

EXPLANATION OF MODEL ESOP DOCUMENTS

The purpose of the model ESOP is to introduce a set of ideal legal instruments that could be fine-tuned and adapted within any country of the world. It is a product of thousands of combined hours of top ESOP lawyers in the United States, Egypt and Latin America.

This model was incorporated into the parallel legal system developed for Costa Rica under contract with USAID, so that this technology could easily be transferred to lawyers, CPAs and other professionals within any country with ESOP-enabling legislation. It was designed so that the model ESOP could be implemented without lengthy bureaucratic delays.

The structure of this prototype can also be adapted to other constituency groups, such as customers of natural monopolies and public utilities, and residents of development communities, etc.

Disclaimer: CESJ does not represent itself as offering legal or other professional services. Users of these documents are advised that these documents may have to be altered to meet the current tax, association, trust, labor, retirement, and other existing laws affecting the implementation of an Employee Share Ownership Plan and worker shareholders association. The user should seek competent legal and other professional advise before implementing these documents.

These documents were contributed free of charge by Equity Expansion International, Inc. (EEI), a for-profit international ESOP consulting and investment banking firm headquartered in Arlington, Virginia. EEI, a sister organization of CESJ, can be contacted for technical assistance at (Tel) 703-243-5155, (Fax) 703-243-5935, and Email: ownco@aol.com.

Draft: July 17, 1989

APPENDIX A:
PROTOTYPE DOCUMENT

DEED OF INCORPORATION
OF THE
_____ COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION

DEED OF INCORPORATION

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APPENDIX A:

PROTOTYPE DOCUMENT

**DEED OF INCORPORATION
OF THE

COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION**

ARTICLE 1. Introduction.

We [*enter names of founding members*], are all Costa Rican employees of the _____ Company (the "Company") which is engaged in the manufacture of _____. We voluntarily associate ourselves to form an employee shareholders' association for the purpose of promoting the social goal of widespread and democratic participation in the ownership and profits of productive enterprises, especially through means which decentralize access to productive credit among workers personally. Toward that goal, the Association will distribute among its members through their personal accounts in an employee share ownership plan ("ESOP") beneficial interests in shares of common stock in the _____ Company, thereby enabling members to participate personally as shareholders of the Company, and otherwise assisting members and their families to accumulate income-producing property during their working careers as a growing source of their personal self-determination and economic security.

ARTICLE 2. Name.

The name of the Association is the _____ Company Employee Shareholders' Association.

ARTICLE 3. Purposes.

The purposes of this Association are (i) to provide and obtain for its members access to productive credit to accumulate equity capital and earn property incomes for their future economic security; (ii) to perform or make available any other services needed to operate an employee share ownership plan; and (iii) to exercise all of its powers on a voluntary non-profit Association basis, for the exclusive benefit of its members. The Association will not directly manage, operate or engage in any business for the profits of the Association or in any other way compete with any business enterprise in the production and marketing of goods and services. The main function of the Association is to enable its members and their families to participate personally and effectively in equity-sharing and profit-sharing opportunities in the developing Costa Rican economy, and in particular the _____ Company.

ARTICLE 4. Powers.

The Association has the power to:

(a) **Employee Share Ownership Plan.** Adopt and administer an Employee Share Ownership Plan which qualifies under Law No. ____ of 19 ____.

(b) **Shares of Company Stock.** Acquire, on credit or otherwise, hold legal title to, pledge, enable members to receive distributions of and enjoy voting privileges with respect to, repurchase and transfer shares of common stock in the _____ Company according to a plan adopted by the Association, and distribute cash dividends to members according to their Company share accounts.

(c) **Dividends.** Receive and distribute dividends and other income on assets of the Association to supplement members' incomes from other sources, to establish a fund to serve as a market to repurchase equity interests of its members, or to repay loans used to purchase shares on behalf of its members.

(d) **Borrow Money.** Borrow money, without limitation, and give a lien or pledge on any of its property as security for any borrowing.

(e) **Advances.** Make cash advances to members.

(f) **Act as Agent.** Act as an agent or representative of anyone participating in the Association's activities.

(g) **On Cash and Other Liquid Assets.** Hold cash and cash equivalents and invest in marketable securities other than those of the Company.

(h) **On Real and Personal Property.** Buy or lease any real or personal property that is needed or useful in the operation of the Association.

(i) **Instruments and Obligations.** Draw, make, accept, guarantee, and issue promissory notes, bills of exchange, drafts, warrants, certificates, and all other kinds of obligations, including negotiable or transferable instruments, for any purpose for which this Association was created, and give a lien on any of its property as security for these obligations.

(j) **Other Powers.** Exercise all other powers, privileges, and rights granted to ordinary corporations and employee beneficial associations by the laws of the Costa Rica and all other powers and rights that are needed to carry out the purposes for which this Association was formed, unless those powers and rights are inconsistent with the laws under which this Association is incorporated.

(k) **Restriction on Powers.** The enumeration of powers in this Section is not a limit or restriction on any general powers given to the Association by law.

ARTICLE 5. Place of Business.

The Association's principal place of business is in the City of _____.

ARTICLE 6. Duration.

This Association shall exist for an indefinite duration, as long as the _____ Company shall remain in existence.

ARTICLE 7. Directors.

This Association will have _____ (____) directors, one-half of whom shall be appointed by management and the other half shall be elected by non-management employees. The first elected employee representatives to the Board of Directors will consist of _____ (____) directors elected for one year; _____ (____) directors elected for two years; and _____ (____) directors elected for three years. Thereafter, all elected directors will be elected for three years. The names and the addresses of the incorporating directors, who will serve until the first annual meeting of members or until their successors are elected and qualified, are:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ARTICLE 8. Membership and Voting.

This Association will not have capital stock, but will admit applicants to membership based on uniform conditions set out in its bylaws. Membership will be restricted to persons employed by the _____ Company. The Association will be operated solely for the mutual benefit of its members.

At any meeting of the members, or on any matters of the _____ Company which are subject to vote of its shareholders, each member will be entitled to vote on a one-share,

one-vote basis, reflecting the relative proprietary stakes and relative risks of potential equity losses among the members.

Property rights and equity interests in the ESOP accounts of members of the Association will not be equal, because of differing compensation levels and differing years of participation among employees. Until share-equivalents are allocated among the individual ESOP accounts of members, each member's relative annual compensation will determine the voting rights on shares acquired by the Association.

Upon dissolution, the equity interests of members will be determined as provided in the bylaws.

IN WITNESS WHEREOF, for the purpose of forming the Employees' Association under Law _____ of 19____ of Costa Rica, amendments thereto, and regulations thereunder, we the undersigned have executed these Articles of the Charter of Incorporation of this Employee Shareholders' Association this _____ day of _____, 19____.

Name	Signature
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Draft: July 17, 1989

APPENDIX B:
PROTOTYPE DOCUMENT

BYLAWS OF THE _____ COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION

PART I:
GOVERNANCE OF THE ASSOCIATION

GOVERNANCE OF THE ASSOCIATION

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APPENDIX B:
PROTOTYPE DOCUMENT

BYLAWS OF THE _____ COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION

PART I:
GOVERNANCE OF THE ASSOCIATION

ARTICLE 1. Membership.

Section 1. Qualifications for Membership.

Any person who meets the eligibility requirements for participation in the _____ Company Employee Share Ownership Plan ("ESOP") as determined in Part II, Article 3 of these bylaws, or a beneficiary of such person under the ESOP, may be a member of this Association. A non-transferable certificate of membership will be issued to each member of the Association. This certificate may be in any form that the board of directors specifies.

Section 2. Suspension or Termination.

(a) **Basis for Suspension or Termination.** A member's rights will be automatically suspended, or his membership automatically terminated, upon a suspension or termination of that members' participation in the ESOP.

