

SUPERINTENDENT'S EMPLOYMENT AGREEMENT

This AGREEMENT made and entered into as of the 23rd day of December, 2009 (hereinafter referred to as the "Effective Date"), by and between SIOUX FALLS SCHOOL DISTRICT 49-5 OF MINNEHAHA COUNTY, SOUTH DAKOTA (hereinafter referred to as the "District") and DR. PAMELA HOMAN, (hereinafter referred to as the "Superintendent");

WITNESSETH:

WHEREAS, the District, by Action No. 35577.G4_of its School Board found in the minutes of the meeting held on December 23, 2009, employed Dr. Pamela Homan, as Superintendent of Schools for the term and upon the conditions set forth herein; and

WHEREAS, both parties agree that said Superintendent shall perform the duties of Superintendent of Schools in and for the public schools in the District as prescribed by the laws and regulations of the State of South Dakota, and by the rules and regulations made thereunder by the School Board of the District; and

WHEREAS, both parties desire to enter into this Agreement to set forth the terms and conditions of the Superintendent's employment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. TERM OF EMPLOYMENT.

The District hereby employs the Superintendent and the Superintendent hereby accepts such employment to undertake to fulfill the duties and obligations of Superintendent of Schools of the Sioux Falls School District 49-5 of Minnehaha County, South Dakota, for a term of five (5) years commencing July 1, 2010, and ending June 30, 2015.

It is the intent of both parties to renegotiate this Agreement no less than seven (7) months prior to the end of the Agreement.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF SUPERINTENDENT.

A. CERTIFICATION. The Superintendent shall furnish throughout the term of her employment as Superintendent a valid and appropriate certificate to act as prescribed by the laws and regulations of the State of South Dakota.

B. DUTIES. The Superintendent shall have charge of the administration of the schools of the District. She shall be the chief executive officer of the District; shall direct and assign teachers and other employees of the schools under her supervision; shall

organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, and shall have the authority to assign and transfer personnel and assign work stations and offices in any manner or fashion which in her professional judgment best serves the interests of the Sioux Falls Public Schools; shall select all personnel subject to the approval of the District's School Board; shall from time to time suggest regulations, rules, and procedures deemed necessary for the well ordering of the school system and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by law or by the District from time to time. The Superintendent shall be entitled to attend all of the District's School Board or committee meetings, including executive sessions where no conflict of interest exists, and shall serve as an ex-officio member of such Board or committees and shall be entitled to submit administrative recommendations on each item of business considered by any such Board or committee. The District agrees that its School Board and members, individually and collectively, promptly shall refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation and shall refrain from individual interference with the administration of school policies except through Board action. This is an agreement for the performance of professional services as superintendent by the Superintendent, who shall not be assigned to any other position or have her duties reassigned to others without her consent.

3. COMPENSATION.

The salary of the Superintendent shall be based on an annual salary of One Hundred Eighty One and no /100 Dollars (\$181,000.00) (the "Salary") and shall be paid in equal installments in accordance and at intervals consistent with the District's payroll practices for professional employees.

Beginning July 1, 2011 the Superintendent's Salary shall be increased annually by the percentage salary increase given to the teaching staff of the District.

At no time shall the Salary of the Superintendent be decreased during the term of this Agreement without the consent of the Superintendent.

4. VACATION AND OTHER BENEFITS.

A. The Superintendent shall receive twenty (20) working days of vacation, annually, exclusive of legal holidays. Not less than fifteen (15) of such days must be utilized during each year during the term of this Agreement. Up to, but not in excess of five (5) unused vacation days per year shall be paid to the Superintendent on a pro rata basis (1/227) based on her salary hereunder or, at the Superintendent's option, may be accumulated and carried forward to successive years, with the maximum number of days permitted to be accumulated and carried forward being forty-five (45). It is agreed that, for purposes of this section, a year shall be deemed to commence on July 1 following the execution of this Agreement. It is further agreed that, in the event the Superintendent does not utilize at least fifteen (15) days of the vacation leave granted hereby during any year, all days not utilized in excess of fifteen (15) days for that year shall be forfeited.

