

SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT

Form 5305-SA (Revised March 2002) Under Section 408(p) of the Internal Revenue Code (Code)

The Participant named above is establishing a savings incentive match plan for employees of small employers individual retirement account (SIMPLE IRA) under Sections 408(a) and 408(p) to provide for his or her retirement and for the support of his or her beneficiaries after death.

Pershing LLC, the Custodian, has given the Participant the disclosure statement required under Regulations Section 1.408-6.

The Participant and the Custodian make the following agreement (the "Agreement"):

ARTICLE I

The Custodian will accept cash contributions made on behalf of the Participant by the Participant's employer under the terms of a SIMPLE IRA plan described in Section 408(p). In addition, the Custodian will accept transfers or rollovers from other SIMPLE IRAs of the Participant. No other contributions will be accepted by the Custodian.

ARTICLE II

The Participant's interest in the balance in the Custodial Account is nonforfeitable.

ARTICLE III

1. No part of the Custodial Account funds may be invested in life insurance contracts, nor may the assets of the Custodial Account be commingled with other property except in a common trust fund or common investment fund [within the meaning of Section 408(a)(5)].
2. No part of the Custodial Account funds may be invested in collectibles [within the meaning of Section 408(m)] except as otherwise permitted by Section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins; coins issued under the laws of any state; and certain bullion.

ARTICLE IV

1. Notwithstanding any provision of this Agreement to the contrary, the distribution of the Participant's interest in the Custodial Account shall be made in accordance with the following requirements and shall otherwise comply with Section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The Participant's entire interest in the Custodial Account must be, or begin to be, distributed no later than the Participant's required beginning date, April 1 following the calendar year in which the Participant reaches the age of 70½. By that date, the Participant may elect, in a manner acceptable to the Custodian, to have the balance in the Custodial Account distributed in:
 - (a) A single sum
 - (b) Payments over a period not longer than the life of the Participant or the joint lives of the Participant and his or her designated Beneficiary
3. If the Participant dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
 - (a) If the Participant dies on or after the required beginning date, and:
 - (i) The designated Beneficiary is the Participant's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by one for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.
 - (ii) The designated Beneficiary is not the Participant's surviving spouse, the remaining interest will be distributed over the Beneficiary's remaining life expectancy as determined in the year following the death of the Participant and reduced by one for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
 - (iii) There is no designated Beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Participant as determined in the year of the Participant's death and reduced by one for each subsequent year.
 - (b) If the Participant dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected [or there is no designated Beneficiary, in accordance with (ii) below]:
 - (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above [but not over the period in paragraph (a)(iii), even if longer], starting by the end of the calendar year following the year of the Participant's death. If, however, the designated Beneficiary is the Participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Participant would have reached the age of 70½. But, in such case, if the Participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above [but not over the period in paragraph (a)(iii), even if longer], over such spouse's designated Beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated Beneficiary.
 - (ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death.
4. If the Participant dies before his or her entire interest has been distributed and if the designated Beneficiary is not the Participant's surviving spouse, no additional contributions may be accepted in the Account.

5. The minimum amount that must be distributed each year, beginning with the year containing the Participant's required beginning date, is known as the "required minimum distribution" and is determined as follows:
 - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the Participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the Uniform Lifetime Table in Regulations Section 1.401(a)(9)-9. However, if the Participant's designated Beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Participant's account value at the close of business on December 31 of the preceding year divided by the number in the Joint and Last Survivor Table in Regulations Section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Participant's (or, if applicable, the Participant's and spouse's) attained age (or ages) in the year.
 - (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the Participant's death [or the year the Participant would have reached the age of 70½, if applicable under paragraph 3(b)(i)] is the account value at the close of business on December 31 of the preceding year divided by the life expectancy [in the Single Life Table in Regulations Section 1.401(a)(9)-9 of the individual specified in such paragraphs 3(a) and 3(b)(i)].
 - (c) The required minimum distribution for the year the Participant reaches the age of 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
6. The owner of two or more IRAs (other than Roth IRAs) may satisfy the minimum distribution requirements described above by taking from one IRA the amount required to satisfy the requirement for another in accordance with the regulations under Section 408(a)(6).

ARTICLE V

1. The Participant agrees to provide the Custodian with all information necessary to prepare any reports required by Sections 408(i) and 408(l)(2) and Regulations Sections 1.408-5 and 1.408-6.
2. The Custodian agrees to submit to the Internal Revenue Service (the "IRS") and Participant the reports prescribed by the IRS.
3. The Custodian also agrees to provide the Participant's employer with the summary description described in Section 408(l)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

ARTICLE VI

Notwithstanding any other articles, which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with Sections 408(a) and 408(p) and the related regulations will be invalid.

ARTICLE VII

This Agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the Application.

ARTICLE VIII

1. Definitions

- (a) "Account" shall mean the SIMPLE IRA established hereunder for the benefit of the Participant and/or his or her Beneficiary or Beneficiaries.
- (b) "Adoption Agreement" shall mean the Agreement or Application signed by each individual adopting the Plan and establishing an Account on behalf of that individual.
- (c) "Agreement" shall mean the Pershing LLC SIMPLE Individual Retirement Custodial Agreement and Disclosure Statement, including the information and provisions set forth in any Application that goes with this Agreement, as may be amended from time to time. This Agreement, including the Account Application and the Designation of Beneficiary filed with the Custodian, may be proved either by an original copy or a reproduced copy thereof, including, without limitation, a copy reproduced by photocopying, facsimile transmission, electronic imaging, or other means of electronic transmission.
- (d) "Beneficiary" shall mean the person, persons, entity, or entities (for instance, a trust), designated from time to time by a Participant or Participant's surviving spouse to receive benefits by reason of the death of the Participant or of such spouse, or the person or persons described in Article VIII, Section 4b, of the Plan who would otherwise be entitled to receive such benefits.
- (e) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- (f) "Compensation" shall mean total Compensation, including wages, salary, professional fees, and other amounts received by a Participant during his or her current taxable year for personal services rendered during that year and includible in his or her gross income for federal income tax purposes. If the Participant is self-employed, his or her Compensation shall include net earnings from self-employment in which personal services of the Participant are a material income-producing factor. Compensation also includes amount includible in gross income with respect to a divorce or separation instrument described in Section 71(b)(2)(A) of the Code.
- (g) "Custodian" shall mean Pershing LLC.
- (h) "Depositor" shall mean Participant as defined herein below.
- (i) "Participant" shall mean the Depositor and an individual who adopts the Plan and who makes contributions or on whose behalf contributions are made to his or her Account pursuant to the Plan.
- (j) "Plan" shall mean the Pershing LLC SIMPLE Individual Retirement Custodial Account Plan, as it may be amended from time to time, in accordance with Article VII of the Plan.
- (k) "Transfer SIMPLE IRA" shall mean the SIMPLE IRA is not the original recipient of contributions under any SIMPLE plan. The summary description requirements of Section 408(l)(2) do not apply to Transfer SIMPLE IRAs.

2. Notices and Change of Address

- (a) Any required notice regarding this SIMPLE IRA will be considered effective when mailed by the Custodian to the last address of the intended recipient that is on the records of the Custodian. Any notice to be given to the Custodian will be effective when actually received by the Custodian. The last address of the Participant on the records of the Custodian will be the address used for any tax withholding, disbursement, and reporting required by taxing authorities. The Participant will notify the Custodian of any change of address.
- (b) *Representations and Responsibilities.* The Participant represents and warrants to the Custodian that any information the Participant has given or will give to the Custodian with respect to this Agreement is complete and accurate. Further, the Participant promises that any direction given by the Participant to the Custodian, or any action taken by the Participant will be proper under this Agreement. The Custodian will not be responsible for the Participant's actions or failures to act. Likewise, the Participant shall not be responsible for the Custodian's actions or failure to act; provided however, that the Custodian's duties and responsibilities under this Agreement are limited to those specifically stated in the Agreement, and no other or further duties or responsibilities shall be implied.

3. Investment of Contributions

- (a) *Direction by Participant.* All investment instructions of the Participant shall be accepted by the Custodian in accordance with its established customs and procedures. Each Participant shall direct the Custodian with respect to the investment of all contributions to his or her Account and the earnings thereon. Such direction shall be limited to publicly traded securities, covered call options, mutual funds, money market instruments, and other investments, to the extent that they are obtainable through and subject to the custody of the Custodian in its regular course of business, and subject to such other limitations as may be agreed to by the Participant and Introducing Broker-Dealer. In the absence of such directions, the Custodian shall have no investment responsibility. All transactions directed by the Participant shall be subject to the rules, regulations, customs, and usages of the exchange, market, or clearing house where executed, and to all applicable federal and state laws and regulations, and to internal policies of the Custodian. The Custodian reserves the right not to accept assets intended for deposit to the Account and may at any time require liquidation of any asset held in the Custodial Account if the Custodian determines that maintaining custody of any such asset is not in accordance with the Custodian's administrative or operational requirements and regular business practices.
- (b) *Direction by Beneficiary.* In the event that the Participant dies before part or all of his or her interest in this Account is distributed to him or her, the remaining assets in the Account shall be invested as directed by the Participant's Beneficiary or Beneficiaries; provided, however, that (1) if the Beneficiary is a trust, such investment directions shall be given by the trustee of such trust, and (2) if the Beneficiary is the Participant's estate, such investment directions shall be given by the personal representative of such estate. In such event, the Beneficiary or Beneficiaries shall be treated as the Participant for all purposes as though he or she were the signatory to the Agreement.
- (c) *No duty to review.* The Custodian shall not be under any duty to review or question any direction of the Participant with respect to investments, to review any securities or other property held in trust, or to make suggestions to the Participant with respect to investments. The Custodian will not be liable for any loss that may result by reason of investments made by it in accordance with the directions of the Participant.
- (d) *Delegation of Investment Responsibility.* The Participant may delegate the investment responsibility for his or her Account to an agent or attorney in fact acceptable to the Custodian by notifying the Custodian in a form and manner acceptable to the Custodian of the delegation of such investment responsibility and the name of the person or persons to whom such responsibility is delegated. The Custodian shall follow the directions of such agent or attorney in fact and shall be under no duty to review or question any direction, action, or failure to direct or act of such agent or attorney in fact. The Participant may revoke the authority of any agent or attorney in fact at any time by notifying the Custodian in a form and manner acceptable to the Custodian of such revocation and the Custodian shall not be liable in any way for transactions initiated prior to receipt of such notice.
- (e) *Uninvested Cash.* The Participant shall direct the Custodian as to the investment of all cash which is not currently invested in assets described in Article VIII, Section 3(a), of the Plan. The Participant or his or her legal representative shall direct the Custodian with respect to the investment of cash pending distribution. In the absence of such direction, the Custodian shall have no investment responsibility.

