through a family member or an interest in a partnership, corporation, joint venture, trust or other entity. "Business Partner" shall mean any agent, broker, appraiser, attorney, trustee, property inspection or preservation company, title company, representative or vendor of Computershare Loan Services LLC, or its parent company, subsidiaries or affiliated companies.

**22.** Conditions to Seller's Performance: In addition to any other rights or remedies set forth in this Agreement, or available at law or in equity, Seller shall have the right, in Seller's sole discretion, to extend the Closing Date or to terminate the Agreement, to the full extent permitted by applicable law, if:

- (a) Full payment of any mortgage insurance claim related to the loan previously secured by the Property is not confirmed prior to the Closing Date or the mortgage insurance company exercises its right to acquire title to the Property;
- (b) Seller determines that it is unable or it is economically not feasible to convey good and marketable title to the Property insurable by a reputable title insurance company at regular rates;
- (c) a third party having an interest in the Property (or the loan that was secured by the Property) has requested that the servicing lender or any other party, release the servicing or repurchase such loan or the Property;
- (d) Full payment of any property, fire or hazard insurance claim is not confirmed prior to the Closing Date;
- (e) Any third party, whether tenant, homeowner's association or otherwise, exercises rights under a right of first refusal to purchase the Property;
- (f) Buyer is the former mortgagor of the Property whose interest was foreclosed, or is related to or affiliated in any way with the former mortgagor and Buyer has not disclosed this fact to Seller prior to Seller's acceptance of the Agreement. Such failure to disclose shall constitute a material breach under the Agreement, entitling Seller to exercise any of its rights and remedies, including, without limitation, retaining the Earnest Money; or
- (g) Seller determines that the sale of the Property to Buyer, or any related transactions, is in any way associated with illegal activity of any kind.

In the event Seller elects to terminate the Agreement, except as otherwise set forth in this Section 23 or elsewhere in the Agreement, Seller shall return Buyer's Earnest Money and the Parties shall have no further rights or obligation under the Agreement, except as to any provision that survives termination pursuant to Section 28 of this Addendum.

**23.** Seller's Remedies for Buyer's Default: In the event of Buyer's material breach or material misrepresentation of any fact under the terms of the Agreement, (i) Seller may retain the Earnest Money and any other funds then paid by Buyer as liquidated damages and invoke any other remedy expressly set out in the Agreement or available under applicable law, (ii) Seller shall be automatically released from the obligation to sell the Property to Buyer, and (iii) Seller and the Indemnified Parties shall not be liable to Buyer for any Claims arising out of or relating in any way to Seller's failure to sell and convey the Property to Buyer.

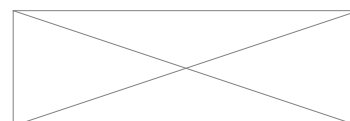
**24.** Indemnification: Buyer agrees to indemnify, defend and hold harmless Seller and its affiliates, subsidiaries, and parent company, and each of their respective representatives, agents, officers, directors, employees, attorneys, shareholders, servicers, tenants, brokers, predecessors, successors and assigns ("Indemnified Parties") from and against any and all claims, causes of action, whether administrative or judicial, losses, costs (including any and all reasonable attorneys' fees, court costs, and reasonable costs of investigation, litigation, and settlement), expenses, sanctions, curtailments, interest, liabilities, penalties, fines, demands, liens, judgments, compensation, fees, loss of profits, injuries, death and/or damages of any kind whatsoever, whether known or unknown, fixed or contingent, joint or several, criminal or civil or at law or in equity ("Claims") arising from, in connection with, or in any way relating to:

- (a) inspections or repairs made by Buyer or its agents, representatives, brokers, employees, contractors, successors or assigns;
- (b) the imposition of any fine or penalty imposed by any governmental entity resulting from Buyer's failure to timely obtain any Certificate of Occupancy or to comply with equivalent laws and regulations;
- (c) claims for amounts due and owed by Seller for real property taxes, homeowner's association dues or assessments, municipal fees or penalties, or any other items prorated at Closing under Section 15 of this Addendum, including any penalty or interest and other charges, arising from the proration of such amounts for which Buyer received a credit at Closing under Section 15 of this Addendum;

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



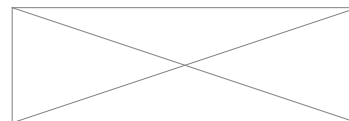
400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

- (d) Buyer or Buyer's tenants, agents or representatives use and/or occupancy of the Property prior to Closing and/or issuance of required Certificates of Occupancy; or
- (e) Buyer's breach of or failure to comply fully with any provision in the Agreement.
25. **Risk of Loss:** In the event of fire, destruction, or other casualty loss to the Property after Seller's acceptance of the Agreement and prior to Closing and payment of the Purchase Price in full, Seller may, in its sole discretion, repair or restore the Property, or either Party may terminate the Agreement unless and until Seller has notified Buyer in writing of Seller's intent to repair or restore the Property. If Seller elects to repair or restore the Property, then Seller may, in its sole discretion, limit the amount to be expended by Seller in making such repairs or restorations. If Seller elects not to repair or restore the Property, Buyer shall either (a) acquire the Property in its AS-IS condition at the time of Closing at the Purchase Price provided in Section 3 herein with no reduction for such loss, or (b) terminate the Agreement and receive a refund of any Earnest Money.
26. **Eminent Domain:** In the event that Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate the Agreement and the Earnest Money shall be returned to Buyer and neither Party shall have any further rights or obligations or liabilities hereunder, except as provided in Section 28 of this Addendum.
27. **Keys:** Buyer is aware that the property may be on a master key system. Buyer shall, at Buyer's sole expense, re-key the Property after Closing. Buyer agrees to hold Seller and the Indemnified Parties harmless for any Claims relating in any way to any theft or damage of personal property or to the Property that occurs after the Closing Date.
28. **Survival:** Delivery of the Deed to the Property to Buyer by Seller shall be deemed to be full performance and discharge of all of Seller's obligations under the Agreement. Notwithstanding anything to the contrary in the Agreement, the provisions of Sections 2, 11, 12, 13, 15, 17, 18, 21, 23, 24, 25, 26, 27, 28, 30, 42, 44 and 45 of this Addendum, as well as any other provisions that contemplate performance or observance subsequent to any termination or expiration of the Agreement, shall survive the Closing, payment of the Purchase Price and the delivery of the Deed and/or termination of the Agreement by any Party and such provisions shall continue in full force and effect.
29. **Title and Closing:** **Buyer has the right to select the (i) escrow, attorney, or closing company ("Settlement Company") and (ii) the company to issue title insurance. If Buyer elects to designate Seller's preferred providers, then Buyer and Seller will each pay half for the Settlement Company fees, and Seller will pay for all fees for the owner's title insurance. If Buyer elects to designate providers that are not the Seller's preferred providers, then Buyer will be responsible to pay for all Title and insurance and closing company fees.**
30. **Severability:** If any provision of the Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired thereby and no provision shall be deemed dependent upon any other provision unless so expressed herein.
31. **Termination of Agreement:** If either Party terminates the Agreement when permitted to do so, the Parties shall have no further rights hereunder or obligation to each other, except as to any provision that survives the termination of the Agreement pursuant to Section 28 of this Addendum
32. **Assignment of Agreement:** Buyer shall not assign the Agreement. Seller may assign the Agreement at its sole discretion without prior notice to, or consent of, Buyer.
33. **Modification and Waiver:** No provision, term or clause of the Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by Buyer and Seller. The waiver by any Party of a breach of the Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No course of dealing between the Parties shall operate as a waiver of any provision of the Agreement.
34. **Rights of Others:** The Agreement does not create any rights, claims or benefits inuring to any person or entity other than Seller's successors and/or assigns, that is not a Party to the Agreement, nor does it create or establish any third party beneficiary to the Agreement.
35. **Counterparts and Facsimile:** The Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original and all such counterparts shall constitute one and the same instrument. A signed facsimile or photocopy of the Agreement shall be treated as an original and shall be deemed to be as binding, valid, genuine and authentic as an originally signed agreement for all purposes, including all matters of evidence and the "best evidence" rule.
36. **Headings:** The titles to the sections and headings of various paragraphs of the Agreement are placed for convenience of reference only and in case of conflict the text of the Agreement, rather than such titles or headings, shall control.
37. **Gender:** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such nouns or pronouns and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.
38. **Force Majeure:** Except as provided in Section 25 to this Addendum, no Party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing

## COUNTER OFFER/ADDENDUM Loan # 3115552

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT

READ IT CAREFULLY



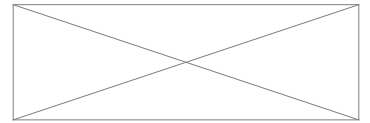
400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such Party through use of alternate sources, workaround plans or other means. Performance shall resume upon completion of termination of the Force Majeure Event (herein so called) and be extended for an equal number of days as the length of the Force Majeure Event.