(b) **Rights and Interests.** The rights and interests of the member in the Association cease upon the termination of membership. The member is entitled only to payment for an equitably appraised value of the member's property rights and interests in the ESOP. This value will be determined, conclusively, by the Board.

ARTICLE 2. Meetings of Members.

Section 1. Annual Meetings.

The Association will hold its annual meeting at the offices of the Association at ____ A.M. on the _____ day of _____ of each year, or on a date or place that the Board chooses at least _____ days in advance.

Section 2. Special Meetings.

The Association may call a special meeting at any time, by order of the Board. Such a meeting must be called if requested in writing by at least _____ percent of the members. Not less than _____ signatures are required in such a request. This request must state the time, place, and object of the meeting.

Section 3. Notice of Meeting.

The members must be notified of every regular and special meeting. This notice will be mailed to the last known post office address of each member not less than _____ days before the meeting. The notice must state the time, place, and object of the meeting. Business not specified in the notice of a special meeting will not be permitted at that meeting.

Section 4. Voting by Members.

At any meeting of the members, or on any matters of the _____ Company which are subject to vote of its shareholders, each member will be entitled to vote on a one-share, one-vote basis on all Company shares or share-equivalents allocated to his or her personal accounts within the ESOP. Unallocated shares acquired by the ESOP will be voted by the members proportionately in the same manner as their allocated shares. Until share-equivalents are allocated among individual ESOP accounts of the members, each member's relative compensation will determine the voting rights on company shares acquired by the Association. All matters involving Association business will be decided by a vote of the majority of share-equivalents voted on that matter. No cumulative voting or voting by proxy shall be permitted. Any voting by the Association or by any fiduciary of the Association on matters of the _____ Company which are subject to shareholder vote shall be voted as if by proxy in the same manner as reflected by the share-equivalents vote of the members and not in a bloc voting manner. If, however, the total number of members is greater than _____, _____ members or _____ percent of the total number of members, whichever is greater, constitutes a quorum. If a quorum is not present, a majority of those present may adjourn the meeting, without further notice.

Section 5. Order of Business at the Annual Meeting.

The order of business at the annual meeting will be:

- (a) Determination of quorum;
- (b) Proof of timely notice of meeting;
- (c) Reading and disposition of minutes;
- (d) Annual reports of officers and committees;
- (e) Unfinished business;
- (f) New business;
- (g) Voting on issues of the _____ Company which are subject to shareholder vote.
- (h) Election of directors; and
- (j) Adjournment.

ARTICLE 3. Directors and Officers.

Section 1. Number and Qualification of Directors.

The board of directors will consist of ten (10) members, one-half of whom shall be appointed by management and the other half of whom shall be elected by the members. The Chairman, or in his absence, the Vice Chairman, both of whom shall be selected by the board and at least one of whom shall be an elected board member, shall preside over meetings of the board of directors.

Section 2. Election of Directors.

Directors will be elected to succeed the incorporating directors at the first annual meeting of the Board. The first elected employee representatives to the board of directors will consist of two (2) directors elected for one year; two (2) directors elected for two years; and one (1) director elected for three years. Thereafter, all elected directors will be elected for three years.

Section 3. Election of Officers.

The Board will elect a president, vice-president, secretary, and treasurer. The Board will do this within _____ days after the Board's first election and every annual election of directors that follows. The president and vice-president must be members of the Board.

All officers will hold their positions until (a) the election and qualification of their successor; (b) their early removal due to death or resignation; or (c) their removal for cause.

Section 4. Vacancies.

If a vacancy, other than by expiration of a term, occurs on the Board, it will be filled by appointment by the remaining Board members, until the next regular Board meeting.

Section 5. Board Meetings.

The Board will hold regular meetings. These are to be held _____ (state time and period, e.g., monthly), or at other times and places as the Board may determine.

Section 6. Special Meetings.

(a) **Who may Call Meeting.** The president or a majority of the directors may call a special meeting of the Board.

(b) **Procedure to Call Meeting.** The call must be in writing, state the time and place of the meeting, and be signed by the person who called the meeting. This call be addressed and delivered to the secretary of the Board.

(c) **Business on Agenda.** Any business may be discussed at a special meeting.

Section 7. Notice of Board Meetings.

The secretary must give each director oral or written notice of all Board Meetings, at least _____ hours before the meeting. This notice may be waived in writing by all the directors. A director's presence at a meeting is equivalent to waiver of notice of that meeting.

Section 8. Compensation.

Whether the members of the Board or executive committee are to be compensated will be determined by the members of the Association, at either a special or at the annual meeting. A Board member will not be allowed to hold any position in the Association on a regular salaried basis.

Section 9. Quorum.

Six (6) members of the Board (at least two (2) of whom shall be elected board members and at least two (2) of whom shall be appointed representatives of the _____ Company management) is a quorum for any Board meeting.

ARTICLE 4. Directors' Responsibilities.

Section 1. General Powers.

The board of directors will be in charge of all the business and exercise all the powers of the Association. (Part II of these bylaws specifies the powers and duties of the board of directors with respect to policies, finances and administration of the ESOP). The only exception to this exclusive grant of power is the powers that are reserved to the members of the Association by law, or by the deed of incorporation or bylaws of the Association. The rules and regulations that the Board establishes are not to be inconsistent with the law, or the deed of incorporation or bylaws of the Association.

Section 2. Manager.

The Board may employ a manager, compensate him and define his duties.

ARTICLE 5. Officers' and Administrator's Responsibilities.

Section 1. Chairman's Duties.

The chairman will preside over all meetings of the Board and the Association. If he is absent or becomes disabled, the vice chairman will take over the chairman's duties.

Section 2. President's Duties.

The president is to (i) be in charge of the day-to-day operations of the Association (but with the consent of the Board, may hire an outside ESOP fiduciary to hold and safeguard ESOP assets and an outside administrator to carry on all financial and administrative matters affecting the ESOP and other functions under his supervision); (ii) sign all membership certificates, ESOP agreements and other papers of the Association as authorized by the Board (but the Board may authorize others to sign checks, contracts, or other instruments in writing on behalf of the Association); and (iii) perform any other duties that are usually performed by a president, or that are prescribed by the Board.

Section 3. Vice-President's Duties.

The vice-president will take over the president's duties if the president is absent or becomes disabled.

Section 4. Secretary's Duties.

The secretary will (i) keep a complete record of all meetings of the Association and the Board; (ii) be in charge of the supervision of the books and records of the Association; (iii) sign all membership certificates, along with the president, as well as other papers of the Association, as authorized by the Board; (iv) serve all notices on Association members, as required by law and by the bylaws of the Association; (v) make a full report to the members of the Association at the annual meeting of all the matters related to his position; (vi) keep complete membership records; (vii) keep the corporate seal; (viii) make all reports required by law; and (ix) perform any other duties, as required by the Association or the Board.

Section 5. Treasurer's Duties.

The treasurer will perform all duties with respect to the Association's finances that the Board prescribes.

ARTICLE 6. Executive and Other Committees.

Section 1. Executive Committee.

An executive committee, consisting of _____ members may be appointed by the Board from its own membership. The Board will determine the tenure of office, power, and duties of the executive committee. The Board may give to this executive committee, subject to the Board's supervision, any of the Board's powers or functions.

Copies of the minutes of any meetings of the executive committee will be mailed to all directors within _____ days of the meeting.

Section 2. Other Committees.

The Board may appoint other committees as it deems necessary and appropriate.

ARTICLE 7. Membership Certificates.

The Board will cause appropriate certificates of membership to be issued.

ARTICLE 8. Property of the Association.

All assets and financing of the Association will be administered as specified in Part II of these bylaws.

ARTICLE 9. Fiscal Year.

The Association's fiscal year will begin on the first day of _____ of each year, and end on the last day of _____ of the following year.

