

Public Notice of Proposed Rulemaking

RHODE ISLAND GOVERNMENT REGISTER NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Administration

DIVISION: Office of Personnel Administration/Employee Benefits

RULE IDENTIFIER: ERLID 477

REGULATION TITLE: Deferred Compensation Plan

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

August 8, 2017 – Notice posted

August 28, 2017 – Public Hearing

September 15, 2017 – End of Public Comment Period

SUMMARY OF PROPOSED RULE: After review, it was determined that the Deferred Compensation Plan document is an internal plan document that applies only to State employees who are voluntarily participating in this specific plan. There is no Rhode Island statutory authority for adoption of this plan document as a regulation and this plan document should not have been adopted as a regulation. An updated plan document, while not regulatory in nature, is on file with the Department of Administration.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed repeal by September 15, 2017 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

RI Department of Administration
Division of Legal Services
One Capitol Hill, 4th Floor
Providence, Rhode Island 02908
ATTN: Rules Coordinator

Or by email: daniel.majcher@doa.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Same as above. Please call (401) 222-8880 to schedule an appointment.

PUBLIC HEARING INFORMATION:

A public comment hearing to accept oral comments is scheduled on Monday August 28, 2017 at the Rhode Island Department of Administration, One Capitol Hill, Providence RI 02908 in conference room 2A at 2PM.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call (401) 222-8880 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

FOR FUTURE INFORMATION CONTACT:

Michael Sligar, Esq., Department of Administration, Office of Employee Benefits, One Capitol Hill Providence, Rhode Island 02908

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking: While the plan is required pursuant to Section 457 of the Internal Revenue Code, there is no Rhode Island statutory authority for adoption as a regulation.

Regulatory Findings:

In the development of the proposed repeal consideration was given to:

- (1) alternative approaches;
- (2) overlap or duplication with other statutory and regulatory provisions; and
- (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:

The Department of Administration proposes to repeal the Deferred Compensation Plan, ERLID# 477, in its entirety as follows:

~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS~~

~~DEFERRED COMPENSATION PLAN~~

~~PURSUANT TO SECTION 457 OF THE INTERNAL REVENUE CODE
(Amended and Restated Effective July 1, 1997)~~

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ARTICLE I

INTRODUCTION

~~The State of Rhode Island and Providence Plantations ("Employer") hereby amends, re-establishes and re-affirms the State of Rhode Island and Providence Plantations Deferred Compensation Plan as established and subsequently amended pursuant to Section 457 of the Internal Revenue Code of 1986, as amended and Chapter 13 of the Rhode Island General Statutes. This amended and restated Plan is effective as of July 1, 1997. The purpose of the Plan is to attract and retain certain individuals by permitting them to enter into agreements with the Employer which will provide for the payment of deferred compensation on retirement or separation from service as well as death benefits in the event of death before or after retirement.~~

~~Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between the Participant and the Employer nor shall it be deemed to give a Participant any right to be retained in the employ of, or under contract to, the Employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement or services between a Participant and the Employer as this Plan is intended to be a supplement thereto.~~

~~Neither the Employer, the State Investment Commission, nor the Director of the Department of Administration makes any endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligation under the Plan, or any other purpose) of (a) any Investment Product offered as a standard for measuring income on amounts deferred under the Plan, or (b) any Investment Product in which amounts deferred under the Plan are actually invested.~~

ARTICLE II

DEFINITIONS

~~Terms used in this Plan shall have the following meanings:~~

- ~~2.1 Beneficiary: Any person or entity designated in writing by the Participant. Nothing herein shall prevent the Participant from designating more than one Beneficiary or primary and secondary Beneficiaries or changing the designation of a Beneficiary. If two or more or less than all designated Beneficiaries survive the Participant, payment shall be made equally to all such Beneficiaries, unless otherwise provided in the Beneficiary designation. Elections made by a Participant shall be binding on any such Beneficiary or Beneficiaries except for the right of a Beneficiary as provided in Section 6.05.~~