39. Attorney Review: Buyer acknowledges that Buyer has had the opportunity to consult with its legal counsel regarding the Agreement and that accordingly the terms of the Agreement are not to be construed against any Party because that Party drafted the Agreement or construed in favor of any Party because that Party failed to understand the legal effect of the provisions of the Agreement.
40. Notices: Any notices required to be given under the Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery or by fax or email with confirmation of transmission to the numbers below, or five (5) calendar days after mailing by first class mail, postage paid. All notices to Seller will be deemed sent or delivered to Seller when sent or delivered to Seller's listing broker, agent or Seller's attorney, at the address or fax number shown below. All notices to Buyer shall be deemed sent or delivered and effective when sent or delivered to Buyer, Buyer's attorney or agent at the address or fax number shown below.
41. Dispute Resolution: At the request of either Party, any dispute arising under this Agreement shall be submitted to mediation before resorting to arbitration or court action. Mediation fees shall be divided equally and each Party shall bear his or its own attorneys' fees and costs. Neither Party may require binding arbitration prior to commencement of court action, although the Parties may mutually agree to such arbitration for the mediation.
42. EFFECT OF ADDENDUM: THIS REAL ESTATE PURCHASE ADDENDUM AMENDS AND SUPPLEMENTS THE CONTRACT AND, IF APPLICABLE, ESCROW INSTRUCTIONS. IN THE EVENT THERE IS ANY CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, ESCROW INSTRUCTIONS, NOTICE OR OTHER DOCUMENTS ATTACHED AND MADE A PART OF THE AGREEMENT, THE TERMS OF THIS ADDENDUM SHALL TAKE PRECEDENCE AND PREVAIL, EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW. The undersigned, if executing the Agreement on behalf of a Seller and/or a Buyer that is a corporation, partnership, trust or other entity, represents and warrants that he/she is authorized by that entity to enter into the Agreement and bind the entity to perform all duties and obligations stated in the Agreement and shall provide Seller with proof of such authority upon execution of the Agreement.
43. Initials: Buyer and Seller agree to all of the terms in the Agreement whether any provision or page is separately initialed or not. For emphasis, some sections or provisions in the Agreement contain a place for Buyer and/or Seller to separately initial, but the failure by Buyer or Seller to initial any section, provision, or page in the Agreement shall not affect the enforceability of any term or provision in the Agreement.
44. Entire Agreement: The Agreement (including any disclosure of information on lead based paint or hazards and other disclosure forms or notices required by law to be provided to Buyer) constitutes the entire agreement between Buyer and Seller concerning the subject matter hereof and supersedes all previous written and oral communications, understandings, representations, warranties, covenants and agreements. Further, Buyer and Seller represent that there are no oral or other written agreements between the Parties. **All negotiations are merged into the Agreement and No oral or written, expressed or implied, promises, representations, warranties, covenants, understandings, communications, agreements or information made or provided by Seller, or seller's employees, agents, representatives or brokers, including, but not limited to, any information on Seller's or Seller's agent or broker's web sites, sales brochures or on the Multiple Listing Service shall be deemed valid or binding upon Seller, unless expressly included in the Agreement.**
45. Attorneys' Fees, Court Costs, and Legal Expenses: In any action, proceeding, or arbitration arising out of, brought under, or relating to the terms or enforceability of the Agreement the prevailing Party shall be entitled to recover from the losing Party all reasonable attorneys' fees, costs and expenses incurred in such action, proceeding or arbitration.
46. Language in Bold or capitalized: For emphasis and Buyer's benefit some provisions have been bolded and/or capitalized, but each and every provision in this Addendum is significant and should be reviewed and understood. No provision should be ignored or disregarded because it is not in bold or emphasized in some manner and the failure to bold, capitalize or emphasize in some manner any terms or provisions in this Addendum shall not affect the enforceability of any terms or provisions.
47. Additional Provisions (provided by Seller): As is sale, seller will not make any repairs or give any credits. Inspections for informational use only- if water/utilities are off seller will not turn on. **SPECIAL ASSESSMENTS**: At Closing, Seller shall pay (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments, Seller shall pay installments due prior to closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated
48. Additional Comments: LLC Docs and authorized signer to be included with contract package. As Is sale. The seller will not pay for any repairs/inspections. All future fees are to be prorated to the closing date. Acceptance is subject to seller execution. The buyer pays the owner's title policy, transfers, and recording fees. If buyer chooses title/closer, buyer pays both seller/buyer's closing fees. Buyer to provide LLC Docs and authorized signer and proof of funds with contract package. Buyer's Earnest Money shall be deposited with the Seller's attorney/title company within 48 hours of the effective date of the contract.. Closing

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

pushed out to 9/12/24. Will close as soon as possible.

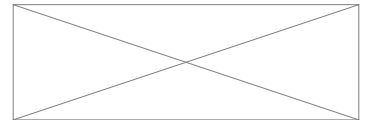
\*\*\*

Remainder of Page Intentionally Left Blank



**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

IN WITNESS WHEREOF, Buyer and Seller have entered into the Agreement effective as of the date it is executed by Seller as set forth below.

**SELLER:**

\_\_\_\_\_

By: Ascribe as Attorney in Fact

Date: \_\_\_\_\_

**BUYER(S):**

**Signature:** \_\_\_\_\_



Date: Aug 09, 2024

Print Name: DAVID DOYLE

Address: 4700 RIVIERA CT

NORTH RICHLAND HILLS, TX 76180

Telephone: 817-992-2877

Fax: \_\_\_\_\_

**Signature:** \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**BUYER'S AGENT:**

Buyer's Agent Name: LUZ EY TALIS

Buyer's Agent Company: SL REAL ESTATE

Address: 4200 FAIRWAY BLVD  
WICHITA FALLS, TX 76308

Telephone: 940-257-3875

Fax: \_\_\_\_\_

Email: LOUALLEN76@GMAIL.COM

**SELLER'S AGENT:**

Seller's Agent Name: Luz Eytalis

Seller's Agent Company: SL REAL ESTATE

Address: 4200 FAIRWAY BLVD

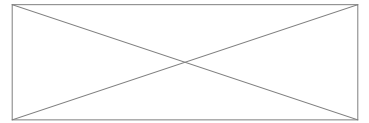
Telephone: 9406897900

Fax: 9408557890

Email: louallen76@gmail.com

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**BUYER'S ATTORNEY:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**MORTGAGE BROKER CONTACT:**

Broker Name: \_\_\_\_\_

Broker Company: \_\_\_\_\_

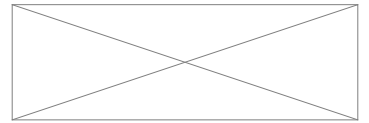
Broker Telephone: \_\_\_\_\_

Broker Fax: \_\_\_\_\_

Broker Email: \_\_\_\_\_

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**EXHIBIT A**

**EARNEST MONEY RECEIPT & FUNDS VERIFICATION**

Earnest Money Check Amount \$ \$7275 Check # \_\_\_\_\_ Date Rec'd \_\_\_\_\_

Listing Agent Name: Luz Eytalis

Office: SL REAL ESTATE

Property Address: 1009 W Louisa AVENUE, Iowa Park, TX 76367

Buyer Name: Doyle Asset Management LLC

This Earnest Money Check is to be Certified and held in Sellers Attorney/Escrow/Title Company Trust Account \*\*

\*\* Contact Information for Attorney/Escrow/Title Company Trust Account is as follows:

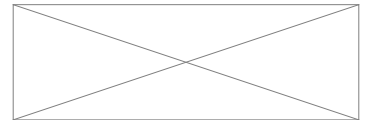
\_\_\_\_\_  
\_\_\_\_\_

Please Insert COPY of Earnest Money Check Below:

**PLEASE COPY THE EARNEST MONEY CHECK TO THIS FORM  
& RETURN WITH YOUR EXECUTED CONTRACT AND SELLER'S  
COUNTER PROPOSAL DOCUMENTS**

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

UNRECORDED CODE VIOLATION DISCLOSURE

Buyer acknowledges the possibility that there are currently unrecorded Local, County, City and/or other municipal code violations ("Code Violations") with regard to the Property. Buyer further acknowledges that he/she has had the opportunity to investigate, research and verify whether or not there currently exist any Code Violations and further that he/she has consulted with, or has had the opportunity to consult with, inspectors, contractors, attorneys, or other experts concerning these matters.

Buyer acknowledges that Seller and/or its affiliates, agents and/or authorized representatives have not made and will not make any representations or warranties expressed or implied regarding the existence of any Code Violations and/or the condition of the Property and further, Buyer acknowledges that in the Sales Contract, Seller has specifically disclaimed any representations and/or warranties regarding conformity of the Property to any zoning, land use and/or building code regulations of any federal, state and/or local governmental authority, and/or the bodies that had jurisdiction over the construction nor the original structure, any improvement and/or any remodeling of any structures and/or improvements on the property.