Unused vacation days accumulated prior to July 1, 2010, shall be carried forward to successive years.

The Superintendent shall be entitled to sick leave in accordance with the policies of District in effect during the term of this Agreement, such sick leave to be not less than fifteen (15) work days per year.

Upon the termination of this Agreement, Superintendent shall be paid for any accrued and unused vacation leave which has not been forfeited on a pro rata basis (1/227) based on the Superintendent's salary for the final year of this Agreement.

B. The District shall pay the same part of the cost of the life, dental and health insurance coverage of the Superintendent as is paid for all other District administrators, provided that the Superintendent chooses a life, dental and/or health insurance plan available to all other professional employees of the District, and the District shall pay all costs for the Superintendent's public employee retirement benefits. In addition, the Superintendent shall receive the greater of each of the retirement benefits, employee benefits and personal benefits provided under this Agreement or each of the retirement benefits, employee benefits and personal benefits provided in the Sioux Falls School Administrators' Association Working Agreement ("Working Agreement") as of the Effective Date this Agreement.

C. The District, at the request of the Superintendent and in accordance with state law, shall withhold and transfer an amount of salary annually or semiannually or monthly, said amount to be determined by the Superintendent, from the Superintendent's annual salary into any tax-favored annuity or retirement program chosen by the Superintendent pursuant to the State of South Dakota 457(b) Plan or the District 403(b) Plan, provided the issuer is an authorized vendor under the terms of the District 403(b) Plan.

D. The District shall pay the Superintendent's membership charges for membership in such professional and civic organizations as the parties shall agree are necessary to maintain and improve her professional skills and community relations.

E. Deferred Compensation: The District shall contribute on the Superintendent's behalf to the Nonqualified Deferred Compensation Agreement dated June 15, 2004 (the "First Agreement") and the Second Nonqualified Deferred Compensation Agreement dated December 23, 2009 (the "Second Agreement") "in accordance with the terms of such Agreements. The First Agreement, incorporated herein by reference, is a continuation of the Nonqualified Deferred Compensation Agreement created by Exhibit A to the Superintendent's previous Agreement with the District. The Second Agreement, also incorporated herein by reference, is the Second Agreement created by Exhibit B to this Agreement.

The Deferred Compensation Plan shall at all times meet the applicable sections of Sections 457(f) and 409A of the Code.

5. PROFESSIONAL GROWTH OF THE SUPERINTENDENT.

The District expects the Superintendent to continue her professional development and expects her to participate in relevant learning experiences. The Superintendent may participate in educational training programs or curricula and shall attend appropriate professional meetings at the local, state, and national levels. The expenses of said attendance will be paid by the District. The President of the Board shall authorize payment to the Superintendent for reimbursement of expenses of the Superintendent while conducting school business as submitted to the Finance Office in accordance with Finance Office practices and procedures.

6. EXPENSES.

The District shall reimburse the Superintendent for reasonable expenses incurred by the Superintendent on behalf of the District, including entertainment expenses. The District recognizes that the Superintendent shall incur such expenses from time to time as the District's representative in the pursuit of educational excellence, private financing, grants, and for other reasons. The Superintendent shall file itemized expense statements with the Business Manager of the District for reimbursement of these expenses. The President of the Board shall authorize payment to the Superintendent for reimbursement of expenses of the Superintendent while conducting school business as submitted to the Finance Office in accordance with Finance Office practices and procedures. Reimbursement for entertainment expenses shall not exceed Five Thousand Two Hundred Dollars (\$5,200.00) for any period of July 1 through June 30 during the term of this Agreement, without the prior authorization of the District. This reimbursement may be increased for the remainder of any year with the authorization of the Board.