4. Withdrawals

The Participant may withdraw all or part of his or her Account balance at any time. All requests for withdrawal shall be in a form and manner prescribed by or acceptable to the Custodian. Any withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties and withholding requirements. Distributions under the SIMPLE IRA may be made in a single sum, periodic payment, or a combination of both.

- (a) *Required Distributions.* Beginning in 2003, the Custodian shall, if requested by the Participant, be responsible for computing the required minimum distribution in accordance with Article IV of the Plan, and for notifying the Participant accordingly. The Participant shall be responsible for causing the required minimum distribution amount to be withdrawn from his or her Account each year. Notwithstanding anything in Article IV to the contrary, the Custodian shall not, without the consent of the Participant, distribute the value of the SIMPLE IRA where the Participant fails to choose any method of distribution by April 1st of the year following the year the Participant reaches the age of 70 1/2.
- (b) *Beneficiaries.* Following the death of the Participant, the balance of the Participant's Account shall be distributed to the Participant's designated Beneficiary or Beneficiaries, if any, in accordance with the provisions of Article IV of the Plan and in accordance with the Custodian's administrative or operational requirements and regular business practices. A Participant may designate a Beneficiary or Beneficiaries of the Account at any time, and any such designation may be changed or revoked at any time, by written designation executed by the Participant in a form and manner prescribed by or acceptable to, and filed with, the Custodian. Such designation, change, or revocation shall be effective only upon receipt by the Custodian and only if such receipt shall be during the Participant's lifetime. The latest such designation, change, or revocation shall control. If there is no Beneficiary designation on file with the Custodian, or if the designated Beneficiary has not survived the Participant, the Custodian shall distribute the Custodial Account to the survivors of the Participant in the following order of preference:
 - (i) The Participant's surviving spouse, if any
 - (ii) The Participant's children, if any, in equal shares per stirpes
 - (iii) The Participant's estate

If the Participant designates more than one primary or contingent Beneficiary but does not specify the percentages to which such Beneficiary or Beneficiaries is entitled, payment will be made to the surviving Beneficiary or Beneficiaries in equal shares. Unless otherwise designated by the Participant in a form and manner acceptable to the Custodian, if a primary or contingent Beneficiary designated by the Participant predeceases the Participant, the Account will be divided equally among the surviving Beneficiary or Beneficiaries. Unless otherwise designated by the Participant in a form and manner acceptable to the Custodian, if there is no primary Beneficiary or Beneficiaries living at the time of the Participant's death, payment of the Participant's Account upon his or her death will be made to the surviving contingent Beneficiary or Beneficiaries designated by the Participant. Unless otherwise specified in the Participant's Designation of Beneficiary, if a Beneficiary does not predecease the Participant but dies before receiving his or her entire interest in the Account, his or her remaining interest in the Account shall be paid to the Beneficiary or Beneficiaries designated by the deceased Beneficiary. If there is no Beneficiary designation of the deceased Beneficiary on file with the Custodian, the Custodian shall distribute the Account to the survivors of the deceased Beneficiary in the following order of preference:

- (i) The deceased Beneficiary's surviving spouse, if any
- (ii) The deceased Beneficiary's children, if any, in equal shares per stirpes
- (iii) The deceased Beneficiary's estate

If the Custodian is unable to make a distribution to a Participant, a Beneficiary, or other distributee because the Custodian cannot ascertain such distributee's whereabouts by writing to the last known mailing address shown on the Custodian's records, if any, the Custodian may hold the proceeds in a non-interest-bearing account until such funds escheat by operation of law. The Beneficiary or Beneficiaries are responsible to ensure that distributions are made in accordance with the provisions of Article IV of the Plan.

- (c) *Account Only Source of Benefits.* The only source of benefit for the Participant, Spouse, or Beneficiary of the Account under this SIMPLE IRA Plan shall be the SIMPLE IRA Account.
- (d) *Qualifying Terminable Interest Property (QTIP) and Qualified Domestic Trust (QDOT).* The provisions of this Section 4(d) of Article VIII of the Plan shall apply if the Participant has designated a QTIP or a QDOT for the benefit of his or her spouse (which trust is intended to satisfy the conditions of Section 2056(b)(7) or 2056A of the Code) as Beneficiary of this SIMPLE IRA (hereafter referred to as the "Spousal Trust"), but only if the Participant, the trustee of the Spousal Trust, or the executor of the estate of the deceased Participant notifies the Custodian in a written document acceptable to the Custodian of such individual's intention to have this Section apply. After the death of the Participant, and upon written direction of the trustee of the Spousal Trust, the Custodian shall distribute to the trustee of the Spousal Trust an amount equal to the greater of (1) all of the income of the Account for the year or (2) the amount required to be distributed under Section 401(a)(9) of the Code and the regulations thereunder annually or at more frequent intervals. No person shall have the power to appoint any part of the Account to any person other than the Spousal Trust. If the Participant dies on or after his or her required beginning date, the Section 401(a)(9) amount shall be the amount required to be distributed under the distribution method that applied to the Participant at his or her death. If the Participant dies before the required beginning date, the Section 401(a)(9) amount shall be the amount required under the payment method described in Article IV, Section 3(a)(i), (that is, the life expectancy of the spouse option), with payments commencing no later than the end of the year following the year of the Participant's death. If requested by the trustee of the Spousal Trust, the Custodian shall pay additional amounts from the Account's principal to the Spousal Trust. The trustee of the Spousal Trust or the Participant's surviving spouse has the right to direct the Custodian to convert nonproductive property into productive property. After the death of the Participant's surviving spouse, the Custodian shall pay any amounts remaining in the Account in accordance with written instructions given to it by the trustee of the Spousal Trust. To the extent permitted by Section 401(a)(9) of the Code, as determined by the trustee of the Spousal Trust, the surviving spouse of the Participant who has designated a Spousal Trust as his or her Beneficiary may be treated as the Participant's Beneficiary for purposes of the distribution requirement of Section 401(a)(9) of the Code. The Custodian shall have no responsibility to determine whether such treatment is appropriate.
- (e) The Custodian shall not be responsible for the purpose, sufficiency, or propriety of any distribution. The Custodian is only authorized to make distributions in accordance with instructions of the Participant, or after the Participant's death, his or her Beneficiary, or as otherwise provided for in this Agreement. Such instructions must be given in a form and manner acceptable to the Custodian.

5. Transfer

- (a) *Transfer.* The Participant may cause the transfer to a SIMPLE IRA established by the Participant hereunder of funds held on behalf of a Participant in another SIMPLE IRA or SIMPLE individual retirement annuity, and such other transfers as tax law and related regulations may permit. If the Participant desires to have transferred to his or her SIMPLE IRA assets other than cash, the Custodian shall accept such assets only if they are compatible with the Custodian's administrative or operational requirements and regular business practices. Upon the request of the Participant in a form and manner acceptable to the Custodian, the Custodian shall transfer funds held in a Participant's Account to another SIMPLE IRA or SIMPLE individual retirement annuity established by or on behalf of the Participant with another approved and qualified Custodian.
- (b) *Transfer on Divorce.* A Participant may transfer any portion or all of his or her interest in an Account to a former spouse under a written instrument incident to divorce or under a divorce decree containing transfer instructions acceptable to the Custodian and compliant with the Custodian's administrative or operational requirements and regular business practices, whereupon such Account, or the transferred portion of such Account, shall be held for the benefit of such former spouse subject to the terms and conditions of the Plan.