Buyer hereby accepts the Property without regard to any current and/or future Code Violations, if any, and shall not seek reimbursement from Seller and/or any of its affiliates, agents and/or its authorized representatives for Code Violations that exist as of the date of close of escrow/settlement and further agrees that from and after the closing/settlement date, Buyer shall indemnify and hold harmless Seller, its affiliates and/or its agents and/or its authorized representatives from any and all losses, costs, expenses, liabilities, damages, or penalties, including attorney's fees (if any) incurred by Buyer as a result of any Code Violations and/or the condition of the Property and/or compliance with any laws, codes, ordinances, with regard to the Property including those with respect to Code Violations.

Buyer further acknowledges that failure by the Buyer to remedy the aforementioned issues may result in the Seller being compelled to pay the costs of demolition of the structure(s) on the subject property. In the event the Buyer's failure to resolve any of the aforementioned compliance issues regarding the subject property results in Seller liability for demolition of said property pursuant to any order of a court of competent jurisdiction, Buyer hereby agrees to hold Seller, its asset management firm, its aff and/or its agents and/or its authorized representatives, harmless and indemnify them for any and all claims, actions and judgments, including all costs of defense, reasonable attorney's fees and all other costs related to the demolition of the subject property.

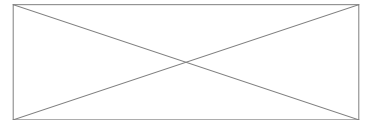
Buyer hereby acknowledges that an Owner's Title Insurance policy and Lender's extended policy will not cover any Code and/or Zoning Violations, penalties, fees, or assessments which are not disclosed on/by the local public properties record as of the date of the policy of title insurance.

Buyer:  Seller: \_\_\_\_\_

Date: Aug 09, 2024 Date: \_\_\_\_\_

**COUNTER OFFER/ADDENDUM Loan # 3115552**

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

# REO Escrow/Closing Disclosure

Property Address: 1009 W Louisa AVENUE City/State: Iowa Park, TX ("Property")

Buyer(s) hereby acknowledge(s) the following terms in the  
Finance of America Reverse LLC ("Seller")

**Real Estate Purchase Addendum** : Seller acknowledges Buyer's right to choose the escrow/attorney/settlement closing company ("Settlement/Closing Company") and/or title insurance company ("Title Insurance Company") to issue title insurance for the Property, (collectively referred to as closing service providers).

If Buyer elects to choose Sellers' escrow closing and title provider and title insurance company used by Seller's provider, **Seller shall pay for the owner's title insurance policy.** Purchaser and Seller agree that Seller's payment of the title insurance products is limited to the amount that Seller would pay its provider under its agreement with the rovider for a basic residential owner's policy or their equivalent. Buyer and seller will pay their own associated closing costs.

Should the Buyer(s) select a Settlement/Closing Company or Title Insurance Company provider other than the Seller's designated closing service providers, **Buyer(s) shall bear the expense for all title insurance costs associated with the transaction, regardless of local custom, requirements, or practice.**

## PLEASE INITIAL ONE OPTION

### Seller's Choice Title

Buyer agrees to use Seller's designated closing service providers. The Buyer(s) and Seller agree that Seller shall pay for the Owners Title Insurance policy. Buyer(s) and Seller agree that Seller's payment of the title insurance products is limited to the amount that Seller would pay its provider under its agreement with the provider for a basic residential owner's insurance policy or its equivalent.

Buyer(s) and seller will pay their own associated closing costs.

### Buyer's Choice Title

The Buyer has selected a Settlement/Closing Company and Title Insurance Company other than Seller's designated closing service providers and therefore Buyer agrees as follows:

Buyer(s) shall bear the expense for all title insurance costs associated with the transaction, regardless of local custom, requirements, or practice.

Buyer(s) and seller will pay their own associated closing costs.

**Buyer's Initials** \_\_\_\_\_  
**Buyer's Agent Initials** \_\_\_\_\_



**Buyer's Initials** \_\_\_\_\_  
**Buyer's Agent Initials** \_\_\_\_\_



**Buyer Signature**

*Aug 09, 2024*

**Date**

**Buyer Signature**

**Date**



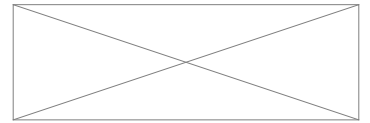
**Selling/Buyer's Agent**

*Aug 09, 2024*

**Date**

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**DISCLOSURE OF INFORMATION ON  
LEAD-BASED PAINT AND/OR LEAD-BASED PAINT  
HAZARDS**

PID# 1795866

Loan # 3115552

Property Address: 1009 W Louisa AVENUE, Iowa Park, TX 76367

**Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase, at purchaser's expense.

**Seller's Disclosure (initial)**

- \_\_\_\_\_ (a) Presence of lead-based paint and/or lead based paint hazards (check one below)
- Known lead-based paint and/or lead based paint hazards are present in the housing (explain):

\_\_\_\_\_

- Seller has no knowledge of lead-based paint and or lead based paint hazards in the housing.

- \_\_\_\_\_ (b) Records and reports available to the seller (check one below)

- Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead based paint hazards are present in the housing. (List documents below)

\_\_\_\_\_

- Seller has no records and reports pertaining to lead-based paint and/or lead based paint hazards are present in the housing.

**Purchaser's Acknowledgment (initial)**



- (c) Purchaser has received copies of all information listed above
- (d) Purchaser has received the pamphlet **Protect Your Family from Lead in Your Home.**
- (e) Purchaser has (check one below):

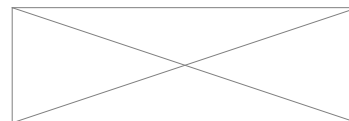
- Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or



Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**COUNTER OFFER/ADDENDUM Loan # 3115552**

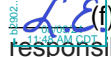
*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**PURCHASER AGREES THEY ARE PURCHASING THE PROPERTY "AS IS," WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE CONDITION OF THE PROPERTY. PURCHASER FURTHER AGREES THAT SELLER AND ITS SERVICERS, REPRESENTATIVES, AGENTS, ATTORNEYS, OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS HAS NO RESPONSIBILITY OR LIABILITY FOR, AND PURCHASER HEREBY UNCONDITIONALLY RELEASES SELLER AND IT'S SERVICERS, REPRESENTATIVES, AGENTS, ATTORNEYS, OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS FROM, ANY AND ALL LIABILITY, BOTH KNOWN AND UNKNOWN, PRESENT AND FUTURE, THAT IS BASED UPON, OR RELATED TO, THE EXISTENCE OF LEAD OR LEAD-BASED PAINT ON OR ABOUT THE PROPERTY.**




**Broker/Agent's Acknowledgment (initial)**

 Broker/Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

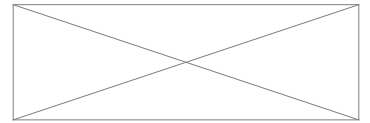
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate. Seller, as Attorney-in-Fact:

\_\_\_\_\_(Print Seller's Name)

Seller	Date	Seller	Date
	Aug 09, 2024		Aug 09, 2024
Broker/Agent	Date	Broker/Agent	Date
	Aug 09, 2024		
Purchaser	Date	Purchaser	Date

**COUNTER OFFER/ADDENDUM Loan # 3115552**

*THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT  
READ IT CAREFULLY*



400 North Tustin Avenue, Suite 402  
Santa Ana, CA 92705  
Corporate: (714) 520-5737  
Fax: (714) 520-5499

**CONFIRMATION OF DOCUMENTS INCLUDED WITH PURCHASE AGREEMENT**

1. Real Estate Purchase Addendum (15 pages, including EMD copy)
2. Unrecorded Code Violation Disclosure
3. REO Escrow/Closing Disclosure
4. Disclosure of Information on Lead-Based Paint and/or Lead Based Paint Hazards
5. Buyer Pre-approval/Proof-of-Funds

List any additional Addenda, Riders, etc. that are included:

---

---

---

---

---





June 5, 2024

Re: Doyle Asset Management LLC

To Whom It May Concern,

Please be advised that Doyle Asset Management LLC has available funds of \$100,000 in Veritex Community Bank as of June 5, 2024. These funds have no restrictions and or holds.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Ashley Baker".

Ashley C Baker  
Senior Vice President  
Veritex Community Bank

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709



**Certificate of Formation  
Limited Liability Company**

**Filed in the Office of the  
Secretary of State of Texas  
Filing #: 804940259 02/23/2023  
Document #: 1224552070002  
Image Generated Electronically  
for Web Filing**

Filing Fee: \$300

**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**Doyle Asset Management, LLC**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

**Name:**

**David Jay Doyle**

C. The business address of the registered agent and the registered office address is:

**Street Address:**

**4700 Riviera Ct North Richland Hills TX 76180**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

**OR**

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Manager 1: **David Jay Doyle**

Title: **Manager**

Address: **4700 Riviera Ct North Richland Hills TX, USA 76180**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**

**Any Lawful Purpose not prohibited by IRC 4975**

[The attached addendum, if any, is incorporated herein by reference.]

**Initial Mailing Address**

Address to be used by the Comptroller of Public Accounts for purposes of sending tax information.

