



# Individual 401(k) Plan

## For Business Owner and Spouse Only

### Trust Document

This booklet contains:

- ▶ Opinion Letter
- ▶ Plan Document
- ▶ Trust Agreement
- ▶ EGTRRA Amendments
- ▶ Unilateral Amendment to Use the Alternative Definition of Compensation



**Delaware Charter**  
**Guarantee & Trust Company**

P. O. Box 8963 / Wilmington, DE 19899-8963 / 302-995-2131 / 800-209-9010



# **TRUSTAR<sup>®</sup> RETIREMENT SERVICES PROTOTYPE**

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## **BASIC SAVINGS PLAN**

**Basic Plan No.: 01  
To be used with  
Adoption Agreement Plan Nos.: 001 – 002 – 003**

**Approved: August 16, 2002**

**The Prototype Plan Sponsor is:**

**Delaware Charter Guarantee & Trust Company  
conducting business as  
Trustar Retirement Services  
1013 Centre Road  
Wilmington, DE 19805  
(302) 995-2131**

## Internal Revenue Service

## Department of Treasury

Plan Description: Prototype Standardized Profit Sharing Plan with CODA  
FFN: 50216680001-003 Case: 200200899 EIN: 51-0099493  
Letter Serial No: K274245a

Washington, DC 20224

▶  
DELAWARE CHARTER GUARANTEE & TRUST CO  
d/b/a TRUSTAR RETIREMENT SERVICES  
1013 CENTRE ROAD  
WILMINGTON, DE 19805

**Contact Person:**

Ms. Arrington 50-00197

**Telephone Number:**

(202) 283-8811

**In Reference to:**

T:EP:RA:T1

**Date:**

08/16/2002

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter to each employer who adopts this plan. You are also required to send a copy of the approved form of the plan, any approved amendments and related documents to Employee Plans Determinations in Cincinnati at the address specified in section 9.11 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553.

This letter considers the changes in qualifications requirements made by the Uruguay Round Agreements Act (GATT), Pub. L. 103-465, the Small Business Job Protection Act of 1996, Pub. L. 104-188, the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353, the Taxpayer Relief Act of 1997, Pub. L. 105-34, the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554. These laws are referred to collectively as GUST.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), except as provided below, provided the eligibility requirements and contribution or benefit provisions are not more favorable for highly compensated employees than for other employees. The terms of the plan must be followed in operation. Except as stated below, Employee Plans Determinations will not issue a determination letter with respect to this plan.

Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan, other than a specified paired plan within the meaning of section 4.13 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Likewise, if this plan is first effective on or after the effective date of the repeal of Code section 415(e), the employer will not be considered to have maintained another plan merely because the employer has maintained a defined benefit plan(s), provided the defined benefit plan(s) has been terminated prior to the effective date of this plan. Our opinion also does not apply for purposes of Code section 401(a)(16) if, after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3).

An employer that adopts this plan may not rely on this opinion letter with respect to: (1) whether any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of section 1.401(a)(4)-5(a) of the regulations, except with respect to plan amendments granting past service that meet the safe harbor described in section 1.401(a)(4)-5(a)(5) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; or (2) whether the plan satisfies the effective availability requirement of section 1.401(a)(4)-4(c) of the regulations with respect to any benefit, right or feature.

An employer that adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter with respect to whether a benefit, right or other feature that is prospectively eliminated satisfies the current availability requirements of section 1.401(a)-4 of the regulations.

An employer that elects to continue to apply the pre-GUST family aggregation rules in years beginning after December 31, 1996, or the combined plan limit of section 415(e) in years beginning after December 31, 1999, will not be able to rely on the opinion letter without a determination letter.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, satisfies the requirements of Code section 401(a) (16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401 (a) (10) (B) as to the top-heavy plan requirements in Code section 416; (2) regarding the nondiscriminatory effect of grants of past service; (3) with respect to whether a prospectively eliminated benefit, right or feature satisfies the current availability requirements; and (4) with respect to the continued application of the pre-GUST family aggregation rules in years beginning after December 31, 1996, or the combined plan limit of section 415(e) in years beginning after December 31, 1999. The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

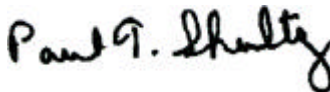
Because you submitted this plan for approval after December 31, 2000, the remedial amendment extension period of section 19 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553 is not applicable.

If you, the master or prototype sponsor, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the master or prototype sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,

A handwritten signature in black ink that reads "Paul G. Shultz". The signature is written in a cursive, slightly slanted style.

Director

Employee Plans Rulings & Agreements

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# Basic Savings Plan

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## INTRODUCTION

The provisions of this Plan apply as of the Effective Date or such later date as may be specified in Item A of the Adoption Agreement, except as provided in any attached addendums.

## ARTICLE I FORMAT AND DEFINITIONS

### SECTION 1.01 – FORMAT.

Our retirement plan is set out in this document, the attached Adoption Agreement which we signed, and any amendments to these documents. If our Adoption Agreement indicates that a Trust Agreement has been set up, our retirement plan also includes the attached Trust Agreement and any amendments to such agreement.

Words and phrases defined in Section 1.02 shall have that defined meaning when used in this Plan, unless the context clearly indicates otherwise. These words and phrases have initial capital letters to aid in identifying them as defined terms. References to "Section" are references to parts of this document; references to "Item" are references to parts of the Adoption Agreement.

Some of the defined terms and phrases in Section 1.02 and some of the provisions contained in the following articles do not apply to our Plan and shall not be used in our Plan. The provisions of the attached Adoption Agreement shall determine whether or not the terms and provisions apply.

### SECTION 1.02 – DEFINITIONS.

**Account** means, for a Member, his share of the Plan Fund. Separate accounting records shall be kept for those parts of the Member's Account resulting from the following:

- a) Required Contributions.
- b) Nondeductible Voluntary Contributions.
- c) Deductible Voluntary Contributions.
- d) Rollover Contributions.
- e) Elective Deferral Contributions.
- f) Qualified Matching Contributions.
- g) Matching Contributions that are not Qualified Matching Contributions.
- h) Qualified Nonelective Contributions.
- i) All other Employer Contributions.

If the Member's Vesting Percentage is less than 100% as to any of these Contributions, a separate accounting record will be kept for any part of his Account resulting from such Contributions and, if there has been a prior Forfeiture Date, from such Contributions made before a prior Forfeiture Date.

A Member's Account shall be reduced by any distribution of his Account and by any Forfeitures. The Member's Account shall participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund. His Account is subject to any minimum guarantees or other interest crediting applicable under the Annuity Contract or other investment arrangement and to any expenses associated therewith.

**Accrual Service Period** means the period defined in Item R.

**ACP Test** means the nondiscrimination test described in Code Section 401(m)(2) as provided for in subparagraph (d) of Section 3.07.

**ACP Test Safe Harbor** means the method described in subparagraph (c) of Section 3.08 for satisfying the ACP Test with respect to Matching Contributions.

**Active Member** means an Eligible Employee who is actively participating in the Plan according to the provisions of Section 2.01.

**Adopting Employer** means an employer which is a Controlled Group member and which is listed in Item AB of the Adoption Agreement. If the Adoption Agreement – Standard is used and the transition period described in Code Section 410(b)(6)(C)(ii) has ended with respect to the primary Employer in Item B, Adopting Employer shall also mean all other employers in the Controlled Group for which such transition period has ended, whether or not listed in Item AB.

**Adoption Agreement** means the attached document labeled Adoption Agreement which contains our selections and specifications for our Plan.

**ADP Test** means the nondiscrimination test described in Code Section 401(k)(3) as provided for in subparagraph (c) of Section 3.07.

**ADP Test Safe Harbor** means the method described in subparagraph (b) of Section 3.08 for satisfying the ADP Test.

**Affiliated Service Group** means any group of corporations, partnerships or other organizations of which we are a part and which is affiliated within the meaning of Code Section 414(m) and regulations thereunder. Such a group includes at least two organizations one of which is either a service organization (that is, an organization the principal business of which is performing services), or an organization the principal business of which is performing management functions on a regular and continuing basis. Such service is of a type historically performed by employees. In the case of a management organization, the Affiliated Service Group shall include organizations related, within the meaning of Code Section 144(a)(3), to either the management organization or the organization for which it performs management functions. The term Controlled Group, as it is used in this Plan, shall include the term Affiliated Service Group.

**Alternate Payee** means any spouse, former spouse, child, or other dependent of a Member who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Member.

**Annual Pay** means the Employee's annual Pay defined in Item N.

**Annuity Contract** means the annuity contract or contracts into which we or the Trustee enters, whichever is appropriate, with the Insurer for guaranteed benefits, for the investment of Contributions in separate accounts, and for the payment of benefits under this Plan. The term Annuity Contract as it is used in this Plan shall include the plural unless the context clearly indicates the singular is meant.

**Annuity Starting Date** means, for a Member, the first day of the first period for which an amount is payable as an annuity or any other form.

**Basic Plan** means this document which contains the basic provisions of our Plan.

**Beneficiary** means the person or persons named by a Member to receive any benefits under the Plan when the Member dies. (See Section 10.07.)

**Claimant** means any person who makes a claim for benefits under this Plan. (See Section 9.05.)

**Code** means the Internal Revenue Code of 1986, as amended.

**Contingent Annuitant** means an individual named by a Member to receive a lifetime benefit under the terms of a survivorship life annuity after the Member dies.

