

MINUTES

**GENERAL EMPLOYEES'
RETIREMENT COMMITTEE MEETING**

THURSDAY - NOVEMBER 18, 2010 - 12:00 PM

PRESENT

Vic Espinal
Larry Gordon
Lori Helton – Chair
Councilwoman Barbara Kramer

ABSENT

Councilman Frantz Pierre

ALSO PRESENT

Charlie Mulfinger – Graystone Consulting
Scott Mullet – GW Capital
Nick Kemerer – MDT Advisors
John Roche – Thornburg
Larry Wilson – Gabriel Roeder Smith
Bob Sugarman – Sugarman & Susskind
Martin Lebowitz – Pension Administrator

DEPARTMENT REPRESENTATIVES

Lori Helton called the meeting to order at 3:10P.M., followed by a roll call of Trustees.

I. PENSION ATTORNEY REPORT

Bob Sugarman prepared an informational letter for participant Van Harrington and other members who may divorce concerning Qualified Domestic Relations Orders (QDRO's) and Income Deduction Orders (IDO's). This letter is to be distributed to members and their spouses who are divorcing.

• **IRS Determination Letter and Ordinance – See Exhibit I and II**

The Ordinance pertains to technical items such as the minimum required distributions under IRC 401 (a)(9) and maximum benefits limits under IRC Section 415. Larry Wilson has provided the statement showing no actuarial impact which will be sent to the State once the Ordinance has been adopted by the City Council.

Motion by Larry Gordon, seconded by Vic Espinal, to recommend adoption of the Ordinance for the IRS technical changes.

Motion carried unanimously.

Bob Sugarman advised to apply for an IRS Determination Letter during the current cycle that expires 1/31/2011 and has asked the committee if they want to apply for IRS Determination Letter. The legal fees to apply are \$8,500, \$7500 if the Police and Fire Retirement Plan also apply, and there is a \$1,000 IRS User fee.

**General Employees'
Retirement Committee Meeting
November 18, 2010
Page 2**

Motions by Larry Gordon, seconded by Vic Espinal, to have Bob Sugarman apply for the IRS Determination Letter, authorized Chair to sign necessary forms and disburse \$1,000 IRS fee.
Motion carried unanimously.

- **Forfeiture of Benefits Rules & Regulation – See Exhibit III**

Bob Sugarman recommended procedures his firm drafted if a participant is subject to forfeiture of benefits. The procedure is reflected in the Forfeiture of Benefits Rules and Regulations document.

Motions by Councilwoman Kramer, seconded by Vic Espinal, to adopt the Forfeiture of Benefits Rules & Regulation.
Motion carried unanimously.

- Disability Case – Elmer Smith – In progress: we await Independent Medical Examination report from Dr. Sherman.
- Contract has been signed with Robbins Geller Rudman and Dowd for Portfolio Monitoring
- Merrill Lynch law suit still on-going
- Working on a contract with UBS for real estate investment management. The issue is UBS will not acknowledge that it is a fiduciary with respect to our plan. This item will be discussed further at the next regular scheduled meeting on February 17, 2011.
- Travel Policy- Lori Helton has requested from Bob Sugarman that he draft a travel policy for the trustees.
- Baxter International – Mark Bogen of Spector, Roseman, Kodroff & Willis (SRKW) discussed the lawsuit. Based on the contingent approval of the Chair, and the recommendation of SRKW. SRKW has filed a Derivative Action on behalf of the Plan against the Directors of Baxter International, Inc. claiming their Colleague Volumetric Infusion Pump and the Syndeo Patient Controlled Analgesic Syringe Pump had numerous violations and has not been corrected, thus harming our investment in Baxter. The General Employees' Retirement Plan is the lead Plaintiff in this Derivative Action.

Motions by Larry Gordon, seconded by Vic Espinal, to ratify Lori Helton's decision to file this lawsuit against the Directors of Baxter International.
Motion carried unanimously.

II. GW CAPITAL – Q/E 9/30/2010

Scott Mullet had to leave the meeting. The total GW Capital Small Cap Value portfolio was valued at \$3,051,809 (including accrued interest) as of 9/30/2010, with an asset allocation of 93.82% in equities, and 6.18% in cash and equivalents.