- ~~2.2 — Code: The Internal Revenue Code of 1986, as amended.~~
- ~~2.3 — Compensation: The total annual remuneration for employment or contracted services payable by the Employer that would be included in the federal gross income of the Participant but for the Participant's election to participate in the Plan.~~
- ~~2.4 — Current Provider: Fidelity Investment Public Sector Services Company or such other organization(s) that the State Investment Commission shall from time to time select pursuant to Section 3.05.~~
- ~~2.5 — Deferred Compensation: The amount of Compensation not yet earned which the Participant and the Employer mutually agree shall be deferred in accordance with the provisions of this Plan.~~
- ~~2.6 — Eligible Individual: Any employee of the Employer whether appointed or elected, who provides services to the Employer for which compensation is paid and the Director designates as eligible to be a Participant.~~
- ~~2.7 — Employer: The State of Rhode Island and Providence Plantations.~~
- ~~2.8 — Former Provider: Any Investment Product available under the Plan prior to July 22, 1997.~~
- ~~2.9 — Includable Compensation: That amount of Compensation that is currently includable in the Participant's gross income under the Code.~~
- ~~2.10 — Investment Product: Any product issued by or obtained from a financial institution or other entity for the purpose of satisfying the Employer's obligations under the Plan; provided, however, any such product must conform to the requirements for such products as described in Section 36-13-1.1 of the Rhode Island General Laws.~~
- ~~2.11 — Normal Retirement Age: The Normal Retirement Age shall be as described in Section 2.11(a) unless the alternative retirement age specified in 2.11(b) is elected in writing by the Participant at any time prior to Separation from Service or prior to the use of the Catch-up Limitation provisions described in Section 4.02(b) or pursuant to the automatic provision of 2.11(c):~~
- ~~(a) — Age 70 and 1/2; or~~
 - ~~(b) — The first day of the calendar month following the Participant's attainment of Normal Retirement Age as that age is defined:
 - ~~(i) Under the State Employees Retirement System (ERS), that is:~~~~

- ~~1. An employee with ten (10) or more years of contributing service credited to the ERS and is age 60 or older; or~~
 - ~~2. An employee with twenty-eight (28) or more years of service credited to the ERS, regardless of age; or~~
 - ~~3. An employee of the Department of Corrections who meets the requirements of the Rhode Island General Laws Section 36-10-9.2 and is age fifty (50) or older and has completed twenty (20) years of total service within the Department of Corrections; or~~
 - ~~4. An employee of the Department of Mental Health, Retardation and Hospitals who meets the requirements of Rhode Island General Laws Section 36-10-9.3 and is age fifty (50) or older and has completed twenty-five (25) years of total service within the Department of Mental Health, Retardation and Hospitals.~~
 - ~~5. An employee of the Office of State Medical Examiners who meets the requirements of Rhode Island General Laws Section 23-4-5(c) and is age fifty (50) or older.~~
- ~~(ii) As to members of the state police, in Rhode Island General Laws Section 42-28-22; or~~
- ~~(iii) As to justices of the supreme court, superior court, family court and district court, in Rhode Island General Laws Sections 8-3-1 through 8-3-18 and Section 8-8-10 (as to district court judges); or~~
- ~~(iv) As to workers' compensation judges, in Rhode Island General Laws Section 28-30-18.1; or~~
- ~~(v) As to judges of the administration adjudication court, in Rhode Island General Laws Section 31-43-11; or~~
- ~~(vi) As to any other participants whose age of retirement is now or hereafter defined in the Rhode Island General Laws, the age of retirement shall be as so defined by statute.~~
- ~~(c) If a Participant continues to provide services for the Employer after Normal Retirement Age specified in 2.11(a) or (b) above, such Participant's Normal Retirement Age shall automatically be the Participant's actual date of Separation from Service.~~