**Contributions** means Elective Deferral, Matching, Qualified Nonelective, Discretionary, Required, Voluntary, and Rollover Contributions, unless the context clearly indicates only specific contributions are meant.

**Controlled Group** means any group of corporations, trades, or businesses of which we are a part that are under common control. A Controlled Group includes any group of corporations, trades, or



businesses, whether or not incorporated, which is either a parent-subsidary group, a brother-sister group, or a combined group within the meaning of Code Section 414(b), Code Section 414(c) and regulations thereunder and, for the purpose of determining contribution limitations under Section 3.06, as modified by Code Section 415(h) and, for the purpose of identifying Leased Employees, as modified by Code Section 144(a)(3). The term Controlled Group, as it is used in this Plan, shall include the term Affiliated Service Group and any other employer required to be aggregated with us under Code Section 414(o) and the regulations thereunder.

**Direct Rollover** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Discretionary Contributions** means discretionary Employer Contributions. (See Item Q and Section 3.01.)

**Distributee** means an Employee or former Employee. In addition, the Employee's (or former Employee's) surviving spouse and the Employee's (or former Employee's) spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

**Early Retirement Age** means, for a Member, the age defined in Item Z.

**Early Retirement Date** means the date a Member selects for beginning his early retirement benefit after he reaches Early Retirement Age and has ceased to be an Employee. If a Member ceases to be an Employee before satisfying any age requirement for Early Retirement Age, but after satisfying any other requirements, the Member shall be entitled to elect an early retirement benefit upon satisfying such age requirement. (See Item Z.)

**Earned Income** means, for a Self-employed Individual, net earnings from self-employment in the trade or business for which this Plan is established if such Self-employed Individual's personal services are a material income producing factor for that trade or business. Net earnings shall be determined without regard to items not included in gross income and the deductions properly allocable to or chargeable against such items. Net earnings shall be reduced for our employer contributions to our qualified retirement plan(s) to the extent deductible under Code Section 404.

Net earnings shall be determined with regard to the deduction allowed to us by Code Section 164(f) for taxable years beginning after December 31, 1989.

**Effective Date** means the date specified in Item D.

**Elective Deferral Contributions** means Employer Contributions which are made in accordance with elective deferral agreements between Eligible Employees and us.

Elective deferral agreements shall be made, changed, or terminated according to the provisions of Item O. (See Item O and Section 3.01.)

Elective Deferral Contributions shall be 100% vested and subject to the distribution restrictions of Code Section 401(k) when made. (See Section 5.04.)

**Eligible Employee** means an Employee who meets the requirements specified in Item J.

Any Employee who became an Employee as the result of a Code Section 410(b)(6)(C) transaction will be excluded during the transition period, until such time as it is administratively feasible for us to include him as an Eligible Employee. A Code Section 410(b)(6)(C) transaction is an asset or stock acquisition, merger, or similar transaction involving a change in the employer of the employees of a trade or business. The transition period begins on the date of the transaction and ends on the last day of the first Plan Year beginning after the date of the transaction.

**Eligible Retirement Plan** means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified plan described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in

the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

**Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV) received after December 31, 1998; (iv) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (v) any other distribution(s) that is reasonably expected to total less than \$200 during a year.

**Employee** means an individual who is employed by us or any other employer required to be aggregated with us under Code Sections 414(b), (c), (m), or (o). A Controlled Group member is required to be aggregated with us.

The term Employee shall include any Self-employed Individual treated as an employee of any employer described in the preceding paragraph as provided in Code Section 401(c)(1). The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the preceding paragraph as provided in Code Section 414(n) or (o).

**Employer** means, except for purposes of Plan Section 3.06, the employer named in Item B and any successor corporation, trade or business which will, by written agreement, assume the obligations of this Plan or any Predecessor Employer which maintained this Plan. The terms we, us, and ours, as they are used in this Plan, refer to the Employer.

**Employer Contributions** means the contributions made by us to fund the Plan. (See Section 3.01 and 11.04.)

**Entry Break** means, when the elapsed time method is used to determine service, a one-year Period of Severance beginning on an Employee's Severance Date. An Employee incurs an Entry Break on the last day of a one-year Period of Severance.

When the hours method is used to determine service, Entry Break is defined in Item L. An Employee incurs an Entry Break on the last day of the Entry Service Period in which he has an Entry Break.

**Entry Date** means the date an Employee first enters the Plan as an Active Member. (See Item M and Section 2.01.)

**Entry Service** means an Employee's service defined in Item L. Entry Service shall include service with a Controlled Group member while we are both members of the Controlled Group.

If selected in Item I, Entry Service shall include service with a Predecessor Employer which did not maintain this Plan. If selected in Item I, Entry Service shall include service with a Prior Employer.

Entry Service shall include a Period of Military Duty. If the elapsed time method is used, the entire Period of Military Duty shall be included to the extent it has not already been counted as Entry Service. If the hours method is used, an Hour of Service shall be credited (without regard to the 501 Hours of Service limitation) for each hour the Employee would normally have been scheduled to work for us during such Period of Military Duty to the extent such hour has not already been counted for purposes of Entry Service.

If the elapsed time method is used, Entry Service shall be measured from his Hire Date to his most recent Severance Date. Entry Service shall be reduced by any Period of Severance that occurred prior to his most recent Severance Date, unless such Period of Severance is included under the service spanning rule below. This period of Entry Service shall be expressed as years (on the basis that 365 days equal one year), months (on the basis that 30 days equals one month) or days.

If the elapsed time method is used, Entry Service shall include a Period of Severance (service spanning rule) if:

- a) the Period of Severance immediately follows a period during which an Employee is not absent from work and ends within 12 months, or
- b) the Period of Severance immediately follows a period during which an Employee is absent from work for any reason other than quitting, being discharged, or retiring (such as a leave of absence or layoff) and ends within 12 months of the date he was first absent.

If the hours method is used and the Entry Service Period shifts to the Plan Year, an Employee will be credited with two years of Entry Service if he has the Hours of Service required for a year of Entry Service in both his first and second Entry Service Periods.

If the method of crediting Entry Service changes, the provisions of Section 10.13 shall apply.

**Entry Service Period** means the period defined in Item L. If an Employee has a Rehire Date, a new Entry Service Period shall begin on that date in the same manner as if it were a Hire Date.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**401(k) Safe Harbor Plan** means a plan which satisfies the ADP Test Safe Harbor and to which the 401(k) safe harbor provisions of Section 3.08 apply as elected in Item O.

**401(k) SIMPLE Plan** means a plan to which the 401(k) SIMPLE provisions of Section 3.09 apply as elected in Item O.

**Fiscal Year** means our taxable year. (See Item F.)

**Forfeiture** means the part, if any, of a Member's Account which is forfeited. (See Section 3.04.)

**Forfeiture Date** means, as to a Member, the date the Member incurs five consecutive Vesting Breaks.

**Highly Compensated Employee** means any Employee who:

- a) was a 5-percent owner at any time during the year or the preceding year, or
- b) for the preceding year had compensation from us in excess of \$80,000 and, if we so elect in Item K, was in the top-paid group for the preceding year. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

For this purpose the applicable year of the plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year. If we have made a calendar year data election in Item K(1)(b), the look-back year shall be the calendar year beginning with or within the look-back year. The Plan may not use such election to determine whether Employees are Highly Compensated Employees on account of being a 5-percent owner.

Calendar year data elections and top-paid group elections, once made, apply for all subsequent years unless changed by us. If we make one election, we are not required to make the other. If both elections are made, the look-back year in determining the top-paid group must be the calendar year beginning with or within the look-back year. These elections must apply consistently to the determination years of all plans maintained by us which reference the highly compensated employee definition in Code Section 414(q), except as provided in Internal Revenue Service Notice 97-45 (or superseding guidance). The consistency requirement will not apply to determination years beginning with or within the 1997 calendar year, and for determination years beginning on or after January 1, 1998 and before January 1, 2000, satisfaction of the consistency requirement is determined without regard to any nonretirement plans of ours.

The determination of who is a highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance

with section 1.414(q)-1T, A-4 of the temporary Income Tax Regulations and Internal Revenue Service Notice 97-45.

In determining whether an Employee is a Highly Compensated Employee for years beginning in 1997, the amendments to Code Section 414(q) stated above are treated as having been in effect for years beginning in 1996.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the compensation that is considered, and the identity of the 5-percent owners, shall be made in accordance with Code Section 414(q) and the regulations thereunder.

**Hire Date** means the date an Employee first performs an Hour of Service.

**Hour of Service** means, for the elapsed time method of crediting service in this Plan, each hour for which an Employee is paid, or entitled to payment, for performing duties for us. Hour of Service means, for the hours method of crediting service in this Plan, the following:

- a) Each hour for which an Employee is paid, or entitled to payment, for performing duties for us during the applicable service period.
- b) Each hour for which an Employee is paid, or entitled to payment, by us on account of a period of time in which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. Notwithstanding the preceding provisions of this subparagraph (b) no credit shall be given to the Employee:
  - 1) for more than 501 Hours of Service under this subparagraph (b) on account of any single continuous period in which the Employee performs no duties (whether or not such period occurs in a single service period); or
  - 2) for an Hour of Service for which the Employee is directly or indirectly paid, or entitled to payment, on account of a period in which no duties are performed if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's or workmen's compensation, or unemployment compensation, or disability insurance laws; or
  - 3) for an Hour of Service for a payment which solely reimburses the Employee for medical or medically related expenses incurred by him.

