REGGIE WHITE, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al..

Defendants

APPEARANCES:

BEFORE SPECIAL MASTER
STEPHEN B. BURBANK

RE: REVENUE SHARING PROCEEDING

OPINION

FOR THE *WHITE* CLASS AND NFL PLAYERS ASSOCIATION:

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FOR THE NFL MANAGEMENT COUNCIL

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Class Counsel and the National Football League Players Association ("NFLPA") initiated this proceeding on December 18, 2009, pursuant to Article XXII of the *White* Stipulation and Settlement Agreement, as amended ("SSA"), and Article XXVI of the Collective Bargaining Agreement, as amended ("CBA"). They seek a ruling that the revenue sharing program proposed by the NFL Management Council ("Management Council") for 2010, which is the Final League Year and an Uncapped Year, cannot be implemented because, under Article XXIV, Section 11 of the CBA (Article X, Section 11 of the SSA) ("Section 11"), it would constitute a material modification to the program that the NFLPA determined to be satisfactory and is not itself reasonably satisfactory.[1] The Management Council responded on January 19, 2010, and Class Counsel replied on January 22. A hearing was held on January 26.

Negotiated as part of the 2006 CBA extension, Section 11 provides:

> For each season during the term of this Agreement, there shall be a program of revenue or cost sharing among the NFL Clubs which shall (a) be based on the Resolution adopted by the NFLMC on March 9, 2006 (2006 Resolution MC-1), approving this Agreement (including "qualifiers" established under Paragraph 5 of that Resolution), (b) provide for incremental revenue sharing as compared to the arrangements created by 1995 Resolution G-6, and (c) be reasonably satisfactory to the NFLPA. The revenue sharing program described to the NFLPA by memorandum dated March 10, 2006, has been determined by the NFLPA to be satisfactory. Any material modification to that program must also be reasonably satisfactory to the NFLPA.

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[1] In a ruling denying Class Counsel any discovery in addition to two documents that the Management Council had provided (purportedly the two resolutions referred to in Section 11), I noted:

> As the revenue sharing dispute has developed, the only question to be determined on the merits is whether the program of revenue sharing to which [Section 11] refers includes in 2010, an Uncapped Year, the portion of revenue sharing that the Management Council proposes to eliminate. If it does, the Management Council concedes that the elimination of that portion would represent a "material modification." Moreover, before bringing the proceeding Class Counsel had already communicated the conclusion that the proposed modification was not "reasonably satisfactory to the NFLPA," a conclusion that the Management Council does not dispute (on the assumption that Class Counsel's interpretation of [Section 11] is correct).

*White v. NFL* (Revenue Sharing Discovery Ruling), Slip Op. at 1-2 (Dec. 31, 2009).

The pertinent paragraphs of the March 10, 2006 memorandum ("March 10 memorandum") provide:

> 1. Establish a new Revenue Sharing mechanism to fund low revenue clubs, beginning at $100 million in 2006 and increasing to a projected total of $220 million in 2011. Overall six-year total estimated at $895 million.
>
> 2. The Revenue Sharing pool will be funded from three sources:
>    a. Amounts currently dedicated to Supplemental Revenue Sharing.
>    b. Direct payments from High Revenue Clubs.
>    c. Distributions from new equally shared revenue streams (other than television), either from existing business categories or New Media Revenues (e.g., digital technologies, Internet); such distributions to come disproportionately from shares that would otherwise go to High Revenue Clubs.[2]

The Management Council's proposed revenue sharing program for 2010 would eliminate at least one of these three funding sources, that which is set forth in Paragraph 2(b).

Reduced to essentials, Class Counsel's position is that (1) Section 11 requires a program of enhanced revenue sharing "[f]or each season during the term of this Agreement," which includes 2010 (or any other Final League Year), and it does not distinguish for that purpose between Capped and Uncapped Years; (2) the revenue sharing program described in the March 10 memorandum, the only program determined to be satisfactory by the NFLPA, similarly makes no distinction between Capped and Uncapped Years; it includes 2010 within the years covered by "a new Revenue Sharing mechanism … increasing to a projected total … in 2011," and it provides for one "Revenue Sharing Pool" to be "funded from three sources;" (3) the fact that the program described in the March 10 memorandum does not cover 2012 simply means that, if there had not been early termination of the CBA (which made 2010 instead of 2012 the Final League Year), the Management Council would have had to propose another revenue sharing program for that year, which would have had to be reasonably satisfactory to the NFLPA, under the first sentence of Section 11, and (4) although not inadmissible as parol evidence, the document produced as 2006 Resolution MC-1 ("2006 Resolution") is of questionable authenticity, and if authentic and incorporated by reference is not of equal status with the CBA (including Section 11) or the March 10 memorandum and need not be read as inconsistent with them, particularly if ambiguities are resolved against the Management Council, which drafted it.