7. TRANSPORTATION.

During the term hereof, the District shall make available to the Superintendent an automobile mutually agreeable to the parties. The use of said automobile shall be restricted to use reasonably related to the performance of the duties of the Superintendent as set forth in this Agreement and in accord with laws and regulations of the State of South Dakota, except that the Superintendent shall be allowed to use the automobile for commuting to and from her work and for her local personal use. The District will bear the expense of licensing, maintaining, providing fuel for and insuring said vehicle with appropriate insurance, including liability insurance for such use. The Superintendent shall be responsible for the payment of any applicable income taxes on her personal use of the automobile.

8. PROFESSIONAL LIABILITY.

The District agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in her individual capacity, or in her official capacity

as agent and employee of the District, provided the incident giving rise to any such demand, claim, suit, action, or legal proceeding arose while the Superintendent was acting within the scope of her employment and the Superintendent acted in good faith and in a manner which the Superintendent believed to be in, or at least not opposed to, the best interests of the District and, with respect to any criminal action or proceeding, had no reasonable cause to believe her conduct was unlawful; and provided further, that such liability coverage is within the authority of the District to provide under state law. The District shall provide indemnity from liability as set forth above regardless if the Superintendent is employed by the District when the demand, claim, suit, action or proceeding is made or commenced. The maximum aggregate indemnification amount for which the District shall be liable under this paragraph 8 in regard to any demands, claims, suits, actions or legal proceedings shall be the greater of Three Million Dollars (\$3,000,000) or the maximum indemnification provided to District School Board members, less the aggregate amount of any payments made in regard to the demands, claims, suits, actions or legal proceedings under any insurance policy. In no case will individual District School Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

9. DISABILITY.

Should the Superintendent be unable to substantially perform the duties required by this Agreement by reason of illness, accident, or other cause beyond her control she shall be covered by the existing sick leave, workers' compensation, or disability plan of the District, insofar as may be applicable; and should this inability to perform her duties exist for more than one hundred eighty (180) days beyond that period of time for which the Superintendent would have been entitled to take sick leave or vacation or both, or if such condition is permanent irreparable, or of such nature as will make the performance of the Superintendent's duties impossible, the District may, at its option, terminate this agreement.

10. PERFORMANCE EVALUATION.

The District shall provide the Superintendent with periodic opportunities to discuss the Superintendent-School Board relationship. A formal evaluation shall occur annually and if not completed by June, shall be completed during the month of June. As part of that evaluation the Board shall review and consider any increases in the Superintendent's salary in addition to the annual percentage increase set forth in Paragraph 3.

11. OUTSIDE EMPLOYMENT.

The Superintendent shall not accept any outside employment that in any manner interferes with the performance of her duties and responsibilities as Superintendent. However, the Board recognizes that certain outside employment may have a beneficial impact on the Superintendent's professional growth and may be such that it would not

interfere with the Superintendent's performance of her duties and responsibilities. Thus, the Board grants to the Superintendent during the Agreement term, without her having to take vacation or other leave time, the opportunity to accept private consulting engagements that do not interfere with the Superintendent's performance of her duties under this agreement. The Superintendent shall receive approval from the School Board President for any such activities in excess of ten (10) business days per year of this Agreement.

12. RESIDENCY. Superintendent agrees to reside in the State of South Dakota throughout the term of this Agreement. Failure of Superintendent to do so shall be grounds for termination of this Agreement by the District.

13. TERMINATION.

Throughout the term of the Agreement the Superintendent shall be subject to discharge for the causes provided by South Dakota Codified Laws Ann. 13-43-6.1 (1996), provided however, that the District does not arbitrarily or capriciously call for her dismissal and that the Superintendent shall have the right to written grounds for her discharge, a fair hearing before the School Board of the District, and at least ten (10) days' written notice of said charges and hearing. At any such hearing before the School Board, the Superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any testimony relevant to the grounds identified by the Board for her discharge. A transcript of the record of the proceedings before the School Board shall be made available without charge to the Superintendent. If the Superintendent chooses to be accompanied by legal counsel at the hearing before the School Board, she will assume the cost of her legal expenses.

14. AMENDMENT.

This Agreement may be amended during its term by the mutual written consent of the District and the Superintendent. Any such amendment shall be in writing and approved by official action of the School Board of the District and accepted in writing by the President of the School Board and Business Manager of the District, and the Superintendent.