For purposes of this subparagraph (b), a payment shall be deemed to be made by or due from us regardless of whether such payment is made by or due from us directly or indirectly through, among others, a trust fund or insurer, to which we contribute or pay premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular employees or are on behalf of a group of employees in the aggregate.

- c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by us. The same Hour of Service shall not be credited under both this subparagraph (c) and under either subparagraph (a) or (b) above. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in subparagraph (b) above shall be subject to the limitations set forth in that subparagraph.

If elected by us in Item X of the Adoption Agreement – Nonstandard, Hours of Service shall be determined using an equivalency based on periods of employment in lieu of actual Hours of Service.

The crediting of Hours of Service above shall be applied under the rules of paragraphs (b) and (c) of the Department of Labor Regulation 2530.200b-2 (including any interpretations or opinions implementing such rules); which rules, by this reference, are specifically incorporated in full within this Plan. The reference to paragraph (b) applies to the special rule for determining hours of service for reasons other than the performance of duties such as payments calculated (or not calculated) on the basis of units of time and the rule against double credit. The

reference to paragraph (c) applies to the crediting of hours of service to service periods.

Hours of Service shall be credited for employment with any other employer required to be aggregated with us under Code Section 414(b), (c), (m), or (o) and the regulations thereunder for purposes of entry and vesting. Hours of Service shall also be credited for any individual who is considered an employee for purposes of this Plan pursuant to Code Section 414(n) or (o) and the regulations thereunder.

Solely for purposes of determining whether a one-year break in service has occurred for entry or vesting purposes, during a Parental Absence an Employee shall be credited with the Hours of Service which would otherwise have been credited to the Employee but for such absence, or in any case in which such hours cannot be determined, eight Hours of Service per day of such absence. The Hours of Service credited under this paragraph shall be credited in the service period in which the absence begins if the crediting is necessary to prevent a break in service in that period; or in all other cases, in the following service period.

**Inactive Member** means a former Active Member who has an Account. (See Section 2.02.)

**Insurance Policy** means, for trustee plans, the life insurance policy or policies issued to the Trustee by the Insurer as provided in Item U and Article IV. The term Insurance Policy as it is used in this Plan shall include the plural unless the context clearly indicates the singular is meant.

**Insurer** means the insurance company or companies which have issued a group annuity contract to either the Employer or the Trustee. If Item U(4)(a) is selected, Insurer shall also mean the insurance company or companies named by the Trustee in its discretion or as directed under the Trust Agreement to issue Insurance Policies.

**Integration Level** means the Integration Level defined in Item Q.

**Investment Fund** means the total of Plan assets, excluding the cash value of any Insurance Policy and the guaranteed benefit policy portion of any Annuity Contract. All or a portion of these assets may be held under, or invested pursuant to, the terms of a Trust Agreement, depending upon the options chosen in the Adoption Agreement.

The Investment Fund shall be valued at current fair market value as of the Valuation Date. The valuation shall take into consideration investment earnings credited, expenses charged, payments made, and changes in the values of the assets held in the Investment Fund.

The Investment Fund shall be allocated at all times to Members, except as otherwise expressly provided in the Plan. The Account of a Member shall be credited with its share of the gains and losses of the Investment Fund. That part of a Member's Account invested in a funding arrangement which establishes one or more accounts or investment vehicles for such Member thereunder shall be credited with the gain or loss from such accounts or investment vehicles. That part of a Member's Account which is invested in other funding arrangements shall be credited with a proportionate share of the gain or loss of such investments. The share shall be determined by multiplying the gain or loss of the investment by the ratio of the part of the Member's Account invested in such funding arrangement to the total of the Investment Fund invested in such funding arrangement.

**Investment Manager** means any fiduciary (other than a Trustee or Named Fiduciary):

- a) who has the power to manage, acquire, or dispose of any assets of the Plan;
- b) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act, is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time it last filed the registration form most recently filed by it with such state in order to maintain its registration under the laws of such state, also filed a copy of such form with the Secretary of Labor; (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in

subparagraph (a) above under the laws of more than one state; and

- c) who has acknowledged in writing being a fiduciary with respect to the Plan.

**Item** means the specified item in the Adoption Agreement we signed.

**Late Retirement Date** means the first day of any month which is after a Member's Normal Retirement Date and on which retirement benefits begin. If a Member continues to work for us after his Normal Retirement Date, his Late Retirement Date shall be the earliest first day of the month on or after the date he ceases to be an Employee. An earlier Retirement Date, if so permitted in Item Z, or a later Retirement Date may apply if the Member so elects. An earlier Retirement Date may apply if the Member is 70 1/2 or older. (See Section 5.04.)

**Leased Employee** means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided by the leasing organization to a Leased Employee, which are attributable to service performed for the recipient employer, shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an employee of the recipient if:

- a) such employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code Section 415(c)(3), but for years beginning before January 1, 1998, including amounts contributed pursuant to a salary reduction agreement which are excludible from the employee's gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), or 403(b), (ii) immediate participation, and (iii) full and immediate vesting, and
- b) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

**Loan Administrator** means the Plan Administrator.

**Matching Contributions** means Employer Contributions which are contingent on a Member's Elective Deferral Contributions. (See Items O and P and Sections 3.01, 3.08, and 3.09.)

**Maximum Integration Rate** means the Maximum Integration Rate defined in Item Q.

**Member** means either an Active Member or an Inactive Member.

**Member Contributions** means Voluntary Contributions and Required Contributions, unless the context clearly indicates only one is meant.

**Monthly Date** means each Yearly Date and the same day of each following month during the Plan Year beginning on such Yearly Date.

**Named Fiduciary** means the person named in Item G.

**Net Profits** means our current or accumulated net earnings, determined according to generally accepted accounting practices, before any Contributions made by us under this Plan and before any deduction for Federal or state income tax, dividends on our stock, and capital gains or losses. If we are a nonprofit organization under Code Section 501(c)(3), Net Profits means excess revenues (excess of receipts over expenditures).

**Nonhighly Compensated Employee** means an Employee of the Employer who is not a Highly Compensated Employee.

**Nonvested Account** means the excess, if any, of a Member's Account over his Vested Account.

**Normal Form** means a single life annuity with installment refund.

**Normal Retirement Age** means, for a Member, the age defined in Item Z.

**Normal Retirement Date** means the earliest first day of the month on or after a Member reaches Normal Retirement Age. Retirement benefits shall begin on a Member's Normal Retirement Date if he is not an Employee, has a Vested Account, and has not elected to have retirement benefits begin later. However, retirement benefits shall not begin before the later of age 62 or his Normal Retirement Age, unless the qualified election procedures of Article VI or VIA, whichever applies, are met. A Member may choose to have retirement benefits begin on his Normal Retirement Date, even if he is an Employee on such date. An earlier Retirement Date may apply if the Member is 70 1/2 or older. (See Section 5.04.)

**Owner-employee** means a Self-employed Individual who, in the case of a sole proprietorship, owns the entire interest in the unincorporated trade or business for which this Plan is established. If this Plan is established for a partnership, an Owner-employee means a Self-employed Individual who owns more than 10 percent of either the capital interest or profits interest in such partnership.

**Parental Absence** means an Employee's absence from work:

- a) by reason of pregnancy of the Employee,
- b) by reason of birth of a child of the Employee,
- c) by reason of the placement of a child with the Employee in connection with adoption of such child by such Employee, or
- d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

**Pay** means the pay defined in Item N.

For Plan Years beginning on and after January 1, 1994, the annual Pay of each Member taken into account for determining all benefits provided under the Plan for any determination period shall not exceed \$150,000, as adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.

If a determination period consists of fewer than 12 months, the annual limit is an amount equal to the otherwise applicable annual limit multiplied by a fraction. The numerator of the fraction is the number of months in the short determination period and the denominator of the fraction is 12.

If Pay for any prior determination period is taken into account in determining a Member's contributions or benefits for the current Plan Year, the Pay for such prior determination period is subject to the applicable annual pay limit in effect for that determination period. For this purpose, in determining contributions or benefits in Plan Years beginning on or after January 1, 1994, the annual Pay limit in effect for determination periods beginning before that date is \$150,000.

Pay means, for a Self-employed Individual, Earned Income.

Pay means, for a Leased Employee, Pay for the services the Leased Employee performs for us, determined in the same manner as the Pay of Employees who are not Leased Employees, regardless of whether such Pay is received directly from us or from the leasing organization.

**Pay Year** means the consecutive 12-month period defined in Item N.

**Period of Military Duty** means, for an Employee

- a) who served as a member of the armed forces of the United States, and
- b) who was reemployed by us at a time when the Employee had a right to reemployment in accordance with seniority rights as protected under Chapter 43 of Title 38 of the United States Code,

the period of time from the date the Employee was first absent from work for us because of such military duty to the date the Employee was reemployed.

**Period of Service** means a period of time beginning on an Employee's Hire or Rehire Date, whichever applies, and ending on his Severance Date.

**Period of Severance** means a period beginning on an Employee's Severance Date and ending on the date he again performs an Hour of Service.

A one-year Period of Severance means a Period of Severance of 12 consecutive months.

Solely for purposes of determining whether a one-year Period of Severance has occurred for entry or vesting purposes, the consecutive 12-month period beginning on the first anniversary of the first date of a Parental Absence shall not be a one-year Period of Severance.