ARTICLE 10. Miscellaneous.

Section 1. Waiver of Notice.

If the bylaws require that notice of a meeting be given to any Association or Board member, he or she may waive that notice in writing. If an Association or Board member attends a meeting, that attendance serves as a waiver of notice. If the member is attending that meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called, then attendance is not deemed to be waiver of notice.

Section 2. Printing of Bylaws.

The bylaws and deed of incorporation will be printed in a pamphlet, after adoption. A copy will be delivered to each member and individuals who later become members of the association as shown on the record books.

Section 3. Seal

The name of the Association and year of its incorporation will be inscribed on the corporate seal.

ARTICLE 11. Amendments.

A bylaw may be amended at any regular or special meeting by an affirmative vote of the majority of shares or share-equivalents of stock in the _____ Company which are allocated to the members, if the notice of this meeting included a notice of the proposed amendment.

Dated: _____, 19_____

President

(SEAL)

Secretary

Draft: July 17, 1989

APPENDIX C:
PROTOTYPE DOCUMENT

BYLAWS OF THE _____ COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION

PART II:
GOVERNANCE OF THE EMPLOYEE SHARE OWNERSHIP PLAN

EMPLOYEE SHARE OWNERSHIP PLAN

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APPENDIX C:
PROTOTYPE DOCUMENT

BYLAWS OF THE _____ COMPANY
EMPLOYEE SHAREHOLDERS' ASSOCIATION

PART II:

GOVERNANCE OF THE EMPLOYEE SHARE OWNERSHIP PLAN

ARTICLE 1. Nature of the Plan.

The _____ Company Employee Shareholders' Association (the "Association") was formed to implement an Employee Share Ownership Plan (the "Plan"). The Plan is based on the idea that access to productive credit largely determines who will participate in the future ownership, profits and basic decisions of productive enterprises. The purpose of this Plan is to enable Employees of _____ Company (the "Company") to share in the growth, prosperity, projected dividend incomes and governance of the Company, and to provide Association members with an opportunity to gain access to productive credit to accumulate equity capital for their future economic security.

Once eligible, each Participant (this term and all other capitalized terms used herein shall have the definitions assigned to such terms in Article 2 of this Plan) as a member the Association will have a personal Account in the Plan. This Account will reflect Company Shares and other assets acquired through the Plan. Such acquisition will not require any payroll deductions, personal financial risk, or investment of personal savings on the part of any Participant.

The primary purpose of the Plan is to enable a broad base of Participants to acquire share ownership interests and enjoy equity growth, voting powers, dividends and other rights of shareholders in the Company. Consequently, assets of the Plan will be invested primarily in Company Shares.

The Plan is also designed to be available to the Company as a technique of corporate finance.

Accordingly, the Plan may be used to accomplish the following objectives:

- (a) To provide Participants personally with beneficial ownership of Company Shares, acquired substantially in proportion to their relative Covered Compensation, without requiring any cash outlay, any reduction in pay or other benefits, or the surrender of any other rights on the part of the Participants;

(b) To enable each Participant to develop to his or her fullest human potential by working together with others and sharing mutually in corporate risks, responsibility, productivity growth and profits.

(c) To meet general financing requirements of the Company, including capital growth and transfers of the ownership of Company Shares; and

(d) To receive loans (or other extensions of credit) to finance the acquisition of Company Shares, with such loans to be repaid by Employer Contributions to the Fiduciary and dividends received on such Company Shares.

This Plan, hereby adopted jointly by the boards of directors of the Association and of the Company and incorporated into the Bylaws of the Association, is effective the _____ day of _____, 19____. The Plan is intended to qualify for approval by the Ministry of _____ under _____ [*Specify appropriate law/s*].

All ESOP Assets acquired with dividends on Company Shares, Employer Contributions, other income and other additions to the ESOP will be administered, distributed, forfeited and otherwise governed by the provisions of this Plan and the related Fiduciary Agreement. The Plan is administered by the Association for the exclusive benefit of Participants (and their Beneficiaries).

ARTICLE 2. Definitions.

In this Plan, whenever the context so indicates, the singular or plural number and the masculine, feminine or neuter gender shall each be deemed to include the other, the terms "he", "his", and "him" shall refer to a Participant, and the capitalized terms shall have the following meanings:

- Account** One of two accounts maintained to record the interest of a Participant in the Plan, including a Company Shares Account and an Other Investments Account.
- Acquisition Loan** A loan (or other extension of credit) used by the Association to finance the acquisition of shares of Company Shares ("Leveraged Shares"), which are repayable wholly from future cash dividends on such Shares, committed or guaranteed Employer cash contributions, voluntary Employer or Employee Contributions, or earnings on ESOP Assets. See Article 5(b).
- Allocation** See Articles 3 and 6.
- Allocation Date** The last day of the fiscal year of the Company.
- Approved Absence** A leave of absence (without pay) granted to an Employee by an Employer under its established leave policy. See Article 3.

Association	The _____ Company Employee Shareholders' Association, a legal entity established by the Employees and approved by the Ministry of _____ as an employees' association for the purpose of implementing the ESOP.
Beneficiary	The person (or persons) entitled to receive any benefits under the Plan in the event of a Participant's death.
Board of Directors	The board of directors of the Association. See Article 16.
Break in Service	A period of time commencing with the date on which an Employee terminates Service and ending on the date he resumes Service. See Article 10.
Bylaws	The bylaws of the Association, including this Plan.
Capital Accumulation	A Participant's Vested (nonforfeitable) Interest in his Accounts under the Plan. Each Participant's Capital Accumulation shall be determined in accordance with the provisions of Articles 6 and 9 and distributed as provided in Articles 11, 12, 13 and 14.
Company	_____ Corporation, a joint-stock company organized under Law Number _____, dated _____, of Costa Rica.
Company Share	A Share of capital stock issued by the Company, being a share of voting common stock (or preferred stock convertible into voting common stock).
Company Shares Account	An Account of a Participant which reflects his interest in Company Shares held in the Plan. See Article 6(a)(1).
Compensation	The total cash compensation a Participant receives from the Company for each Plan Year, including salary, wages, bonuses, commissions and overtime pay, but excluding all deferred compensation and contributions to this Plan or any other deferred compensation plan.
Credited Service	The elapsed period of an Employee's Service. See Article 10.
Disability	The total and permanent inability of an Employee to perform the usual duties of his employment with the Employer, as determined by a licensed physician approved by the Association. See Article 11.
Distribution	See Articles 11, 12, 13, and 14.
Eligibility	See Article 3.
Employee	Any person employed by the Company. See Article 3.

Employee Contributions	Voluntary cash payments made by an Employee to the Association to increase the ESOP Assets in his ESOP Accounts. See Article 6(b)(3).
Employer	The Company in its relations with the Employees.
Employer Contributions	Payments in cash or Contributed Shares made to the Association by the Employer for the benefit of the Employees. See Articles 4 and 6(b)(1)
ESOP	The Employee Share Ownership Plan.
ESOP Assets	The Company Shares and other assets held by the Fiduciary or in the Association for the benefit of Participants. See Articles 5(a) and 19.
Fair Market Value	The fair market value of Company Shares, as determined by the Fiduciary or by the Association for all purposes under the Plan, based upon a valuation by an independent professional appraiser.
Fiduciary	The Fiduciary (or Fiduciaries) designated by the Association, and any successor Fiduciary, which agrees to serve by executing the Fiduciary Agreement.
Fiduciary Agreement	The Agreement between the Fiduciary (and any successor Fiduciary) and the Association, which defines the duties, rights and powers of the Fiduciary acting as representative of the interests of the Employees and as administrator of the ESOP Assets and all loans and other financial transactions involving such assets.
Forfeiture	Any portion of a Participant's Accounts which does not become part of his Capital Accumulation and which is forfeited under Article 9.
Hour of Service	Each hour of Service for which an Employee is credited under the Plan.
Leveraged Shares	Company Shares acquired by the Association with the proceeds of an Acquisition Loan. See Articles 4(b), 5 and 6(b)(2).
Liquidity Fund	A sub-account within the Other Investments Account designed to meet repurchase requirements on Company Shares held by terminated Participants. See Articles 5(a), 5(f), 6 and 16(c)(8).
Loan Suspense Account	The sub-account of the Company Shares Account reflecting unallocated Share-Equivalents of Leveraged Shares prior to their release for Allocation among Participants' Accounts. See Article 6(b)(2).