**General Employees'
Retirement Committee Meeting
November 18, 2010
Page 3**

For the quarter ended 9/30/2010: Total fund return was 10.18% compared to 9.72% for the Russell 2000 Value.

Plan year results: Total return for their portfolio was 15.46% vs. 11.84% for the Russell 2000 Value.

III. MDT ADVISORS - Q/E 9/30/2010

Nick Kemerer reported the total MDT Advisors Mid Cap Growth portfolio was valued at 3,262,286 (including accrued interest) as of 9/30/2010, with an asset allocation of 98.58% in equities, 1.42% in cash and equivalents.

For the quarter ended 9/30/2010: Total fund return was 15.62% compared to 14.64% for the Russell 2000 Growth.

Plan year results: Total return for their portfolio was 24.08% vs. 18.26% for the Russell 2000 Growth.

IV. THORNBURG – Q/E 9/30/2010

John Roche had to leave the meeting. The total Thornburg International Value portfolio was valued at \$2,729,830 (including accrued interest) as of 9/30/2010, with an asset allocation of 96.25% in equities, 3.75% in cash and equivalents.

For the quarter ended 9/30/2010: Total fund return was 16.82% compared to 16.58% for the MSCI AC World x US.

Plan year results: Total return for their portfolio was 11.92% vs. 7.56% for the MSCI AC World x US.

V. GRAYSTONE CONSULTING – Q/E 9/30/2010

Charlie Mulfinger presented the performance report, indicating a total portfolio market value on 9/30/2010 of \$55,950,111 (including accrued income). This represents a net increase in value from the previous quarter of \$4,266,110. The total asset allocation was reported to be 50.97% invested in domestic equities, 10.12% invested in international, 38.14% in fixed income and .77% in cash and equivalents. The total fund earned 8.26% for the quarter.

For the quarter ended 9/30/2010: Garcia Hamilton under-performed Russell 1000 Growth Fund 12.86% vs.13.00%. Buckhead under-performed Russell 1000 Value Fund 7.32% vs. 10.13%. GW Capital returned 10.18% vs. 9.72% for the Russell 2000 Value Fund. MDT

**General Employees'
Retirement Committee Meeting
November 18, 2010
Page 4**

returned 15.62% vs. 14.64% for the Russell 2000 Growth Fund. Harding Loevner returned 17.48% vs. 16.58% for the MSCI AC World x US. Thornburg returned 16.82% vs. 16.58 for the MSCI AC World x US. Garcia Hamilton Fixed Income earned 3.32% outperformed the BC Int. Gov/Credit of 2.76%.

Plan year results: Total return earned for plan year was 10.24%.

VI. GABRIEL ROEDER SMITH – Larry Wilson had to leave for another meeting. Lori Helton did speak to Larry Wilson prior to him leaving and he is working on the Benefit Statements and 2010 Valuation Report.

VII. QUARTERLY MEETING SCHEDULE FOR 2011

The following meeting schedule for the year 2011 was agreed to, subject to any necessary changes due to scheduling conflicts:

Thursday, February 17 th	~	Quarter End 12/31/2010
Thursday, May 19 th	~	Quarter End 3/31/2011
Thursday, August 18 th	~	Quarter End 6/30/2011
Thursday, November 17 th	~	Quarter End 9/30/2011

APPROVAL OF MINUTES – JNT. JULY 15, 2010, JNT. AUGUST 10, 2010, AUGUST 10, 2010 AND JNT OCTOBER 1, 2010.

Motion by Larry Gordon, seconded by Vic Espinal, to accept the August 10, 2010 and Jnt. October 1, 2010 minutes for the General Employees' Retirement Plan Meeting and to table the Jnt. July 15, 2010 and Jnt. August 10, 2010 minutes.

Motion carried unanimously.

VIII. OPEN DISCUSSION

Larry Gordon discussed Lori Helton's election as chair-person had expired after one year. Lori Helton was elected as the Chair-person for the General Board for the next year by consensus.