Again in essence, the Management Council's position is that (1) the "revenue sharing program" to which the second sentence of Section 11 refers as "described to the NFLPA by [the March 10 memorandum]" is the program reflected in the 2006 Resolution; (2) the mistakes made

[2] The full text of this document is attached as Exhibit 2 to this opinion.

by Section 11 in describing the 2006 Resolution are scrivener's errors; (3) the 2006 Resolution contains a number of provisions that signal intent to exclude one of the three elements it describes in 2012, thus supporting the Management Council's proposal to eliminate that element in 2010 now that it has replaced 2012 as the Final League Year; (4) even if the March 10 memorandum has independent status for purposes of Section 11, it should be read harmoniously with the 2006 Resolution, and (5) by describing a "new Revenue Sharing mechanism" to provide funding that would "increase[e] to a projected total … in 2011" and referring to an estimated "[o]verall six-year total," the March 10 memorandum suggests that the element of the revenue sharing program that the Management Council proposes to eliminate was not intended to be included in 2012, and thus should not be included in 2010 now that it has become, the Final League Year and an Uncapped Year.

New York law governs the interpretation of Section 11. As explained by the Court:

> Under New York law, the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract. *Slatt v. Slatt,* 64 N.Y.2d 966, 967, 477 N.E.2d 1099, 488 N.Y.S.2d 645 (1985). "The objective in any question of the interpretation of a written contract, of course, is to determine 'what is the intention of the parties as derived from the language employed.'" *Hartford Accident & Indemnity Co. v. Wesolowski,* 33 N.Y.2d 169, 171-72, 305 N.E.2d 907, 350 N.Y.S.2d 895 (1973) (quoting 4 S. Williston, *A Treatise on the Law of Contracts* § 600, at 280 (3d ed. 1961)). The court should also give the words in a contract their plain and ordinary meaning unless context mandates a different interpretation. *See* *Laba v. Carey,* 29 N.Y.2d 302, 308, 327 N.Y.S.2d 613, 277 N.E.2d 641, *mot. for rearg. den.* 30 N.Y.2d 694 (1971).
>
> ….
>
> Moreover, a court may not rewrite into a contract conditions the parties did not insert or, under the guise of construction, add or excise terms. *Slatt v. Slatt,* 64 N.Y.2d 966, 967, 477 N.E.2d 1099, 488 N.Y.S.2d 645 (1985).

*White v. NFL*, 899 F. Supp. 410, 414, 415 (D.Minn. 1995).

Although New York law permits the consideration of parol or extrinsic evidence to ascertain the intent of the parties when a contract is ambiguous, the SSA and CBA bar use of or reference "to any parol evidence with regard to the interpretation or meaning of … this Agreement." SSA Art. XXX(7); CBA Art. LV, Section 19. *See White v. NFL*, 972 F. Supp. 1230, 1235 (D.Minn. 1997). In a case like this, where the stakes are high and the contract multiplies the risks of ambiguity by referring to other documents, it is easy to appreciate that such a rule has costs as well as benefits. It may be best to begin by taking off the table interpretations of Section 11 offered by both sides that do not require resort to other documents.

Contrary to an argument made by Class Counsel, it is not possible to resolve this dispute

solely on the basis of the language in Section 11. The argument puts the rabbit in the hat by turning one of the three required elements in the first sentence of Section 11 into an adjective and pretending that "enhanced revenue sharing" is necessarily invariant. At the hearing, however, Class Counsel acknowledged that what matters for this purpose is that any particular year's revenue sharing program satisfy the test of "incremental revenue sharing as compared to the arrangements created by 1995 Resolution G-6 ["the 1995 Resolution"]." Since the Management Council's proposed revenue sharing program for 2010 would include "New Media Revenues," *see* March 10 memorandum, Paragraph 2(c), in addition to the amounts called for by the1995 Resolution, it would meet that test.