**Plan** means our retirement plan set forth in the attached Adoption Agreement and this document, including any later amendments to them. If our Adoption Agreement indicates that a Trust Agreement has been set up, the term Plan shall include the term Trust Agreement, if applicable, unless the context clearly indicates otherwise.

**Plan Administrator** means the person named in Item H.

**Plan Fund** means the total of the Investment Fund, the guaranteed benefit policy portion of any Annuity Contract, and the cash value of any Insurance Policy. The Investment Fund shall be valued as stated in its definition. The guaranteed benefit policy portion of any Annuity Contract shall be determined in accordance with the terms of the Annuity Contract and, to the extent that such Annuity Contract allocates contract values to Members, allocated to Members in accordance with its terms. The cash value of any Insurance Policy shall be stated in such policy. The total of all amounts held under the Plan Fund shall equal the value of the aggregate of Members' Accounts under the Plan.

**Plan Year** means a consecutive 12-month period beginning on a Yearly Date and ending on the day before the next Yearly Date. If the Yearly Date changes, the change will result in a short Plan Year. If a service period or the Pay Year is based on the Plan Year, corresponding years before the Effective Date shall be included.

**Plan-year Quarter** means a period beginning on a Quarterly Date and ending on the day before the next Quarterly Date.

**Predecessor Employer** means a firm of which we were once a part (e.g., due to a spinoff or a change of corporate status) or a firm absorbed by us because of a merger or acquisition (stock or asset, including a division of an operation of such company). The definition of Employer includes Predecessor Employers which maintained this Plan.

**Prior Employer** means an Employee's last employer immediately prior to the Employer which is not a Predecessor Employer or a Controlled Group member, but for which service credit is granted under the Plan if selected in Item I.

**Prior Plan** means a retirement plan of ours or of a Predecessor Employer which was qualifiable under Code Section 401(a), and of which this Plan is a continuation of such plan. If, because of a merger, consolidation, or transfer of assets or liabilities, this Plan is a continuation of a plan which was qualifiable under Code Section 401(a), that plan shall be a Prior Plan. If, with the approval of any governmental agency to which it is subject, the assets of a terminated plan of ours which was qualified under Code Section 401(a) are transferred to this Plan, that terminated plan shall be deemed to be the Prior Plan.

**Prior Plan Assets** means the assets accumulated under the Prior Plan which have not been distributed and which are held under this Plan.

**Qualified Joint and Survivor Annuity** means, for a Member who has a spouse, an immediate survivorship life annuity with installment refund, where the Contingent Annuitant is the Member's spouse and the survivorship percentage is 50%. A former spouse will be treated as the spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

The amount of the benefit payable under the Qualified Joint and Survivor Annuity shall be the amount of benefit which may be provided by the Member's Vested Account.

**Qualified Matching Contributions** means Matching Contributions which are 100% vested and subject to the distribution restrictions of Code Section 401(k) when made. (See Section 5.04.) Our Matching Contributions shall be Qualified Matching Contributions if elected in Item O or P.

**Qualified Nonelective Contributions** means Employer Contributions (other than Elective Deferral Contributions and Qualified Matching Contributions) which are 100% vested and subject to the distribution restrictions of Code Section 401(k) when made. (See Items O and Q and Sections 3.01, 3.08, and 5.04.)

**Qualified Preretirement Survivor Annuity** means a life annuity with installment refund payable to the surviving spouse of a Member who dies before his Annuity Starting Date. A former spouse will be treated as the surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

**Qualifying Employer Securities** means any security which is issued by us or any Controlled Group member and which meets the requirements of Code Section 409(l) and ERISA Section 407(d)(5)(a). This shall also include any securities that satisfied the requirements of the definition when these securities were assigned to the Plan.

**Qualifying Employer Securities Fund** means that part of the assets of the Trust Fund that are designated to be held primarily or exclusively in Qualifying Employer Securities for the purpose of providing benefits for Members.

**Quarterly Date** means each Yearly Date and the third, sixth, and ninth Monthly Date after each Yearly Date which is within the same Plan Year.

**Reentry Date** means the date a former Active Member reenters the Plan. (See Section 2.01.)

**Rehire Date** means the date an Employee first performs an Hour of Service following a Period of Severance when the elapsed time method is used, or an Entry Break when the hours method is used.

**Required Contributions** means nondeductible employee contributions required from an active member in order to participate in the Prior Plan.

**Retirement Date** means the date a retirement benefit will begin and is a Member's Early, Normal, or Late Retirement Date, as the case may be.

**Rollover Contributions** means the rollover contributions which are made by an Eligible Employee or an Inactive Member. (See Section 3.03.)

**Self-directed Brokerage Account** means that portion of a Member's Account that is invested at the Member's discretion in any regulated investment company selected by the Employer and administratively acceptable to the Trustee.

**Self-employed Individual** means, with respect to any Fiscal Year, an individual who has Earned Income for the Fiscal Year (or who would have Earned Income but for the fact the trade or business for which this Plan is established did not have net profits for such Fiscal Year).

**Semi-yearly Date** means each Yearly Date and the sixth Monthly Date after each Yearly Date which is within the same Plan Year.

**Severance Date** means the earlier of:

- a) the date on which an Employee quits, retires, dies, or is discharged, or
- b) the first anniversary of the date an Employee begins a one-year absence from service (with or without pay). This absence may be the result of any combination of vacation, holiday, sickness, disability, leave of absence, or layoff.

Solely to determine whether a one-year Period of Severance has occurred for entry or vesting purposes for an Employee who is absent from service beyond the first anniversary of the first day of a Parental Absence, Severance Date is the second anniversary of the first day of the Parental Absence. The period between the first and second anniversaries of the first day of the Parental Absence is not a Period of Service and is not a Period of Severance.

**Significant Corporate Event** means any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as may be prescribed in regulations under Code Section 409(e)(3).

**Taxable Wage Base** means the contribution and benefit base under section 230 of the Social Security Act.

**Totally Disabled** means that a Member is disabled, as a result of sickness or injury, to the extent that he is prevented from engaging in any substantial gainful activity, and is eligible for and receives a disability benefit under Title II of the Federal Social Security Act.

If our Employees are not covered under Title II of the Federal Social Security Act, Totally Disabled means that a Member is disabled as a result of sickness or injury, to the extent that he is completely prevented from performing any work or engaging in any occupation for wage or profit, and has been continuously disabled for six months. Initial written proof that the disability exists and has continued for at least six months must be furnished to the Plan Administrator by the Member within one year after the date the disability begins. The Plan Administrator, upon receipt of any notice of proof of a Member's total disability, shall have the right and opportunity to have a physician it designates examine the Member when and as often as it may reasonably require, but not more than once each year after the disability has continued uninterrupted for at least two years beyond the date of furnishing the first proof.

**Trust Agreement** means, if we select Item U(1)(a), the Trustee Retirement Services Trust Agreement labeled Attachment A.

**Trust Fund** means the total funds held under the Trust Agreement.

**Trustee** means, for trustee plans, the party or parties named in the Attachment chosen in Item U. The term Trustee as it is used in this Plan shall include the plural unless the context clearly indicates the singular is meant.

**Valuation Date** means the date on which the value of the assets of the Investment Fund is determined. The value of each Account which is maintained under this Plan shall be determined on the Valuation Date. In each Plan Year, the Valuation Date shall be the last day of the Plan Year. At the discretion of the Plan Administrator, Trustee, or Insurer, (whichever applies), assets of the Investment Fund may be valued more frequently. These dates shall also be Valuation Dates.

**Vested Account** means, on any date, the vested part of a Member's Account. If all Employer Contributions are 100% vested, the Member's Vested Account is equal to his Account. If not all Employer Contributions are 100% vested, and the Member's Vesting Percentage is 100%, the Vested Account equals his Account. If not all Employer Contributions are 100% vested and the Member's Vesting Percentage is not 100%, the Vested Account equals the sum of (a) and (b) below:

- a) The part of the Member's Account resulting from Employer Contributions made before any prior Forfeiture Date and all other Contributions which were 100% vested when made. The Member is fully (100%) vested in this part of his Account.
- b) The balance of the Member's Account in excess of the amount in (a) above multiplied by his Vesting Percentage.

If the Member has withdrawn any part of his Account resulting from our Contributions, other than vested Employer Contributions included in (a) above, the amount determined under this subparagraph (b) shall be equal to  $P(AB + D) - D$  as defined below:

- P The Member's Vesting Percentage.
- AB The balance of the Member's Account in excess of the amount in (a) above.
- D The amount of the withdrawal resulting from our Contributions, other than our vested Contributions included in (a) above.

**Vesting Break** means, when the elapsed time method is used, a one-year Period of Severance. An Employee incurs a Vesting Break on the last day of a one-year Period of Severance.

When the hours method is used, Vesting Break is defined in Item W. An Employee incurs a Vesting Break on the last day of the Vesting Service Period in which he has a Vesting Break.

**Vesting Percentage** means the Member's Vesting Percentage determined under Item V. If the computation of Vesting Percentage is changed, a Member's Vesting Percentage as of the day before the change shall not be reduced due to the change. The provisions of Section 10.01 regarding changes in the computation of Vesting Percentage shall apply.

**Vesting Service** means an Employee's service determined under Item W. Vesting Service is subject to the modifications selected under that item. Vesting Service shall include service with a Controlled Group member while we are both members of the Controlled Group.