6. Powers, Duties, and Obligations of Custodian

- (a) *No Investment Discretion.* The Custodian shall have no discretion to direct any investments of an Account, and is merely authorized to acquire and hold the particular investments specified by the Participant. The Custodian will not act as investment advisor or counselor to a Participant and will not advise a Participant or offer any opinion or judgement on any matter pertaining to the nature, value, potential value, or suitability of any investment or potential investment by a Participant.
- (b) *Administrative Powers.* The Custodian may hold any securities acquired hereunder in the name of the Custodian without qualification or description or in the name of any nominee. Pursuant to the Participant's direction, the Custodian shall have the following powers and authority with respect to the administration of each Account:

- (i) To invest and reinvest the assets of the Account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for fiduciary investments.
 - (ii) To exercise or sell options, conversion privileges, or rights to subscribe for additional securities and to make payments therefor.
 - (iii) To consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers, or other changes affecting securities held by the Custodian.
 - (iv) To make, execute, and deliver as Custodian any and all contracts, waivers, releases, or other instruments in writing necessary or proper for the exercise of any of the foregoing powers.
 - (v) To grant options to purchase securities held by the Custodian or to repurchase options previously granted with respect to securities held by the Custodian.
- (c) **Proxies.** All proxy and solicitation materials, notices of shareholders' meetings, current prospectus and other annual or regular shareholder reports shall, to the extent furnished to the Custodian by the issuers of the securities in the Account, be sent by the Custodian or its delegate to the Participant. The Custodian shall exercise any rights of a shareholder (including voting rights) with respect to any securities held in the Account only in accordance with the instructions of the Participant pursuant to any applicable rules of the Securities and Exchange Commission and the national exchanges of which the Custodian is a member.
- (d) **Records and Reports.** The Custodian shall keep accurate records of all contributions, receipts, investments, distributions, disbursements, and all other transactions of the Account. Within 120 days (or such other deadline imposed by applicable law) after the close of each calendar year (or after a distribution or transfer of a Participant's Account or upon the Custodian's resignation or removal), the Custodian shall file with the Participant a written report (which may consist of copies of the Custodian's regularly issued Account statements) reflecting all transactions affecting the Account for the period in question and including a statement of the assets in the Account and their fair market values. Unless the Participant files a written statement of exceptions or objections to the report with the Custodian within 60 days after mailing of the report, the Participant shall be deemed to have approved such report and the Custodian shall be released from all liability to anyone (including any Participant's spouse or Beneficiary) with respect to all matters set forth in the report. No person, other than a Participant, the spouse of a Participant, or Beneficiary may require an accounting.
- (e) **Right to Request Judicial Assistance.** The Custodian shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of its accounts or for determination of any questions of construction which may arise or for instructions. The only necessary party defendant to any such action shall be the Participant, but the Custodian may join any other person or persons as a party defendant. The cost, including attorney's fees, of any such proceeding shall be charged as an administrative expense under Article VIII, Section 9, of the Plan.
- (f) **Scope of Custodian's Duties.** The Custodian shall only have the duties which are specifically set forth in this Plan. The Custodian shall have no duty to ascertain whether contributions or distributions comply with the Plan or the Code. The Custodian shall not make any investments or dispose of any investments held in an Account, except upon the direction of the Participant or in accordance with Article VIII, Section 10(d), of the Plan. The Custodian shall not question any such directions of the Participant, review any securities or other property held in an Account, or make suggestions to the Participants with respect to the investment, retention, or disposition of any assets held in an Account.
- (g) **Scope of Custodian's Liability.** The Custodian shall not be liable for any loss of any kind which may result from any action taken by it in accordance with the directions of the Participant or his or her designated agent or attorney in fact or from any failure to act because of the absence of any such directions. The Custodian shall not be responsible for determining whether any contribution or rollover contribution satisfies the requirements of the Code. The Custodian shall not be liable for any taxes (or interest thereon) or penalties incurred by the Participant in connection with any Account or in connection with any contribution to or distribution from the Account. The Custodian is entitled to act upon any instrument, certificate, or form it believes is genuine and believes is executed or presented by the proper person or persons, and the Custodian need not investigate or inquire as to any statement contained in such document, but may accept it as true and accurate. The Custodian is not liable for any losses directly or indirectly caused by acts of war, acts of terrorism, labor disputes, exchange, or market decisions, including the suspension of trading, market volatility, trade volume, or by government restriction. The Participant shall duly indemnify and hold harmless the Custodian from any liability which may arise hereunder except liability arising from the gross negligence or willful misconduct of the Custodian.

7. Resignation or Removal of Custodian

- (a) **Resignation.** The Custodian may resign as Custodian hereunder as to any Account by mailing or actually delivering notice to the Participant 30 days prior to the resignation. Upon its resignation the Custodian may, but shall not be required to, appoint a corporation or other organization as the successor custodian under this Agreement. Each Participant, after the receipt of the resignation, shall have 30 days to appoint an alternative successor custodian. If no alternate is chosen, the Participant will be deemed to have accepted the Custodian's appointed successor custodian. Upon acceptance of appointment by the successor, the Custodian shall assign, transfer, and deliver to the successor all assets held in the Account to which such resignation or removal relates. The Custodian is authorized, however, to reserve such amounts as it deems advisable to provide for the payment of expenses and fees then due or to be incurred in connection with the settlement of its Account, and any balance remaining after the settlement of its Account shall be paid to the successor custodian or trustee. At the sole discretion of the Custodian, any successor custodian appointed by the Custodian may, with the approval of the Custodian, amend the Agreement by giving notice to the Participants. If the Custodian does not choose to appoint a successor, the Participant has 30 days after receiving notification of the Custodian's resignation to appoint a qualifying successor custodian. If the Participant does not appoint a successor custodian within this time period, the Custodian shall have the right to terminate the Custodial Account and distribute the assets directly to the Participant.
- (b) **Removal.** The Participant shall substitute another custodian in place of the Custodian upon notification by the Internal Revenue Service that such substitution is required because the Custodian has failed to comply with the requirement of Treasury Regulation Section 1.408-2(e), or is not keeping such records, or making such returns, or rendering such statements as are required by that regulation.
- (c) The Custodian shall not be liable for the acts or omissions of its successor.

8. Amendment and Termination of the Plan

- (a) *Amendment or Termination.* The Custodian may amend or terminate this Plan at any time consistent with the provisions of applicable law without obtaining the consent of the Participant, the spouse of the Participant, or Beneficiary. No amendment of the Plan, however, shall deprive any Participant, spouse of a Participant, or Beneficiary of any benefit to which he or she was entitled under the Plan from contributions made prior to the amendment unless the amendment is necessary to conform the Plan to the current or future requirements of the Employee Retirement Income Security Act of 1974, Sections 408(a) and 408(p) of the Code, or other applicable law, regulation, or ruling, in which case the Custodian is expressly authorized to make amendments that are necessary for such purposes retroactively to the later of the effective date of the Plan or the effective date of any future legal requirements. A Participant may change an election or designation made with respect to the Adoption Agreement, provided such change is made in a form and manner prescribed by and acceptable to the Custodian.
- (b) *Distribution on Termination.* If the Plan is terminated for any reason by the Custodian, the balance held in each Account for the benefit of a Participant, spouse of a Participant, or Beneficiary shall be distributed by the Custodian to a successor custodian or trustee, in accordance with Article VIII, Section 7, of the Plan.

9. Fees, Expenses, and Indebtedness

- (a) *Payment and Deduction of Fees and Expenses.* The Custodian's annual maintenance, termination, and other administration fees shall be charged by the Custodian for its services hereunder in accordance with the current fee schedule of the Custodian that is in effect from time to time as it may be amended by the Custodian. Any administrative expenses, including fees for legal and/or accounting services incurred by the Custodian at the request of or necessitated by the actions of the Depositor or designated Beneficiary, including, but not by way of limitation, the direction of investment of Custodial Account assets in an investment that causes the Custodial Account to realize unrelated business taxable income within the meaning of Section 512 of the Code, that are over and above the services set forth in the Custodian's fee schedule shall be paid by the Participant and the Participant hereby covenants and agrees to pay the same. The Custodian's fees and expenses shall be automatically charged to the Custodial Account unless the Depositor chooses to pay the fee directly to the Custodian in a timely manner before the Custodial Account has been so charged and fees or other administrative expenses that are not paid by the Depositor directly to the Custodian when due may be charged to the Account. The Custodian reserves the right to liquidate any assets of the Account to collect any charge for which payment may at any time be past due. In the event of Account termination by the Participant or the Custodian for any reason, the Custodian shall be entitled to receive the full termination fee, along with the full, nonprorated current year maintenance fees, regardless of the date during the year that the Account is terminated. Such amounts will be automatically charged against the Account at the time the Participant terminates the SIMPLE IRA. Any reimbursement of fees charged against an Account will be recorded as a contribution to the Account and reported to taxing authorities accordingly. Specific fee details are provided in the current fee schedule available from the Custodian or from the financial organization that has introduced your Account to the Custodian.
- (b) *Taxes.* Any taxes of any kind whatsoever that may be levied or assessed upon any Custodial Account or that the Custodian may otherwise be charged with the responsibility of collecting shall be paid from the assets of the Custodial Account involved.
- (c) *Brokerage Commissions.* The Account will be charged brokerage commissions and other securities transaction related charges for the transactions in the Custodial Account in accordance with the Custodian's usual practice.
- (d) *Indebtedness.* The Participant shall pay any debit balance or other obligation owing to the Custodian on demand.