15. PARTIAL INVALIDITY.

The invalidity of one or more phrases, sentences, clauses, sections, or paragraphs contained in this agreement shall not affect the remaining portions, so long as the material purposes of this agreement can be determined and effectuated.

16. LAW.

This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of South Dakota.

17. ENTIRE AGREEMENT.

The parties hereto agree that this instrument contains the entire agreement between them as of this date, and that it has not been induced by either party or by any representations, promises, or undertakings not expressed herein; and that there are no collateral agreements, stipulations, promises, or understandings whatsoever by the respective parties in any way affecting the subject matter of this Agreement which are not expressly contained in this instrument

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

SIOUX FALLS SCHOOL DISTRICT 49-5
OF MINNEHAHA COUNTY,
SOUTH DAKOTA

By: 

School Board President

By: 

Business Manager

SUPERINTENDENT


Dr. Pamela Homan

FIRST AMENDMENT TO NONQUALIFIED DEFERRED COMPENSATION AGREEMENT

THIS FIRST AMENDMENT TO NONQUALIFIED DEFERRED COMPENSATION AGREEMENT, made and entered into this 23rd day of December, 2009, between the SIOUX FALLS SCHOOL DISTRICT 49-5 of Minnehaha County, South Dakota (the "District") and DR. PAMELA HOMAN (the "Superintendent"):

WHEREAS, District and Superintendent entered into Superintendent's Employment Agreement of even date herewith whereby the District agreed to employ Superintendent as superintendent of schools in and for the public schools of the District for a five (5) year term; and

WHEREAS, District and Superintendent entered into a Nonqualified Deferred Compensation Agreement dated the 15th day of November, 2004 (the "First Agreement"); and

WHEREAS the parties entered into a Second Nonqualified Deferred Compensation Agreement ("Second Agreement") of even date herewith; and

WHEREAS, the First Agreement provided that the definition of compensation did not include any amount paid under the First Agreement; and

WHEREAS, the parties hereto desire to amend the First Agreement to provide that it shall also not include any amounts paid under the Second Agreement;

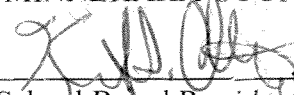
NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

Section 2(f) of the First Agreement shall be amended as follows:

- (f) "Compensation" shall mean Superintendent's W-2 wages for federal income tax withholding purposes but shall not include any amount paid Superintendent pursuant to the First Agreement or Second Agreement. Compensation shall include elective contributions excludable from Superintendent's gross income under Code §§125, 403(b) or 457(b), and contributed by the District, at the Superintendent's election, to a cafeteria plan (Code §125 plan), a tax sheltered annuity (Code 403(b)), or a Code §457(b) eligible deferred compensation plan.

IN WITNESS WHEREOF, District and Superintendent have caused this Agreement to be duly executed on the day and year first above written.

SIOUX FALLS SCHOOL DISTRICT 49-5
OF MINNEHAHA COUNTY, SOUTH DAKOTA

By  _____
School Board President

By  _____
Business Manager

SUPERINTENDENT

 _____
Dr. Pamela Homan

EXHIBIT B

SECOND NONQUALIFIED DEFERRED COMPENSATION AGREEMENT

THIS AGREEMENT, made and entered into this 23rd day of December, 2009, between the SIOUX FALLS SCHOOL DISTRICT 49-5 of Minnehaha County, South Dakota (the "District") and DR. PAMELA HOMAN (the "Superintendent"):

WHEREAS, District and Superintendent entered into Superintendent's Employment Agreement of even date herewith whereby the District agreed to employ Superintendent as the Superintendent of Schools in and for the public schools of the District for a five (5) year term; and

WHEREAS, Section 4E of the Superintendent's Employment Agreement incorporates this Second Nonqualified Deferred Compensation Agreement by reference; and

WHEREAS, the term of the Superintendent's Employment Agreement expires on June 30, 2015;