- ~~(d) — Once a Participant has to any extent utilized the Catch-up Limitation of Section 4.02(b), such Participant's Normal Retirement Age shall be determined solely by reference to that age used for purposes of Section 4.02(b); and may not thereafter be changed.~~
- ~~2.12 — Participant: Any Eligible Individual who fulfills the eligibility and enrollment requirements of Article IV or any former employee who has any undistributed benefits under the Plan.~~
- ~~2.13 — Plan: The State of Rhode Island and Providence Plantations Deferred Compensation Plan.~~
- ~~2.14 — Plan Year: The calendar year.~~
- ~~2.15 — Retirement: The severance of the Participant's employment contract or agreement for services with the Employer on or after attainment of the Participant's Normal Retirement Age whereby the Participant thereafter is not providing services to the Employer.~~
- ~~2.16 — Separation From Service: A Participant is separated from service with the State if there is a separation from service within the meaning of Section 402(d)(4)(A)(iii) of the Code, relating to lump sum distributions, and on account of the Participant's death or retirement.~~

ARTICLE III

ADMINISTRATION

- ~~3.1 — This Plan shall be administered by the Director of the Department of Administration and the State Investment Commission. The Director shall represent the State in all matters concerning the administration of the Plan other than the selection of financial institutions or entities to provide Investment Products. The State Investment Commission shall select the financial institutions or entities which shall provide Investment Products under the Plan.~~
- ~~3.2 — The Director shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Plan, Chapter 13 of the Rhode Island General Laws and Section 457 of the Code and any Treasury regulations promulgated thereunder; to interpret, alter, amend, or revoke any rules and regulations so adopted; to enter into contracts on behalf of the Employer with respect to this Plan; to make discretionary decisions under this Plan such as called for in Article VII; to demand satisfactory proof of the occurrence of any event that is a condition precedent to the commencement of any payment or discharge of any obligation~~

~~under the Plan to employ legal counsel, consultants and agents; and to perform any and all administrative duties under this Plan.~~

- ~~3.3 The term "Director," wherever it shall appear in this Plan, shall include any person, or groups of persons authorized by the Director, in writing, to act in his/her behalf in carrying out his/her duties and responsibilities under the Plan.~~
- ~~3.4 The Director or any person acting in behalf of the Director shall be eligible to participate in the Plan, but such person shall not be entitled to participate in discretionary decisions under Article VII relating to such person's own participation in the Plan.~~
- ~~3.5 The State Investment Commission shall from time to time select financial institutions or other entities in which the State shall invest funds under this Plan, and contract with such institution or other entities to issue to the Employer an Investment Product as described in Article V of the Plan and to provide services under the Plan for the convenience of the Employer as directed by the Commission.~~
- ~~3.6 Upon the occurrence of any event requiring the payment of amounts under this Plan, the Director may, in his or her sole discretion, elect to honor a request from the Participant to substitute the transfer in kind and assignment of any asset which the Employer has acquired, at fair market value.~~
- ~~3.7 Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held: (a) in trust for the exclusive benefit of participants and beneficiaries under the Plan, or (b) in one or more annuity contracts, as defined in Section 401(g) of the Code, issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the Plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of Rhode Island.~~

~~All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan or to an annuity contract described in Section 401(f) of the Internal Revenue Code within a period that is not longer than is reasonable for the proper administration of the accounts of participants.~~

ARTICLE IV

PARTICIPATION IN THE PLAN

4.1 — Eligibility: Any Eligible Individual is eligible to participate in the Plan.

4.2 — Enrollment In The Plan:

(a) — An Eligible Individual may become a Participant by agreeing to defer Compensation not yet earned under the Plan, subject to the limits set forth in subsection (b). The enrollment of a Participant will become effective with the next payroll period after all enrollment information is provided and any other documentation required by the Employer is completed.

(b) — The deferred compensation is subject to the following limitations:

(i) — Normal Limitation: The maximum amount that may be deferred under this Plan for a Participant's taxable year (except as provided in paragraph 2.05(b)) is the lesser of \$7,500 (as adjusted for increases in the cost of living in accordance with Section 457(d)(15) of the Code) or 33 1/3% of the Participant's Includable Compensation (or 25% of the Participant's Compensation), reduced by any amount excludable from the Participant's gross income for the taxable year as set forth in Section 457(c)(2) of the Code.