The Management Council's argument that "[t]he revenue sharing program described to the NFLPA by memorandum dated March 10, 2006" means the revenue sharing program reflected in the 2006 Resolution is also unpersuasive. Section 11's first sentence refers to the 2006 Resolution not as reflecting a revenue sharing program but as the required basis for any such program. Moreover, its second and third sentences imply that, although the "revenue sharing program described" by the March 10 memorandum is based on the 2006 Resolution, it is nonetheless "that program" referred to as providing the basis for judgment about "material modification." Finally, the argument raises the question why, if that were the intent, the second sentence of Section 11 did not simply refer to "the revenue sharing program reflected in the 2006 Resolution." The answer may be (1) felt need to have the NFLPA review a concrete revenue sharing program, thereby disciplining its incentive and ability to reject subsequent programs as not "reasonably satisfactory" by establishing a "material modification standard" and a baseline for judgment on that issue, and (2) reluctance to have the 2006 Resolution used for that purpose, both of which are implied by the very existence of the March 10 memorandum. *See infra* at 9 n.5. If the Management Council's argument depriving the March 10 memorandum of independent status as the repository of "that program" were accepted, however, much of its value would be lost in any situation in which it did not permit confident judgment about the materiality of modifications to the program putatively reflected in the 2006 Resolution.

There is no way that, considered on its own, the program set forth in the March 10 memorandum can accommodate the program that the Management Council proposes for 2010. Paragraph 1 refers to "a new Revenue Sharing mechanism," not to two such mechanisms, one for Capped Years and another for Uncapped Years (or for the Final League Year).[3] Paragraph 2 specifies three sources of funding for the one revenue sharing mechanism prescribed. Even if Paragraph 1 were interpreted to exclude 2010 (by inferring an intent to exclude 2012 because it was the Final League Year and an Uncapped Year and further inferring an intent to exclude any other year that became the Final League Year because of early termination), the result would be

[3] As Class Counsel observes, the "CBA is replete with provisions specifying various changes that take place in any Uncapped Year, including the Final League Year, demonstrating that the parties were aware of the need to expressly provide for such changes, and were perfectly capable of doing so. Class Counsel's Reply Brief at 2 (Jan. 22 , 2010). *See id.* at 2-5 (listing CBA provisions reflecting changes during Uncapped Years, including in the event of early termination).

that the March 10 memorandum was functus officio. There would be no revenue sharing mechanism to fund and no basis in the March 10 memorandum for deciding whether any particular proposed level of funding for 2010 should be deemed "reasonably satisfactory" by the NFLPA. In that event, the Management Council's proposed revenue sharing program for 2010 would be subject to the three requirements in the first sentence of Section 11, including the requirement that it be "reasonably satisfactory to the NFLPA."

It is now apparent why the Management Council advances an interpretation of Section 11 that would require direct resort to the 2006 Resolution when determining whether the proposed revenue sharing program for 2010 represents a "material modification." Having rejected that interpretation, I must nevertheless consider what if any role the 2006 Resolution should play in making that determination with respect to the discrete program described in the March 10 memorandum.

The full text of the document that the Management Council produced in response to Class Counsel's discovery request for the 2006 Resolution is attached as Exhibit 1 to this opinion. Class Counsel has questioned its authenticity, noting that, although Section 11 refers to "the Resolution adopted by the NFLMC on March 9, 2006 (2006 Resolution MC-1)," Exhibit 1 is dated March 15, 2006 and refers to a "Resolution Adopted at Special Management Council/League Meeting, March 8, 2006, Dallas Texas."

> The NFLPA, Class Counsel and the Special Master thus have no way of knowing – especially without any discovery having been granted – whether there was any different "Resolution adopted by the NFLMC on March 9, 2006." CBA Art. XXIV, § 11. Clearly, the burden of proof rests upon the NFLMC if it wishes to establish that the document it has submitted is just mislabeled and actually contains the exact terms of the Resolution referred to in the CBA as being adopted on a different date.

Class Counsel's Reply Brief at 13 (Jan. 22, 2010).

In addition, it was noted at the hearing that, although Section 11 refers to "'qualifiers' established under Paragraph 5 of that Resolution," that subject is treated in Paragraph 6 of Exhibit 1.