10. Miscellaneous

- (a) *Prohibited Transactions.* No Participant, spouse of a Participant, or Beneficiary shall be entitled to use a Participant's Account, or any portion thereof, as security for a loan or borrow from the Account. Neither the Custodian, the Participant, nor any other person or organization shall engage in any prohibited transaction, within the meaning of Section 4975 of the Code, with respect to any Participant's Account.
- (b) *Prohibition Against Assignment of Benefits.* Except to the extent otherwise required by law, none of the benefits, payments, or proceeds held in an Account on behalf of any Participant, spouse of a Participant, or Beneficiary shall be subject to the claims of any creditor of such Participant, spouse, or Beneficiary, nor shall any Participant, spouse, or Beneficiary have any right to anticipate, sell, pledge, option, encumber, or assign any of the benefits, payments, or proceeds to which he or she is or may be entitled under the Plan.
- (c) *Applicable Law.* The Plan shall be construed, administered, and enforced according to the laws of the State of New York, except to the extent preempted by federal law. All contributions to the Account shall be deemed to take place in the State of New York. The terms and conditions of the Plan shall be applicable without regard to the community property laws of any state.
- (d) *Liquidation of Assets.* If the Custodian must liquidate assets in order to make distributions, transfer assets, or pay fees, expenses, or taxes assessed against a Participant's Account, and the Participant fails to instruct the Custodian as to the liquidation of such assets, assets will be liquidated in the following order to the extent held in the Account: (a) any shares of a money market fund or money market type fund, (b) securities, (c) other assets.
- (e) *Purpose of Form.* This document shall serve as a Form 5305-SA, which is a model Custodial Account agreement that meets the requirements of Sections 408(a) and 408(p) of the Code and has been automatically approved by the IRS. A SIMPLE IRA is established after the Adoption Agreement is fully executed by the Participant and entered into the records of the Custodian.
- (f) *Identifying Number.* The Participant's Social Security Number will serve as the identification number of his or her SIMPLE IRA. An employer identification number is required only for a SIMPLE IRA for which a return is filed to report unrelated business taxable income. An employer identification number is required for a common fund created for SIMPLE IRAs.
- (g) The Custodian will be deemed to have satisfied its summary description reporting requirements under Section 408(l)(2) of the Code because it has provided the Participant with the Custodian's name, address, and withdrawal procedures to the Participant. The Participant's employer shall be responsible to provide the Participant with all other required information.

ARTICLE IX

ARBITRATION DISCLOSURES:

THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:

- ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
- ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
- THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
- THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
- THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.

ARBITRATION AGREEMENT

ANY CONTROVERSY BETWEEN YOU AND US SHALL BE SUBMITTED TO ARBITRATION BEFORE THE NEW YORK STOCK EXCHANGE, INC., ANY OTHER NATIONAL SECURITIES EXCHANGE ON WHICH A TRANSACTION GIVING RISE TO THE CLAIM TOOK PLACE (AND ONLY BEFORE SUCH EXCHANGE), OR THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL; (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

THE LAWS OF THE STATE OF NEW YORK GOVERN.

SIMPLE IRA DISCLOSURE STATEMENT

The Disclosure Statement provides a general description of the features of a SIMPLE Individual Retirement Account (the "Account," the "Custodial Account," or the "SIMPLE IRA") for which Pershing LLC acts as Custodian.

1. RIGHT OF REVOCATION BY PARTICIPANT

- (a) Once you execute the Adoption Agreement, you become the Participant and you shall have the right to revoke the Adoption Agreement for a period of seven days from the date it is executed by mailing or personally delivering a written notice of revocation to Pershing LLC, Retirement Products Department, One Pershing Plaza, Jersey City, New Jersey 07399. The notice of revocation shall be deemed mailed on the date of the postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the United States mail in an envelope, or other appropriate wrapper, first class postage prepaid, properly addressed. If such notice is not received within seven days after the deemed date of mailing, the notice of revocation shall not be valid.
- (b) If the Adoption Agreement is revoked, the Custodian will return your entire contribution to the SIMPLE IRA without penalty, service charge, administrative expenses, or any other reduction. The contribution to a SIMPLE IRA that is revoked, and the distribution from a SIMPLE IRA that is revoked, must be reported to the Internal Revenue Service.

2. SPECIAL REQUIREMENTS OF THE PERSHING LLC SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT PLAN

In addition to the statutory requirements described in the Plan, Pershing LLC, as Custodian, has the following requirements:

- (a) Pershing LLC (the Custodian) will not make any investment decisions with respect to the Account. You shall direct the Custodian with respect to the investment of all contributions and earnings therefrom. Investments may be made in publicly traded securities, covered call options, long put and long call options, mutual funds, money market instruments, and other investments that are obtainable through and subject to the custody of the Custodian and compatible with its administrative or operational requirements and usual business practices. The Custodian may systematically sweep uninvested cash (subject to certain required minimums) in an Account to a money market fund or other investment offered by the Custodian.
- (b) You must notify the Custodian in writing as to when you wish to receive your benefits and the manner of payout pursuant to Article IV of the Pershing LLC SIMPLE Individual Retirement Custodial Account Plan.
- (c) Pershing LLC, as Custodian, will have no responsibility to ascertain whether rollover contributions comply with the Plan or the Code.
- (d) You shall be entitled to designate a Beneficiary to receive benefits which are payable under the SIMPLE IRA upon your death. If you do not designate a Beneficiary, or, if the Beneficiary dies before you, or cannot be located when you die, the benefits will be paid in the following order of priority: (a) to your surviving spouse, if any; (b) to your surviving children, if any, in equal shares per stirpes; and (c) to your estate.

3. REQUIREMENTS OF A SIMPLE IRA

- (a) Your contribution to your SIMPLE IRA must be in cash, unless it is a rollover contribution.
- (b) The only contributions which may be made to your SIMPLE IRA are employee elective deferrals and employer contributions under a qualified salary reduction arrangement, which is a SIMPLE IRA plan maintained by your employer and other contributions allowed by law or regulations. Unless you are the age of 50 by the end of the year, employee elective deferral contributions to your SIMPLE IRA may not exceed the lesser of 100% of your compensation for the calendar year or \$7,000 for 2002, \$8,000 for 2003, \$9,000 for 2004, and \$10,000 for 2005 (adjusted annually thereafter). If you are the age of 50 or older by the close of the plan year, you may make an additional contribution to your SIMPLE IRA of \$500 for 2002, \$1,000 for 2003, \$1,500 for 2004, \$2,000 for 2005, and \$2,500 for 2006 (adjusted annually thereafter). Your employer may make additional contributions to your SIMPLE IRA within the limits prescribed in Section 408(p) of the Code. Your employer is required to provide you with information which describes the terms of your employer's SIMPLE IRA plan.
- (c) Your interest in your SIMPLE IRA is nonforfeitable.
- (d) The assets of your SIMPLE IRA cannot be commingled with other property except in a common trust fund or common investment fund.
- (e) No portion of your SIMPLE IRA may be invested in life insurance contracts.
- (f) You may not invest the assets of your SIMPLE IRA in collectibles as described in Section 408(m) of the Code. A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the Internal Revenue Service. Specially minted United States gold and silver bullion coins and certain state-issued coins are permissible SIMPLE IRA investments. Platinum coins and certain gold, silver, platinum, or palladium bullion as described in Section 408(m)(3) of the Code are also permitted as SIMPLE IRA investments.
- (g) You are required to take minimum distributions from your SIMPLE IRA at certain times in accordance with the Code and Treasury Regulations. The Custodian reserves the right to calculate your required minimum distribution based upon the Uniform Lifetime Table found in Treasury Regulation Section 1.401(a)(9)-9. However, the Custodian will make distributions to you or your Beneficiary or Beneficiaries only upon specific instructions to do so.
 - (i) You are required to take a minimum distribution from your SIMPLE IRA by April 1 of the calendar year following the year in which you attain the age of 70½ and by the end of each year thereafter. The minimum distribution for any taxable year is equal to the amount obtained by dividing the account balance at the end of the prior year (less any required distribution taken between January 1 and April 1 of the year following the year you attain the age of 70½) by the applicable divisor.
 - (ii) The applicable divisor is generally determined using whichever is applicable of the Single Life Table, the Uniform Lifetime Table, or the Joint and Last Survivor Table, all as set forth in Treasury Regulation Section 1.401(a)(9)-9 or other applicable IRS publications. The Uniform Lifetime Table assumes that your beneficiary is exactly 10 years younger than you, regardless of who is the named beneficiary. If your spouse is your sole beneficiary and is more than 10 years younger than you, the required minimum distribution must be calculated using the actual joint life expectancy of you and your spouse, rather than the life expectancy divisor from the Uniform Lifetime Table.

(iii) Distributions to your Beneficiary or Beneficiaries:

1. If you die on or after your required beginning date, distributions will be made to your Beneficiary or Beneficiaries over the single life expectancy of such designated Beneficiary or Beneficiaries or over your remaining life expectancy, whichever is longer.
2. If you die before your required beginning date, the entire amount remaining in your account must, at the election of your Beneficiary or Beneficiaries, either:
 - (a) Be distributed by December 31 of the fifth year following your death.
 - (b) Be distributed in equal or substantially equal payments over a period not to exceed the life or life expectancy of your designated Beneficiary or Beneficiaries.

Your Beneficiary or Beneficiaries must elect either option 2(a) or 2(b) by December 31 of the year following the year of your death. If no election is made, distribution must be made in accordance with 2(b) if the Beneficiary is your surviving spouse, and in accordance with option 2(a) if your Beneficiary or Beneficiaries are or include anyone other than your surviving spouse. In the case of distributions under option 2(b), distributions must commence by December 31 of the year following the year of your death. If your spouse is the Beneficiary, distributions need not commence until December 31 of the year you would have attained the age of 70½, if later.

4. INCOME TAX CONSEQUENCES OF ESTABLISHING A SIMPLE IRA

- (a) **SIMPLE IRA Deductibility.** You may not take a deduction for the amounts contributed to your SIMPLE IRA as either employee elective deferrals or employer contributions. However, elective deferrals to a SIMPLE IRA will reduce your taxable income. Further, employer SIMPLE IRA contributions, including earnings, will not be taxable to you until you receive a distribution from your SIMPLE IRA.

Participation in your employer's SIMPLE IRA plan renders you an active participant for purposes of determining whether or not you can deduct contributions to a Traditional IRA.