(ii) — Catch-up Limitation: For each one of the Participant's last three taxable years ending prior to but not including the year of such Participant's Normal Retirement Age, as elected by the Participant pursuant to or otherwise defined in Section 2.11, the limitation set forth in paragraph 4.02(b)(i) shall be the lesser of:

1. — \$15,000, reduced by any amount excludable from the Participant's gross income for the taxable year as set forth in Section 2.09 of this Plan.

2. — the sum of the Normal Limitation set forth in paragraph 4.02(b)(i) plus so much of the Normal Limitation which has been underutilized in all prior taxable years since January 1, 1979.

(iii) — For purposes of subparagraph (ii) a prior taxable year can be taken into account: (1) if the Participant was eligible to participate in the Plan or any similar prior plan of the same Employer or another employer in the same state during any portion of any prior taxable year since January 1, 1979; and (2) if the compensation deferred, if any, under such plan or the Plan during such prior taxable years

~~was subject to a maximum deferral limitation as required by Section 457 of the Code.~~

~~A Participant may elect to utilize the Catch-up Limitation with respect to only one Normal Retirement Age in this Plan or any other similar plan notwithstanding the fact that the Participant utilizes the Catch-up Limitation in less than all of the three eligible years.~~

- ~~(c) A Participant must agree to defer a minimum amount of \$260.00 per year (\$10.00 biweekly).~~
- ~~(d) A Participant who defers Compensation may not modify such agreement to change the amount deferred except with respect to Compensation to be earned in a subsequent calendar month or except as provided in Article VII hereof with respect to withdrawals. Notice of such modification must be given prior to the next payroll period for which such modification is to be effective.~~
- ~~(e) A Participant may at any time revoke the agreement to defer Compensation with respect to compensation not yet earned. The revocation is effective and Compensation will be restored as of the next available payroll period. Amounts previously deferred shall be distributed only as provided in this Plan.~~
- ~~(f) A Participant who has withdrawn from the Plan, as set forth in Article VII or has revoked the agreement to defer Compensation, as set forth in subsection (e), above, or who returns to perform services for the Employer after a Separation from Service, may again become a Participant in the Plan and agree to defer Compensation not yet earned as provided in Section 4.02(a) above.~~
- ~~(g) A Participant may, pursuant to procedures determined by the Director, request that the Employer change the Investment Product in which the amounts the Participant has deferred under the Plan are to be invested.~~
- ~~(h) Eligible Individuals who first commence participation in the Plan after July 20, 1997 may only select a Current Provider. Eligible Individuals who became Participants in the Plan prior to July 20, 1997 shall have the following options:
 - ~~Option One: Future contributions directed to the Current Provider. Existing balance moved to Current Provider.~~
 - ~~Option Two: Future contributions directed to Current Provider. Existing balance remains with Former Provider.~~~~

~~Option Three: Future contributions directed to the Former Provider.
Existing balance remains with the Former Provider.~~

- ~~(i) If a Participant elects to transfer funds from the Former Provider to the Current Provider, future contributions may only be directed to the Current Provider. Once enrolled with the Current Provider, a Participant may not continue to send contributions to the Former Provider. A Participant may not re-enroll with a Former Provider at a future date, but the Director may, in his or her discretion, permit such re-enrollment if the facts and circumstances so warrant.~~

~~ARTICLE V~~

~~CALCULATION OF BENEFITS~~

- ~~5.1 The amount of any benefit payment to a Participant or Beneficiary made pursuant to this Plan shall be determined by the value at the time of such payment of the Investment Product(s) in which the amounts the Participant has deferred under the Plan and the income thereon are invested.~~
- ~~5.2 The Employer shall be liable to pay benefits under this Plan only to the extent of amounts that are available under the Investment Product and the Employer shall not be responsible for the investment or performance results of such Investment Product. The value of any benefit shall be determined by the actual value of the Investment Product at the time of benefit payment.~~