Other Investments Account	The Account which reflects each Participant's interest under the Plan attributable to Plan Assets other than Company Shares. See Article 6.
Participant	Any Employee or former Employee who has met the applicable eligibility requirements of Article 3 and who has not yet received complete distribution of his Capital Accumulation.
Participation	See Article 3.
Plan	The _____ Company Employee Share Ownership Plan (ESOP).
Plan Year	The twelve-month period ending on the ____ day of _____.
Pledge Agreement	The agreement under which Company Shares are pledged as Pledged Collateral for an Acquisition Loan.
Pledged Collateral	Collateral for securing repayment of an Acquisition Loan including (i) Pledged Shares and the certificates representing such Shares (whether temporary or permanent), (ii) all property, including dividends, which are paid or payable other than in cash in respect of Pledged Shares, (iii) all voluntary cash contributions by participating Employees or by the Company which are specifically made and designated for repayment of an Acquisition Loan, (iv) cash dividends paid or payable on Pledged Shares in an amount not exceeding the amount of the principal of and interest on such Acquisition Loan due and owing at the time of distribution of such dividends plus all such principal and interest which shall become due as of the next scheduled repayment date, and (v) all earnings on such property, contributions and dividends.
Pledged Shares	Company Shares purchased with an Acquisition Loan which are pledged under a Pledge Agreement.
Retirement	Termination of Service on or after attaining the retirement age specified in the Labor Code.
Service	Employment with the Company.
Share-Equivalents	The accounting term describing Company Shares for Allocation, Distribution and voting purposes.
Vested Interest	The portion of a Participant's Account which may not become a Forfeiture and which reflects his Capital Accumulation..

ARTICLE 3. Eligibility and Participation.

(a) **Eligibility to Participate.** Subject to the provisions of this Article 3, each Employee of the Company shall automatically become a Participant in the Plan on the first date he is credited with an Hour of Service following the effective date of the Plan as specified in Article 1. A former Participant who is reemployed by the Employer shall become a Participant as of the date of his reemployment. A Participant who is on an Approved Absence shall continue as a Participant during the period of his Approved Absence.

(b) **Exclusions from Participation.** An Employee shall be excluded from participation in this Plan if he is:

- (1) hired only for a period of temporary employment commonly referred to as "summer employment," if it is understood at the time of hire that such employment shall not exceed a period of four months; or
- (2) enrolled as a full-time student in school, or on a definite period of vacation or absence from school with the intent of resuming enrollment as a full-time student after the conclusion of such period.

(c) **Participants' Entitlements.** A Participant is entitled to share in the Allocation of Employer Contributions and Forfeitures under Article 6 for each Plan year in which he is an eligible Employee on the Allocation Date. A Participant is also entitled to share in the allocation of Employer Contributions and Forfeitures for the Plan Year of his Retirement, Disability or death. A Participant is entitled to share in dividends in any Plan Year on Company Shares or Share-Equivalents remaining in his ESOP Accounts at the time such dividends are declared by the Company.

ARTICLE 4. Employer Contributions.

(a) **Voluntary Contributions.** Discretionary Employer Contributions may be paid to the Association for each Plan Year in such amounts (or under such formula) as may be determined by the Employer's board of directors. Employer Contributions may be paid to the Association in cash or Company Shares, as determined by the Employer's board of directors.

(b) **Mandatory Contributions.** In cases where the Employer guarantees an Acquisition Loan for Leveraged Shares, the Employer shall pay Employer Contributions to the Association in cash in such amounts, and at such times, as needed to provide the Association with cash sufficient to pay any currently maturing debt obligations (including interest) under such guaranteed Acquisition Loan. If the Employer is the lender with respect to an Acquisition Loan, Employer contributions may be paid in the form of forgiveness of indebtedness under the Acquisition Loan.

(c) **Mistakes in Contributions.** In the event Employer Contributions are paid to the Association by reason of a mistake of fact, such Employer Contributions may be returned to the Employer by the Association within one year after the payment to the Association.

(d) **No Matching Employee Contributions Required.** No Participant shall be required to make contributions to the Plan.

ARTICLE 5. Investment of Plan Assets.

(a) **General.** Plan Assets will be invested by the Fiduciary primarily in Company Shares. Employer Contributions (and other Plan Assets) may be used to acquire Company Shares from Company shareholders (including former Participants or Beneficiaries) or from the Company. The ESOP Fiduciary may also invest Plan Assets in such other prudent investments as the Fiduciary deems to be desirable for meeting the objectives of the Plan (including savings accounts, certificates of deposit, high-grade short-term securities, high-grade stocks and bonds, or other prudent investments), or Plan assets may be held temporarily in cash. All purchases of Company Shares shall be made at prices which do not exceed the Fair Market Value of such Shares as of the Allocation Date preceding or coinciding with the date of such purchase, as determined in good faith by the Fiduciary in accordance with the provisions of Article 16. Except for the funding of a Liquidity Fund to meet projected repurchases of Company Shares from terminated Participants, the Fiduciary may invest and hold up to 100% of the Plan Assets in Company Shares.

(b) **Acquisition Loans.** The Association may direct the Fiduciary to incur Acquisition Loans from time to time to finance the acquisition of Company Shares (Leveraged Shares) for the Association, or to repay a prior Acquisition Loan. An installment obligation incurred in connection with the purchase of Company Shares shall be treated as an Acquisition Loan. An Acquisition Loan shall be for a specific term, shall bear a reasonable rate of interest, and shall not be payable on demand except in the event of a default. An Acquisition Loan may be secured by Pledged Collateral, including a pledge of the Leveraged Shares acquired with the proceeds of that Acquisition Loan (or of a prior Acquisition Loan which is being refinanced). No other Plan Assets may be pledged as collateral for an Acquisition Loan, and no lender shall have recourse against Plan Assets other than such Leveraged Shares and other Pledged Collateral.

(c) **Employer-Guaranteed Acquisition Loans.** Any pledge of Leveraged Shares acquired with an Acquisition Loan which has been guaranteed by the Employer must provide for the release of Pledged Shares (plus earnings derived from such Pledged Shares where such earnings have not been committed or paid for servicing the Acquisition Loan) as payments on the Acquisition Loan are made by the Fiduciary, and Share-Equivalents representing Leveraged Shares released from pledge must be allocated to Participants' Company Share Accounts under Article 6(b).

(d) **Acquisition Loans Without Employer Guarantees.** Where there is no Employer guarantee (or a comparable guarantee) of loan repayment on an Acquisition Loan,

- (1) the release of Leveraged Shares may be postponed until the Acquisition Loan has been repaid in full, if required by the lender, and
- (2) dividends on such Leveraged Shares must first be used to meet scheduled debt obligations (including accrued interest) on such Acquisition Loan. In such a case, the release formula for Leveraged Shares in Article 6(b)(2) shall apply, and credits for Share-Equivalents equal in number to such Leveraged Shares will be allocated to Participants' Company Shares Accounts as if an actual release has occurred.