The initial mailing address of the filing entity is:

**4700 Riviera Ct  
North Richland Hills, TX 76180  
USA**

**Organizer**

The name and address of the organizer are set forth below.

**Adam Bergman      5024 S. Bur Oak Place, Ste 200 Sioux Falls, South Dakota 57108**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Adam Bergman**

Signature of Organizer

**FILING OFFICE COPY**



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Doyle Asset Management, LLC  
File Number: 804940259

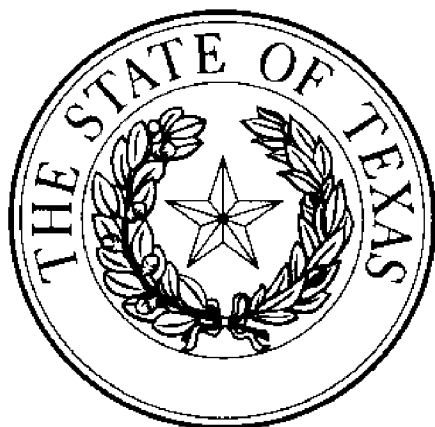
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/23/2023

Effective: 02/23/2023



A handwritten signature in black ink that reads "Jane Nelson".

Jane Nelson  
Secretary of State

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**Doyle Asset Management, LLC**

**(A Texas Limited Liability Company)**

---

# LIMITED LIABILITY COMPANY AGREEMENT

OF

**Doyle Asset Management, LLC**

**THIS LIMITED LIABILITY COMPANY AGREEMENT** (the “Agreement”), has been executed by the member (the “Member”) set forth on Exhibit A annexed hereto, for the purposes of setting forth the rights and obligations of the Member in and to **Doyle Asset Management, LLC** (the “Company”) formed pursuant to the provisions of the Texas Business Organization Code

## ARTICLE 1

### THE COMPANY AND ITS BUSINESS

1.1 **Formation of Company.** The limited liability company was formed on February, 23 2023 pursuant to the provisions of the Act. The rights and liabilities of the Member with respect to the management of the affairs of the Company and the conduct of its business shall be as provided in the Act, except as otherwise expressly provided herein.

1.2 **Name.** The name of the Company shall be **Doyle Asset Management, LLC** until otherwise determined by the Managers (as defined in Section 5.1).

1.3 **Purpose.** The business purpose of the Company is to engage in any activity which may lawfully be conducted under the Act, including investing in real estate, public stocks or mutual funds, private business entities and commercial paper. The Company shall not engage in investments relating to life insurance, collectibles and any “prohibited transaction” listed under Internal Revenue Code (“Code”) Section 4975, a copy of which is attached hereto as **Exhibit B.**

1.4 **Filings.** The Managers shall, from time to time, execute, acknowledge, verify, file, record and publish all such applications, certificates and other documents, and do or cause to be done all such other acts, as the Managers may deem necessary or appropriate to comply with the requirements of law for the formation, qualification and operation of the Company as a limited liability company in all jurisdictions in which the Company shall desire to conduct business.

1.5 **Offices.** The name and address of the Company’s registered office in the State of Texas shall be David Jay Doyle, 4700 Riviera Ct North Richland Hills, TX 76180. In addition, the Company shall maintain its chief executive office and principal place of business at 4700 Riviera Ct North Richland Hills, TX 76180. or as otherwise determined by the Managers.

## ARTICLE 2

### CAPITALIZATION

2.1 **Capital Contributions.** The Member shall make such capital contributions, consisting of cash or real or personal property, to the Company as it deems appropriate from time to time. The Member's initial capital contribution shall be provided on Exhibit A annexed hereto.

2.2 **Additional Capital Contributions.** Except as provided in the Act or as otherwise provided in this Agreement, the Member shall not be required to make an additional capital contribution to the Company. The Member may, however, from time to time, be permitted with the consent of the Manager to make additional capital contributions to the Company.

2.2 **Liability of Member and Affiliates.** Except as otherwise provided by applicable law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company. Neither the Member, any person affiliated with the Member nor any officer of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being the Member, an affiliate of the Member or an officer of the Company.

2.3 **Required Distributions.** Managers confirms that they are aware of the rules surrounding required minimum distributions ("RMDs") generally beginning at the age of 73 for "Traditional IRAs," "401(k)'s," "SEP IRAs," AND "SIMPLE IRAs," and confirms that they will take the steps necessary to ensure that the requirement is met.

2.4 **Title to Company Property.** All property owned by the Company, including but not limited to real estate, shall be owned by the Company as an entity and, insofar as permitted by applicable law, the Member shall have no ownership in any Company property in its individual name or right, and the Member Interest shall be personal property for all purposes.

## ARTICLE 3

### PROFITS AND LOSSES; DISTRIBUTIONS

3.1 **Profit and Losses.** All profits and losses of the Company will be allocated to the Member.

3.2 **Distributions.** All distributions of cash, property, profits or otherwise and the timing thereof will be made at the discretion of the Managers.

## ARTICLE 4

### PROHIBITED TRANSACTION & UBTI

4.1 **General.** The Company shall not engage in any transaction prohibited by Code Section 4975 (attached hereto as **Exhibit B**), Code Section 408 (attached hereto as **Exhibit C**), or any other provision of the Code. Under Code Section 4975, a “prohibited transaction” is generally defined as any direct or indirect: (I) Sale or exchange, or leasing, of any property between a plan and a disqualified person (as defined in Section 4.7.2); (ii) Lending of money or other extension of credit between a plan and a disqualified person; (iii) Furnishing of goods, services, or facilities between a plan and a disqualified person; (iv) Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; (v) Act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or (vi) Receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

4.2 **Direct Prohibited Transactions.** The Managers shall not allow the Company to engage in any type of “Direct Prohibited Transaction”. A “Direct Prohibited Transaction” generally involves one of the following:

- (i) Sale, exchange, or leasing of property between a 401(k) and a “disqualified person”;
- (ii) Lending of money or other extension of credit between a 401(k) and a “disqualified person”;
- (iii) Furnishing of goods, services, or facilities between a 401(k) and a “disqualified person”; or
- (iv) Transfer to a “disqualified person” of income or assets of a 401(k).

4.3 **Self-Dealing/Personal Benefit Prohibited Transactions.** The Managers shall not allow the Company to engage in any type of “Self-Dealing/Personal Benefit Prohibited Transaction”. A “Self-Dealing/Personal Benefit Prohibited Transaction” generally involves one of the following:

- (i) Direct or indirect use of Plan income or assets for the benefit of a “Disqualified Person”;
- (ii) An act by a “Disqualified Person” who is a fiduciary whereby he/she deals with income or assets of the Plan in his/her own interest or for his/her own account; or
- (iii) Receipt of any consideration by a “Disqualified Person” who is a fiduciary for his/her own account from any party dealing with the Plan in connection with a transaction involving income or assets of the Plan.

4.4 **Conflict of Interest Prohibited Transactions.** The Manager shall not allow the Company to engage in any type of “Conflict of Interest Prohibited Transaction”. A “Conflict of Interest Prohibited Transaction” could arise if a disqualified person’s interest or involvement in a transaction affects his/her independent judgment. The Manager confirms that all Company



investments will be made for the sole benefit of the Member.

4.5 **Section 408 Prohibited Transactions.** (a) General. Under Code Section 408, the Company shall not engage in: (i) pledging a 401(k) or any 401(k) asset as a security for a loan, or (ii) investing in collectibles pursuant to Section 408(m). Notwithstanding the above, Code Section 4975(d) sets forth certain transactions that are exempt from being treated as “prohibited transactions” which the Company shall be permitted to engage in.

(b) Precious Metals. The Managers agree that the Company shall not be permitted to invest in any collectibles pursuant to Section 408(m). However, the following are not considered collectibles for this purpose:

- One, one-half, one-quarter or one-tenth ounce U.S. gold coins (American Gold Eagle coins are the only gold coins specifically approved for 401(k)’s. Other gold coins, to be eligible a 401(k) investments, must be at least .995 fine (99.5% pure) and be legal tender coins.
- one-ounce silver coins minted by the Treasury Department;
- any coin issued under the laws of any state;
- a platinum coin described in 31 USCS 5112(k) ; and
- gold, silver, platinum or palladium bullion (other than bullion that is made into a coin) of a certain fineness that is in the physical possession of a trustee that meets the requirements for 401(k) trustees under Code Sec. 408(a).

(b) Holding Precious Metals & Coins. The Managers hereby confirm that all IRS approved precious metals and coins shall be held in the “physical possession” of an authorized U.S. depository or U.S. bank. The Managers confirm that all Company owned IRS approved precious metals and coins shall not be held in the personal possession of any individual.

#### 4.6 **Penalties.**

4.6.1 The Member and Managers acknowledge that if any of the events prohibited by Code Section Code 4975, Code Section 408, or any other provision of the Code occurs during the existence of the 401(k), with respect to the 401(k) owner, the 401(k) is deemed immediately disqualified as of January 1 of the year in which the prohibited transaction occurred, resulting in current income tax treatment of a traditional 401(k) and possible excise tax penalty for a premature withdrawal from an 401(k). If this deemed “distribution” occurs, it will be subject to ordinary income tax and, if you were under the age of 59 1/2 at that time, a ten (10%) percent excise tax on premature distributions may also be assessed.