- (b) **Tax Credit for Contributions.** For taxable years beginning on or after January 1, 2002 and ending on December 31, 2006, you may be eligible to receive a tax credit on your IRA contributions equaling a percentage of your qualified retirement savings contributions not exceeding \$2,000. This credit will be allowed in addition to any reduction of your taxable income that may apply, and may not exceed \$1,000 in a given year. You may be eligible for this tax credit if you are:

- The age of 18 or older, as of the close of the taxable year
- Not a dependent of another taxpayer
- Not a full time student

The credit is based upon your income (see chart below) and will range from 0% to 50% of eligible contributions. In order to determine the amount of your qualified retirement savings contributions, add all of the contributions made to your SIMPLE IRA and reduce these contributions by any distributions that you have taken during the testing period. The testing period begins two years prior to the year for which the credit is sought and ends on the tax return due date (including extensions) for the year for which the credit is sought. In order to determine your tax credit, multiply the applicable percentage from the chart below by the amount of your contributions that do not exceed \$2,000.

ADJUSTED GROSS INCOME*						Applicable Percentage
Joint Return		Head of a Household		All Other Cases		
Over	Not Over	Over	Not Over	Over	Not Over	
	\$30,000		\$22,500		\$15,000	50
\$30,000	\$32,500	\$22,500	\$24,375	\$15,000	\$16,250	20
\$32,500	\$50,000	\$24,375	\$37,500	\$16,250	\$25,000	10
\$50,000		\$37,500		\$25,000		0

* Adjusted gross income excludes foreign earned income and income from Guam, American Samoa, North Mariana Islands, and Puerto Rico.

- (c) **Tax Deferred Earnings.** The investment earnings of your SIMPLE IRA are generally not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).
- (d) **Rollovers.** Rollover is a term used to describe a tax-free movement of cash or other property from your SIMPLE IRA to an employer-sponsored retirement plan, a Traditional IRA, or another SIMPLE IRA. Your SIMPLE IRA may be rolled over to another SIMPLE IRA, or your SIMPLE IRA may receive rollover contributions, provided that all of the applicable rollover rules are followed. The rollover rules are generally summarized below. These transactions are often complex. If you have any questions regarding a rollover, please see your tax advisor.
- (i) **SIMPLE IRA to SIMPLE IRA Rollovers.** Funds distributed from your SIMPLE IRA may be rolled over to another SIMPLE IRA if the requirements of Section 408(d)(3) of the Code are met. A proper SIMPLE IRA to SIMPLE IRA rollover is completed if all or part of the distribution is rolled over no later than 60 days after the distribution is received. You may not have completed another SIMPLE IRA to SIMPLE IRA rollover from the distributing SIMPLE IRA during the 12 months preceding the date you receive the distribution. Further, you may roll the same dollars or assets only once every 12 months.
 - (ii) **SIMPLE IRA to Traditional IRA Rollovers.** Funds may be distributed from your SIMPLE IRA and rolled over to your Traditional IRA without IRS penalty provided two years have passed since you first participated in the SIMPLE IRA plan sponsored by your employer. As with SIMPLE IRA to SIMPLE IRA rollovers, the requirements of Section 408(d)(3) of the Code must be met. A proper SIMPLE IRA to Traditional IRA rollover is completed if all or part of the distribution is rolled over no later than 60 days after the distribution is received. You may not have completed another SIMPLE IRA to Traditional IRA, SIMPLE IRA to SIMPLE IRA, or SIMPLE IRA to a qualified plan, a Section 403(b) tax-sheltered annuity, or a Section 457 deferred compensation plan (beginning January 1, 2002) rollover from the

distributing SIMPLE IRA during the 12 months preceding the date you receive the distribution. Further, you may roll over the same dollars or assets only once every 12 months.

- (iii) **SIMPLE IRA to Employer Sponsored Retirement Plans.** You may roll over, directly or indirectly, any eligible rollover distribution from a SIMPLE IRA to an employer's qualified retirement plan, a Section 403(b) tax-sheltered annuity, or a Section 457 deferred compensation plan provided two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer. An eligible rollover distribution is defined as any taxable distribution from a SIMPLE IRA that is not a part of a required minimum distribution.
- (iv) **Rollover Election.** At the time you make a proper rollover to a SIMPLE IRA, you must designate to the Custodian, in a form and manner acceptable to the Custodian, your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.

5. LIMITATIONS AND RESTRICTIONS

- (a) A deduction is not allowed for rollover or transfer contributions.
- (b) Capital gains treatment and favorable ten year forward averaging tax authorized by Section 402 of the Code do not apply to SIMPLE IRA distributions.
- (c) Any withdrawal from your SIMPLE IRA, except a direct transfer to another SIMPLE IRA, a Traditional IRA, or qualified plan, is subject to federal income tax withholding. You may, however, elect not to have withholding apply to your SIMPLE IRA withdrawal. If withholding is applied to your withdrawal, not less than 10% of the amount withdrawn must be withheld.
- (d) If you or your Beneficiary engage in a prohibited transaction with your SIMPLE IRA, as described in Section 4975 of the Code, the SIMPLE IRA will lose its tax exemption and you must include the value of your account in your gross income for that taxable year. In addition, if you are under the age of 59½, the "distribution" also will be subject to both ordinary income tax and the 10% penalty tax for premature distributions.
- (e) If you pledge any portion of your SIMPLE IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

6. FEDERAL TAX PENALTIES

- (a) If you are under the age of 59½ and receive a SIMPLE IRA distribution, an additional tax of 10% will generally apply, unless made on account of death, disability, a qualifying rollover, a direct transfer, the timely withdrawal of an excess contribution, or if the distribution is part of a series of substantially equal periodic payments (at least annual payments) made over your life expectancy or the joint life expectancy of you and your Beneficiary. Payments made to pay medical expenses which exceed 7.5% of your adjusted gross income and distributions to pay for health insurance by an individual who has separated from employment and who has received unemployment compensation under a federal or state program for at least 12 weeks are also exempt from the 10% tax. Payments to cover certain qualified education expenses and distributions to buy, build, or rebuild a first-home (up to a lifetime maximum of \$10,000) are exempt from the 10% tax. This additional tax will apply only to the portion of a distribution that is includable in your income. If less than two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer, the early distributions penalty shall increase from 10% to 25%.
- (b) If you or your designated Beneficiary or Beneficiaries fail to take a minimum distribution as described in paragraph 3(g) of this Disclosure Statement, an additional tax of 50% is imposed upon any excess of the minimum required to be distributed over the amount actually distributed. This tax is referred to as an excess accumulation penalty tax.
- (c) An excise tax may be assessed against you by the IRS for contributions which exceed the permissible limits under Sections 408(a) and 408(p) of the Code.
- (d) You must file Form 5329 with the Internal Revenue Service when any additional or excise taxes are due.

7. OTHER

- (a) The form of Agreement used to establish this SIMPLE IRA is the model government form provided by the Internal Revenue Service and is known as Form 5305-SA. The Internal Revenue Service approval is a determination only as to the form. It is not an endorsement of the plan in operation or of the investments offered.
- (b) You may obtain further information on SIMPLE IRAs from your District Office of the Internal Revenue Service or by visiting the Internal Revenue Service web site at www.irs.gov. In particular, you may wish to obtain IRS Publication 590, Individual Retirement Arrangements.
- (c) If you designate a trust for the benefit of your spouse as Beneficiary of your SIMPLE IRA and that trust is designed to meet the QTIP rules for federal estate tax purposes, special provisions of your SIMPLE IRA plan may apply. Those provisions relate to payments from your SIMPLE IRA to the trust after your death. Be sure to consult with your tax advisor about this issue.

8. ADDITIONAL FINANCIAL INFORMATION

- (a) **Custodial Fees.** If not accompanied by this Disclosure Statement and SIMPLE Individual Retirement Custodial Account Plan, a schedule of fees is available from the Custodian or from the financial organization that has introduced your Account to the Custodian. The Custodian's annual maintenance, termination, and other administration fees shall be charged by the Custodian for its services hereunder in accordance with the current fee schedule of the Custodian that is in effect from time to time. At the discretion of the Custodian, you may receive an invoice for the custodial maintenance and other related fees that are due and payable upon receipt. Unless paid by you in a timely manner, fees will be automatically charged against the Account, or as you direct in writing, charged against another account held by the Custodian over which you have investment authority. You may not reimburse your SIMPLE IRA for the custodial fees once they have been charged to your SIMPLE IRA. Any such reimbursement of custodial or other administrative fees will be deemed a contribution to your IRA and reported to the IRS accordingly. The Custodian will notify you prior to changing the fee schedule. In the event of Account termination either by you or by the Custodian for any reason, the Custodian shall be entitled to receive the full termination fee, along with the full, nonprorated current year maintenance fee, regardless of the date during the year of the termination of the Custodial Account.

- (b) **Brokerage Commissions.** Brokerage commissions and other securities transaction related charges shall be as charged by the financial organization which has introduced your Account to the Custodian. Such commissions must be paid from assets held within your SIMPLE IRA and may not be reimbursed.
- (c) **Other Expenses.** Taxes of any kind, which may be imposed with respect to the SIMPLE IRA, and any expenses incurred by the Custodian in the management of your Account, together with any fees referred to above, shall be paid by you, or if not paid by you in a timely manner, will be charged against your Account, or as directed in writing by you, charged against another account over which you have investment authority.
- (d) **Earnings.** The earnings of each separate Account shall be allocated only to that Account. The Custodian will attribute earnings only to the assets held in the Account in the custody of the Custodian according to its ordinary business practice and in accordance with its established customs and procedures.
- (e) **Growth in Value.** Growth in value of your Account will depend entirely on the investment decisions made by you and is neither guaranteed nor projected.