APPROVAL TO ATTEND OUT-OF-STATE CONFERENCE

Motion by Councilwoman Kramer, second by Vic Espinal, to authorize normal travel expenses for those trustees wishing to attend the NAPO Conference in February 2011(2 nights only with any additional nights and related costs at attendee's expense.).

Motion carried

IX. APPROVAL OF INVOICES

Motion by Victor Espinal, seconded by Larry Gordon, to approve payment of the following invoices:

Garcia Hamilton – Equity Quarterly Mgt. Fees	\$13,808.34
Garcia Hamilton – Fixed Quarterly Mgt. Fees	14,321.34
Buckhead Capital - Quarterly Management Fees	14,940.14
Morgan Stanley Smith Barney – Qtly. Consulting Fees	5,625.00
GW Capital - Quarterly Management Fees	5,480.20
Harding Loevner – Quarterly Management Fees	5,515.00
Thornburg Management – Quarterly Management Fees	4,217.81
MDT - Quarterly Management Fees	6,524.65
GRS – Actuaries Fees	8,080.00
Sugarman & Susskind – Legal Fees	13,116.45
Steven Gordon – Auditors Fees	875.00
Perry and Jensen – Legal Fees	2,968.53
Salem Trust – Custodial Fees	6,959.23
	<u>\$102,432.04</u>

Motion carried unanimously.

The next regularly scheduled quarterly Board meeting will be held on February 17, 2011 at 3:00 p.m. Meeting was adjourned at 5:05 p.m.

Martin Lebowitz, Pension Administrator

EXHIBIT I
SUGARMAN & SUSSKIND

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Robert A. Sugarman♦
Howard S. Susskind
Kenneth R. Harrison, Sr.
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♦Board Certified Labor
& Employment Lawyer

August 9, 2010

Board of Trustees
North Miami Beach Police Officers' & Firefighters' Retirement Plan
c/o Marty Lebowitz, Pension Coordinator
17011 N.E. 19th Avenue
N. Miami Beach, Florida 33162-3194

Board of Trustees
North Miami Beach General Employees Retirement Plan
c/o Marty Lebowitz, Pension Coordinator
17011 N.E. 19th Avenue
N. Miami Beach, Florida 33162-3194

Re: IRS Determination Request

Dear Trustees:

You will recall that in early 2008, the Internal Revenue Service turned its attention to state and local governmental pension plans and opened a dialogue with the governmental pension plan community regarding the filing of applications for a Favorable Determination Letter from the IRS. One result of that dialogue was to permit governmental plans to defer the filing of an application until Cycle E, which will run from February 1, 2010 to January 31, 2011.

We write to recommend that you apply for a Favorable Determination Letter during Cycle E.

During the recent conference of the National Association of Public Pension Attorneys, the IRS stated unambiguously its intention to begin to turn its attention to the compliance of public pension funds with the requirements of the Internal Revenue Code. The Service also stated clearly that funds that apply for a determination letter during the current cycle will be treated more leniently than funds that delay filing or that are selected for audit. We therefore recommend that the fund apply during the current cycle for a favorable determination letter.

A Favorable Determination Letter is a letter from the IRS stating that the provisions of the plan, as set forth in the plan document, satisfy the requirements of Section 401(a) of the

In re: IRS Determination Letter

August 9, 2010

Page 2

Internal Revenue Code. A plan that satisfies the requirements of Section 401(a) is deemed to be a "qualified plan," and is entitled to favorable tax treatment. Specifically, the employees are not taxed on the value of contributions paid on their behalf until they begin to receive benefits under the plan; and the income of the fund, including investment earnings, is not subject to taxation.

The importance of a Favorable Determination Letter in the administration of the plan cannot be overstated. First, it assures the trustees that the plan meets the requirements for favorable tax treatment. Second, the board of trustees may rely upon the Favorable Determination Letter in the event of a subsequent audit of the plan by the IRS.