4.6.2 For the “disqualified person” involved in the transaction, the initial tax on a prohibited transaction is fifteen (15%) percent of the amount involved for every year (or portion thereof) in the “taxable period,” which is the period beginning when the transaction occurs and ending on the date of the earliest of (1) the mailing of a notice of deficiency for the tax, (2) assessment of the tax, or (3) correction of the transaction. The fifteen (15%) percent excise tax is followed by an additional tax of 100% if the disqualified person is recalcitrant.

## 4.7 **Definitions.**

4.7.1 Under Code Section 4975, the term “plan” is defined as (A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under Code Section 501(a), (B) an individual retirement account described in Code Section 408(a), (C) an individual retirement annuity described in Code Section 408(b), (D) an Archer MSA described in Code Section 220(d), (E) a health savings account described in Code Section 223(d), (F) a Coverdell education savings account described in Code Section 530, or (G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

4.7.2 Under Code Section 4975(e)(2), a “disqualified person” is defined as a person who is (A) a fiduciary; (B) a person providing services to the plan; (C) an employer any of whose employees are covered by the plan; (D) an employee organization any of whose members are covered by the plan; (E) an owner, direct or indirect, of 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D) of Code Section 4975(e); (F) a member of the family (as defined in paragraph (6) of Code Section 4975) of any individual described in subparagraph (A), (B), (C), or (E) of Code Section 4975(e); (G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E) of Code Section 4975(e); (H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G) of Section 4975(e); or (I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G) of Code Section 4975(e).

4.7.3 Under Code Section 4975(e)(3), a “fiduciary” is defined as any person who:

(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of such plan.

4.8 **UBTI.** The Managers acknowledge that if the Company engages in an “active trade or business” that is regularly carried on or generates debt-financed income as defined pursuant to Code Sections 512-514, any income derived from such business will be subject to “unrelated business taxable income” (“UBTI”). The Managers hereby confirm that he/she will be responsible for the determination of whether any Company investment involved the application of the UBTI

rules. The Managers confirm that they will be solely responsible for the completion and filing of all relevant tax returns to the IRS and state authorities, including IRS Form 990-T.

4.9 **Plan Asset Rules.** The Member and the Managers acknowledge that the Plan Asset Rules described in Department of Labor Regulation 29 CFR 2510.3-101 may treat an investment of the Company into an “investment entity”, as defined therein, as “Plan” assets. Under the Plan Asset Rules, if the Company’s ownership of an “investment entity” combined with any other unrelated 401(k) investor is 25% or more of all the assets of an “investment entity”, then the equity interests and assets of the “investment entity” are viewed as assets of the Company for purposes of the prohibited transactions rules, unless an exception applies. Also, if the Company or any Affiliate owns 100% of an “operating company”, the operating company exception will not apply and the company's assets will still be treated as plan assets.

## ARTICLE 5 MANAGEMENT

5.1 **Management.** (a) The business and affairs of the Company shall be managed by David Jay Doyle (the “Manager”). In the event of the death, incapacity, removal, or resignation of any of the Manager, a successor Manager shall be Selected.

5.1.2 A quorum for the transaction of business at meetings of the Managers shall consist of all the Managers present in person or represented by proxy. If a quorum shall not be present at any meeting of the Managers, the Managers present at such meeting may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present. Any matter to be voted upon by the Managers at such meeting shall be decided by the Managers holding the required percentage of Interests as required by express provision of law, the Act or this Agreement. In the event of a dead lock among the Managers with respect to a particular Company item being considered, the written consent of all the Managers shall be required to approve any such item.

5.1.3 The Managers shall have full power and authority to take any action and execute any documents on behalf of the Company; provided; however, the Managers shall not engage in any investments relating to life insurance, collectibles or certain “prohibited transaction” described in Code Section 4975. The Managers is the agent of the Company for the purpose of the Company’s business, and for the purpose of the execution in the name of the Company of any instrument for carrying on in the usual way the business of the Company. The Managers’ acts bind the Company, unless such act is in contravention of the Act or this Agreement. The Managers shall not invest any of the Company’s funds, property or assets in any manner prohibited by this Agreement.

5.2 **Expenses.** The Company shall pay all of its own operating, overhead and administrative expenses of every kind. The Managers and the officers of the Company shall be reimbursed for all reasonable costs and expenses they may have incurred or may hereafter incur on behalf of the Company.

5.3 **Compensation.** The Managers shall not be entitled to receive any compensation

for serving as Managers of the Company.

5.4 **Duties & Responsibilities.** Including, but not limited to, the Managers hereby confirm to undertake the following duties & responsibilities:

- Pay all fees timely;
- Hold all IRS-approved coins & precious metals in the “physical possession” of a U.S. depository or U.S. bank;
- Perform required and necessary due diligence before engaging in any investment or transaction, specifically in the case of promissory notes, cryptocurrencies, and initial coin offerings (“ICOs”);
- Understand the high degree of risk involved in making cryptocurrency and ICO investments;
- Understand the high degree of fraud inherent in promissory note investments;
- Timely prepare and file all relevant federal and state income tax returns for the Company or with respect to any Company investment or transaction;
- Not acquire a credit card on behalf of the Company;
- Not use any Company assets for any personal purposes;
- Understand that he/she is solely responsible for determining the valuation of all Company assets and that any valuation displayed or reported by the 401(k) custodian is based solely off what the Manager has provided the 401(k) Custodian and is in no way indicative of the actual or real value of the Company or its assets;
- Confirm that the Company shall not invest in any investment involving illegal or impermissible investments under Federal law, including, but not limited to, illegal gambling or illegal artifacts.

5.5 **Officers.** The Managers shall have the right to delegate any portion of their duties as Managers may determine to officers or to other persons; provided, however, that no such delegation of authority shall relieve the Managers of their obligations hereunder. The Managers may, from time to time, designate or appoint one or more officers of the Company, including, without limitation, one or more chairmen, a vice chairman, a chairman emeritus, a chief executive officer, a president, one or more vice presidents, a secretary, an assistant secretary, and/or a treasurer. Such officers may, but need not be, employees of the Company, or an affiliate of the Company. Each appointed officer shall hold office until: (i) his/her successor is appointed by the Managers; (ii) such officer submits his/her resignation; or (iii) such officer is removed, with or without cause, by the Managers. All officers shall have the authority to perform duties to conduct the day to day operations of the Company consistent with and in the ordinary course of its business, subject to the terms and provisions of this Agreement and to the direction and authorization of the Member. Each officer shall perform his/her duties as an officer in good faith and with such degree

of care, which an ordinarily prudent person in a like position would use under similar circumstances.

5.6 **Fiduciary Duty.** The Managers shall have a fiduciary responsibility for the safekeeping and use of all Company funds, property and assets, whether or not in his, her or its immediate possession. The Managers shall not engage in any investments relating to life insurance, collectibles or certain “prohibited transaction” described in Code Section 4975. The Managers acknowledge that he or she is a fiduciary to the Company and cannot use the Company’s funds directly *or indirectly* for his, her, or its benefit. The Managers acknowledge that the fiduciary prohibited transaction rules under Code Section 4975(c)(1)(D) and (E), may be applicable to an investment or transaction, regardless of whether there is a disqualified person on the other side of the investment or transaction. The Managers shall not employ or permit another to use any of the Company’s funds, property or assets in any manner except for the exclusive benefit of the Company and shall not engage in any investment or transaction that conflicts with the purpose of the Company pursuant to Section 1.3 hereof. In fulfilling his, her or its fiduciary duty, the Managers shall exercise his, her or its business judgment in a manner that is reasonably consistent with that which would be applied by a reasonable Person under similar circumstances.

5.7 **Indemnity.**

5.8.1 Neither the Managers nor any officer of the Company shall be liable to the Company for any loss or damages resulting from errors in judgment or for any acts or omissions that do not constitute willful misconduct or gross negligence. In all transactions for or with the Company, the Managers and the officers of the Company shall act in good faith and in a manner believed to be in the best interests of the Company.

5.8.2 The Company, its receiver or its trustee, as the case may be (but not the Managers personally), shall indemnify and defend the Managers and the officers of the Company against and hold them harmless from any and all losses, judgments, costs, damages, liabilities, fines, claims and expenses (including, but not limited to, reasonable attorneys’ fees and court costs, which shall be paid by the Company as incurred) that may be made or imposed upon such persons and any amounts paid in settlement of any claims sustained by the Company by reason of any act or inaction which is determined by the Managers or the officers of the Company, as the case may be, in good faith to have been in the best interests of the Company so long as such conduct shall not constitute willful misconduct or gross negligence.