If selected in Item I, Vesting Service shall include service with a Predecessor Employer which did not maintain this Plan. If selected in Item I, Vesting Service shall include service with a Prior Employer.

Vesting Service shall include a Period of Military Duty. If the elapsed time method is used, the entire Period of Military Duty shall be included to the extent it has not already been counted as Vesting Service. If the hours method is used, an Hour of Service shall be credited (without regard to the 501 Hours of Service limitation) for each hour the Employee would normally have been scheduled to work for us during such Period of Military Duty, to the extent such hour has not already been credited as Vesting Service.

If the elapsed time method is used, Vesting Service shall be measured from his Hire Date to his most recent Severance Date. Vesting Service shall be reduced by all or any part of a Period of Service that is not counted. Vesting Service shall also be reduced by any Period of Severance that occurred prior to his most recent Severance Date, unless such Period of Severance is included under the service spanning rule below. This period of Vesting Service shall be expressed as years and fractional parts of a year (to four decimal places) on the basis that 365 days equal one year.

If the elapsed time method is used, Vesting Service shall include a Period of Severance (service spanning rule) if:

- a) the Period of Severance immediately follows a period during which an Employee is not absent from work and ends within 12 months, or
- b) the Period of Severance immediately follows a period during which an Employee is absent from work for any reason other than quitting, being discharged, or retiring (such as a leave of absence or layoff) and ends within 12 months of the date he was first absent.

If the Prior Plan applied the rule of parity before the first Yearly Date in 1985, an Employee's Vesting Service, accumulated before a Vesting Break which occurred before that date, shall be excluded according to the Prior Plan provisions if (i) his Vesting Percentage is zero, and (ii) his latest period of consecutive Vesting Breaks equals or exceeds his prior Vesting Service (disregarding any Vesting Service that was excluded because of a previous period of Vesting Breaks).

For a Member who is not credited with an Hour of Service on or after the first Yearly Date in 1985, Vesting Service accrued before such date and before an age greater than 18 (before the beginning of the Vesting Service Period in which he attained that age, when the hours method is used) shall be excluded if the Prior Plan excluded such service.

If the method of crediting Vesting Service changes, the provisions of Sections 10.01 and 10.13 shall apply.

**Vesting Service Period** means the period defined in Item W.

**Voluntary Contributions** means the Contributions by a Member that are not required as a condition of employment, of participation, or for obtaining additional benefits from employer contributions under the Prior Plan. (See Section 3.02.)

**Yearly Date** means the Yearly Date defined in Item E.

**Years of Service** means an Employee's Vesting Service defined in Item W, disregarding any modifications which exclude service.

If Vesting Service is not defined in Item W, then for purposes of determining Years of Service, Vesting Service shall be deemed to be determined using the elapsed time method.

## ARTICLE II PARTICIPATION

### SECTION 2.01 – ACTIVE MEMBER.

An Employee shall first become an Active Member (begin active participation in the Plan) on the earliest date specified in Item M on which he is an Eligible Employee and has met all of the entry requirements selected in Item L. This date is the Member's Entry Date.

If this Plan is a continuation of a Prior Plan, each Employee who was an active member under the Prior Plan shall continue to be an Active Member under this Plan if he is still an Eligible Employee and his Entry Date shall not change.

If selected in Item I, service with a Predecessor Employer or a Prior Employer is counted for purposes of Entry Service. An Employee shall be credited with such service on the date he becomes an Employee and shall become an Active Member on the earliest date specified in Item M on which he is an Eligible Employee and has met all of the entry requirements selected in Item L. This date is the Member's Entry Date.

If a person has been an Eligible Employee who has met all of the entry requirements selected in Item L but is not an Eligible Employee on the date which would have been his Entry Date, he shall become an Active Member on the date he again becomes an Eligible Employee. This date is the Member's Entry Date.

In the event an Employee who is not an Eligible Employee becomes an Eligible Employee, such Eligible Employee shall become an Active Member immediately if such Eligible Employee has satisfied the entry requirements in Item L and would have otherwise previously become an Active Member had he met the definition of Eligible Employee. This date is the Member's Entry Date.

An Inactive Member shall again become an Active Member (resume active participation in the Plan) on the date he again performs an Hour of Service as an Eligible Employee. This date is his Reentry Date. Upon again becoming an Active Member, he shall cease to be an Inactive Member.

A former Member shall again become an Active Member (resume active participation in the Plan) on the date he again performs an Hour of Service as an Eligible Employee. This date is his Reentry Date.

There shall be no duplication of benefits for a Member under this Plan because of more than one period as an Active Member.

### SECTION 2.02 – INACTIVE MEMBER.

An Active Member shall become an Inactive Member (stop accruing benefits under the Plan) on the earlier of the following:

- a) the date the Member ceases to be an Eligible Employee, or
- b) the effective date of complete termination of the Plan under Article VIII.

If this Plan is a continuation of a Prior Plan, an Employee or former Employee who was an inactive member under the Prior Plan shall continue to be an Inactive Member under this Plan. Eligibility for any benefits payable to the Member or on his behalf and the amount of the benefits shall be determined according to the provisions of the Prior Plan, unless otherwise stated in this Plan.

### SECTION 2.03 – CESSATION OF PARTICIPATION.

A Member shall cease to be a Member on the date he is no longer an Eligible Employee and his Account is zero.

### SECTION 2.04 – ADOPTING EMPLOYERS – SINGLE PLAN.

If the Adoption Agreement – Standard is used, each Adopting Employer listed in Item AB shall be an Adopting Employer which

participates with us in this Plan. If the Adoption Agreement – Standard is used and the transition period described in Code Section 410(b)(6)(C)(ii) has ended with respect to us, each Controlled Group member for which such transition period has ended, whether or not listed in Item AB, shall also be an Adopting Employer which participates with us in this Plan. An Adopting Employer's agreement to participate in this Plan shall be in writing. If the Adopting Employer does not agree to participate in writing, we shall, by our signature on the Adoption Agreement, agree in writing for the Adopting Employer.

If the Adoption Agreement – Nonstandard is used, each Adopting Employer listed in Item AB participates with us in this Plan. An Adopting Employer's agreement to participate in this Plan shall be in writing.

We have the right to amend the Plan. An Adopting Employer does not have the right to amend the Plan.

If the Adopting Employer did not maintain a Prior Plan, the date of participation specified in Item AB (the day following the end of its transition period described in Code Section 410(b)(6)(C)(ii) for an Adopting Employer not listed in Item AB) shall be the Entry Date for any of its Employees who have met the requirements in Section 2.01 as of that date. Service with and Pay from an Adopting Employer shall be included as service with and Pay from us. Transfer of employment, without interruption, between an Adopting Employer and another Adopting Employer or us shall not be considered an interruption of service. Our Fiscal Year in Item F shall be the Fiscal Year used in interpreting this Plan for Adopting Employers.

Contributions made by an Adopting Employer shall be treated as Contributions made by us. Forfeitures arising from those Contributions shall be used for the benefit of all Members.

An employer shall not be an Adopting Employer if it ceases to be a Controlled Group member. Such an employer may continue a retirement plan for its Employees in the form of a separate document. This Plan shall be amended to delete a former Adopting Employer from Item AB.

If (i) an employer ceases to be an Adopting Employer or the Plan is amended to delete an Adopting Employer and (ii) the Adopting Employer does not continue a retirement plan for the benefit of its Employees, partial termination may result and the provisions of Article VIII shall apply.

### **ARTICLE III CONTRIBUTIONS**

#### **SECTION 3.01 – EMPLOYER CONTRIBUTIONS.**

Our Contributions are conditioned on initial qualification of the Plan. If the Plan is denied initial qualification, the provisions of Section 10.15 shall apply.

The amount of our Contributions is specified in the Adoption Agreement. If Item K(2)(a) is selected and we have not elected to make the 401(k) safe harbor Contributions for a Plan Year, we may also make a discretionary Qualified Nonelective Contribution in an amount determined by us for the Plan Year. Such Contribution is in addition to any Qualified Nonelective Contribution specified in Item Q and may be used to reduce the Excess Aggregate Contributions or Excess Contributions, as defined in Section 3.07.

Our Contributions are made without regard to our current or accumulated Net Profits. Notwithstanding the foregoing, the Plan shall continue to be designed to qualify as a profit sharing plan for purposes of Code Sections 401(a), 402, 412, and 417.

No Member shall be permitted to have Elective Deferral Contributions, as defined in Section 3.07, made under this Plan, or any other qualified plan maintained by us, during any taxable year in excess of the dollar limitation contained in Code Section 402(g) in effect at the beginning of such taxable year.

If Item O(3) is selected, the Plan provides for an automatic election to have Elective Deferral Contributions made. Such automatic election shall apply when a Member first becomes eligible to make Elective Deferral Contributions (or again becomes eligible after a period during which he was not an Active Member). The Member shall be provided a

notice that explains the automatic election and his right to elect a different rate of Elective Deferral Contributions or no Elective Deferral Contributions. The notice shall include the procedure for exercising that right and the timing for implementing any such election. The Member shall be given a reasonable period thereafter to elect a different rate of Elective Deferral Contributions or no Elective Deferral Contributions.