Counsel for the Management Council described the March 8 vs. March 9 discrepancy as a "scrivener's error." Even if so, the discrepancy concerning the numbered paragraphs of the 2006 Resolution is more troublesome. One of the Management Council's arguments concerning the interpretation of the 2006 Resolution turns on the content of a paragraph in Exhibit 1(Paragraph 5). *See infra* at 9 n.5. Yet, as set forth in Exhibit 1 that paragraph not only states that it "may drop out," *see also* Exhibit 1, pg. 2006-12, Note 3; its disappearance in a subsequent iteration could explain why that which Section 11 refers to as "Paragraph 5" is Paragraph 6 in Exhibit 1.

The concerns raised by these discrepancies extend beyond the question of authenticity. In order to be incorporated by reference in a contract, "New York law requires that [a] document be

referenced beyond all reasonable doubt." *4Connections LLC v. Optical Communications Group, Inc.*, 618 F. Supp.2d 178, 183 (E.D.N.Y. 2009). *See Chiacchia v. Nat'l Westminster Bank*, 124 A.D.2d 626, 628, 507 N,Y.S.2d 888, 889-90 (2d Dep't 1986) ("requiring that the paper to be incorporated into a written instrument by reference must be so referred to and described in the instrument that the paper may be identified beyond all reasonable doubt").

I am reluctant to exclude Exhibit 1 under Federal Rule of Evidence 901, or to hold that it does not qualify for incorporation under New York law, because of the representations as to authenticity made by counsel for the Management Council at the hearing and because Class Counsel's response to my question whether he was in fact challenging authenticity was ambivalent. I am also mindful of the accelerated schedule of briefing and preparation for the hearing and of the customary reluctance of both sides to insist on formalities.[4] In declining to exclude Exhibit 1, I am influenced as well by the reduced role that it plays once the March 10 memorandum is accorded the independent status in Section 11 that, as I hold above, it requires. Finally, having been informed by both parties that an appeal would be taken from an adverse decision, I am conscious that the Court can correct any error made in failing to exclude Exhibit 1 (or to disqualify it for incorporation under New York law).

In New York the common law rule that "[i]n order to uphold the validity of terms incorporated by reference it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms," *Lamb v. Emhart Corp.*, 47 F.3d 551, 558 (2d Cir. 1995), has been effectively modified so that "a party's failure to read a duly incorporated document will not excuse the obligation to be bound by its terms." *PaineWebber, Inc. v. Bybyk*, 81 F.3d 1193, 1201 (2d Cir. 1996). On the assumption that Exhibit 1 is authentic and identified with sufficient certainty, the NFLPA is deemed to be familiar with its provisions. Yet, the significance of the binding force of the 2006 Resolution is restricted because, as incorporated in Section 11, it serves only as the required foundation for any revenue sharing program proposed, including that described in the March 10 memorandum. Mindful of my duty under New York law to read "all writings that form part of a single transaction and are designed to effectuate the same purpose … together, even though they were executed on different dates and were not all between the same parties," *Gordon v. Youmans*, 358 F.2d 261, 263 (2d Cir. 1965), I now consider whether knowledge of the contents of the 2006 Resolution should change the interpretation of the March 10 memorandum by demonstrating an intent different from that which is inferable from the latter standing alone. I have concluded that it should not do so.

Like the "new Revenue Sharing mechanism" described in Paragraph 1 of the March 10 memorandum, Paragraph 2 of the 2006 Resolution refers to a single "SRS" and projects funding

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[4] On the other hand, the absence of meaningful discovery made possible by the Management Council's strategy to rest on the interpretation of Section 11 and documents incorporated by reference as a matter of law might be thought to favor strict application of evidentiary rules designed to screen out unreliable evidence. *See* CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE 1122 (1995).

levels beginning in 2006 and ending in 2011. Like Paragraph 2 of the March 10 memorandum, Paragraph 3 of the 2006 Resolution sets out the funding sources (or "Funding Mix") to be used to fund the one "SRS." Again we find no explicit distinction between Capped and Uncapped Years, or between Capped Years and the Final League Year. The Management Council argues, however, that the inference of an intent to make such a distinction is much stronger in the 2006 Resolution because, in addition to excluding 2012, the original Final League Year and an Uncapped Year, Paragraph 2(b) refers to the "Salary Cap" (and the "trigger") and prescribes a formula for determining funding levels that depends on Salary Cap methodology. That does not change the fact, however, that, like the March 10 memorandum, the 2006 Resolution contemplates one program with one set of projected funding levels and three different funding sources, rather than, as the Management Council would have it, a variable program with three different "elements."[5]