5.8.3 In the event of settlement of any action, suit or proceeding brought or threatened, such indemnification shall apply to all matters covered by the settlement except for matters as to which the Company is advised by counsel retained by the Company that the person seeking indemnification, in the opinion of counsel, did not act in good faith. The foregoing right of indemnification shall be in addition to any rights to which the Managers or the officers of the Company may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

5.8.4 Any right of indemnity granted under this Section 5.6.4 may be satisfied only out of the assets of the Company, and neither the Managers nor any officer of the Company shall be personally liable with respect to any such claim for indemnification.

5.8.5 The Managers shall have the power to purchase and maintain insurance in reasonable amounts on behalf of itself and the officers, employees and agents of the Company against any liability incurred by them in their capacities as such, whether or not the Company has the power to indemnify them against such liability.

5.7 **Member has no Management Power.** Except as otherwise expressly provided herein, the Member shall take no part in or interfere in any manner with the management, conduct or control of the Company's business or investments and the Member shall have no right or authority to act for or bind the Company in any manner whatsoever. The Member shall have only the right to vote on specified matters as set forth in this Agreement, if any, or as required by the Act.

## ARTICLE 6

### BOOKS AND RECORDS

6.1 **Books of Account.** Complete books of account shall be kept by the Managers at the principal office of the Company, or at such other office as the Managers may designate.

6.2 **Bank Accounts.** The Managers may maintain one or more bank accounts for such funds of the Company as he, she, or it shall choose to deposit therein, and withdrawals therefrom shall be made upon such signature or signatures as the Managers shall determine.

6.3 **Fiscal Year.** The fiscal year of the Company shall begin on January 1 and end on December 31, except as otherwise required.

6.4 **Tax Election.** The Managers shall have the authority to cause the Company to make any election required or permitted to be made for income tax purposes if the Managers determines, in its sole judgment, that such election is in the best interests of the Company.

6.5 **Tax Matters.** David Jay Doyle shall be the "tax matter partner" of the Company, and it or its authorized agent shall be the only person authorized to prepare, execute and file tax returns and tax reports on behalf of the Company and to represent the Company before the Internal Revenue Service and any state or local taxing authority.

6.6 **Title to Assets.** Title to, and all right and interest in and to, the Company's assets, shall be acquired in the name of and held by the Company, or if acquired in any other name, held for the benefit of the Company.

6.7 **Bankruptcy of the Member.** The bankruptcy of the Member will not cause the Member to cease to be a Member of the Company, and upon the occurrence of such event, the Company shall continue without dissolution.

## ARTICLE 7

### DISSOLUTION AND TERMINATION

7.1 **Dissolution.** The Company shall be dissolved and terminated upon the earliest to occur of the following:

- 7.1.1 the entry of a decree of judicial dissolution of the Company; or
- 7.1.2 when the provisions of Section 7.3 below have been met; or
- 7.1.3 when otherwise determined by the unanimous consent of the Managers.

7.2 **Distribution of Assets.** In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, as set forth under the Act.

7.3 **Termination.** The Company shall terminate when all property owned by the Company shall have been disposed of and the assets, after payment of, or due provision has been taken for, liabilities to Company creditors, shall have been distributed. Upon such termination, the Managers or the Company's officers shall execute and cause to be filed all documents necessary in connection with the termination of the Company.

## ARTICLE 8

### MISCELLANEOUS

8.1 **Admission of Additional Member.** One or more additional members may be admitted to the Company with the prior written consent of the Managers.

8.2 **Severability.** If any of the provisions of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

8.3 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to the conflicts of law rules of said state.

8.4 **Amendments.** This Agreement may be amended or modified from time to time only upon the written consent of the Managers (which consent may be evidenced by the execution of an amendment and restatement of this Agreement).

8.5 **No Third-Party Beneficiaries.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Company or any other person not a party to this Agreement.

**IN WITNESS WHEREOF**, the undersigned Member caused this counterpart signature page to this Limited Liability Company Agreement to be duly executed on the date set forth below, and to be effective as of the date set forth below.

**MEMBER**

**DOYLE ENTERPRISES 401K TRUST,**

**DAVID JAY DOYLE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**MICHAEL JAY DOYLE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**MANAGER(S)**

**DAVID JAY DOYLE**

By: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**

<b><u>Member</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Percentage Interest</u></b>
DOYLE ENTERPRISE 401K TRUST, 4700 RIVIERA COURT NORTH RICHLANDS HILLS, TX, 76180	\$	100%

## **EXHIBIT B**

Checkpoint Contents

Federal Library

Federal Source Materials

Code, Regulations, Committee Reports & Tax Treaties

Internal Revenue Code

Current Code

Subtitle D Miscellaneous Excise Taxes §§4001-5000

Chapter 43 QUALIFIED PENSION, ETC., PLANS §§4971-4980G

§4975 Tax on prohibited transactions.

### **Internal Revenue Code**

#### 8.5.1 § 4975 Tax on prohibited transactions.

**(a) Initial taxes on disqualified person.**

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

**(b) Additional taxes on disqualified person.**

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

**(c) Prohibited transaction.**

**(1) General rule.**

For purposes of this section , the term "prohibited transaction" means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account;  
or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

**(2) Special exemption.**

The Secretary shall establish an exemption procedure for purposes of this subsection . Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection . Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph , the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A) , (B) , and (C) of this paragraph , except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974 .

**(3) Special rule for individual retirement accounts.**

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section ) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

**(4) Special rule for Archer MSAs.**

An individual for whose benefit an Archer MSA (within the meaning of section 220(d) ) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section ) if section 220(e)(2) applies to such transaction.

**(5) Special rule for Coverdell education savings accounts.**

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section ) if section 530(d) applies with respect to such transaction.

**(6) Special rule for health savings accounts.**

An individual for whose benefit a health savings account (within the meaning of section 223(d) ) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.

**(d) Exemptions.**

Except as provided in subsection (f)(6) , the prohibitions provided in subsection (c) shall not apply to—

**(1)** any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees (within the meaning of section 414(q) ) in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

**(2)** any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

**(3)** any loan to a leveraged employee stock ownership plan (as defined in subsection (e)(7) ), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8) );

**(4)** the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

**(5)** any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

**(6)** the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

**(7)** the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion;

**(8)** any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

**(9)** receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

**(10)** receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

**(11)** service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

**(12)** the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

**(13)** any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

**(14)** any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974 , but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F) ;

**(15)** a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F) ;

**(16)** a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581 ) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),

(B) such stock is held by such trust as of the date of the enactment of this paragraph ,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

**(17)** Any transaction in connection with the provision of investment advice described in subsection (e)(3)(B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f)(8) are met,

**(18)** any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and disqualified person (other than a fiduciary described in subsection (e)(3) ) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length transaction with an unrelated party,

**(19)** any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length transaction with an unrelated party,

(D) if the disqualified person has an ownership interest in the system or venue described in subparagraph (A) , the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph , and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A) , a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,

**(20)** transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or



control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B) ) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2) , or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,

**(21)** any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person, if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,

**(22)** any transaction described in subsection (c)(1)(A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a-7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D) ), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H) ,

(E) each plan participating in the transaction has assets of at least \$100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) of the Employee Retirement Income Security Act of 1974 ), the master trust has assets of at least \$100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded, (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H) , and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time, or

**(23)** except as provided in subsection (f)(11) , a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

**(e) Definitions.**

**(1) Plan.**

For purposes of this section , the term "plan" means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) , which trust or plan is exempt from tax under section 501(a) ,

(B) an individual retirement account described in section 408(a) ,

(C) an individual retirement annuity described in section 408(b) ,

(D) an Archer MSA described in section 220(d) ,

(E) a health savings account described in section 223(d) ,

(F) a Coverdell education savings account described in section 530 , or

(G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph .

**(2) Disqualified person.**

For purposes of this section , the term "disqualified person" means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D) ;

(F) a member of the family (as defined in paragraph (6) ) of any individual described in subparagraph (A) , (B) , (C) , or (E) ;

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A) , (B) , (C) , (D) , or (E) ;

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C) , (D) , (E) , or (G) ; or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C) , (D) , (E) , or (G) .

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I) .

### **(3) Fiduciary.**

For purposes of this section , the term "fiduciary" means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974 .

**(4) Stockholdings.**

For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c) , except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6) .

**(5) Partnerships; trusts.**

For purposes of paragraphs (2)(E)(ii) and (iii) , (G)(ii) and (iii) , and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof ) , except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6) .

**(6) Member of family.**

For purposes of paragraph (2)(F) , the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

**(7) Employee stock ownership plan.**

The term "employee stock ownership plan" means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a) , and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h) , section 409(o) , and, if applicable, section 409(n) , section 409(p) , and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4) ) , it meets the requirements of section 409(e) .

**(8) Qualifying employer security.**

The term "qualifying employer security" means any employer security within the meaning of section 409(l) . If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section , except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

**(9) Section made applicable to withdrawal liability payment funds.**

For purposes of this section —

(A) In general. The term "plan" includes a trust described in section 501(c)(22) .

(B) Disqualified person. In the case of any trust to which this section applies by reason of subparagraph (A) , the term “disqualified person” includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974 .