In Revenue Procedure 2005-66, the IRS established a system of 5-year application cycles for Favorable Determination Letters. Under the new system, employee benefit plans are encouraged to apply once every five years for a Favorable Determination Letter. An initial application period is designated for each type of employee benefit plan. For governmental plans, the initial application period began on February 1, 2008 and ran until January 31, 2009. Pursuant to the extension that was granted in 2008, governmental plans were permitted to defer filing until Cycle E, from February 1, 2010 to January 31, 2011. That means that this plan should apply prior to January 31, 2011 for a Favorable Determination Letter, which would remain valid for three years, until the end of the next application period, January 31, 2014. For all subsequent years, the plan would revert to Cycle C, and subsequent Favorable Determination Letters would have a validity of five years.

Although a plan may apply for a Favorable Determination Letter outside of its designated five-year cycle, we advise the board of trustees to file its application in accordance with the designated cycle for the plan. First, as stated above, the IRS has indicated that plans that file during the cycle will be treated leniently. Also, with respect to the current application period, its ending date, January 31, 2011, is also the deadline for governmental plans to make any remedial plan amendments required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Generally, therefore, in the case of an application submitted prior to that date, if the IRS determined that certain amendments were required in order to bring the plan into compliance with EGTRRA, the trustees would be permitted to make the necessary amendments without any penalties being levied against the plan. In the case of an application submitted after January 31, 2011, penalties may apply to each provision, or lack thereof, of the Plan that does not comply with the requirements of EGTRRA.

The preparation of an application for a favorable Determination Letter is a multi-step process. We must first obtain copies of all plan documents and amendments that have been adopted by the board of trustees since the issuance of the plan's most recent Favorable Determination Letter. We then prepare the application form 5300, which is submitted to the IRS along with all required supporting documentation, including plan documents and amendments, and copies of past Favorable Determination Letters. Simultaneously, notice of the submission of the application must be sent to all interested parties (employer, labor organizations, etc.). During

In re: IRS Determination Letter

August 9, 2010

Page 3

the pendency of the application, we correspond closely with the IRS in order to draft any amendments to the plan that the Service deems necessary to the plan's qualification. We obtain the Service's approval of any proposed amendments, prior to submitting them to the trustees for action. Finally, once a Favorable Determination Letter has been issued, we instruct the trustees of the proper procedures for maintaining the Letter in the plan's records. We estimate that a total of approximately 35 hours will be necessary to complete the entire application process (compared to the IRS' estimation of approximately 63 hours as reported on Form 5300).

Our fee for the preparation of your application as set forth above is \$8,500.00 if just one fund applies; should both funds apply a discounted fee of \$7,500.00 for each fund would be charged (for a total of \$15,000). In addition, an application fee of \$1000.00 **per fund** is payable directly to the Internal Revenue Service. In light of the significant amount of time required to prepare the application for submission to the IRS, and of the likely need of on-going correspondence and cooperation between our offices and the IRS during the pendency of the application, we recommend that the trustees authorize our offices to take all steps necessary to the processing of the application. Any issue, however, relating to the eventual imposition of penalties, fines, or the on-going qualification of the plan, would be brought to the trustees for resolution.

I look forward to discussing this matter with you upon the occasion of your next meeting.

Yours truly,



ROBERT A. SUGARMAN

Board Certified Labor & Employment Lawyer

RAS/jd

EXHIBIT II

ORDINANCE NO. 200____

AN ORDINANCE AMENDING THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING ARTICLE II, DEFINITIONS, ARTICLE VI, RETIREMENT BENEFITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, recent changes to federal laws and regulations require that various amendments be made to the Plan in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, the City Council has received an actuarial impact statement from the Plan's actuary relating to the amendments set forth herein;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida:

Section 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Article II, Definitions, of the Retirement Plan for General Employees of the City of North Miami Beach is hereby amended by adding the following underlined language and deleting the stricken language:

...

Basic Compensation means base pay to be interpreted as the compensation actually paid to a participant by the City, exclusive of commissions, bonuses, overtime pay, expense allowances and all other extraordinary compensation. For the purposes of applying the limitations under Sections 415 and 401(a)(17) of the Internal Revenue Code, Basic Compensation shall include any elective deferral (as defined in Code

Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Subsection 6.08(a) hereof, Basic Compensation shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.