In other words, although it is not hard to imagine why the Management Council proposes a revenue sharing program for 2010 that includes both "the arrangements created by the 1995 Resolution" and "New Media Revenues" – after all, the first sentence of Section 11 requires some increment over the 1995 Resolution -- there is nothing in the logic of its position regarding Paragraph 2(b) that supports picking and choosing among funding sources (while calling them "elements"). For that the Management Council relies on language in Paragraph 4 of the 2006 Resolution, which provides that "[f]or the duration of this CBA, including the uncapped year, all ["New Media Revenues"] shall be committed as equally-shared revenues." According to the Management Council, Paragraph 4 does not just signal the parties' intent that "New Media Revenues" be shared in the "uncapped year;" in so prescribing it renders even clearer that other provisions were not intended to include "the uncapped year."

This argument shares with the Management Council's treatment of the 2006 Resolution as a whole the failure to distinguish between, or conflation of, the revenue sharing program, funding levels and sources of funding. In that regard, the part of Paragraph 4 that deals with "New Media Revenues" also provides:

> Beginning with the 2006 League Year, the amount of equally-shared New Media Revenues that would otherwise be distributed to the High Revenue Clubs … shall instead be used to the extent necessary to fund the supplemental revenue-sharing pool created under the extended CBA. Any New Media Revenues not devoted to the supplemental revenue sharing pool shall be distributed equally to clubs that are not "High Revenue Clubs" and to High Revenue Clubs insofar as the New Media Revenues of those clubs are not required to fund the supplemental revenue sharing pool.

Exhibit 1, Paragraph 4.

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[5] As Class Counsel argues, "it is far from impossible to calculate the RSM pool for Uncapped Years, since the amount of the Salary Cap itself is merely a percentage of projected Total Revenues, a formula which easily could be calculated and applied in an Uncapped Year, even if the Cap itself is not in effect." Class Counsel's Reply Brief at 17 (Jan. 22, 2010).

Thus, it is evident that the reference to the "uncapped year" has nothing to do with the use of "New Media Revenues" to fund the SRS described in Paragraph 2, particularly when one recalls the purpose "to fund low revenue clubs" stated in Paragraph 1 of the March 10 memorandum. It is equally clear that the intent was that "New Media Revenues" should be used only "to the extent necessary to fund the supplemental revenue-sharing pool created under the extended CBA." In the latter respect, Paragraph 4 confirms the inference arising from the structure of Paragraph 3 and the fact that Paragraph 3(c) (which includes "New Media Revenues") begins with the words "[b]alance from." Coupled with the considerations discussed above, and considering that any ambiguities in the 2006 Resolution should be construed against its drafter, *see, e.g.*, *Guardian Life Ins. Co. v. Schaefer*, 70 N.Y.2d 888, 890, 519 N.E.2d 288 (1987), this hierarchy of funding sources tends to confirm, rather than contravene, the intent ascribed to the March 10 memorandum.[6]

In sum, Class Counsel is entitled to a declaration that the 2010 League Year is either (1) covered by the "new Revenue Sharing mechanism" prescribed in Paragraph 1 of the March 10 memorandum and to be funded as prescribed in Paragraph 2, in which case the Management Council's proposal for 2010, which eliminates part of that funding, is concededly a material modification, or (2) not covered by the March 10 memorandum, in which case any new proposal must satisfy the three requirements of the first sentence of Section 11. Since the result of these two alternative conclusions is the same for purposes of this dispute, I need not choose between them.

s/Stephen B. Burbank
Special Master
February 1, 2010

[6] The Management Council also argues that the reference to banking any excess funding "for future obligations through four or six years," Exhibit 1, Paragraph 5, further confirms an intent that the funding mechanism not apply to the Final League Year (i.e., that it apply only to the years 2006-2009 or 2006-2011). Putting aside doubts about the status of this paragraph of the 2006 Resolution, *see supra* at 6, given a plausible alternative explanation by Class Counsel, *see* Class Counsel's Reply Brief at 15-16 (Jan. 22, 2010), this language is at best ambiguous and under New York law should be construed against the drafter. Further, the posited intent would at most support the interpretation that, being based on the 2006 Resolution, the March 10 memorandum is functus officio in the Final League Year, one of two interpretations already suggested by consideration of the March 10 memorandum on its own. *See supra* at 5. Finally, the matter dealt with in this paragraph of Exhibit 1, like much else in that document, ranges far afield from the joint concerns of the parties that are addressed in Section 11, which helps to understand why the Management Council may not have wanted to use the 2006 Resolution as the basis for initial judgment by the NFLPA and tends to confirm the conclusion that the March 10 memorandum sets forth "that program" to which Section 11 refers.