WHEREAS, both parties desire to enter into this Second Nonqualified Deferred Compensation Agreement ("Second Agreement") to supplement the terms and conditions of Superintendent's Employment Agreement;

WHEREAS, District and Superintendent entered into a Nonqualified Deferred Compensation Agreement dated the 15th day of November, 2004 (the "First Agreement"), which First Agreement expires on June 30, 2014;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

ARTICLE 1. TERM OF AGREEMENT

District has agreed to employ Superintendent for five (5) years in accordance with Superintendent's Employment Agreement of even date herewith. This Second Agreement is intended to supplement the terms of Superintendent's Employment Agreement. This Second Agreement shall not be construed to alter the terms of Superintendent's Employment Agreement, the First Agreement or extend the term of such Agreements. The term of this Second Agreement shall be five (5) years, commencing on July 1, 2010 and terminating on June 30, 2015, unless sooner terminated as provided herein.

ARTICLE 2. DEFINITIONS

Section 2.1. Definitions. Whenever used in this Second Agreement, the following words and phrases shall have the meanings set forth below unless the context plainly requires a different meaning. When the defined meaning is intended, the term is capitalized.

- (a) “Accrued Balance” means the amount of Superintendent’s deferred compensation that is credited to Book Account No. 2 (as adjusted for earnings, losses, distributions, allocable expenses, and changes in value) as provided in Sections 5.1 and 5.2.
- (b) “Board” means the School Board of the District.
- (c) “Book Account No. 2” means the deferred compensation account, which account shall be established under Section 5.2 on the books of the District.
- (d) “Cause” shall mean termination of Superintendent’s employment in accordance with Section 13 of Superintendent’s Employment Agreement.
- (e) “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- (f) “Compensation” shall mean Superintendent’s W-2 wages for federal income tax withholding purposes but shall not include any amount paid Superintendent pursuant to the First Agreement or this Second Agreement. Compensation shall include elective contributions excludable from Superintendent’s gross income under Code §§125, 403(b) or 457(b), and contributed by the District, at the Superintendent’s election, to a cafeteria plan (Code §125 plan), a tax sheltered annuity (Code 403(b)), or a Code §457(b) eligible deferred compensation plan.
- (g) “Effective Date” means the date of execution of this Agreement.

ARTICLE 3. DEFERRAL AMOUNT

Section 3.1. Establishing the Book Account/Deferral Amount. The District shall establish Book Account No. 2 on its books for the benefit of Superintendent in accordance with Section 5.2. The District shall credit Book Account No. 2 on June 30, 2011, and on each June 30 thereafter during the term of this Agreement, an amount equal to the maximum annual deferral allowable to a Code Section 457(b) plan for calendar year 2009, including the limits under Code Sections 457(b)(2), 457(c)(1) and 414(v). Such annual credit shall be increased each year commencing June 30, 2011, by the lesser of (1) any increase in the limits under the applicable sections of the Code for the most recent completed calendar year made by the Secretary of the Treasury due to a cost of living adjustment or (b) the increase in the Consumer Price Index-Urban (“CPI U”) for the most recent completed calendar year as

published by the U.S. Bureau of Labor Statistics, but in no event shall the adjustment to the annual contribution amount be negative. This amount shall be credited to Book Account No. 2 no later than the last day of each fiscal year, subject to the following conditions:

- (a) Superintendent's Employment Agreement is in effect or Superintendent is otherwise employed as Superintendent for the entire fiscal year for which a Book Account credit is to be made; and
- (b) No amounts shall be credited after June 30, 2015.

The District shall also pay Superintendent on June 30, 2015 an amount equal to ten percent (10%) of Superintendent's Compensation for the fiscal year July 1, 2014 through June 30, 2015, provided Superintendent is employed by the District as Superintendent on June 30, 2015.