...

Section 3. The heading of Section 6.05, Limitations of Benefits, shall be amended to read LIMITATION OF BENEFITS UNDER STATE LAW as follows:

S.6.05 LIMITATIONS OF BENEFITS UNDER STATE LAW.

Section 4. Section 6.08, Temporary Limitations on Benefits Required by the Internal Revenue Service, of the Retirement Plan for General Employees of the City of North Miami Beach is hereby deleted in its entirety and amended to read as follows:

~~S.6.08 TEMPORARY LIMITATIONS ON BENEFITS REQUIRED BY THE INTERNAL REVENUE SERVICE~~ COMPLIANCE WITH INTERNAL REVENUE CODE.

~~The term "employee" as used in this Section 6.08 shall include all employees who are participants in the Plan on the applicable effective date as hereinafter described and all employees who may later become participants in the Plan.~~

~~Notwithstanding any provision of any other section of the Plan to the contrary, the retirement income or retirement benefit in any form attributable to the City's contributions for any participant within the applicable group of the 25 highest-paid employees, as hereinafter described, shall not exceed an amount which is equal in value to (or which is actuarially equivalent to) the amount specified below with respect to the period for which the limitations described herein shall be applicable.~~

~~(A) With respect to any employee who is in the group of the 25 highest-paid employees of the City, determined as of July 1, 1957, who is a participant under the plan and whose monthly retirement income under the plan will exceed \$125, and who is not in the group of the 25 highest-paid employees determined as of October 1, 1965 (to whom the provisions of Section 6.08(B) below shall be applicable), the benefits in any form attributable to City contributions, which any participant to whom this Section 6.08(A) is applicable may receive prior to July 1, 1967, shall not exceed an~~

amount which is equal in value (or which is actuarially equivalent to) the larger of the following amounts:

(1) — \$20,000 and

(2) An amount computed by multiplying the number of years elapsed since July 1, 1957, for which the full current costs have been met, by the smaller of the following amounts:

(a) — \$10,000; and

(b) — An amount equal to 20% of the participant's average regular annual compensation received from the City for the five years immediately preceding the date of such determination, or for a participant whose service has terminated, who has retired prior to his normal retirement date or who has attained his normal retirement age whether or not he has retired under the plan, the date of termination of service, the date of retirement or the normal retirement date, respectively.

Provided, however, if the full current costs have not been met as of July 1, 1967, the above restrictions will continue to apply until the full current costs have been funded for the first time.

(B) — With respect to any employee who is in the group of the 25 highest paid employees of the City, determined as of October 1, 1965, and whose monthly retirement income under the plan will exceed \$125, the benefits in any form attributable to City contributions which any participant to whom this Section 6.08(B) is applicable may receive prior to October 1, 1975 shall not exceed an amount which is equal in value (or which is actuarially equivalent to) the largest of the following amounts:

(1) — The amount attributable to City contributions which would have been applied to provide the benefits for such participant if the plan, as in effect on September 30, 1965, had been continued without change;

(2) — \$20,000; and

(3) — The sum of:

(a) — The amount attributable to City contributions which would have been applied to provide benefits accrued to the participant under the plan on September 30, 1965; and

~~(b) — An amount computed by multiplying the number of years elapsed since October 1, 1965 for which the full current costs of the plan have been met by the smaller of the following amounts:~~

~~(i) — \$10,000; and~~

~~(ii) — An amount equal to 20% of the participant's average regular annual compensation received from the City for the five years immediately preceding the date of such determination, or for a participant whose service has terminated, who has retired prior to his normal retirement date or who has attained his normal retirement age whether or not he has retired under the plan, the date of termination of service, the date of retirement or the normal retirement date, respectively.~~

~~Provided, however, if the full current costs have not been met as of October 1, 1975, the above limitations will continue to apply until the full current costs have been funded for the first time.~~

~~The foregoing conditions will not restrict the payment of the full benefits to a beneficiary after the death of a participant whose benefits are subject to the provisions of this Section 6.08 if, at the time of such death, the Plan is in full effect and the full current costs thereof have been met.~~