**(f) Other definitions and special rules.**

For purposes of this section —

**(1) Joint and several liability.**

If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

**(2) Taxable period.**

The term “taxable period” means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 ,

(B) the date on which the tax imposed by subsection (a) is assessed, or

(C) the date on which correction of the prohibited transaction is completed.

**(3) Sale or exchange; encumbered property.**

A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

**(4) Amount involved.**

The term “amount involved” means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a) , shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b) , shall be the highest fair market value during the taxable period.

**(5) Correction.**

The terms “correction” and “correct” mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

**(6) Exemptions not to apply to certain transactions.**

(A) In general. In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3) ), the exemptions provided by subsection (d) (other than paragraphs (9) and (12) ) shall not apply to a transaction in which the plan directly or indirectly—

- (i) lends any part of the corpus or income of the plan to,
- (ii) pays any compensation for personal services rendered to the plan to, or
- (iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4) ) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(B) Special rules for shareholder-employees, etc.

(i) In general. For purposes of subparagraph (A) , the following shall be treated as owner-employees:

(I) A shareholder-employee.

(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37) ).

(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c) .

(ii) Exception for certain transactions involving shareholder-employees. Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7) ) by a shareholder-employee, a member of the family (as defined in section 267(c)(4) ) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A) .

(iii) Loan exception. For purposes of subparagraph (A)(i) , the term "owner-employee" shall only include a person described in subclause (II) or (III) of clause (i) .

(C) Shareholder-employee. For purposes of subparagraph (B) , the term "shareholder-employee" means an employee or officer of an S corporation

who owns (or is considered as owning within the meaning of section 318(a)(1) ) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

**(7) S corporation repayment of loans for qualifying employer securities.**

A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7) , or as engaging in a prohibited transaction for purposes of subsection (d)(3) , merely by reason of any distribution (as described in section 1368(a) ) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

**(8) Provision of investment advice to participant and beneficiaries.**

(A) In general. The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d)(17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(B) Eligible investment advice arrangement. For purposes of this paragraph , the term "eligible investment advice arrangement" means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

(C) Investment advice program using computer model.

(i) In general. An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.



(ii) Computer model. The requirements of this clause are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(iii) Certification.

(I) In general. The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii) .

(II) Renewal of certifications. If, as determined under regulations prescribed by the Secretary of Labor, there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

(III) Eligible investment expert. The term "eligible investment expert" means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(iv) Exclusivity of recommendation. The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii) , and

(II) any transaction described in (d)(17)(A)(ii) occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i) , but only if such request has not been solicited by any person connected with carrying out the arrangement.

(D) Express authorization by separate fiduciary. The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(E) Audits.

(i) In general. The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph , and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph .

(ii) Special rule for individual retirement and similar plans. In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i) , audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

(iii) Independent auditor. For purposes of this subparagraph , an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(F) Disclosure. The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to

any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser, in the development of the investment advice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H) ,

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(G) Other conditions. The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(H) Standards for presentation of information.

(i) In general. The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F)(i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(ii) Model form for disclosure of fees and other compensation. The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F)(i)(III) which meets the requirements of clause (i) .

(I) Maintenance for 6 years of evidence of compliance. The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(J) Definitions. For purposes of this paragraph and subsection (d)(17) —

(i) Fiduciary adviser. The term "fiduciary adviser" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 ( 15 U.S.C. 80b-1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act ( 12 U.S.C. 1813(b)(1) ), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 ( 15 U.S.C. 78 et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV) , or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17) , except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(ii) Affiliate. The term "affiliate" of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 ( 15 U.S.C. 80a-2(a)(3) )).

(iii) Registered representative. The term "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 ( 15 U.S.C. 78c(a)(18) ) (substituting the entity for the broker or dealer referred to in such section) or a person described in section

202(a)(17) of the Investment Advisers Act of 1940 ( 15 U.S.C. 80b-2(a)(17) ) (substituting the entity for the investment adviser referred to in such section).

**(9) Block trade.**

The term "block trade" means any trade of at least 10,000 shares or with a market value of at least \$200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

**(10) Adequate consideration.**

The term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

**(11) Correction period.**

(A) In general. For purposes of subsection (d)(23) , the term "correction period" means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23) ) constitute a prohibited transaction.

(B) Exceptions.

(i) Employer securities. Subsection (d)(23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

(ii) Knowing prohibited transaction. In the case of any disqualified person, subsection (d)(23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction

would (without regard to this paragraph ) constitute a prohibited transaction.

(C) Abatement of tax where there is a correction. If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23) , then no tax under subsection (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(D) Definitions. For purposes of this paragraph and subsection (d)(23) —

(i) Security. The term “security” has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) Commodity. The term “commodity” has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

(iii) Correct. The term “correct” means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

**(g) Application of section.**

This section shall not apply—

**(1)** in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974 ) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

**(2)** to a governmental plan (within the meaning of section 414(d) ); or

**(3)** to a church plan (within the meaning of section 414(e) ) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

**(h) Notification of Secretary of Labor.**

Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) , the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

**(i) Cross reference.**

For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b) , see section 3003 of the Employee Retirement Income Security Act of 1974 .



## EXHIBIT C

### Checkpoint Contents

#### Federal Library

#### Federal Source Materials

#### Code, Regulations, Committee Reports & Tax Treaties

#### Internal Revenue Code

#### Current Code

#### Subtitle A Income Taxes §§1-1563

#### Chapter 1 NORMAL TAXES AND SURTAXES §§1-1400U-3

#### Subchapter D Deferred Compensation, Etc. §§401-436

#### Part I PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC. §§401-420

#### Subpart A General Rules §§401-409A

#### §408 Individual retirement accounts.

### Internal Revenue Code

#### 8.5.1 § 408 Individual retirement accounts.

##### **(a) Individual retirement account.**

For purposes of this section , the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

**(1)** Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c) , 403(a)(4) , 403(b)(8) , or 457(e)(16) , no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A) .

**(2)** The trustee is a bank (as defined in subsection (n) ) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section .

**(3) No part of the trust funds will be invested in life insurance contracts.**

**(4)** The interest of an individual in the balance in his account is nonforfeitable.

**(5)** The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

**(6)** Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

##### **(b) Individual retirement annuity.**

For purposes of this section , the term "individual retirement annuity" means an annuity

contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

- (1) The contract is not transferable by the owner.
- (2) Under the contract—
  - (A) the premiums are not fixed,
  - (B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A) , and
  - (C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.
- (3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.
- (4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection , no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A) .

**(c) Accounts established by employers and certain associations of employees.**

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1) ) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a) ), but only if the written governing instrument creating the trust meets the following requirements:

- (1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a) .
- (2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

**(d) Tax treatment of distributions.**

**(1) In general.**

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

**(2) Special rules for applying section 72.**

For purposes of applying section 72 to any amount described in paragraph (1) —

- (A) all individual retirement plans shall be treated as 1 contract,
- (B) all distributions during any taxable year shall be treated as 1 distribution, and
- (C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

**(3) Rollover contribution.**

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

- (A) In general. Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—
  - (i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or
  - (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term “eligible retirement plan” means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation. This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual

received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph .

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general. In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity. An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted.

(i) In general. If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan. For purposes of clause (i), the term “eligible plan” means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions. This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits. For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts. In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72.

(i) In general. If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules. In the case of a distribution described in clause (i) —

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement. The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

**(4) Contributions returned before due date of return.**

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61 , any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

**(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions.**

(A) In general. In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A) , paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4) ,

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information. If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph , the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g) .

**(6) Transfer of account incident to divorce.**

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

**(7) Special rules for simplified employee pensions or simple retirement accounts.**

(A) Transfer or rollover of contributions prohibited until deferral test met. Notwithstanding any other provision of this subsection or section 72(t) , paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions. For purposes of paragraphs (4) and (5) and section 4973 , any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219 .

**(8) Distributions for charitable purposes.**

(A) In general. So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed \$100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution. For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p) )—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2) ), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70 1/2.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) .

(C) Contributions must be otherwise deductible. For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72 . Notwithstanding section 72 , in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction. Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination. This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2009.

#### **(9) Distribution for health savings account funding.**

(A) In general. In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution. For purposes of this paragraph, the term "qualified HSA funding distribution" means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p) ) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations.

(i) Maximum dollar limitation. The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over



(II) in the case of a distribution described in clause (ii)(II) , the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer.

(I) In general. Except as provided in subclause (II) , an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage. If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage.

(i) In general. If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A) —

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death. Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7) ).

(iii) Testing period. The term “testing period” means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72 . Notwithstanding section 72 , in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A) , the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from

all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

**(e) Tax treatment of accounts and annuities.**

**(1) Exemption from tax.**

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3) Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

**(2) Loss of exemption of account where employee engages in prohibited transaction.**

(A) In general. If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph —

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets. In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

**(3) Effect of borrowing on annuity contract.**

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

**(4) Effect of pledging account as security.**

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

**(5) Purchase of endowment contract by individual retirement account.**

If the assets of an individual retirement account or any part of such assets are

used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3) , and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

**(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds.**

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a) .