ARTICLE 4. VESTING

Section 4.1. Vesting Period. Except as otherwise provided in Section 4.2, the Superintendent shall be considered partially or fully vested in the Accrued Balance as follows (provided that Superintendent remains employed by District during that vesting period):

<u>Fiscal Year of Employment</u> <u>July 1 – June 30</u>	<u>Vested Percentage of Accrued</u> <u>Balance</u>
Fiscal Year 1 (2010-2011)	0%
Fiscal Year 2 (2011-2012)	25%
Fiscal Year 3 (2012-2013)	50%
Fiscal Year 4 (2013-2014)	75%
Fiscal Year 5 (2014-2015)	100%

Vesting for each fiscal year of employment shall be deemed to accrue on the last day of such fiscal year.

Section 4.2. Termination of Employment or Second Agreement. As a general rule (subject to the remainder of this Section 4.2), Superintendent shall forfeit any right to receive, or beneficial interest in, and the District shall have no obligation to pay any amounts under this Second Agreement if one of the following events occurs before Superintendent satisfies any one or more of the vesting periods provided in Section 4.1:

- (a) Superintendent's voluntary termination of employment prior to vesting; or
- (b) District's termination of Superintendent's employment for any reason, including, but not limited to, Cause prior to vesting.

This Agreement shall terminate upon the occurrence of any of the events described in Section 4.2(a) or (b).

ARTICLE 5. STATUS OF DEFERRED AMOUNTS

Section 5.1. Investment by District. District shall be the applicant for, and owner of, any investment made under this Second Agreement. District shall direct the investment of amounts held for the benefit of Superintendent. In so directing, District may take into consideration the investment recommendations, if any, indicated by Superintendent to District. Superintendent shall be the measuring life (e.g., the annuitant under any annuity contract) with respect to any investment made under this Second Agreement. However, title to and beneficial ownership of all such investments shall at all times remain in District and shall constitute a general asset of District, subject to claims of District's general creditors.

Section 5.2. Book Account. District shall establish Book Account No. 2 for Superintendent to reflect accurately the District's liability to Superintendent for amounts due under this Second Agreement. The Accrued Balance of Book Account No. 2 shall be determined as if the amounts in Book Account No. 2 were invested in the investment options (based on the then current fair market value) selected by the Board on Superintendent's behalf under Section 5.1, net of brokerage fees or other transactional fees associated with those investment vehicles in which Book Account No. 2 has been invested and any reasonable fee payable by the District to maintain Book Account No. 2.

Section 5.3. Report of Accrued Balance in the Book Account. The District shall advise Superintendent of the Accrued Balance in Book Account No. 2 at least annually (on a date to be determined by the District).

ARTICLE 6. DISTRIBUTIONS

Section 6.1. Distributions. District shall distribute to Superintendent any part of the Accrued Balance that becomes vested, either partially or fully, as soon as administratively practicable after such vesting. When Superintendent becomes so vested, District shall pay to Superintendent, in a single lump sum cash payment, her vested Accrued Balance, less any withholding required by applicable law.

Section 6.2. Designation of Beneficiary. The Superintendent shall designate a beneficiary by filing a written designation on an approved form with the District. The Superintendent may revoke or modify the designation at any time by filing a new designation. However, designations will only be effective if signed by the Superintendent and accepted by the District during the Superintendent's lifetime. The Superintendent's beneficiary designation shall be deemed automatically revoked if that beneficiary predeceases the Superintendent, or if the Superintendent names her spouse as beneficiary and the marriage is subsequently dissolved. If the Superintendent dies without a valid beneficiary designation, all payments shall be made to the Superintendent's surviving spouse, if any, and if none, to the Superintendent's surviving children and the descendants of any deceased child

by right of representation, and if no children or descendants survive, to the Superintendent's estate.

ARTICLE 7. PROVISIONS RELATING TO PARTICIPATION

Section 7.1. Extent of Rights Under Agreement. Except as to amounts actually distributed under this Second Agreement, neither Superintendent nor any person claiming under or through Superintendent shall have any right or interest, whether vested or otherwise, in this Second Agreement.

Section 7.2. Unfunded Agreement. Neither Superintendent, Superintendent's beneficiary nor any other person, shall have any right, title or interest in Book Account No. 2, any fund, any specific sum of money, or in any asset which may be acquired by District in respect of its obligations under this Second Agreement (other than as a general creditor of District with an unsecured claim against District's general assets).