~~The provisions of this Section 6.08 will not apply to the retirement income payable in the normal form, or under Option 1, Option 2 or any other optional form which does not provide a larger monthly income to any participant retiring or receiving benefits during any period in which the Plan is in full effect and the full current costs have been met.~~

~~The limitations will not apply to the payment of any survivorship income with respect to any deceased participant or retired participant who dies prior to the termination of the Plan and while the full current costs thereof have been met.~~

~~In the event of the termination of the Plan prior to the end of the 10-year period that next follows the effective date of the Plan, that portion of the assets of the trust fund arising from contributions made by the City with respect to those participants to whom the provisions of this Section 6.08 are applicable which is in excess of the foregoing limitations will be apportioned to the other participants, including retired participants, in accordance with the provisions contained in Section 8.06 hereof.~~

~~(C) Application of Code Section 415 Limitations~~

~~Defined contribution plan limits of IRC Section 415(c) and regulations thereunder, and combined plan limits of IRC Section 415(e) and regulations thereunder, are hereby incorporated by reference to the extent that such provisions may apply to this plan.~~

~~If, as a result of this allocation of forfeitures, a reasonable error in estimating a member's compensation or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the annual additions under this plan would cause the maximum annual additions to be exceeded for any member, the administrator shall (1) return any employee contributions credited for the "limitation year" to the extent that the return would reduce the excess amount in the member's accounts; (2) hold any "excess amount" remaining after the return of any employee contributions in a "Section 415 suspense account"; (3) use the "Section 415 suspense account" in the next limitation year (and succeeding limitation years if necessary) to reduce employer contributions for that member if that member is covered by the plan as of the end of the limitation year; or (4) reduce employer contributions to the plan for such limitation year by the amount of the "Section 415 suspense account" allocated and reallocated during such "limitation year". For purposes of this section, "excess amount" for any member for a limitation year shall mean the excess, if any, of (1) the annual additions which would be credited to his account under the terms of the plan without regard to the limitations of IRC Section 415 or (2) the maximum annual additions determined pursuant to the previous paragraph.~~

~~For purposes of this section, "Section 415 suspense account" shall mean an unallocated account equal to the sum of "excess amounts" for all members in the plan during the limitation year. The "Section 415 suspense account" shall not share in any earnings or losses of the fund.~~

~~The foregoing shall not apply if Section 415 of the Internal Revenue Code is made inapplicable to this Plan either by statute or regulation.~~

~~(a) Maximum Pension.~~

~~Notwithstanding any provision of this Plan to the contrary, the Annual Pension that is accrued by or paid to a Member shall not exceed the Dollar Limitation set forth below. If the benefit the Member would otherwise accrue in a Limitation Year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited to a benefit that does not exceed the Dollar Limitation.~~

~~(1) Definitions Used in this Section~~

(A) “Annual Pension” means the benefits received by a Member under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the Dollar Limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit payable to the Member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Section, and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection 6.08(a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(B) “Dollar Limitation” means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the Member when benefits begin, as follows:

(i) Except with respect to a Member who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I)

of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the Dollar Limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the Member's age based on completed calendar months as of the annuity starting date); and

(II) the Dollar Limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(ii) For benefits beginning after the age of 65, the age-adjusted Dollar Limitation is equal to the lesser of:

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the Member's age based on

completed calendar months as of the annuity starting date); and

(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical Member who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the Member receiving the distribution (determined disregarding the Member's accruals after age 65 and without applying the rules of section 415).

(iii) There shall be no age adjustment of the Dollar Limitation with respect to benefits beginning between the ages of 62 and 65.

(2) The limitations set forth in this Subsection 6.08(a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the City.

(3) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.

(4) In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (1)(B) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.

(5) Any portion of a Member's benefit that is attributable to mandatory employee contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any Member participate in more than one defined benefit plan maintained by the City, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Member's benefit under this Plan shall be reduced so that the Member's combined benefits will equal the Dollar Limitation.