**(f) Repealed.**

**(g) Community property laws.**

This section shall be applied without regard to any community property laws.

**(h) Custodial accounts.**

For purposes of this section , a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n) ) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section , and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a) . For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

**(i) Reports.**

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating \$10 or more in any calendar year and such other matters as the Secretary may require. The reports required by this subsection —

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p) , only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2) ) but, in addition to the report under this subsection , there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

**(j) Increase in maximum limitations for simplified employee pensions.**

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A) .

**(k) Simplified employee pension defined.**

**(1) In general.**

For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2) , (3) , (4) , and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416 ) , with respect to which the requirements of section 416(c)(2) are met.

**(2) Participation requirements.**

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least \$450 in compensation (within the meaning of section 414(q)(4) ) from the employer for the year.

For purposes of this paragraph , there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3) . For purposes of any arrangement described in subsection (k)(6) , any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

**(3) Contributions may not discriminate in favor of the highly compensated, etc.**

(A) In general. The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees

do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q) ).

(B) Special rules. For purposes of subparagraph (A) , there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3) .

(C) Contributions must bear uniform relationship to total compensation. For purposes of subparagraph (A) , and except as provided in subparagraph (D) , employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6) ) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first \$200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity. For purposes of subparagraph (C) , the rules of section 401(1)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6) ).

**(4) Withdrawals must be permitted.**

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

**(5) Contributions must be made under written allocation formula.**

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

**(6) Employee may elect salary reduction arrangement.**

(A) Arrangements which qualify.

(i) In general. A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect. Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage. Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals. Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees. This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions.

(i) In general. Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph . Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979 .

(ii) Excess contribution. For purposes of clause (i) , the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii) .

(D) Deferral percentage. For purposes of this paragraph , the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first \$200,000) for the year.

(E) Exception for State and local and tax-exempt pensions. This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions. This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C) , including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4) , provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee. For purposes of this paragraph , the term "highly compensated employee" has the meaning given such term by section 414(q) .

(H) Termination. This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A) .

**(7) Definitions.**

For purposes of this subsection and subsection (1) —

(A) Employee, employer, or owner-employee. The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c) .

(B) Compensation. Except as provided in paragraph (2)(C) , the term "compensation" has the meaning given such term by section 414(s) .

(C) Year. The term "year" means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

**(8) Cost-of-living adjustment.**

The Secretary shall adjust the \$450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the \$200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same

amount, as any adjustment under section 401(a)(17)(B) ; except that any increase in the \$450 amount which is not a multiple of \$50 shall be rounded to the next lowest multiple of \$50.

**(9) Cross reference.**

For excise tax on certain excess contributions, see section 4979 .

**(I) Simplified employer reports.**

**(1) In general.**

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

**(2) Simple retirement accounts.**

(A) No employer reports. Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description. The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification. The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B) .

**(m) Investment in collectibles treated as distributions.**

**(1) In general.**

**The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any**



**collectible shall be treated (for purposes of this section and section 402 ) as a distribution from such account in an amount equal to the cost to such account of such collectible.**

**(2) Collectible defined.**

**For purposes of this subsection , the term "collectible" means—**

- (A) any work of art,**
- (B) any rug or antique,**
- (C) any metal or gem,**
- (D) any stamp or coin,**
- (E) any alcoholic beverage, or**
- (F) any other tangible personal property specified by the Secretary for purposes of this subsection .**

**(3) Exception for certain coins and bullion.**

**For purposes of this subsection , the term "collectible" shall not include—**

- (A) any coin which is—**
  - (i) a gold coin described in paragraph (7) , (8) , (9) , or (10) of section 5112(a) of title 31, United States Code ,**
  - (ii) a silver coin described in section 5112(e) of title 31, United States Code ,**
  - (iii) a platinum coin described in section 5112(k) of title 31, United States Code , or**
  - (iv) a coin issued under the laws of any State, or**
- (B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7 ) requires for metals which may be delivered in satisfaction of a regulated futures contract,**

**if such bullion is in the physical possession of a trustee described under subsection (a) of this section .**

**(n) Bank.**

**For purposes of subsection (a)(2) , the term "bank" means—**

- (1) any bank (as defined in section 581 ),**

**(2)** an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

**(3)** a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

**(o) Definitions and rules relating to nondeductible contributions to individual retirement plans.**

**(1) In general.**

Subject to the provisions of this subsection , designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

**(2) Limits on amounts which may be contributed.**

(A) In general. The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit. For purposes of this paragraph —

(i) In general. The term “nondeductible limit” means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g) ), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g) ).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible. If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions.

(i) In general. For purposes of this paragraph , the term “designated nondeductible contribution” means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219 .

(ii) Designation. Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

**(3) Time when contributions made.**

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

**(4) Individual required to report amount of designated nondeductible contributions.**

(A) In general. Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B) .

(B) Information required to be supplied. The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made. For penalty where individual reports designated nondeductible contributions not made, see section 6693(b) .

**(p) Simple retirement accounts.**

**(1) In general.**

For purposes of this title, the term "simple retirement account" means an individual retirement plan (as defined in section 7701(a)(37) )—

(A) with respect to which the requirements of paragraphs (3) , (4) , and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

**(2) Qualified salary reduction arrangement.**

(A) In general. For purposes of this subsection , the term "qualified salary reduction arrangement" means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii) .

(B) Employer may elect 2-percent nonelective contribution.

(i) In general. An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least \$5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C) .

(ii) Compensation limitation. The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17) .

(C) Definitions. For purposes of this subsection —

(i) Eligible employer—

(I) In general. The term “eligible employer” means, with respect to any year, an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period. An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage.

(I) In general. The term “applicable percentage” means 3 percent.

(II) Election of lower percentage. An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C) . An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect. If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer.

(i) In general. An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any

predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan. For purposes of this subparagraph , the term "qualified plan" means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5) .

(E) Applicable dollar amount; cost-of-living adjustment.

(i) In general. For purposes of subparagraph (A)(ii) , the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005 or thereafter	\$10,000.

(ii) Cost-of-living adjustment. In the case of a year beginning after December 31, 2005, the Secretary shall adjust the \$10,000 amount under clause (i) at the same time and in the same manner as under section 415(d) , except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

**(3) Vesting requirements.**

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

**(4) Participation requirements.**

(A) In general. The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least \$5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least \$5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B) .

(B) Excludable employees. An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3) .

**(5) Administrative requirements.**

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B) ,

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

**(6) Definitions.**

For purposes of this subsection —

(A) Compensation.

(i) In general. The term “compensation” means amounts described in paragraphs (3) and (8) of section 6051(a) . For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3) .

(ii) Self-employed. In the case of an employee described in subparagraph (B) , the term “compensation” means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection . The preceding sentence shall be applied as if the term “trade or business” for purposes of section 1402 included service described in section 1402(c)(6) .

(B) Employee. The term “employee” includes an employee as defined in section 401(c)(1) .

(C) Year. The term "year" means the calendar year.

**(7) Use of designated financial institution.**

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (l)(2)(C) ) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G) .

**(8) Coordination with maximum limitation under subsection (a) .**

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting "the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection , whichever is applicable" for "the dollar amount in effect under section 219(b)(1)(A) " .

**(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions.**

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c) ) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

**(10) Special rules for acquisitions, dispositions, and similar transactions.**

(A) In general. An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II) ; and

(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement. For purposes of this paragraph , the term "applicable requirement" means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4) .



(C) Transition period. For purposes of this paragraph , the term “transition period” means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

**(q) Deemed IRAs under qualified employer plans.**

**(1) General rule.**

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B) , the requirements of subsection (a)(5) shall not apply.

**(2) Special rules for qualified employer plans.**

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1) .

**(3) Definitions.**

For purposes of this subsection —

(A) Qualified employer plan. The term “qualified employer plan” has the meaning given such term by section 72(p)(4)(A)(i) ; except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b) ) of an eligible employer described in section 457(e)(1)(A) .

(B) Voluntary employee contribution. The term “voluntary employee contribution” means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C) )—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1) , and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

**(r) Cross references.**

**(1)** For tax on excess contributions in individual retirement accounts or annuities, see section 4973 .

**(2)** For tax on certain accumulations in individual retirement accounts or annuities, see section 4974 .

Date of this notice: 03-03-2023

Employer Identification Number:  
92-2675600

Form: SS-4

Number of this notice: CP 575 G

DOYLE ASSET MANAGEMENT LLC  
DAVID JAY DOYLE SOLE MBR  
4700 RIVIERA CT  
N RICHLND HLS, TX 76180

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 92-2675600. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

Taxpayers request an EIN for their business. Some taxpayers receive CP575 notices when another person has stolen their identity and are opening a business using their information. If you did **not** apply for this EIN, please contact us at the phone number or address listed on the top of this notice.

When filing tax documents, making payments, or replying to any related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear-off stub and return it to us.

A limited liability company (LLC) may file Form 8832, *Entity Classification Election*, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, *Election by a Small Business Corporation*. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