~~ARTICLE VI~~

~~BENEFITS~~

~~6.1 General Benefit Terms:~~

- ~~(a) Benefit payments to a Participant or Beneficiary shall be made according to the manner and method of payment as elected by a Participant or a Beneficiary, which election may be changed by a Participant or a Beneficiary as appropriate and as allowed by the Plan at any time more than thirty (30) days prior to the commencement of such benefit payments. In the absence of an election as to the manner and method of such benefit payments, the Employer shall make the lump-sum distribution to the Participant or Beneficiary.~~
- ~~(b) Benefit payments to a Participant or Beneficiary shall commence at the time provided in the Plan, subject to an irrevocable election by the Participant or Beneficiary as appropriate prior to the time such benefits~~

~~first become payable, to defer the beginning of such payments or a portion of such payments to a later date as allowed by the Plan.~~

- ~~(c) In no event may benefit payments to the Participant or any Beneficiary commence any later than the April 1st of the calendar year following (i) the calendar year in which the Participant attains the age of 70 1/2 or (ii) the calendar year in which the Participant retires, whichever is later (hereinafter "required beginning date").~~
- ~~(d) Except as provided in Section 7.04, no amounts will be made available to a Participant or a Beneficiary earlier than
 - ~~(i) the calendar year in which the Participant attains age 70-1/2;~~
 - ~~(ii) when the Participant is separated from service with the Employer;~~
~~or~~
 - ~~(iii) when the Participant is faced with an unforeseeable emergency as defined in Section 7.02 of the Plan.~~~~
- ~~(e) In the case of distributions beginning before the death of a Participant, such distributions must be made in a form under which the amounts payable to the Participant will be paid at times specified in regulations adopted by the Secretary but in no event later than the time determined under section 401(a)(9)(G) of the Code and Code Regulation Section 1.401(a)(9)-2.~~
- ~~(f) Benefits must be distributed in the case of an Investment Product which is a fixed or variable annuity contract (i) over the life of the Participant or over the joint life of the Participant and his designated Beneficiary or (ii) over a period not to exceed the life expectancy of the Participant or the joint life expectancy of the Participant and his designated Beneficiary, or in the case of any other Investment Product (i) in a single lump sum payment. (ii) in equal or substantially equal monthly, quarterly or annual payments for a specified number of years not exceeding the life expectancy of the Participant with the balance distributed in a final payment at the end of the specified period, or (iii) in monthly, quarterly, or annual payments for a specified number of years not exceeding the life expectancy of the Participant where the amount to be distributed each period in the first year is the value of the Participant's benefit at the beginning of the year divided by the number of payment periods and thereafter the amount to be distributed is recalculated annually based on the value of the Participant's benefit at the beginning of the year and the number of payment periods remaining.~~

~~In no event shall payments to a Beneficiary exceed the life of a Beneficiary where such Beneficiary is the surviving spouse of the Participant or a period of fifteen (15) years where such Beneficiary is not the surviving spouse of the Participant.~~

~~(g) — Any benefit payments which are payable over a period of more than one (1) year must be made in substantially non-increasing amounts paid not less frequently than annually.~~

~~6.2 — Benefits Upon Disability: Should the Participant become totally and permanently disabled, (as that term is defined by the Social Security Administration and proof of which is presented to and accepted by the Director) the Participant shall be entitled to receive benefits as provided in Section 6.03.~~

~~6.3 — Benefits Upon Retirement Or Separation From Service:~~

~~(a) — Beginning no later than sixty (60) days following the Participant's Retirement, the Employer shall begin payments to the Participant in accordance with the Participant's election; provided, however, the Participant may elect before the commencement of any payments under the Plan, to defer the beginning of such payments or any portion of such payments to a date not later than the required beginning date.~~

~~(b) — If Separation from Service occurs prior to attainment of the Normal Retirement Age, the Employer shall begin benefit payments no later than sixty (60) days following such Separation from Service; provided, however, the Participant may elect before the commencement of any payments under the Plan, to defer the beginning of such payments, or any portion of such payments, to a date not later than the required beginning date.~~