If Item O(3) is selected, at least 30 days, but not more than 90 days, before the beginning of each Plan Year, each Active Member shall be provided a notice which states his current rate of Elective Deferral Contributions, explains the automatic election and his right to elect a different rate of Elective Deferral Contributions or no Elective Deferral Contributions. The notice shall include the procedure for exercising that right and the timing for implementing any such election.

An elective deferral agreement (or change thereto) must be made in such manner and in accordance with such rules as we may prescribe (including by means of voice response or other electronic system under circumstances we permit) and may not be made retroactively.

Our Contributions are allocated according to the provisions of Section 3.05.

We may make all or any portion of our Matching Contributions, Qualified Nonelective Contributions, or Discretionary Contributions, which are to be invested in Qualifying Employer Securities to the Trustee in the form of Qualifying Employer Securities.

A portion of the Plan assets resulting from our Contributions (but not more than the original amount of those Contributions) may be returned if our Contributions are made because of a mistake of fact or are more than the amount deductible under Code Section 404 (excluding any amount which is not deductible because the Plan is disqualified). The amount involved must be returned to us within one year after the date our Contributions are made by mistake of fact or the date the deduction is disallowed, whichever applies. Except as provided under this paragraph and Articles VIII and X, the assets of the Plan shall never be used for our benefit and are held for the exclusive purpose of providing benefits to Members and their Beneficiaries and for defraying reasonable expenses of administering the Plan.

Prior Plan Assets which result from contributions made by us shall be treated in the same manner as Employer Contributions made under this Plan. If the Prior Plan Assets are transferred from a terminated plan, they shall be treated in the same manner as Employer Contributions made under this Plan before a Forfeiture Date.

#### **SECTION 3.02 – VOLUNTARY CONTRIBUTIONS BY MEMBERS.**

The Plan will not accept deductible Voluntary Contributions which are made for a taxable year beginning after December 31, 1986. Such Contributions made prior to that date shall be maintained in a separate account which will be nonforfeitable at all times.

The part of the Member's Prior Plan Assets which result from voluntary contributions made by the Member under the Prior Plan is fully (100%) vested and nonforfeitable at all times. These Prior Plan Assets may include deductible voluntary contributions which were made according to the provisions of the Prior Plan.

#### **SECTION 3.03 – ROLLOVER CONTRIBUTIONS.**

If permitted under Item T, a Rollover Contribution may be made by an Eligible Employee or an Inactive Member if the following conditions are met:

- a) The Contribution is of amounts distributed from a plan that satisfies the requirements of Code Section 401(a) or from a "conduit" individual retirement account described in Code Section 408(d)(3)(A). In the case of an Inactive Member, the Contribution must be of an amount distributed from another plan of ours, or a plan of a Controlled Group member, that satisfies the requirements of Code Section 401(a).
- b) The Contribution is of amounts that the Code permits to be transferred to a plan that meets the requirements of Code Section 401(a).
- c) The Contribution is made in the form of a direct rollover under Code Section 401(a)(31) or is a rollover made under Code

Section 402(c) or 408(d)(3)(A) within 60 days after the Eligible Employee or Inactive Member receives the distribution.

- d) The Eligible Employee or Inactive Member furnishes evidence satisfactory to the Plan Administrator that the proposed rollover meets conditions (a), (b), and (c) above.

A Rollover Contribution shall be allowed in cash only and must be made according to procedures set up by the Plan Administrator.

If the Eligible Employee is not an Active Member when the Rollover Contribution is made, he shall be deemed to be an Active Member only for the purpose of investment and distribution of the Rollover Contribution. Our Contributions shall not be made for or allocated to the Eligible Employee until the time he meets all of the requirements to become an Active Member.

Rollover Contributions made by an Eligible Employee or an Inactive Member shall be credited to his Account. The part of the Member's Account resulting from Rollover Contributions is fully (100%) vested and nonforfeitable at all times. A separate accounting record shall be maintained for that part of his Rollover Contributions consisting of voluntary contributions which were deducted from the Member's gross income for Federal income tax purposes.

Prior Plan Assets which result from the Member's rollover contributions shall be treated in the same manner as Rollover Contributions made under this Plan.

### **SECTION 3.04 – FORFEITURES.**

The Nonvested Account of a Member shall be forfeited as of the earlier of the following:

- a) the date the Member dies (if prior to such date he had ceased to be an Employee), or
- b) the Member's Forfeiture Date.

All or a portion of a Member's Nonvested Account shall be forfeited before such earlier date if, after he ceases to be an Employee, he receives, or is deemed to receive, a distribution of his entire Vested Account or a distribution of his Vested Account derived from our Contributions which were not 100% vested when made, under Section 5.01, 5.03, or 10.11. The forfeiture shall occur as of the date the Member receives, or is deemed to receive, the distribution. If a Member receives, or is deemed to receive, his entire Vested Account, his entire Nonvested Account shall be forfeited. If a Member receives a distribution of his Vested Account from our Contributions which were not 100% vested when made, but less than his entire Vested Account from such Contributions, the amount to be forfeited shall be determined by multiplying his Nonvested Account from such Contributions by a fraction. The numerator of the fraction is the amount of the distribution derived from our Contributions which were not 100% vested when made and the denominator of the fraction is his entire Vested Account derived from such Contributions on the date of the distribution.

A Forfeiture shall also occur as provided in Section 3.07.

Forfeitures for each Plan Year shall be used to pay administrative expenses, allocated, or applied to reduce Employer Contributions as follows:

- 1) First, Forfeitures shall be used to the extent necessary to restore the Nonvested Account of a Member who repays a distribution as described below.
- 2) If after the application of (1) above Forfeitures still exist, to the extent elected by the Plan Administrator, such Forfeitures shall be used to pay reasonable costs of administering the Plan.
- 3) If after the application of (2) above Forfeitures still exist, such Forfeitures shall be deemed to be Employer Contributions and shall be applied to reduce the earliest Employer Contributions made after the Forfeitures are determined.
- 4) If after the application of (3) above Forfeitures still exist and Item Q(2) is selected, such Forfeitures shall be deemed to be Employer Contributions and shall be allocated with Discretionary Contributions.

- 5) If after the application of (3) above Forfeitures still exist and Item Q(2) is not selected, such Forfeitures shall be deemed to be Matching Contributions and shall be allocated as of the last day of the Plan Year by multiplying the amount of such Forfeitures by the ratio of each Member's Elective Deferral Contributions for such Plan Year to the total of all Member's Elective Deferral Contributions for such Plan Year.

If a Member again becomes an Eligible Employee after receiving a distribution which caused all or a portion of his Nonvested Account to be forfeited, he shall have the right to repay to the Plan the entire amount of the distribution he received (excluding any amount of such distribution resulting from Contributions which were 100% vested when made). The repayment must be made in a single sum (repayment in installments is not permitted) before the earlier of the date five years after the date he again becomes an Eligible Employee or the end of the first period of five consecutive Vesting Breaks which begin after the date of the distribution.

If the Member makes the repayment provided above, the Plan Administrator shall restore to his Account an amount equal to his Nonvested Account which was forfeited on the date of distribution, unadjusted for any investment gains or losses. If no amount is to be repaid because the Member was deemed to have received a distribution or only received a distribution of Contributions that were 100% vested when made, and he again performs an Hour of Service as an Eligible Employee within the repayment period, the Plan Administrator shall restore the Member's Account as if he had made a required repayment on the date he performed such Hour of Service. Restoration of the Member's Account shall include restoration of all Code Section 411(d)(6) protected benefits with respect to the restored Account, according to applicable Treasury regulations. Provided, however, the Plan Administrator shall not restore the Nonvested Account if (i) a Forfeiture Date has occurred after the date of the distribution and on or before the date of repayment and (ii) that Forfeiture Date would result in a complete forfeiture of the amount the Plan Administrator would otherwise restore.

The Plan Administrator shall restore the Member's Account by the close of the Plan Year following the Plan Year in which repayment is made. The permissible sources for restoration of the Member's Account are Forfeitures or special Employer Contributions. Such special Employer Contributions shall be made without regard to profits. The repaid and restored amounts are not included in the Member's Annual Additions, as defined in Section 3.06.

### **SECTION 3.05 – ALLOCATION.**

Elective Deferral Contributions in Item O shall be allocated to the Members for whom such Contributions are made under Item O. Such Contributions shall be allocated when made and credited to the Member's Account.

Matching Contributions in Item P shall be allocated to the persons for whom such Contributions are made under Item P. Such Contributions calculated based on Elective Deferral Contributions and Pay for the pay period shall be allocated when made and credited to the person's Account. Such Contributions calculated based on Elective Deferral Contributions and Pay for the Plan Year shall be allocated as of the last day of the Plan Year and credited to the person's Account.

The discretionary Qualified Nonelective Contributions described in Section 3.01 which are in addition to those specified in Item Q shall be allocated as of the last day of the Plan Year only to Nonhighly Compensated Employees who meet the requirements in Item R. Such Contributions shall be allocated first to the eligible person with the lowest Annual Pay for the Plan Year, then to the eligible person with the next lowest Annual Pay, and so forth, in each case subject to applicable limits of Section 3.06. This amount shall be credited to the person's Account.

Qualified Nonelective Contributions in Item Q shall be allocated to the persons for whom such Contributions are made under Item Q. Such Contributions based on Pay or a dollar amount for the pay period, or a dollar amount for Hours of Service during the pay period, shall be allocated when made and credited to the person's Account. Such Contributions based on Pay or a dollar amount for the Plan Year shall be allocated as of the last day of the Plan Year and credited to the person's Account.