(e) **Payments on Acquisition Loans.** Payments of principal and/or interest on any Acquisition Loan shall be made by the Fiduciary or the Association only from (i) Employer Contributions and Employee Contributions paid in cash to enable the Fiduciary to repay such Acquisition Loans, (ii) earnings attributable to such Employer and Employee Contributions, and

(iii) any cash dividends received by the Fiduciary on Leveraged Shares (whether allocated or unallocated) purchased with the proceeds of such Acquisition Loan. If the Company is not the lender with respect to an Acquisition Loan, the Company may elect to make payments on the Acquisition Loan directly to the Lender and to treat such payments as Employer Contributions.

(f) **Dividends.** Cash dividends on Leveraged Shares in excess of scheduled repayment on Acquisition Loans shall be credited to Participants' Other Investments Accounts based on previous Allocations of Share-Equivalents to such Participants' Company Shares Accounts (or, if no such Allocations have yet occurred with respect to unreleased Leveraged Shares, on the basis of relative Compensation). As directed by the Association, such dividends may be paid out in cash, put into a reserve for future repayments on the Acquisition Loan, invested for the benefit of Participants through the Other Investments Accounts, or deposited in a special reserve fund (a "Liquidity Fund") within the Other Investments Accounts to meet future share repurchase requirements as Participants terminate their employment.

(g) **Sale of Company Shares.** The Association may direct the Fiduciary to sell Company Shares to any person (including the Company), provided that any such sale must be at a price not less favorable to the Plan than Fair Market Value as of the date of the sale. Notwithstanding the provisions of Article 5(e), the Association may direct the Fiduciary to apply the proceeds from the sale of unallocated Leveraged Shares to repay the Acquisition Loan (incurred to finance the purchase of such Leveraged Shares) in the event of the sale of the Company or the termination of the Plan, or if the Association ceases to be a qualified employees' association under Costa Rican Law. If the Fiduciary is unable to make payments of principal and/or interest on an Acquisition Loan when due, the Association (with the approval of the Company's board of directors) may direct the Fiduciary either to sell any Leveraged Shares that have not yet been allocated to Participants' Company Shares Accounts, or to obtain a new Acquisition Loan in an amount sufficient to make such payments

ARTICLE 6. Allocations to Participants' Accounts.

(a) **Types of Participants' Accounts.** A Company Shares Account and an Other Investments Account shall be maintained to reflect the interest of each Participant under the Plan. These Accounts may be administered by the Company (with the consent of the Association), by the Association or by an accounting firm hired by the Association for this purpose.

(1) **Company Shares Account.** The Company Shares Account maintained for each Participant will be credited annually with his allocable number of Company Shares (including fractional shares) purchased and paid for by the Plan or contributed in kind by the Company to the Plan as an Employer Contribution, with any Forfeitures from other Company Shares Accounts, and with any stock dividends on Company Shares allocated to his Company Shares Account. Allocated Company Shares will be credited to Participants' Accounts in the form of Share-Equivalents equal in number to such allocated shares.

(2) **Other Investments Account.** The Other Investments Account maintained for each Participant will be credited annually with his allocable share of Employer Contributions which are not in the form of Company Shares, with any voluntary Employee Contributions in cash, with any Forfeitures from Other Investments Accounts, with

any cash dividends (other than currently distributed dividends) on Company Shares or Share-Equivalents allocated to his Company Share Account, and with any net income (or loss) of the Plan. Such Account will be debited for the Participant's share any cash payment made by the Fiduciary for the acquisition of Company Shares or for the payment of any principal and/or interest on an Acquisition Loan. A special reserve fund shall be established within the Other Investments Account to meet future share repurchase requirements as Participants terminate their employment where there is no active public market for Company Shares.

(b) **Formulae for Allocation among Participants' Accounts.** The Allocations to Participants' Accounts for each Plan year will be made as follows:

- (1) **Employer Contributions, Forfeitures and Cash Dividends on Unallocated Shares.** Employer Contributions under Article 4(a), Forfeitures under Article 9b), and cash dividends on unallocated Company Shares for each Plan Year, will be allocated as of the Allocation Date among the Accounts of Participants so entitled under Article 3(c) in the ratio that the Compensation of each Participant bears to the total Compensation of all such Participants, *provided, however, that* the maximum amount which may be allocated to the personal Plan account of any member during any Plan Year from corporate contributions, donations and forfeitures may not exceed five times the average amount allocated to all Participants for that Plan Year.
- (2) **Leveraged Shares.** Any Leveraged Shares acquired by the Plan for the Employees shall initially be credited to a "Loan Suspense Account" and Share-Equivalents representing such shares will be allocated to the Company Shares Accounts of Participants only as payments on the Acquisition Loan are made by the Fiduciary. The number of Leveraged Shares to be released or credited from the Loan Suspense Account for allocation to Participants' Company Shares Accounts for each Plan Year shall be determined by the Association for that Employee group (as of each Allocation Date) as follows:
 - (i) The number of Leveraged Shares (or their Share-Equivalents) credited to the Loan Suspense Account immediately before the release for the current Plan Year shall be multiplied by a fraction. The numerator of the fraction shall be the amount of principal and/or interest paid on the Acquisition Loan for that Plan Year. The denominator of the fraction shall be the sum of the numerator plus the total payments of principal and interest on the Acquisition Loan projected to be paid for all future Plan Years. For this purpose, the interest to be paid in future years shall be computed by using the interest rate in effect as of the current Allocation Date.

In each Plan Year in which Plan Assets are applied to make payments on an Acquisition Loan, the Leveraged Shares released from the Loan Suspense Account in accordance with the

provisions of this Article 6(b) shall be allocated in the form of Share-Equivalents among the Company Shares Accounts of Participants in the manner determined by the Association, based upon the source of funds (Employer Contributions, Employee Contributions, earnings attributable to such Employer Contributions or Employee Contributions, and cash dividends) used to make payments on the Acquisition Loan.

If cash dividends on Share-Equivalents previously allocated to a Participant's Company Shares Account are used for payments on an Acquisition Loan, Share-Equivalents of additional Leveraged Shares (representing that portion of such payments) released or credited for release from the Loan Suspense Account shall be allocated to that Participant's Company Shares Account in the same ratio as his Share-Equivalents bears to the total Share-Equivalents allocated among all Participants' Company Shares Accounts on the preceding Allocation Date.

Share-Equivalents acquired with cash dividends on unallocated Leveraged Shares shall be allocated under a formula based on Compensation as specified in Article 6(b)(1).

- (3) **Voluntary Employee Contributions.** Each Participant's Other Investments Account will be credited directly with any voluntary Employee Contributions made by that Participant during any Plan Year.
- (4) **Net Income (or Loss) of the Plan.** The net income (or loss) of the Plan for each Plan Year will be determined as of the Allocation Date. Prior to the Allocation of Employer Contributions and Forfeitures and of Employee Contributions for the Plan Year, each Participant's share of any net income (or loss) will be allocated to his Other Investments Account in the ratio that the total balance of such Other Investments Account on the preceding Allocation Date (reduced by any distribution of Capital Accumulation during the Plan Year) bears to the sum of the Other Investments Account balances for all Participants as of that date. The net income (or loss) of the Plan includes the increase (or decrease) in the fair market value of Plan Assets (other than Company Shares), interest income, dividends, and other income and gains (or losses) attributable to Plan Assets (other than dividends on Company Shares) since the preceding Allocation Date, reduced by any expenses charged to the Plan Assets for that Plan Year. The determination of the net income (or loss) of the Plan shall not take into account any interest paid by the Plan under an Acquisition Loan.
- (5) **Dividends on Company Shares.** Any cash dividends received on Share-Equivalents allocated to Participants' Company Shares Accounts will be allocated to the respective Other Investments Accounts of such Participants in the ratio that the number of Share-Equivalents of each Participant bears to total Share-Equivalents allocated to all such Participants on the preceding Allocation Date. Any cash dividends received on unallocated Company Shares (including any Leveraged Shares credited to the Loan Suspense Account) shall be allocated among the Participants' Other Investments Accounts in the ratio that Compensation of each Participant bears to the total Compensation of all such Participants. Any stock dividends received on Company Shares shall be credited to the Accounts (including the Loan Suspense Account) to which Share-Equivalents representing such Company Shares were

allocated. Any cash dividends which are currently distributed to Participants (or their Beneficiaries) under Article 12 shall not be credited to their Other Investments Accounts.