(7) For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the Annual Pension under Paragraph (a)(1) of this Subsection 6.08(a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection 6.08(a) of the Plan and the provisions of Section 415 of the Code and regulations

thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection 6.08(a) shall be used to decrease future employer contributions.

(b) Required Beginning Date:

Notwithstanding any other provision of the Plan, payment of a Member's retirement benefits under the Plan shall commence not later than the Member's Required Beginning Date, which is defined as the later of:

-April 1 of the calendar year that next follows the calendar year in which the Member attains or will attain the age of 70½ years; or

-April 1 of the calendar year that next follows the calendar year in which the Member retires.

(c) Required Minimum Distributions.

(1) Required Beginning Date. The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's Required Beginning Date as defined in Subsection (b) of this Section 6.08.

(2) Death of Member Before Distributions Begin.

(A) If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.

(ii) If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(B) The Member's entire interest shall be distributed as follows:

(i) Member Survived by Designated Beneficiary. If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(A) above, over the life of the designated beneficiary or over a period certain not exceeding:

(I) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No Designated Beneficiary. If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the Member dies before the date distribution of his or her

interest begins, (ii) the Member's surviving spouse is the Member's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(A) and 2(B) above shall apply as though the surviving spouse were the Member.

(3) Requirements For Annuity Distributions That Commence During Member's Lifetime.

(A) Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse. If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspousal beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(B) Period Certain Annuities. Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this Subparagraph (3)(B), or the joint life and last survivor

expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Form of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(A), (4)(B) and (4)(C) below. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(A) General Annuity Requirements. If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (c);

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be non-increasing or increase only as follows:

(I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based

on prices of all items and issued by the Bureau of Labor Statistics;

(II) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(III) to provide cash refunds of employee contributions upon the Member's death; or

(IV) to pay increased benefits that result from a Plan amendment.

(B) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date.

(C) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this Subsection (c), distributions are considered to begin on the Member's Required Beginning Date. If annuity payments irrevocably commence to the Member (or to the Member's Surviving Spouse) before the Member's Required

Beginning Date (or, if to the Member's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

(A) Designated beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(B) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

(C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life

Beginning Date (or, if to the Member's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

(A) Designated beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(B) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

(C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life

expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution that is a hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code; and

(iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(4) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(5) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.

(f) Compensation Limitations Under 401(a)(17):

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each Member taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

Section 5. Section 6.11, Election for Direct Rollover of Eligible Distributions

Required by Internal Revenue Service, of the Retirement Plan for General Employees

of the City of North Miami Beach is hereby repealed in its entirety and reserved for future use. All references to Section 6.11 shall be amended to refer to Section 6.08.

S. 6.11 ~~ELECTION FOR DIRECT ROLLOVER OF ELIGIBLE DISTRIBUTIONS REQUIRED BY INTERNAL REVENUE SERVICE~~Reserved.

~~(A) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~

~~(B) Definitions~~

~~(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.~~

~~(2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

~~(3) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse.~~

~~(4) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.~~

Section 6. Conforming Amendments.

Subsection (e) of Section 3.05 is hereby amended by striking "6.11" and inserting "6.08".

Section 7. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. If any section, subsection, clause or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 9. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

Section 10. This Ordinance shall take effect upon adoption.

PASSED, FIRST READING, this _____ day of _____,
2010.

PASSED, SECOND READING, this ____ day of _____,
2010.

MAYOR

ATTEST:

City Clerk

I HEREBY CERTIFY that I have approved this
ORDINANCE as to form.

City Attorney

EXHIBIT III

Retirement Plan for General Employees of the City of North Miami Beach

FORFEITURE OF BENEFITS

RULES AND REGULATIONS

WHEREAS, the Code of Ordinances for the City of North Miami Beach, Florida, in Section 5.04 authorizes the Retirement System's Board of Trustees to establish rules and regulations for the administration of the Retirement System, and

WHEREAS, Section 112.3173(5)(a), Florida Statutes, requires the Board of Trustees to give notice and hold a hearing upon receiving notice or otherwise having reason to believe that the benefits payable or being paid to a member of the Retirement System are subject to forfeiture, and

WHEREAS, the Board of Trustees wishes to prescribe the procedures for notice and hearing;

NOW, THEREFORE, the following Rules and Regulations are adopted, effective immediately.