# EXHIBIT 1

**2006 RESOLUTION G-1**
**2006 RESOLUTION MC-1**

**March 15, 2006**

**Resolution Adopted at Special Management Council/ League Meeting, March 8, 2006, Dallas, Texas**

**(Moved by Baltimore, Carolina, Dallas, Denver, New England, New York Giants, New York Jets, Pittsburgh; seconded by Atlanta)**

1. Accept the Union's offer.

2. SRS funded at the following levels:

   a. 2006 -- $100 million

   b. 2007-11 – 65% of **a club's own revenue at the** "midpoint" **between the Salary Cap and the "trigger"** (58.5% level), **projected at approximately**
      i. 2007 -- $105 million
      ii. 2008 -- $120 million
      iii. 2009 -- $140 million
      iv. 2010 -- $210 million
      v. 2011 -- $220 million

   **[Note: The current projections of committed finding levels, distributed at the meeting during the discussion of the proposed resolution, is at Attachment A.]**

3. Funding Mix:

   a. Current **SRS Funding Sources** (now pooled; approximately $27 million annually)

   b. **Annual** commitments from High Revenue Clubs, at
      i. $3 million from each of the top five Clubs
      ii. $2 million from each of the next five Clubs
      iii. $1 million from each of the next five Clubs

   c. Balance from High Revenue Clubs' **(as identified on an annual basis)** share of incremental League revenue streams in excess of current projections (other than television): e.g., new business categories, new technologies, new revenue streams from existing business categories.

d. [Deleted due to overlap with paragraph 4.]

4. **The League will have the** authority to borrow against High Revenue Clubs' **(as identified on an annual basis)** share of digital and internet revenue **streams** pooled at League level to fund shortfalls. **Such funding may** be called to the actual extent earned by qualifying Clubs in the given year. To the extent earned, the League will borrow these monies against a pledge of the High Revenue Clubs' distribution of **future New Media revenues. For the first four years of the extended CBA (2006-09), the annual financial responsibility of the top 15 clubs for funding shortfalls of up to $105 million (average of $26 million/year)** will be as follows:
   a. **Clubs** 1-5 = $2.6 million
   b. **Clubs** 6-10 = $2.08 million
   c. **Clubs** 11-15 = $520 thousand

To the extent less **than the $26 million annual average is needed**, it will be taken pro rata on the above formula. **Money will not be borrowed unless necessary.**

**For the duration of this CBA, including the uncapped year,** all revenues generated by the NFL or any member club from the distribution of audio, video, animated, live statistical, or textual content via any subscription, non-broadcast digital, or other technology for distributing media now in existence or hereafter developed, including without limitation subscription television or radio (other than existing DirecTV and Sirius agreements), video-on-demand, internet (including advertising or pay-per-view or related services), broadband, IPTV, or digital download or streaming devices (e.g., iPods, cell phones, PDAs or similar devices) shall be committed as equally-shared revenues (hereafter referred to as "New Media Revenues"). Beginning with the 2006 League Year, the amount of equally-shared New Media Revenues that would otherwise be distributed to the High Revenue Clubs (as that term is defined by the membership) shall instead be used **to the extent necessary** to fund the supplemental revenue sharing pool created under the extended CBA. **Any** New Media Revenues not devoted to the supplemental revenue sharing pool **shall be** distributed equally to clubs that are not "High Revenue Clubs" **and to High Revenue Clubs insofar as the New Media Revenues of those clubs are not required to fund the supplemental revenue sharing pool.**

5. **To the extent excess funding arising from Paragraph 3 exists in any year, such excess will be retained ("Banked") for future obligations through four years or six years, as the case may be. At the end of the term provided for under this document any remaining banked funds will be returned to the contributing clubs. [This section may drop out; committed to discuss further with the clubs.** *(See Note 3 at Attachment C.)*]