- (6) **Accounting for Allocations.** The Association shall establish accounting procedures for the purpose of making the Allocations to Participants' Accounts provided for in this Article 6. The Association shall maintain adequate records of the aggregate cost basis of Company Shares allocated to each Participant's Company Shares Account. The Association shall also keep separate records of Leveraged Shares and of Employer Contributions and Employee Contributions made for the purpose of enabling the Plan to repay any Acquisition Loan, and of any earnings thereon. The Association may modify the accounting procedures from time to time for the purpose of achieving equitable and nondiscriminatory allocations among the Accounts of Participants in accordance with the general concepts of the Plan.

ARTICLE 7. Voting Company Shares.

The Association shall instruct the Fiduciary in voting Company Shares acquired by the Association.

Prior to the first allocation of Share-Equivalents to Participants' Accounts, the Association shall solicit instructions from each of its Participants on all matters subject to shareholder vote. Prior to such first Allocation, the Participants may vote all Company Shares acquired with the Acquisition Loan, with the total vote sub-divided among Participants according to the ratio that each Participant's Compensation bears to the total Compensation of all Participants. The Association shall direct the ESOP Fiduciary to vote accordingly.

If the Association shall fail to give the ESOP Fiduciary timely instructions, the Fiduciary shall not exercise its power to vote such Company Shares.

After the first Allocation of Share-Equivalents to Participants' Accounts, voting by Participants will be on a one-share, one-vote basis, based upon Share-Equivalents allocated among Participants' Accounts. Unallocated Company Shares will be voted by Participants in the same proportion as the Participants' allocated Company Shares.

ARTICLE 8. Disclosures to Participants.

(a) **Summary Plan Description.** Each Participant shall be given a summary of the Plan written in a language which shall enable Employees to understand their rights under the Plan. Such summary plan description shall be updated at least once every five years.

(b) **Summary Annual Report.** Within nine (9) months after each Allocation Date, each Participant shall be given the summary annual report of the Plan, providing him with a summary of the activities of the Plan during the Plan Year and the financial status of all Plan Accounts at the close of the year compared with the previous year.

(c) **Annual Statement.** Following each Allocation Date, each Participant shall be given a statement reflecting the following information:

- (1) The balance (if any) in each of his personal Plan Accounts as of the beginning of the Plan Year.
- (2) The amount of Employer Contributions, Employee Contributions and Forfeitures, dividends and net income (or loss) allocated to his Accounts for the Plan Year.
- (3) The adjustments to his Accounts to reflect his share of dividends, if any, on Company Shares and any net income (or loss) of the Plan for the Plan Year.
- (4) The new balances in each of his Accounts as of that Allocation Date, including the number of Share-Equivalents allocated to his Company Shares Account and the Fair Market Value of such shares as of the Allocation Date.
- (5) His years of Credited Service and his vested percentage in his Account balances (under Article 9) as of that Allocation Date.

(d) **Additional Disclosure.** The Association shall make available for examination by any Participant copies of the Association Bylaws (including the Plan), the Fiduciary Agreement, the Association deed of incorporation, the latest annual report and financial statement of the Plan, and any other reports required to be available to Participants by any ministry or agency of the Government of Costa Rica. Upon written request of any Participant, the Association shall furnish copies of such documents, and may make a reasonable charge to cover the cost of furnishing such copies.

WHAT PARTICIPANTS WILL RECEIVE

ARTICLE 9. Vesting and Forfeitures.

(a) **Vesting.**

- (i) A Participant's interest in his Accounts shall become 100% vested and nonforfeitable without regard to his Credited Service if he (i) is employed by the Company on or after his age of Retirement, (ii) incurs a Disability while employed by the Company, or (iii) dies while employed by the Company.
- (ii) Except as otherwise provided in Article 9(a)(1), the interest of each Participant in his Accounts (except for interests resulting from voluntary Employee Contributions, which are always 100% vested) shall become vested and nonforfeitable in accordance with the following schedule:

<u>Credited Service Under Article 10</u>	<u>Nonforfeitable Percentage Of Accounts</u>
Less than three years	0%
Three years	30%
Four years	40%
Five years	50%
Six years	60%
Seven years	70%
Eight years	80%
Nine years	90%
Ten or more years	100%

(b) **Forfeitures.** Any portion of the final balance in a Participant's Account which is not vested (and thus does not become part of his Capital Accumulation) will become a Forfeiture as of the Allocation Date of the Plan Year in which he incurs a five-consecutive-year Break in Service. Forfeitures shall first be charged against a Participant's Other Investments Account, with any balance charged against his Company Shares Account (at Fair Market Value). Share-Equivalents representing Leveraged Shares shall be forfeited only after other Share-Equivalents have been forfeited. All Forfeitures will be reallocated to the Accounts of the remaining Participants, as provided in Article 6(b)(1), as of the Allocation Date of the Plan Year in which a five-consecutive-year Break in Service occurs.

(c) **Vesting Upon Reemployment.** If a Participant who is not 100% vested receives a distribution of his Capital Accumulation prior to the occurrence of a five-consecutive-year Break in Service and he is reemployed prior to the occurrence of such a Break in Service, the portion of his Accounts which was not vested shall be maintained separately until he becomes 100% vested. His vested and nonforfeitable percentage in such separate Accounts upon his subsequent termination of service shall be equal to:

$$\frac{X - Y}{100\% - Y}$$

For the purpose of applying this formula, X is the vested percentage at the time of the subsequent termination, and Y is vested percentage at the time of the prior termination.

ARTICLE 10. Credited Service and Break in Service.

(a) **Credited Service.** An Employee's Credited Service shall be the number of Plan Years, beginning after _____, in which he is credited with at least 1000 Hours of Service.

(b) **Break in Service.** A one-year Break in Service shall occur in a Plan Year in which an Employee is not credited with more than 500 Hours of Service by reason of his termination of Service. A five-consecutive-year Break in Service shall be five consecutive one-year Breaks in Service.

For purposes of determining the period of a Participant's Break in Service, the period of a maternity/paternity leave not exceeding one year shall not be treated as a Break in Service.

(c) **Reemployment.** If a former Employee is reemployed after a one-year Break in Service, the following special rules shall apply in determining his Credited Service:

- (1) New Accounts will be established to reflect his interest in the Plan attributable to Service after the Break in Service. After he completes one year of Credited Service following his reemployment, his Credited Service with respect to the new Accounts will include his Credited Service accumulated prior to the Break in Service.
- (2) If he is reemployed after the occurrence of a five-consecutive-year Break in Service, Credited Service after the Break in Service will not increase his Vested Interest in his accounts attributable to Service prior to the Break in Service.
- (3) In the case of a Participant who is reemployed after a five-consecutive-year Break in Service and who has not attained a Vested Interest in his Accounts, Service prior to the Break in Service shall not be included in determining his Credited Service.
- (4) If an Employee is granted an Approved Absence, his Service is not terminated by the Approved Absence, and the period of the Approved Absence will be included in his Credited Service. Failure to return to work by the end of an Approved Absence will terminate Credited Service as of the end of the Approved Absence.

ARTICLE 11. When Capital Accumulation Will be Distributed.

(a) Except as otherwise provided in Article 12, a Participant's Capital Accumulation will be distributed following his termination of Service, but only at the time and in the manner determined by the Association.