~~(c) — Any Election to defer receipt of benefits under (a) or (b) above until a later date, if made after Participant's Retirement or the Separation from Service (as the case may be), once made, shall be irrevocable; that is, no benefit shall be payable prior to this date nor shall any benefit so deferred be delayed beyond this selected date.~~

~~6.4 — Benefits Upon Death After Commencement Of Benefits:~~

~~(a) — Should the Participant die at any time after benefit payments have commenced, the Employer shall commence payment to the Beneficiary of the balance remaining of such payments no earlier than thirty (30) days and no later than sixty (60) days following receipt by the Director of satisfactory proof of death of the Participant and the appointment of the administrator or executor of the Participant's estate. Such payments shall~~

~~be made according to the manner and method selected by the Participant, provided that the remaining portions of such benefits, if any, must be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.~~

- ~~(b) — If no Beneficiary is designated as provided in Section 2.01 or if no Beneficiary survives the Participant for a period of thirty (30) days, then the Employer shall pay to the estate of the Participant a single lump sum amount equal to the current value of such remaining payments. If a Beneficiary does not survive the period after the Participant's death during which such payments to the Beneficiary are to be made, the Employer shall pay to the estate of that Beneficiary a single lump sum amount equal to the current value of such remaining payments to that Beneficiary.~~

~~6.5 — Benefits Upon Death Prior To Commencement Of Benefits:~~

- ~~(a) — Should the Participant die at any time before benefit payments have commenced, the Employer shall commence benefit payments to the Beneficiary no earlier than thirty (30) days and no later than sixty (60) days following receipt by the Director of satisfactory proof of death of the Participant and the appointment of the administrator or executor of the Participant's estate. Such payments shall be made according to the manner and method selected by the Participant prior to death, or if no such designation was made, by the Beneficiary.~~
- ~~(b) — (i) — A Beneficiary who is not the Participant's surviving spouse may irrevocably elect to defer the beginning date of such payments to a date on or before December 31 of the calendar year following the year in which the Participant died, in which case, benefit payments may be distributed over the life or life expectancy of the Beneficiary, but in no event may the distribution period exceed fifteen years. Where such Beneficiary irrevocably elects to defer the beginning date of such payments to a date later than December 31 of the calendar year following the calendar year in which the Participant died, the Participant's entire interest must be distributed on or before December 31 of the calendar year in which the fifth anniversary of the Participant's death occurs.~~
- ~~(ii) — A Beneficiary who is the Participant's surviving spouse may irrevocably elect to defer the beginning date of such payments to a date not later than December 31 of the calendar year in which the Participant would have attained age 70 1/2.~~
- ~~(c) — If no Beneficiary is designated as provided in Section 2.01 or if no Beneficiary survives the Participant for a period of thirty (30) days, the Employer shall pay to the estate of the Participant a single lump sum~~

~~amount equal to the current value of any remaining payments. If a Beneficiary does not survive the period after the Participant's death during which such payments to the Beneficiary are to be made, then the Employer shall pay to the estate of that Beneficiary a single lump sum amount equal to the current value of such remaining payments to that Beneficiary.~~

- ~~6.6 — Payment of Small Amounts: If the benefit payable to a Participant or Beneficiary does not exceed \$3,500 (\$5,000 effective as of January 1, 1998), the Employer may distribute the entire benefit in a single lump payment at any time following the Separation from Service or death of the Participant without the consent or election of the Participant or Beneficiary.~~