Qualified Nonelective Contributions in Item Q(1)(a) or (b), and Discretionary Contributions in Item Q(2) (and Forfeitures if allocated with Discretionary Contributions) shall be allocated as of the last day of the Plan Year to each person eligible to share in the allocation under Item Q. The amount allocated to such person shall be determined under the allocation formula selected in Item Q. This amount shall be credited to the person's Account.

If Leased Employees are Eligible Employees, in determining the amount of our Contributions allocated to a person who is a Leased Employee, contributions provided by the leasing organization which are attributable to services such Leased Employee performs for us shall be treated as provided by us. Those contributions shall not be duplicated under this Plan.

### SECTION 3.06 – CONTRIBUTION LIMITATION.

a) Definitions. For the purpose of determining the contribution limitation set forth in this section, the following terms are defined:

**Annual Additions** means the sum of the following amounts credited to a Member's account for the Limitation Year:

- 1) employer contributions;
- 2) employee contributions; and
- 3) forfeitures.

Annual Additions to a defined contribution plan shall also include the following:

- 4) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which are part of a pension or annuity plan maintained by the Employer;
- 5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer; and
- 6) allocations under a simplified employee pension.

For this purpose, any Excess Amount applied under (e) and (k) below in the Limitation Year to reduce Employer Contributions shall be considered Annual Additions for such Limitation Year.

**Compensation** means one of the following as specified in Item S:

- 1) Information Required to be Reported Under Code Sections 6041, 6051, and 6052 ("Wages, Tips and Other Compensation" box on Form W-2). Compensation is defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
- 2) Code Section 3401(a) Wages. Compensation is defined as wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
- 3) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually

rendered in the course of employment with the Employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in section 1.62-2(c) of the regulations)), and excluding the following:

- i) employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation;
- ii) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- iii) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- iv) other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludible from the gross income of the Employee).

For any Self-employed Individual, Compensation shall mean Earned Income.

For purposes of applying the limitations of this section, Compensation for a Limitation Year is the Compensation actually paid or made available in gross income during such Limitation Year.

For Limitation Years beginning after December 31, 1997, for purposes of applying the limitations of this section, Compensation paid or made available during such Limitation Year shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(f)(4), or 457.

**Defined Benefit Plan Fraction** means a fraction, the numerator of which is the sum of the Member's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of (i) 125 percent of the dollar limitation determined for the Limitation Year under Code Sections 415(b)(1)(A) and (d) or (ii) 140 percent of the Highest Average Compensation, including any adjustments under Code Section 415(b)(5).

Notwithstanding the above, if the Member was a member as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Member had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 for all Limitation Years beginning before January 1, 1987.

**Defined Contribution Dollar Limitation** means, for Limitation Years beginning after December 31, 1994, \$30,000, as adjusted under Code Section 415(d).

**Defined Contribution Plan Fraction** means a fraction, the numerator of which is the sum of the Annual Additions to the

Member's account under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the Annual Additions attributable to the Member's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the Annual Additions attributable to all welfare benefit funds, individual medical accounts, and simplified employee pensions, maintained by the Employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any Limitation Year is the lesser of (i) 125 percent of the dollar limitation under Code Section 415(c)(1)(A) after adjustment under Code Section 415(d) or (ii) 35 percent of the Member's Compensation for such year.

If the Employee was a member as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over 1.0 times (ii) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the Code Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as Annual Additions.

**Employer** means the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) as modified by Code Section 415(h)) or affiliated service groups (as defined in Code Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to regulations under Code Section 414(o).

**Excess Amount** means the excess of the Member's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

**Highest Average Compensation** means the average Compensation for the three consecutive Limitation Years while he was an Employee (actual consecutive Limitation Years while he was an Employee, if employed less than three years) that produces the highest average.

**Limitation Year** means a calendar year or the consecutive 12-month period elected by the Employer in Item S. If the Limitation Year ends on the last day of the Fiscal Year and the Fiscal Year is a 52-53 week period, then the Limitation Year shall be such period. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different consecutive 12-month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**Master or Prototype Plan** means a plan, the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

**Maximum Permissible Amount** means the maximum Annual Addition that may be contributed or allocated to a Member's Account under the Plan for any Limitation Year. This amount shall not exceed the lesser of:

- 1) The Defined Contribution Dollar Limitation, or

- 2) 25 percent of the Member's Compensation for the Limitation Year.

The compensation limitation referred to in (2) shall not apply to any contribution for medical benefits (within the meaning of Code Section 401(h) or 419A(f)(2)) which is otherwise treated as an Annual Addition under Code Section 415(l)(1) or 419A(d)(2).

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different consecutive 12-month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

12

**Projected Annual Benefit** means the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Member would be entitled under the terms of the plan assuming:

- 1) the Member will continue employment until normal retirement age under the plan (or current age, if later), and
  - 2) the Member's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.
- b) If the Member does not participate in, and has never participated in, another qualified plan maintained by the Employer or a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer, or an individual medical account, as defined in Code Section 415(l)(2), maintained by the Employer, or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Member's Account for any Limitation Year shall not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Member's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated shall be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
  - c) Prior to determining the Member's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Member on the basis of a reasonable estimation of the Member's Compensation for the Limitation Year, uniformly determined for all Members similarly situated.
  - d) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Member's actual Compensation for the Limitation Year.
  - e) If as a result of the allocation of Forfeitures, a reasonable error in estimating a Member's Compensation for the Limitation Year, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limits of Code Section 415, or under other facts and circumstances allowed by the Internal Revenue Service, there is an Excess Amount, the excess will be disposed of as follows:
    - 1) Any nondeductible Voluntary Contributions (plus attributable earnings), to the extent they would reduce the Excess Amount, will be returned (distributed, in the case of earnings) to the Member.
    - 2) If after the application of (1) above an Excess Amount still exists, any Elective Deferral Contributions that are not the basis for Matching Contributions (plus attributable earnings), to the extent they would reduce the Excess Amount, will be distributed to the Member.

- 3) If after the application of (2) above an Excess Amount still exists, any Elective Deferral Contributions that are the basis for Matching Contributions (plus attributable earnings), to the extent they would reduce the Excess Amount, will be distributed to the Member. Concurrently with the distribution of such Elective Deferral Contributions, any Matching Contributions which relate to any Elective Deferral Contributions distributed in the preceding sentence, to the extent such application would reduce the Excess Amount, will be applied as provided in (4) or (5) below.
  - 4) If after the application of (3) above an Excess Amount still exists, and the Member is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Member's Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Member in the next Limitation Year, and each succeeding Limitation Year if necessary.
  - 5) If after the application of (3) above an Excess Amount still exists, and the Member is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions for all remaining Members in the next Limitation Year, and each succeeding Limitation Year if necessary.
  - 6) If a suspense account is in existence at any time during a Limitation Year pursuant to this (e), it will participate in the allocation of investment gains or losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Member's Accounts before any Employer Contributions may be made to the Plan for that Limitation Year. Excess amounts held in a suspense account may not be distributed to Members or former Members.
- f) This (f) applies if, in addition to this Plan, the Member is covered under another qualified defined contribution Master or Prototype Plan maintained by the Employer, a welfare benefit fund maintained by the Employer, an individual medical account maintained by the Employer, or a simplified employee pension maintained by the Employer which provides an Annual Addition during any Limitation Year. The Annual Additions which may be credited to a Member's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount, reduced by the Annual Additions credited to a Member's account under the other qualified defined contribution Master or Prototype Plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Member under other qualified defined contribution Master or Prototype Plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the Maximum Permissible Amount, and the Employer Contribution that would otherwise be contributed or allocated to the Member's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Member under such other qualified defined contribution Master or Prototype Plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Member's Account under this Plan for the Limitation Year.
- g) Prior to determining the Member's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Member in the manner described in (c) above.
- h) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Member's actual Compensation for the Limitation Year.
- i) If pursuant to (h) above or as a result of the allocation of forfeitures or as a result of a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limits of Code Section 415, a Member's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.
  - j) If an Excess Amount was allocated to a Member on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:
    - 1) the total Excess Amount allocated as of such date, times
    - 2) the ratio of (i) the Annual Additions allocated to the Member for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Member for the Limitation Year as of such date under this and all the other qualified defined contribution Master or Prototype Plans.
  - k) Any Excess Amount attributed to this Plan will be disposed in the manner described in (e) above.
  - l) If the Member is covered under another qualified defined contribution plan maintained by the Employer which is not a Master or Prototype Plan, Annual Additions which may be credited to the Member's Account under this Plan for any Limitation Year will be limited in accordance with (f) through (k) above as though the other plan were a Master or Prototype Plan, unless the Employer provides other limitations in Item S.
  - m) If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Member in this Plan, the sum of the Member's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions credited to the Member's Account under this Plan for any Limitation Year will be limited in accordance with Item S. This subparagraph shall cease to apply effective as of the first Limitation Year beginning on or after January 1, 2000.