(b) In the event of a Participant's Retirement, Disability or death, distribution of his Capital Accumulation shall commence no later than the Allocation Date of the Plan Year following the Plan Year in which his Retirement, Disability or death occurs. If a Participant's Service terminates for any other reason, distribution of his Capital Accumulation shall commence no later than the Allocation Date of the sixth Plan Year following the Plan Year in which his Service terminates; for distributions on such terminations, if a Participant's Capital Accumulation includes Leveraged Shares, such shares shall not be deemed to be part of his Capital Accumulation until the Allocation Date of the Plan Year in which the Acquisition Loan has been fully repaid.

The following alternative modes of distribution may be selected by the Association (after considering the available liquid assets of the Plan):

- (1) distribution of a Participant's Capital Accumulation in a single lump sum; or
- (2) distribution of a Participant's Capital Accumulation in substantially equal annual installments over a period

not exceeding five years (provided that the period over which installments may be distributed may be extended for Capital Accumulations exceeding _____); or

(3) any combination of the foregoing.

(c) Distribution of a Participant's Capital Accumulation shall commence not later than 60 days after the Allocation Date coinciding with or next following his age of Retirement (or his termination of Service, if later). If the amount of a Participant's Capital Accumulation cannot be determined by the Association by the date on which a distribution is to commence, or if the Participant cannot be located, distribution of his Capital Accumulation shall commence within 60 days after the date on which his Capital Accumulation can be determined or after the date on which the Association locates the Participant.

(d) If any part of a Participant's Capital Accumulation is retained in the Plan after his Service ends, his Accounts will continue to be treated as described in Article 6. However, except as otherwise provided in Article 3(c), such Accounts shall not be credited with any additional Employer Contributions, Forfeitures, and dividends on unallocated Leveraged Shares.

ARTICLE 12. In-service Distributions.

(a) **Cash Dividends.** If there is no Company guarantee (or a comparable guarantee) to support repayment of an Acquisition Loan, cash dividends on Leveraged Shares, whether allocated or unallocated, shall first be used to meet current or accrued repayment obligations on the Acquisition Loan which financed such shares. See Articles 5(e) and 5(f).

After required debt service obligations are made and in accordance with Article 5(f), any cash dividends payable on Company Shares allocated as Share-Equivalents to the Company Shares Accounts of Participants may be paid currently (or within 30 days after cash dividends are paid to the Association or the Fiduciary) in cash to such Participants (or their Beneficiaries) on a nondiscriminatory basis, as determined by the Association.

With respect to cash dividends payable on Leveraged Shares which remain unallocated, the Association may also direct the Fiduciary to make payments in cash to Participants based on their relative Compensation, with the balance added to Participants' Other Investment Accounts. See Article 6(b)(1).

(b) **Withdrawals.** Except as provided in this Article 12, a Participant is not entitled to any payment, withdrawal or distribution under the Plan during his Service.

Upon written application by a Participant, the Association may, if sufficient cash is available in Participants' Other Investments Accounts, direct the Fiduciary to make a partial cash distribution to him while he remains an Employee and an active Participant in the Plan. Such distribution shall be limited to a Participant who demonstrates (to the satisfaction of the Association a need for personal funds due to a financial hardship. Any hardship distribution shall be limited to 50% of the Participant's Vested Interest under Article 9 at that time, and shall be treated as an advance against the Capital Accumulation to be distributed following termination of his Service.

ARTICLE 13. How Capital Accumulation Will be Distributed.

(a) The Fiduciary will make distributions from the Plan to an Employee only as directed by the Association. The distribution of a Participant's Capital Accumulation will be made entirely in cash, unless both the Company and the Association agree otherwise. No Participant has the right to demand a distribution in Company Shares.

(b) Distribution of a Participant's Capital Accumulation will be made to the Participant if living, and otherwise to his Beneficiary. In the event of a Participant's death, his Beneficiary shall be his surviving spouse, or (if none) his estate. A Participant (with the consent of his spouse, if any) may designate a different Beneficiary or Beneficiaries from time to time by filing a written designation with the Fiduciary. A deceased Participant's entire Capital Accumulation shall be distributed to his Beneficiary within five years after his death, except to the extent that distribution previously has commenced in accordance with Article 12(b).

ARTICLE 14. Rights, Options and Restrictions on Company Shares.

In the event the Company and the Association both agree to a distribution of all or part of a Participant's Capital Accumulation in Company Shares, such distribution shall be made under the following conditions:

(a) Any Company Shares distributed by the Plan shall be subject to a "right of first refusal." The right of first refusal shall provide that, prior to any subsequent transfer, the shares must first be offered for purchase in writing to the Company, and then to the Association, at the then Fair Market Value. A bona fide written offer from an independent prospective buyer shall be deemed to be the Fair Market Value for this purpose. The Company and the Association shall have a total of 14 days to exercise the right of first refusal on the same terms offered by a prospective buyer. The Company may require that a Participant entitled to a distribution of Company Shares execute an appropriate share transfer agreement (evidencing the right of first refusal) prior to receiving a certificate for Company Shares.

(b) The Company shall provide a "put option" to any Participant (or Beneficiary) who receives a distribution of Company Shares. The put option shall permit the Participant (or Beneficiary) to sell such Company Shares to the Company at any time during two option periods, at the then Fair Market Value. The first option period shall be for at least 60 days beginning on the date of distribution. The second option period shall be for at least 60 days beginning after the new determination of Fair Market Value (and notice to the Participant thereof) in the following Plan Year. The Company may allow the Association to purchase Company Shares tendered to the Company under a put option.

The payment for any Company Shares sold under a put option shall be made within 30 days if the shares are distributed as part of an installment distribution. If the shares are distributed in a lump sum distribution, payment shall commence within 30 days and may be made in a lump sum or in substantially equal annual installments over a period not exceeding five years, with adequate security provided and interest payable at a reasonable rate (as determined by the Company or the Association) on the unpaid installment balance.

(c) Company Shares held or distributed by the Association may include such legend restrictions on transferability as the Company may reasonably require in order to assure compliance with applicable Costa Rican securities laws. Except as otherwise provided in this Article 14, no

Company Shares held or distributed by the Fiduciary may be subject to a put, call or other option, or buy-sell or similar arrangement. The provisions of this Article 14 shall continue to be applicable to Company Shares even if the Association and the ESOP cease to exist.

ARTICLE 15. No Assignment of Benefits.

A Participant's Capital Accumulation may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process, except where specifically required by laws governing assets of employee associations.

ARTICLE 16. Administration.

(a) **Composition and Fiduciary Role of the Association's Board of Directors.** The Board of Directors of the Association shall be responsible for all matters affecting the Plan. The board shall consist of _____ persons, half of whom will be appointed by management and the other half will be elected by the Employees. All members of the Board of Directors will serve the Plan in a fiduciary capacity. The Association may contract with an outside Fiduciary to hold and administer ESOP Assets on behalf of all members of the Association and to serve as a directed Fiduciary, subject to instructions received from the Association with respect to all investment, distribution and voting matters. The selection and replacement of members of the Board of Directors are governed by Part I of these Bylaws, dealing with the governance of the Association.

(b) **Voting, Records and General Authority of the Board of Directors.** Any action on behalf of the Association which is taken by the Board of Directors will be by vote of a majority of Board members at a meeting in which a quorum of _____ is present or in writing without a meeting. A Board member who is a Participant shall not vote on any question relating specifically to himself.

The Board members shall be authorized to execute any certificate or other written direction on behalf of the Association. The Association shall keep a record of its proceedings and of all dates, records and documents pertaining to the administration of the Plan.