Section 1. *Definition of Member.*

For purposes of these Rules and Regulations, "Member" is defined as a current or former member of the Retirement System, a retiree, or a pension recipient.

Section 2. *Grounds for forfeiture:*

Any member of this retirement system (or anyone receiving a pension benefit on account of the death of such a member) who is convicted of a specified offense, as that term is defined in Florida Statute §112.3173(2), committed prior to retirement or whose employment is terminated by reason of the employee's admitted commission, aid or abatement of an offense so specified,

shall forfeit all rights and benefits under this retirement system. If forfeiture is ordered, the member or survivor recipient shall be entitled to the return of the employee's accumulated contributions without interest as of the date of termination.

Section 3. *Forfeiture determination:*

A. Whenever the Board of Trustees receives notice that a member of this retirement system has been convicted of an offense specified hereunder or otherwise has reason to believe that the rights and privileges of any eligible employee are subject to forfeiture, the board shall forward the particulars to the Board's attorney or special counsel, who shall investigate the matter and opine to the Board whether a notice of proposed forfeiture should issue. After considering the opinion of the attorney, the Board shall determine whether to initiate forfeiture proceedings. If the Board votes to initiate forfeiture proceedings, it shall do so by issuing a Notice of Proposed Agency Action.

 If the Board gives such notice and holds a hearing, then such hearing shall be conducted in accordance with the Uniform Rules of Procedure, Chapter 28-106, Florida Administrative Code, for the purpose of determining whether such rights and privileges are to be forfeited. If the Board of Trustees determines that such rights and privileges are to be forfeited, the board shall order such rights and privileges forfeited.

B. When a member has filed a Retirement Application and information has been brought to the Board's attention that the member has been either charged with or convicted of a specified offense or the member's employment has been terminated due to admission of a specified offense, the board shall forward the particulars to the Board's attorney or special counsel, who shall investigate the matter and opine to the Board whether a notice of proposed forfeiture should issue or, if the criminal charges are pending, whether a conviction would

warrant forfeiture. After considering the opinion of the attorney, the Board shall determine whether to initiate forfeiture proceedings or defer consideration of forfeiture proceedings until the criminal case, any appeals, and any appeals to the employment termination are resolved. Consideration of the Retirement Application shall be stayed pending the conclusion of the criminal case, any appeals, and any appeals to the employment termination.

If the member is not convicted of a specified offense or the conviction or termination is overturned on appeal, the Board shall act on the retirement application of the member. If the conviction or employment termination is upheld or not appealed, the Board shall initiate forfeiture proceedings. Forfeiture proceedings shall be in accordance with section 2.A, above.

C. If a member is receiving benefits and the trustees vote to initiate forfeiture proceedings, the payments of any benefits over and above the employee's contributions shall be suspended, pending the outcome of the criminal case, criminal appeal, any employment termination appeal, and any subsequent forfeiture proceedings. Should the benefit not be forfeited, the retired member will be paid all sums suspended and normal monthly benefits will recommence. A member shall be given advance notice of all proposed suspensions of benefits under this rule as well as notice of the date, time and place of the Board of Trustees' meeting at which the suspension will be considered.

D. The payment of any retirement benefits ordered forfeited, except payments of employee contributions, shall be stayed pending an appeal of a felony conviction, or any appeal, grievance, or arbitration of an employment termination. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction or termination is affirmed, retirement benefits shall be forfeited as ordered in this subsection.

E. If any member's rights and privileges under this retirement system are forfeited pursuant to this subsection and that member or anyone receiving a pension benefit on account of the death of a member has received benefits from the system in excess of the employee's accumulated contributions, such member or survivor recipient shall pay back to the system the amount of the benefits received in excess of the accumulated contributions. If the member or survivor recipient fails to pay back such amount, the Board of Trustees may bring an action in circuit court to recover such amount, plus court costs.

ADOPTED on this _____ day of August, 2010.

SECRETARY

CHAIRPERSON