~~ARTICLE VII~~

~~WITHDRAWALS~~

- ~~7.1 — In the case of an unforeseeable emergency prior or subsequent to the commencement of benefit payments, a Participant may apply to the Director for withdrawal of an amount reasonably necessary to satisfy the emergency need. If such application for withdrawal is approved by the Director, the withdrawal will be effective at the later of the date specified in the Participant's application or the date of approval by the Director. The approved amount shall be payable in a lump sum or in some other manner consistent with the emergency need as determined by the Director.~~
- ~~7.2 — For the purpose of this Plan, the term "unforeseeable emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Withdrawals for foreseeable expenditures normally budgetable, such as a down payment on a home or purchase of an auto or college expenses, will not be permitted. The Director shall not permit withdrawal for unforeseeable emergency to the extent that such hardship is or may be relieved:~~
- ~~(a) — through reimbursement of compensation by insurance or otherwise;~~
 - ~~(b) — by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or~~
 - ~~(c) — by cessation of deferrals under the Plan.~~

~~7.3 In no event shall the amount of a withdrawal for unforeseeable emergency exceed the amount of benefits which would have been available to the Participant at the time of withdrawal. Notwithstanding any other provision of this Plan, if a Participant makes a withdrawal hereunder, the value of benefits under the Plan shall be appropriately reduced to reflect such withdrawal, and the remainder of any benefits shall be payable in accordance with otherwise applicable provisions of the Plan. Further, upon approval of the application, the Participant may not elect to defer under this Plan for a period of twelve (12) months beginning on the date of the distribution.~~

~~7.4 If (i) the amount of the benefit payable to the Participant does not exceed \$3,500 (\$5,000 effective as of January 1, 1998), (ii) there has been no prior distribution under the Plan to the Participant, and (iii) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of distribution, Participant may elect to receive the amount held under the Plan for the benefit of the Participant notwithstanding the fact that an event described in Section 6.02 shall not have occurred.~~

ARTICLE VIII

LEAVE OF ABSENCE

~~8.01 A Participant on an approved leave of absence with or without Compensation may continue to participate in the Plan subject to all the terms and conditions of the Plan; provided further, Compensation may be deferred for such Participant if such Compensation continues while the Participant is on an approved leave of absence.~~

ARTICLE IX

NON-ASSIGNABILITY CLAUSE

~~9.01 Neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are expressly declared to be unassignable and nontransferable, nor shall any unpaid benefits be subject to attachment, garnishment, or execution for the payment of any debts, judgments, alimony or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.~~

ARTICLE X

AMENDMENT OR TERMINATION OF PLAN

- ~~10.1 The Employer may terminate or amend the provisions of this Plan at any time; provided, however, no termination or amendment shall affect the rights of a Participant or a Beneficiary to the receipt of benefits any Compensation deferred before the time of the termination or amendment, as adjusted for the investment experience of the Investment Product prior to or subsequent to the termination or amendment.~~
- ~~10.2 Upon termination of the Plan, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. The full Compensation of all Participants will be thereupon restored on a non-deferred basis. The Director shall not distribute Plan benefits at the time of such termination; the Director shall rather retain all amounts of Deferred Compensation and shall only pay or dispose of Plan benefits as provided by Articles V, VI, VII and XI of the Plan and according to the terms of the Plan.~~

ARTICLE XI

PLAN-TO-PLAN TRANSFERS

- ~~11.1 This Plan shall accept for transfer amounts of Compensation previously deferred pursuant to another "eligible" plan of deferred compensation established pursuant to Section 457 of the Code and maintained by another employer.~~
- ~~11.2 If the Participant separates from service to accept employment with or perform services for another employer which maintains an "eligible" plan of deferred compensation pursuant to Section 457 of the Code, the amounts deferred under this Plan shall, at the Participant's election, be transferred to such other "eligible" plan, provided such other plan provides for the acceptance of such amounts. The Participant's election to transfer must be made prior to the date benefits would otherwise become payable as a result of Separation from Service.~~

ARTICLE XII

APPLICABLE LAW

- ~~12.01 The Plan shall be construed under the laws of the State of Rhode Island.~~

~~IN WITNESS WHEREOF, the Employer has caused the Deferred Compensation Plan, as amended, to be signed and attested to by its duly authorized officer on the _____ day of _____, 1999.~~

~~STATE OF RHODE ISLAND
AND PROVIDENCE
PLANTATIONS:~~

~~_____
Director of Administration~~

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