SIMPLE IRA ADOPTION AGREEMENT

For Participants in a Savings Incentive Match Plan for Employees

I. ACCOUNT INFORMATION (This Adoption Agreement may only be used in conjunction with the SIMPLE IRA plan document stipulated by the Custodian)

I hereby designate _____ as the financial organization.

ACCOUNT NUMBER: — -1-

ACCOUNT TYPE: PARTICIPANT EMPLOYER GUARDIAN INHERITED

II. PARTICIPANT INFORMATION

NAME: _____ GENDER: M F DATE OF BIRTH: / /

MAILING ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

TELEPHONE: (_____) SOCIAL SECURITY NUMBER: — —

III. EMPLOYER INFORMATION

EMPLOYER NAME: _____

EMPLOYER ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

TAX IDENTIFICATION NUMBER: — EMPLOYER PERSHING LLC SIMPLE PLAN ACCOUNT NUMBER: —

(If maintained at Pershing LLC—otherwise see Employer Certification below)

IV. UNINVESTED CASH

The Participant understands that any idle cash in the IRA will be invested in a money market fund, deposit account, or other investment made available through your financial organization, unless the Participant elects otherwise by checking the box below. Any such investment of idle cash is made pursuant to a prospectus or other offering document, which the Participant should obtain from his or her financial organization.¹

DO NOT INVEST IDLE CASH. (The Participant understands that the Custodian has no responsibility to credit interest on uninvested cash in any IRA.)

¹ For more complete information about the money market fund, including charges and expenses, request a prospectus from your financial organization. Read it carefully before you invest.

V. BENEFICIARY DESIGNATIONS

MARITAL STATUS: SINGLE MARRIED (Note: Spousal consent may be required. See below.)

The following shall be my Beneficiary or Beneficiaries of this SIMPLE IRA. If I designate more than one primary or contingent Beneficiary, but do not specify the percentages to which such Beneficiary or Beneficiaries is entitled, payment will be made to the surviving Beneficiary or Beneficiaries in equal shares.

Note: For specific beneficiary provisions, please refer to the applicable sections of the Plan and the Disclosure Statement.

PRIMARY BENEFICIARIES

NAME	GENDER	RELATIONSHIP	DATE OF BIRTH	SOCIAL SECURITY NUMBER	ADDRESS	PERCENTAGE
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

CONTINGENT BENEFICIARIES (Secondary Beneficiaries will be paid only if all primary Beneficiaries do not survive the Participant)

NAME	GENDER	RELATIONSHIP	DATE OF BIRTH	SOCIAL SECURITY NUMBER	ADDRESS	PERCENTAGE
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

VI. SPOUSAL CONSENT (For use in community or marital property states including: AZ, CA, ID, LA, NV, NM, TX, WA, WI)

If you are married, reside in a community property or marital property state, and designate someone other than your spouse as your sole, primary Beneficiary, your spouse must sign this form below. In addition, if required in your state, the form must be signed in the presence of a Notary Public. I am the spouse of the above-named account holder. I acknowledge that I have received a fair and reasonable disclosure of my spouse's property and financial obligations. Due to the important tax consequences of giving up my interest in this IRA, I have been advised to see a tax professional. I hereby give the account holder any interest I have in the funds or property deposited in this SIMPLE IRA and consent to the Beneficiary designation(s) indicated above. I assume full responsibility for any adverse consequences that may result. No tax or legal advice was given to me by the Custodian.

SIGNATURE OF SPOUSE (Required in community or marital property states): _____ DATE: _____

VII. CERTIFICATION

I understand the eligibility requirement for the type of SIMPLE IRA deposits I make and I state that I am a participant in my employer's Savings Incentive Match Plan for Employees and do qualify to establish a SIMPLE IRA and make the deposit. I understand that Pershing LLC assumes no responsibility for any tax consequences relating to such contributions or distributions from this SIMPLE IRA. I have received a copy of the Pershing LLC Individual Retirement Custodial Account Plan and Disclosure Statement. I understand that the terms and conditions which apply to this SIMPLE Individual Retirement Account are contained in this Pershing LLC Individual Retirement Custodial Account Plan and Disclosure Statement. I agree to be bound by those terms and conditions. If I elect to make a rollover contribution to this account, I hereby certify that I understand the rollover rules and conditions as they pertain to this SIMPLE IRA and I have met the requirements for making a rollover. Due to the important tax consequences of rolling over funds or property, I have been advised to consult with a tax professional. All information provided by me is true and correct and may be relied upon by the Custodian. I assume full responsibility for establishing this SIMPLE IRA and for rollover transactions and will not hold the Custodian liable for any adverse consequences that may result. I hereby irrevocably designate the rollover of funds or other property as rollover contributions. I HEREBY ADOPT THE PERSHING LLC SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL PLAN. I AGREE THAT THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE, WHICH IS LOCATED AT ARTICLE IX ON PAGE 7 IN THIS AGREEMENT.

PARTICIPANT OR GUARDIAN SIGNATURE: _____ DATE: _____



SIRA-104 ADOP

REQUIRED APPROVALS OF THE FINANCIAL ORGANIZATION (Please forward to your financial organization for approval)

Investment Professional Signature (If applicable) _____ Date _____ Operations Manager Signature _____ Date _____

Participant Account Number

Savings Incentive Match Plan For Employees of Small Employers (SIMPLE) (Not subject to the Designated Financial Institution Rules)

Plan Administrator/Employer Account Number (If different from participant account number, above.)

Name of Employer establishes the following SIMPLE IRA plan under section 408(p) of the Internal Revenue Code and pursuant to the instructions contained in this form.

Employer Tax Identification Number

Article I—Employee Eligibility Requirements (complete applicable box(es) and blanks—see instructions)

- 1 General Eligibility Requirements. The Employer agrees to permit salary reduction contributions to be made in each calendar year to the SIMPLE IRA established by each employee who meets the following requirements (select either 1a or 1b):
a Full Eligibility. All employees are eligible.
b Limited Eligibility. Eligibility is limited to employees who are described in both (i) and (ii) below:
(i) Current compensation. Employees who are reasonably expected to receive at least \$_____ in compensation (not to exceed \$5,000) for the calendar year.
(ii) Prior compensation. Employees who have received at least \$_____ in compensation (not to exceed \$5,000) during any _____ calendar year(s) (insert 0, 1, or 2) preceding the calendar year.
2 Excludable Employees.
The Employer elects to exclude employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. Note: This box is deemed checked if the Employer maintains a qualified plan covering only such employees.

Article II—Salary Reduction Agreements (complete the box and blank, if applicable—see instructions)

- 1 Salary Reduction Election. An eligible employee may make an election to have his or her compensation for each pay period reduced. The total amount of the reduction in the employee's compensation for a calendar year cannot exceed the applicable amount for that year.
2 Timing of Salary Reduction Elections
a For a calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.
b In addition to the election periods in 2a, eligible employees may make salary reduction elections or modify prior elections _____. If the Employer chooses this option, insert a period or periods (e.g. semi-annually, quarterly, monthly, or daily) that will apply uniformly to all eligible employees.
c No salary reduction election may apply to compensation that an employee received, or had a right to immediately receive, before execution of the salary reduction election.
d An employee may terminate a salary reduction election at any time during the calendar year. If this box is checked, an employee who terminates a salary reduction election not in accordance with 2b may not resume salary reduction contributions during the calendar year.

Article III—Contributions (complete the blank, if applicable—see instructions)

- 1 Salary Reduction Contributions. The amount by which the employee agrees to reduce his or her compensation will be contributed by the Employer to the employee's SIMPLE IRA.
2a Matching Contributions
(i) For each calendar year, the Employer will contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions up to a limit of 3% of the employee's compensation for the calendar year.
(ii) The Employer may reduce the 3% limit for the calendar year in (i) only if:
(1) The limit is not reduced below 1%;
(2) The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and
(3) Each employee is notified of the reduced limit within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
b Nonelective Contributions
(i) For any calendar year, instead of making matching contributions, the Employer may make nonelective contributions equal to 2% of compensation for the calendar year to the SIMPLE IRA of each eligible employee who has at least \$_____ (not more than \$5,000) in compensation for the calendar year. No more than \$200,000* in compensation can be taken into account in determining the nonelective contribution for each eligible employee.
(ii) For any calendar year, the Employer may make 2% nonelective contributions instead of matching contributions only if:
(1) Each eligible employee is notified that a 2% nonelective contribution will be made instead of a matching contribution; and
(2) This notification is provided within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
3. Time and Manner of Contributions
a The Employer will make the salary reduction contributions (described in 1 above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than 30 days after the end of the month in which the money is withheld from the employee's pay. See instructions.
b The Employer will make the matching or nonelective contributions (described in 2a and 2b above) for each eligible employee to the SIMPLE IRA established at the financial institution selected by that employee no later than the due date for filing the Employer's tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

* For 2003 and later years, this amount is subject to annual cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS's internet web site at www.irs.gov.