Section 7.3. Extent to Which Other Parties Bound by Agreement. This Second Agreement shall be binding upon, and shall inure to the benefit of the District and its successors and assigns, and Superintendent and her heirs, administrators and personal representatives.

Section 7.4. Tax Withholding. The District shall withhold any taxes that are required to be withheld from any benefits payable under this Second Agreement.

ARTICLE 8. ADMINISTRATION AND FINANCES

Section 8.1. Powers of the Board. The Board shall have all powers necessary to administer this Second Agreement, including, without limitation, the power to interpret the provisions of this Second Agreement, and in their sole discretion to establish rules and forms for the administration of the terms of this Second Agreement and to appoint individuals to assist in the administration of the terms of this Second Agreement and any other agents it deems advisable.

Section 8.2. Actions of the Board. All determinations, interpretations, rules, and decisions of the Board shall be conclusive and binding upon all persons having or claiming to have any interest or right under this Second Agreement.

Section 8.3. Delegation. The Board shall have the power to delegate specific duties and responsibilities to officers or other employees of the District or to other individuals or entities. Any delegation may be rescinded by the Board at any time. Except as otherwise required by law, each person or entity to whom a duty or responsibility has been delegated shall be responsible for the exercise of such duty or responsibility and shall not be responsible for any act or failure to act of any other person or entity.

Section 8.4. Reports and Records. The Board and those to whom the Board have delegated duties under this Second Agreement shall keep records of all their proceedings and actions and shall maintain books of account, records, and other data as shall be necessary for the proper administration of the terms under this Second Agreement and for compliance with applicable law.

Section 8.5. Responsibility. The Board shall not be liable to any person for any action taken or omitted in connection with the administration of the terms under this Second Agreement unless attributable to its fraud or willful misconduct; nor shall District be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a Board Member, officer or employee of District within the scope of her or her duties. Each member of the Board shall be indemnified and held harmless by District for any liabilities, costs, and expenses arising out of the good-faith administration of the terms of this Second Agreement, including reasonable attorneys' fees and the costs of settlement of any lawsuit, to the maximum extent permitted by law.

ARTICLE 9. AMENDMENT

Section 9.1. Amendment. Except for amendments required to comply with applicable law, this Second Agreement may be amended only by written agreement signed by the District and the Superintendent.

ARTICLE 10. CLAIMS PROCEDURE

Section 10.1. Claims Procedure. Any individual or his/her authorized representative ("Claimant") who has not received benefits under this Second Agreement that he or she believes should be paid shall make a claim for such benefits as follows:

- (a) *Initiation – Written Claim*. The Claimant initiates a claim by submitting to the District a written claim for the benefits.
- (b) *Timing of District Response*. The District shall respond to such Claimant within 90 days after receiving the claim. If the District determines that special circumstances require additional time for processing the claim, the District can extend the response period by an additional 90 days by notifying the Claimant in writing or electronically, prior to the end of the initial 90-day period, that an additional period is required. The notice of extension must set forth the special circumstances and the date by which the District expects to render its decision.
- (c) *Notice of Decision*. If the District denies part or all of the claim, the District shall notify the Claimant in writing or electronically of such denial. The District shall write the notification in a manner calculated to be understood by the Claimant. The notification shall set forth:

- a. The specific reasons for the denial;
 - b. A reference to the specific provisions of this Second Agreement on which the denial is based;
 - c. A description of any additional information or material necessary for the Claimant to perfect the claim and an explanation of why it is needed; and
 - d. An explanation of this Second Agreement's review procedures and the time limits applicable to such procedures.
- (d) *Review Procedure – Denial of Benefits.* This Second Agreement has one level of appeals for benefit denials. If the District denies part or all of the claim, the Claimant shall have the opportunity for a full and fair review by the District of the denial, as follows:
- (e) *Initiation – Written Request.* To initiate the review, the Claimant, within 60 days after receiving the District's notice of denial, must file with the District a written request for review.
- (f) *Additional Submissions – Information Access.* The Claimant shall then have the opportunity to submit written comments, documents, records and other information relating to the claim. The District shall also provide the Claimant, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the Claimant's claim for benefits.
- (g) *Considerations on Review.* In considering the review, the District shall take into account all materials and information the Claimant submits relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- (h) *Timing of District Response.* The District shall respond to Claimant within 60 days after receiving the request for review. If the District determines that special circumstances require additional time for processing the claim, the District can extend the response period by an additional 60 days by notifying the Claimant in writing or electronically, prior to the end of the initial 60-day period, that an additional period is required. The notice of extension must set forth the special circumstances and the date by which the District expects to render its decision.
- (i) *Notice of Decision.* The District shall notify the Claimant in writing or electronically of its decision on review. The District shall write the notification in a manner calculated to be understood by Claimant. The adverse benefit notification shall set forth:
 - a. The specific reasons for the denial;

- b. A reference to the specific provisions of this Second Agreement on which the denial is based; and
- c. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits.

Section 10.2. Deadline Extensions. The Claimant and District may extend any claim filing deadline by mutual written consent.

Section 10.3. Rights after Appeal. If the Claimant is dissatisfied with the District's review of the decision, the Claimant has the right to file suit in a federal or state court, which suit must be filed within twelve (12) calendar months immediately following the date of such District's decision. No action may be brought for benefits provided by this Second Agreement or to enforce any right hereunder until after a claim has been submitted to and determined by the District and all appeal rights under the Second Agreement have been exhausted. This means that all claims under this Second Agreement must be appealed under this Second Agreement before any suit for benefits may be filed by the Claimant in federal or state court. The Claimant's beneficiary must follow the same claims procedure in the event of the Claimant's death.

For purposes of submitting claims pursuant to the claims procedure set forth in this Article 10 (but not for any other purpose) the District is hereby designated as the Plan Administrator of this Second Agreement.

ARTICLE 11. MISCELLANEOUS

Section 11.1. No Guaranty of Employment. The adoption and maintenance of the terms under this Second Agreement shall not be deemed to be a contract of employment between District and Superintendent. Nothing contained in this Second Agreement shall give Superintendent the right to be retained in the employ of District or to interfere with the right of District to discharge Superintendent at any time subject to the terms of Superintendent's Employment Agreement, nor shall it give District the right to require Superintendent to remain in its employ or to interfere with Superintendent's right to terminate her employment at any time subject to the terms of Superintendent's Employment Agreement.

Section 11.2. Alienation Prohibited. No benefit payable at any time under this Second Agreement shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, or encumbrance of any kind.

Section 11.3. Applicable Law. This Second Agreement and all rights under this Second Agreement shall be governed by and construed according to Section 457(f) of the Code and by the laws of the State of South Dakota, except to the extent preempted by federal law.

Section 11.4. Benefits and Burdens. This Second Agreement shall be binding upon and inure to the benefit of Superintendent and her personal representatives and the District and any successor organization which shall succeed to substantially all of its assets and business.

Section 11.5. Severability. If this Second Agreement shall ever be determined by the Internal Revenue Service to be void, then those amounts of the Accrued Balance which are treated as taxable income by the Internal Revenue Service at the time of voiding this Second Agreement will be paid to Superintendent. Any remaining Accrued Balance in Book Account No. 2 at the time of such voiding shall be distributed to Superintendent according to Article 6.

Section 11.6. Entire Agreement. This Second Agreement constitutes the entire agreement between the Superintendent and District as it relates to the Second Nonqualified Deferred Compensation Agreement referenced in Section 4E of Superintendent's Employment Agreement.

Section 11.7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together shall constitute one in the same agreement.

IN WITNESS WHEREOF, District and Superintendent have caused this Agreement to be duly executed on the day and year first above written.

SIOUX FALLS SCHOOL DISTRICT 49-5
OF MINNEHAHA COUNTY,
SOUTH DAKOTA

By: 

School Board President

By: 

Business Manager

SUPERINTENDENT



Dr. Pamela Homan