6. Qualifiers per current system/Commissioner recommendations (See Attachment B; "Funds Distribution Standards"). **The final system will include qualifiers. The Commissioner will appoint and chair a Special Committee, to be composed of eight owners (2 from each "quartile" in the League), which will review the issue of qualifiers and make a report and recommendations to the membership. Any qualifiers will be approved by a vote of three-fourths of the membership. If, in the judgment of the Commissioner, the membership is unable to resolve the issue of qualifiers on a three-fourths vote, the Commissioner shall have the authority to determine those qualifiers that will apply to distributions from the supplemental revenue sharing pool. [*See Notes 1 and 2 (at Attachment C) for Commissioner's comments on the subject of qualifiers.*]**

7. If at end of term, there is a debt balance, debt will be repaid in same proportion as High Revenue Clubs' contributions to pool. **[This section needs further consideration in light of paragraph 4. *(See Note 3 at Attachment C) for Commissioner's comments on this subject.*]**

8. Any decision **to be made as per the Players Association's term sheet in November 2008 or 2009** to extend the CBA to include a 2010 and/or 2011 capped year shall require the affirmative vote of three-fourths of the Member Clubs.

# Player Cost as % of Revenue Test - 65%

| | | Seasons Projected | | | | | |
|---|---|---|---|---|---|---|---|
| | | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| 6-Year Deal Average | | | | | | | |
| 58.5% | # Clubs Above 65% | 18 | 16 | 16 | 17 | 17 | 17 |
| | $ Required | $100 | $111 | $115 | $132 | $207 | $219 |

## FUNDS DISTRIBUTION STANDARDS

New Stadium - no distribution for specified period of years

Purchase of team - no distributions for specified period of years. on standards provided in advance of purchase

Distributions tied to improved team performance on objective standards (home sellouts. gross ticket receipts to VTS pool, etc.)

## NOTES

1. In response to questions from Mike Bidwell, John Shaw and others, the Commissioner explained that the Resolution would state that he would appoint a Special Committee to study the issue of qualifiers and to report to the membership. He further explained that the qualifiers to be evaluated by the Committee would include those in the current SRS system (such as the imputation of ticket receipts for each club as a percentage of average receipts) and that the three items identified in the attachments to the 8 Club Proposal reflected for Commissioner's recommendations as to the key elements of a framework for establishing qualifiers.

2. In response to suggestions from Mike Bidwill and others, the Commissioner stated that the Resolution would state that any qualifiers would be subject to approval by a vote of the League's membership under the three-fourths voting standard. At the suggestion of Dan Snyder and others (and with the concurrence of Mike Bidwill), the Commissioner stated that the Resolution would provide that, in the event of a membership deadlock on qualifiers, the Commissioner would have the delegated authority to determine qualifiers that will apply as a condition of receiving a distribution from the Revenue Sharing Pool. The Commissioner also noted Jeff Lurie's suggestion that the qualifiers should be determined within the next six months.

3. In response to a question from Jeff Lurie, the Commissioner stated that this paragraph was a direct carryover from the Jets-Patriots concept summary and that the paragraph might prove to be unnecessary in light of the new and broader funding arrangements reflected in the 8 Club Proposal; that in developing the 8 Club Proposal, we had not had time to address this issue; and that the issue would be addressed in a definitive way after the 8 Club Proposal was adopted (assuming it would be adopted).

# EXHIBIT 2

March 10, 2006

**Summary of Revenue Sharing Arrangements**

1. Establish a new Revenue Sharing mechanism to fund low revenue clubs, beginning at $100 million in 2006 and increasing to a projected total of $220 million in 2011. Overall six-year total estimated at $895 million.

2. The Revenue Sharing pool will be funded from three sources:

    a. Amounts currently dedicated to Supplemental Revenue Sharing.
    b. Direct payments from High Revenue Clubs.
    c. Distributions from new equally shared revenue streams (other than television), either from existing business categories or New Media Revenues (e.g., digital technologies, Internet); such distributions to come disproportionately from shares that would otherwise go to High Revenue Clubs.

3. Qualifiers/performance standards to be addressed by Committee of eight owners, chaired by Commissioner. Committee will make recommendations to the membership. If the membership is unable to agree upon qualifiers, Commissioner has the authority to put them in place.