5304S

Article IV—Other Requirements and Provisions

- 1 Contributions in General.** The Employer will make no contributions to the SIMPLE IRAs other than salary reduction contributions (described in Article III, item 1) and matching or nonelective contributions (described in Article III, items 2a and 2b).
- 2 Vesting Requirements.** All contributions made under this SIMPLE IRA plan are fully vested and nonforfeitable.
- 3 No Withdrawal Restrictions.** The Employer may not require the employee to retain any portion of the contributions in his or her SIMPLE IRA or otherwise impose any withdrawal restrictions.
- 4 Selection of IRA Trustee.** The employer must permit each eligible employee to select the financial institution that will serve as the trustee, custodian, or issuer of the SIMPLE IRA to which the employer will make all contributions on behalf of that employee.
- 5 Amendments to This SIMPLE IRA Plan.** This SIMPLE IRA plan may not be amended except to modify the entries inserted in the blanks or boxes provided in Articles I, II, III, VI, and VII.
- 6 Effects of Withdrawals and Rollovers**
 - a** An amount withdrawn from the SIMPLE IRA is generally includible in gross income. However, a SIMPLE IRA balance may be rolled over or transferred on a tax-free basis to another IRA designed solely to hold funds under a SIMPLE IRA plan. In addition, an individual may roll over or transfer his or her SIMPLE IRA balance to any IRA after a 2-year period has expired since the individual first participated in any SIMPLE IRA plan of the Employer. Any rollover or transfer must comply with the requirements under section 408.
 - b** If an individual withdraws an amount from a SIMPLE IRA during the 2-year period beginning when the individual first participated in any SIMPLE IRA plan of the Employer and the amount is subject to the additional tax on early distributions under section 72(t), this additional tax is increased from 10% to 25%.

Article V—Definitions

- 1 Compensation**
 - a General Definition of Compensation.** Compensation means the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in Section 6051(a)(3)) and the employee's salary reduction contributions made under this plan, and, if applicable, elective deferrals under a Section 401(k) plan, a SARSEP, or a Section 403(b) annuity contract and compensation deferred under a Section 457 plan required to be reported by the Employer on Form W-2 (as described in Section 6051(a)(8)).
 - b Compensation for Self-Employed Individuals.** For self-employed individuals, compensation means the net earnings from self-employment determined under Section 1402(a), without regard to Section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.
- 2 Employee.** Employee means a common-law employee of the Employer. The term employee also includes a self-employed individual and a leased employee described in Section 414(n) but does not include a nonresident alien who received no earned income from the Employer that constitutes income from sources within the United States.
- 3 Eligible Employee.** An eligible employee means an employee who satisfies the conditions in Article I, item 1 and is not excluded under Article I, item 2.
- 4 SIMPLE IRA.** A SIMPLE IRA is an individual retirement account described in Section 408(a), or an individual retirement annuity described in Section 408(b), to which the only contributions that can be made are contributions under a SIMPLE IRA plan and rollovers or transfers from another SIMPLE IRA.

Article VI—Procedures for Withdrawal *(The employer will provide each employee with the procedures for withdrawals of contributions received by the financial institution selected by that employee, and that financial institution's name and address (by attaching that information or inserting it in the space below) unless: (1) that financial institution's procedures are unavailable, or (2) that financial institution provides the procedures directly to the employee. See **Employee Notification** on page 5.)*

If you wish to take a distribution from your SIMPLE IRA, you must complete a withdrawal form provided by or acceptable to Pershing LLC. The completed withdrawal form should be sent to your investment professional for processing. Refer to the investment information provided to you by your investment professional for information on fees or penalties relating to the distribution. For plan participants using Pershing LLC as Custodian, additional information regarding the procedures for withdrawal is contained in the Pershing LLC Individual Retirement Custodial Account Plan and Disclosure Statement accompanying the Pershing LLC SIMPLE IRA Adoption Agreement.

Article VII—Effective Date

This SIMPLE IRA plan is effective _____ . See instructions.

By signing below, the employer certifies that within the time frames described in IRS Notice 97-6, the employer shall provide each participating employee with the following information: 1) the name and address of the employer; 2) the effects of withdrawals from the SIMPLE IRA; 3) the eligibility requirements for participation in the SIMPLE IRA plan; 4) the benefits provided with respect to the SIMPLE IRA plan; and 5) the time and method of making elections with respect to the SIMPLE IRA plan.

 Name of Employer

 By: Signature

 Date

 Address of Employer

 Name and Title

Model Notification to Eligible Employees

I. Opportunity to Participate in the SIMPLE IRA Plan

You are eligible to make salary reduction contributions to the _____ SIMPLE IRA plan. This notice and the attached summary description provide you with information that you should consider before you decide whether to start, continue, or change your salary reduction agreement.

II. Employer Contribution Election

For the _____ calendar year, the employer elects to contribute to your SIMPLE IRA (*employer must select either (1), (2), or (3)*):

- (1)** A matching contribution equal to your salary reduction contributions up to a limit of 3% of your compensation for the year;
- (2)** A matching contribution equal to your salary reduction contributions up to a limit of _____% (employer must insert a number from 1 to 3 and is subject to certain restrictions) of your compensation for the year; or
- (3)** A nonelective contribution equal to 2% of your compensation for the year (limited to \$200,000*) if you are an employee who makes at least \$_____ (*employer must insert an amount that is \$5,000 or less*) in compensation for the year.

III. Administrative Procedures

To start or change your salary reduction contributions, you must complete the salary reduction agreement and return it to _____ (*employer should designate a place or individual*) by _____ (*employer should insert a date that is not less than 60 days after notice is given*).

IV. Employee Selection of Financial Institution

You must select the financial institution that will serve as the trustee, custodian, or issuer of your SIMPLE IRA and notify your employer of your selection.

Model Salary Reduction Agreement

I. Salary Reduction Election

Subject to the requirements of the SIMPLE IRA plan of _____ (*name of employer*) I authorize _____% or \$_____ (which equals _____% of my current rate of pay) to be withheld from my pay for each pay period and contributed to my SIMPLE IRA as a salary reduction contribution.

II. Maximum Salary Reduction

I understand that the total amount of my salary reduction contributions in any calendar year cannot exceed the applicable amount for that year. See instructions.

III. Date Salary Reduction Begins

I understand that my salary reduction contributions will start as soon as permitted under the SIMPLE IRA plan and as soon as administratively feasible or, if later, _____. (*Fill in the date you want the salary reduction contributions to begin. The date must be after you sign this agreement.*)

IV. Employee Selection of Financial Institution

I select the following financial institution to serve as the trustee, custodian, or issuer of my SIMPLE IRA.

Name of financial institution

Address of financial institution

SIMPLE IRA account name and number

I understand that I must establish a SIMPLE IRA to receive any contributions made on my behalf under this SIMPLE IRA plan. If the information regarding my SIMPLE IRA is incomplete when I first submit my salary reduction agreement, I realize that it must be completed by the date contributions must be made under the SIMPLE IRA plan. If I fail to update my agreement to provide this information by that date, I understand that my employer may select a financial institution for my SIMPLE IRA.

V. Duration of Election

This salary reduction agreement replaces any earlier agreement and will remain in effect as long as I remain an eligible employee under the SIMPLE IRA plan or until I provide my employer with a request to end my salary reduction contributions or provide a new salary reduction agreement as permitted under this SIMPLE IRA plan.

Signature of employee _____ Date _____

* For 2003 and later years, this amount is subject to cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS Web Site at www.irs.gov.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Form 5304-SIMPLE is a model Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) plan document that an employer may use to establish a SIMPLE IRA plan described in section 408(p), under which each eligible employee is permitted to select the financial institution for his or her SIMPLE IRA.

These instructions are designed to assist in the establishment and administration of the SIMPLE IRA plan. They are **not** intended to supersede any provision in the SIMPLE IRA plan.

Do not file Form 5304-SIMPLE with the IRS. Instead, keep it with your records.

For more information, see **Pub. 560**, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), and **Pub. 590**, Individual Retirement Arrangements (IRAs).

Which Employers May Establish and Maintain a SIMPLE IRA Plan?

To establish and maintain a SIMPLE IRA plan, you must meet **both** of the following requirements:

1. Last calendar year, you had no more than 100 employees (including self-employed individuals) who earned \$5,000 or more in compensation from you during the year. If you have a SIMPLE IRA plan but later exceed this 100-employee limit, you will be treated as meeting the limit for the 2 years following the calendar year in which you last satisfied the limit.

2. You do not maintain during any part of the calendar year another qualified plan with respect to which contributions are made, or benefits are accrued, for service in the calendar year. For this purpose, a qualified plan (defined in section 219(g)(5)) includes a qualified pension plan, a profit-sharing plan, a stock bonus plan, a qualified annuity plan, a tax-sheltered annuity plan, and a simplified employee pension (SEP) plan. A qualified plan that only covers employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining is disregarded if these employees are excluded from participating in the SIMPLE IRA plan.

If the failure to continue to satisfy the 100-employee limit or the one-plan rule described in **1** and **2** above is due to an acquisition or similar transaction involving your business, special rules apply. Consult your tax advisor to find out if you can still maintain the plan after the transaction.

Certain related employers (trades or businesses under common control) must be treated as a single employer for purposes of the SIMPLE IRA requirements. These are: **(1)** a controlled group of corporations under section 414(b); **(2)** a partnership or sole proprietorship under common control under section 414(c); or **(3)** an affiliated service group under section 414(m). In addition, if you have leased employees required to be treated as your own employees under the rules of section 414(n), then you must count all such leased employees for the requirements listed above.

What is a SIMPLE IRA Plan?

A SIMPLE IRA plan is a written arrangement that provides you and your employees with an easy way to make contributions to provide retirement income for your employees. Under a SIMPLE IRA plan, employees may choose whether to make salary reduction contributions to the SIMPLE IRA plan rather than receiving these amounts as part of their regular compensation. In addition, you will contribute matching or nonelective contributions on behalf of eligible employees (see **Employee Eligibility Requirements** below and **Contributions** on page 5). All contributions under this plan will be deposited into a SIMPLE individual retirement account or annuity established for each eligible employee with the financial institution selected by him or her.