(c) **Powers and Duties of the Board of Directors.** The Board of Directors of the Association shall have all the powers necessary to determine all matters of policy which pertain to the Association and the ESOP Fiduciary Agreement as a whole, including without limitation the following:

- (1) construing and interpreting the Plan and the Fiduciary Agreement and adopting for administration of the Plan rules which are consistent with the terms of these ESOP Bylaws;
- (2) resolving all questions relating to the eligibility of Employees to become Participants;
- (3) determining the appropriate allocations to Participants' Accounts pursuant to Article 6;

- (4) determining the amount of benefits payable to a Participant (or Beneficiary), and the time and manner in which such benefits are to be paid;
- (5) engaging any administrative, legal, accounting, clerical or other services which it may deem appropriate; and
- (6) reviewing the performance of the Fiduciary with respect to the Fiduciary's administrative duties, responsibilities and obligations under the Plan and the ESOP Fiduciary Agreement;
- (7) selecting an independent appraiser and determining the Fair Market Value of Company Shares as of such dates as it determines to be necessary or appropriate;
- (8) conducting at least every three years a liquidity analysis of the Company Share repurchase requirements of the Plan, based on projections of future share values, employee turnover rates, vesting, future contributions and other factors affecting accumulations of terminating members, and planning for the funding of a Liquidity Fund within the Other Investments Account to meet such repurchase obligations.
- (9) authorizing and directing all disbursements of Assets by the Fiduciary;
- (10) providing timely reports to the Participants regarding their Plan Accounts;
- (11) compiling and maintaining all records it determines to be necessary, appropriate or convenient in connection with the administration of the Plan; and
- (12) executing agreements and other documents on behalf of the Plan.

The Association shall be responsible for directing the Fiduciary as to the investment of Plan Assets in a manner which is consistent with the objectives of the Plan. The Association may delegate to the Fiduciary the responsibility for investing Plan Assets other than Company Shares and shall establish a method for directing the Fiduciary on any acquisitions and disposals of Company Shares.

The Association and any fiduciary shall perform its duties under the Plan and the ESOP Fiduciary Agreement solely in the interests of the Participants (and their Beneficiaries). Any discretion granted to anyone acting in a fiduciary capacity under any of the provisions of the Plan or the ESOP Fiduciary Agreement shall be exercised only in accordance with rules and policies established by the Association, which shall be applicable on a nondiscriminatory basis.

(d) **Expenses.** All reasonable expenses of administering the Plan and Plan Assets shall be charged to and paid out of the Plan Assets. The Company may, however, pay all or any portion of such expenses directly, and payment of expenses by the Company shall not be deemed to be Employer Contributions.

(e) **Information to be Submitted by the Company.** To enable the Association to perform its functions, the Company shall supply full and timely information to the Board of Directors on all matters as it may require, and shall maintain such other records as the Board may determine to be necessary or appropriate in order to determine the benefits due or which may become due to Participants (or Beneficiaries) under the Plan.

(f) **Delegation of Fiduciary Responsibility.** The Board of Directors may from time to time allocate to one or more of its members and/or delegate to any other persons or organizations any of its rights, powers, duties and responsibilities with respect to the operation and administration of the Plan which are permitted to be so delegated under the Plan; provided, however, that responsibility for investment of the Plan Assets may not be allocated or delegated other than as provided in Article 16(c). Any such allocation or delegation shall be made in writing, shall be reviewed periodically by the Board and shall be terminable upon such written notice as the Board in its discretion deems reasonable and proper under the circumstances.

(g) **Bonding, Insurance and Indemnity.** The Association shall secure fidelity bonding for the fiduciaries of the Plan.

The Association (in its discretion) or the Fiduciary (as directed by the Board) may obtain a policy or policies of insurance for Board Members (and other fiduciaries of the Plan) to cover liability or loss occurring by reason of the act or omission of a fiduciary. If such insurance is purchased with Plan Assets, the policy must permit recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary. The Company shall indemnify each member of the Board (to the extent permitted by law) against any personal liability or expense resulting from his service on the Board, except such liability or expense as may result from his own willful misconduct.

(h) **Notices, Statements and Reports.** The Board shall assist the Company, as requested, in complying with governmental reporting and disclosure requirements. The Board shall be the designated agent of the Plan for the service of legal process.

ARTICLE 17. Claims Procedure.

A Participant (or Beneficiary) who does not receive a distribution of benefits to which he believes he is entitled may present a claim to the Association. The claim for benefits must be in writing and addressed to the Association. If the claim for benefits is denied, the Association shall notify the Participant (or Beneficiary) in writing within 90 days after the Association initially receives the benefit claim. Any notice of a denial of benefits shall advise the Participant (or Beneficiary) of the basis for the denial, any additional material or information necessary for the Participant (or Beneficiary) to perfect his claim, and the steps which the Participant (or Beneficiary) must take to have his claim for benefits reviewed.

Each Participant (or Beneficiary) whose claim for benefits has been denied may file a written request for a review of his claim by the Board of Directors of the Association. The request for review must be filed by the Participant (or Beneficiary) within 60 days after he receives the written notice denying his claim. The decision of the Board will be made within 60 days after receipt of a request for review and shall be communicated in writing to the claimant. Such written notice shall set forth the basis for the Board's decision. If there are special circumstances (such as the need to hold a hearing) which require an extension of time for completing the review, the Board's decision shall be rendered not later than 120 days after receipt of a request for review.

ARTICLE 18. Limitations on Participants' Rights.

A participant's Capital Accumulation will be based on his Vested Interest in his Accounts and will be paid only from the Plan Assets. The Association, the Company or the Fiduciary shall not have any duty or liability to furnish the Plan with any funds, securities or other assets, except as expressly provided in the Plan.

The adoption and maintenance of the Plan shall not be deemed to constitute a contract of employment or otherwise between the Company and any Employee, or to be a consideration for, or an inducement or condition of, any employment. Nothing contained in this Plan shall be deemed to give an Employee the right to be retained in the Service of the Company or to interfere with the right of the Company to discharge, with or without cause, any Employee at any time.

ARTICLE 19. Future of the Plan.

The Association reserves the right to amend or terminate the Plan (in whole or in part) and the Fiduciary Agreement at any time, by action of its Board of Directors. Neither amendment nor termination of the Plan shall retroactively reduce the vested rights of Participants or permit any part of the Plan Assets to be diverted to or used for any purposes other than for the exclusive benefit of the Participants (and their Beneficiaries).

If the Plan is terminated (or partially terminated), participation of Participants affected by the termination will end. The Accounts of Employees affected by the termination will become nonforfeitable as of the date of termination. A complete discontinuance of Employer Contributions, dividends on Company Shares, and voluntary Employee contributions shall be deemed to be a termination of the Plan for this purpose. After termination of the Plan, the Plan will be maintained until the Capital Accumulations of all Participants have been distributed. Capital Accumulations may be distributed following termination of the Plan, or distributions may be deferred as provided in Article 11, as the Company shall determine.

In the event of the merger or consolidation of this Plan with another Plan, or the transfer of Plan Assets (or liabilities) to another plan, the Account balances of each Participant immediately after such merger, consolidation or transfer must be at least as great as immediately before such merger, consolidation or transfer (as if the Plan had then terminated).

ARTICLE 20. Governing Law.

The provisions of this Plan shall be construed, administered and enforced in accordance with the laws of Costa Rica.

ARTICLE 21. Execution.

To record the adoption of this Plan, the Association has caused its appropriate officers to affix its association name and seal hereto this _____ day of _____, 19____.

EMPLOYEE SHAREHOLDERS'
ASSOCIATION **COMPANY**

By _____
President

(SEAL)

By _____
Secretary

To record its concurrence with this Plan, the Company has caused its appropriate officers to affix its corporate name and seal hereon this _____ day of _____, 19____.

COMPANY

By _____
President

(SEAL)

By _____
Secretary

**THE LEGISLATIVE ASSEMBLY HEREBY ORDERS THAT THE ABOVE
LAW BE COMMUNICATED TO THE EXECUTIVE BRANCH.**

**LEGISLATIVE ASSEMBLY, San Jose, on the _____ day of the month of
_____ of 19_____.**