When To Use Form 5304-SIMPLE

A SIMPLE IRA plan may be established by using this Model Form or any other document that satisfies the statutory requirements.

Do not use Form 5304-SIMPLE if:

1. You want to require that all SIMPLE IRA plan contributions initially go to a financial institution designated by you. That is, you do not want to permit each of your eligible employees to choose a financial institution that will initially receive contributions. Instead, use **Form 5305-SIMPLE**, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution.

2. You want employees who are nonresident aliens receiving no earned income from you that constitutes income from sources within the United States to be eligible under this plan; or

3. You want to establish a SIMPLE 401(k) plan.

Completing Form 5304-SIMPLE

Pages 1 and 2 of Form 5304-SIMPLE contain the operative provisions of your SIMPLE IRA plan. This SIMPLE IRA plan is considered adopted when you have completed all applicable boxes and blanks and it has been executed by you.

The SIMPLE IRA plan is a legal document with important tax consequences for you and your employees. You may want to consult with your attorney or tax advisor before adopting this plan.

Employee Eligibility Requirements (Article I)

Each year for which this SIMPLE IRA plan is effective, you must permit salary reduction contributions to be made by all of your employees who are reasonably expected to receive at least \$5,000 in compensation from you during the year, and who received at least \$5,000 in compensation from you in any 2 preceding years. However, you can expand the group of employees who are eligible to participate in the SIMPLE IRA plan by completing the options provided in Article I, items 1a and 1b. To choose full eligibility, check the box in Article I, item 1a. Alternatively, to choose limited eligibility, check the box in Article I, item 1b, and then insert "\$5,000" or a lower compensation amount (including zero) and "2" or a lower number of years of service in the blanks in (i) and (ii) of Article I, item 1b.

In addition, you can exclude from participation those employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. You may do this by checking the box in Article I, item 2. Under certain circumstances, these employees must be excluded. See **Which Employers May Establish and Maintain a SIMPLE IRA Plan?** above.

Salary Reduction Agreements (Article II)

As indicated in Article II, item 1, a salary reduction agreement permits an eligible employee to make a salary reduction election to have his or her compensation

for each pay period reduced by a percentage (expressed as a percentage or dollar amount). The total amount of the reduction in the employee's compensation cannot exceed the applicable amount for any calendar year. The applicable amount is \$7,000 for 2002. That amount will increase to \$8,000 for 2003, \$9,000 for 2004, and \$10,000 for 2005 and later years. In the case of an eligible employee who will be 50 or older before the end of the calendar year, the above limitation is increased to \$7,500 for 2002, \$9,000 for 2003, \$10,500 for 2004, \$12,000 for 2005, and \$12,500 for 2006 and later years.

Timing of Salary Reduction Elections

For any calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.

You can extend the 60-day election periods to provide additional opportunities for eligible employees to make or modify salary reduction elections using the blank in Article II, item 2b. For example, you can provide that eligible employees may make new salary reduction elections or modify prior elections for any calendar quarter during the 30 days before that quarter.

You may use the **Model Salary Reduction Agreement** on page 3 to enable eligible employees to make or modify salary reduction elections.

Employees must be permitted to terminate their salary reduction elections at any time. They may resume salary reduction contributions for the year if permitted under Article II, item 2b. However, by checking the box in Article II, item 2d, you may prohibit an employee who terminates a salary reduction election outside the normal election cycle from resuming salary reduction contributions during the remainder of the calendar year.

Contributions (Article III)

Only contributions described below may be made to this SIMPLE IRA plan. No additional contributions may be made.

Salary Reduction Contributions

As indicated in Article III, item 1, salary reduction contributions consist of the amount by which the employee agrees to reduce his or her compensation. You must contribute the salary reduction contributions

to the financial institution selected by each eligible employee.

Matching Contributions

In general, you must contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions. This matching contribution cannot exceed 3% of the employee's compensation. See **Definition of Compensation**, below.

You may reduce this 3% limit to a lower percentage, but not lower than 1%. You cannot lower the 3% limit for more than 2 calendar years out of the 5-year period ending with the calendar year the reduction is effective.

Note: *If any year in the 5-year period described above is a year before you first established any SIMPLE IRA plan, you will be treated as making a 3% matching contribution for that year for purposes of determining when you may reduce the employer matching contribution.*

To elect this option, you must notify the employees of the reduced limit within a reasonable period of time before the applicable 60-day election periods for the year. See **Timing of Salary Reduction Elections** above.

Nonelective Contributions

Instead of making a matching contribution, you may, for any year, make a nonelective contribution equal to 2% of compensation for each eligible employee who has at least \$5,000 in compensation for the year. Nonelective contributions may not be based on more than \$200,000* of compensation.

To elect to make nonelective contributions, you must notify employees within a reasonable period of time before the applicable 60-day election periods for such year. See **Timing of Salary Reduction Elections** above.

Note: *Insert "\$5,000" in Article III, item 2b(i) to impose the \$5,000 compensation requirement. You may expand the group of employees who are eligible for nonelective contributions by inserting a compensation amount lower than \$5,000.*

Effective Date (Article VII)

Insert in Article VII, the date you want the provisions of the SIMPLE IRA plan to become effective. You must insert January 1 of the applicable year unless this is the first year for which you are adopting any SIMPLE IRA plan. If this is the first year for which you are adopting a SIMPLE IRA plan, you may insert any date between January 1 and October 1, inclusive of the applicable year.

Additional Information

Timing of Salary Reduction Contributions

The employer must make the salary reduction contributions to the financial institution selected by each eligible employee for his or her SIMPLE IRA no later than the 30th day of the month following the month in which the amounts would otherwise have been payable to the employee in cash.

The Department of Labor has indicated that most SIMPLE IRA plans are also subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under Department of Labor regulations at 29 CFR 2510.3-102, salary reduction contributions must be made to each participant's SIMPLE IRA as of the earliest date on which those contributions can reasonably be segregated from the employer's general assets, but in no event later than the 30-day deadline described above.

Definition of Compensation

"Compensation" means the amount described in section 6051(a)(3) (wages, tips, and other compensation from the employer subject to federal income tax withholding under section 3401(a)). Usually, this is the amount shown in box 1 of **Form W-2**, Wage and Tax Statement. For further information, see **Pub. 15**, Circular E, Employer's Tax Guide. Compensation also includes the salary reduction contributions made under this plan, and, if applicable, compensation deferred under a section 457 plan. In determining an employee's compensation for prior years, the employee's elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract are also included in the employee's compensation.

For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this SIMPLE IRA plan on behalf of the individual.

Employee Notification

You must notify each eligible employee prior to the employee's 60-day election period described above that he or she can make or change salary reduction elections and select the financial institution that will serve as the trustee, custodian, or issuer of the employee's SIMPLE IRA. In this notification, you must indicate whether you will provide:

1. A matching contribution equal to your employees' salary reduction contributions up to a limit of 3% of their compensation;
2. A matching contribution equal to your employees' salary reduction contributions subject to a percentage limit that is between 1 and 3% of their compensation; or
3. A nonelective contribution equal to 2% of your employees' compensation.

You can use the **Model Notification to Eligible Employees** on page 3 to satisfy these employee notification requirements for this SIMPLE IRA plan. A **Summary Description** must also be provided to eligible employees at this time. This summary description requirement may be satisfied by providing a completed copy of pages 1 and 2 of Form 5304-SIMPLE (including the information described in Article VI—Procedures for Withdrawal).

If you fail to provide the employee notification (including the summary description) described above, you will be liable for a penalty of \$50 per day until the notification is provided. If you can show that the failure was due to reasonable cause, the penalty will not be imposed.

If the financial institution's name, address, or withdrawal procedures are not available at the time the employee must be given the summary description, you must provide the summary description without this information. In that case, you will have reasonable cause for not including this information in the summary description, but only if you ensure that it is provided to the employee as soon as administratively feasible.

Reporting Requirements

You are not required to file any annual information returns for your SIMPLE IRA plan, such as Forms 5500 or 5500-EZ. However, you must report to the IRS which eligible employees are active participants in the SIMPLE IRA plan and the amount of your employees' salary reduction contributions to the SIMPLE IRA plan on Form W-2. These contributions are subject to social security, medicare, railroad retirement, and federal unemployment tax.

Deducting Contributions

Contributions to this SIMPLE IRA plan are deductible in your tax year containing the end of the calendar year for which the contributions are made.

Contributions will be treated as made for a particular tax year if they are made for that year and are made by the due date (including extensions) of your income tax return for that year.

Summary Description

Each year the SIMPLE IRA plan is in effect, the financial institution for the SIMPLE IRA of each eligible employee must provide the employer the information described in section 408(l)(2)(B). This requirement may be satisfied by providing the employer a current copy of Form 5304-SIMPLE (including instructions) together with the financial institution's procedures for withdrawals from SIMPLE IRAs established at that financial institution, including the financial institution's name and address. The summary description must be received by the employer in sufficient time to comply with the **Employee Notification** requirements above.

There is a penalty of \$50 per day imposed on the financial institution for each failure to provide the summary description described above. However, if the failure was due to reasonable cause, the penalty will not be imposed.

Paperwork Reduction Act Notice. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is:

- Recordkeeping** 3 hr., 38 min.
- Learning about the law or the form** 2 hr., 26 min.
- Preparing the form** 47 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this address. Instead, keep it with your records.