**SECTION 3.07 – EXCESS AMOUNTS.**

- a) Definitions. For purposes of this section, the following terms are defined:
- ACP** means the average (expressed as a percentage) of the Contribution Percentages of the Eligible Members in a group.
- ADP** means the average (expressed as a percentage) of the Deferral Percentages of the Eligible Members in a group.
- Aggregate Limit** means the greater of:
- 1) The sum of:
    - i) 125 percent of the greater of the ADP of the Nonhighly Compensated Employees for the prior Plan Year or the ACP of the Nonhighly Compensated Employees under the plan subject to Code Section 401(m) for the Plan Year beginning with or within the prior Plan Year of the cash or deferred arrangement, and
    - ii) the lesser of 200 percent or 2 percent plus the lesser of such ADP or ACP.
  - 2) The sum of:
    - i) 125 percent of the lesser of the ADP of the Nonhighly Compensated Employees for the prior Plan Year or the ACP of the Nonhighly Compensated Employees under the plan subject to Code Section 401(m) for the Plan Year beginning with or within the prior Plan Year of the cash or deferred arrangement, and

- ii) the lesser of 200 percent or 2 percent plus the greater of such ADP or ACP.

If we have elected in Item K(2)(a) to use the current year testing method, then, in calculating the Aggregate Limit for a particular Plan Year, the Nonhighly Compensated Employees' ADP and ACP for that Plan Year, instead of the prior Plan Year, is used.

**Contribution Percentage** means the ratio (expressed as a percentage) of the Eligible Member's Contribution Percentage Amounts to the Eligible Member's Pay for the Plan Year (whether or not the Eligible Member was an Eligible Member for the entire Plan Year). If selected in Item N and in modification of the foregoing, Pay shall be limited to the Pay received while an Eligible Member. For an Eligible Member for whom such Contribution Percentage Amounts for the Plan Year are zero, the percentage is zero.

**Contribution Percentage Amounts** means the sum of the Member Contributions and Matching Contributions (that are not Qualified Matching Contributions taken into account for purposes of the ADP Test) made under the Plan on behalf of the Eligible Member for the Plan Year. Such Contribution Percentage Amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or because the Contributions to which they relate are Excess Elective Deferrals, Excess Contributions, or Excess Aggregate Contributions. Under such rules as the Secretary of the Treasury shall prescribe, in determining the Contribution Percentage we may elect to include Qualified Nonelective Contributions under this Plan which were not used in computing the Deferral Percentage. We may also elect to use Elective Deferral Contributions in computing the Contribution Percentage so long as the ADP Test is met before the Elective Deferral Contributions are used in the ACP Test and continues to be met following the exclusion of those Elective Deferral Contributions that are used to meet the ACP Test.

**Deferral Percentage** means the ratio (expressed as a percentage) of Elective Deferral Contributions under this Plan on behalf of the Eligible Member for the Plan Year to the Eligible Member's Pay for the Plan Year (whether or not the Eligible Member was an Eligible Member for the entire Plan Year). If selected in Item N and in modification of the foregoing, Pay shall be limited to the Pay received while an Eligible Member. The Elective Deferral Contributions used to determine the Deferral Percentage shall include Excess Elective Deferrals (other than Excess Elective Deferrals of Nonhighly Compensated Employees that arise solely from Elective Deferral Contributions made under this Plan or any other plans of ours or a Controlled Group member), but shall exclude Elective Deferral Contributions that are used in computing the Contribution Percentage (provided the ADP Test is satisfied both with and without exclusion of these Elective Deferral Contributions). Under such rules as the Secretary of the Treasury shall prescribe, we may elect to include Qualified Nonelective Contributions and Qualified Matching Contributions under this Plan in computing the Deferral Percentage. For an Eligible Member for whom such contributions on his behalf for the Plan Year are zero, the percentage is zero.

**Elective Deferral Contributions** means any employer contributions made to a plan at the election of a member, in lieu of cash compensation, and shall include contributions made pursuant to a salary reduction agreement or other deferral mechanism. With respect to any taxable year, a member's Elective Deferral Contributions are the sum of all employer contributions made on behalf of such member pursuant to an election to defer under any qualified cash or deferred arrangement described in Code Section 401(k), any salary reduction simplified employee pension plan described in Code Section 408(k)(6), any SIMPLE IRA plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plan described under Code Section 501(c)(18), and any employer contributions made on behalf of a member for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. Elective Deferral Contributions shall not include any deferrals properly distributed as excess annual additions.

**Eligible Member** means, for purposes of determining the Deferral Percentage, any Employee who is otherwise entitled to make Elective Deferral Contributions under the terms of the Plan for the Plan Year. Eligible Member means, for purposes of determining the Contribution Percentage, any Employee who is eligible (i) to make a Member Contribution or an Elective Deferral Contribution (if we take such contributions into account in the calculation of the Contribution Percentage), or (ii) to receive a Matching Contribution (including forfeitures) or a Qualified Matching Contribution. If a Member Contribution is required as a condition of participation in the Plan, any Employee who would be a Member in the Plan if such Employee made such a contribution shall be treated as an Eligible Member on behalf of whom no Member Contributions are made.

**Excess Aggregate Contributions** means, with respect to any Plan Year, the excess of:

- 1) The aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over
- 2) The maximum Contribution Percentage Amounts permitted by the ACP Test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals and then determining Excess Contributions.

**Excess Contributions** means, with respect to any Plan Year, the excess of:

- 1) The aggregate amount of employer contributions actually taken into account in computing the Deferral Percentage of Highly Compensated Employees for such Plan Year, over
- 2) The maximum amount of such contributions permitted by the ADP Test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in the order of the Deferral Percentages, beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals.

**Excess Elective Deferrals** means those Elective Deferral Contributions that are includible in a Member's gross income under Code Section 402(g) to the extent such Member's Elective Deferral Contributions for a taxable year exceed the dollar limitation under such Code section. Excess Elective Deferrals shall be treated as Annual Additions, as defined in Section 3.06, under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the Member's taxable year.

**Matching Contributions** means employer contributions made to this or any other defined contribution plan, or to a contract described in Code Section 403(b), on behalf of a member on account of a Member Contribution made by such member, or on account of a member's Elective Deferral Contributions, under a plan maintained by us or a Controlled Group member.

**Member Contributions** means contributions made to the plan by or on behalf of a member that are included in the member's gross income in the year in which made and that are maintained under a separate account to which earnings and losses are allocated.

**Qualified Matching Contributions** means Matching Contributions which are subject to the distribution and nonforfeiture requirements under Code Section 401(k) when made.

**Qualified Nonelective Contributions** means any employer contributions (other than Matching Contributions) which an employee may not elect to have paid to him in cash instead of being contributed to the plan and which are subject to the distribution and nonforfeiture requirements under Code Section 401(k) when made.

- b) Excess Elective Deferrals. A Member may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Member by notifying the Plan Administrator in writing on or before the first following March 1 of the amount of the Excess Elective Deferrals to be assigned to the Plan. A Member is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferral Contributions made to this Plan and any other plan of ours or a Controlled Group member. The Member's claim for Excess Elective Deferrals shall be accompanied by the Member's written statement that if such amounts are not distributed, such Excess Elective Deferrals will exceed the limit imposed on the Member by Code Section 402(g) for the year in which the deferral occurred. The Excess Elective Deferrals assigned to this Plan cannot exceed the Elective Deferral Contributions allocated under this Plan for such taxable year.

Notwithstanding any other provision of the Plan, Elective Deferral Contributions in an amount equal to the Excess Elective Deferrals assigned to this Plan, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Member to whose Account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year.

The Excess Elective Deferrals shall be adjusted for any income or loss. The income or loss allocable to such Excess Elective Deferrals shall be equal to the income or loss allocable to the Member's Elective Deferral Contributions for the taxable year in which the excess occurred multiplied by a fraction. The numerator of the fraction is the Excess Elective Deferrals. The denominator of the fraction is the closing balance without regard to any income or loss occurring during such taxable year (as of the end of such taxable year) of the Member's Account resulting from Elective Deferral Contributions.

Any Matching Contributions which were based on the Elective Deferral Contributions which are distributed as Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be forfeited.

- c) ADP Test. As of the end of each Plan Year after Excess Elective Deferrals have been determined, the Plan must satisfy the ADP Test. The ADP Test shall be satisfied using the prior year testing method, unless we have elected in Item K(2)(a) to use the current year testing method.

- 1) Prior Year Testing Method. The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for each Plan Year and the prior year's ADP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

- i) The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's ADP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 1.25; or
- ii) The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year:
  - A. shall not exceed the prior year's ADP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 2, and
  - B. the difference between such ADPs is not more than 2.

If this is not a successor plan, for the first Plan Year the Plan permits any Member to make Elective Deferral Contributions, for purposes of the foregoing tests, the prior year's Nonhighly Compensated Employees' ADP shall be 3 percent, unless we have elected in Item K(2)(b)(i) to use the Plan Year's ADP for these Eligible Members.

- 2) Current Year Testing Method. The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for each Plan Year and the ADP for Eligible Members who

are Nonhighly Compensated Employees for the Plan Year must satisfy one of the following tests:

- i) The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year shall not exceed the ADP for Eligible Members who are Nonhighly Compensated Employees for the Plan Year multiplied by 1.25; or
- ii) The ADP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year:
  - A. shall not exceed the ADP for Eligible Members who are Nonhighly Compensated Employees for the Plan Year multiplied by 2, and
  - B. the difference between such ADPs is not more than 2.

If we have elected in Item K(2)(a) to use the current year testing method, that election cannot be changed unless (i) the Plan has been using the current year testing method for the preceding five Plan Years, or if less, the number of Plan Years the Plan has been in existence; or (ii) the Plan otherwise meets one of the conditions specified in Internal Revenue Service Notice 98-1 (or superseding guidance) for changing from the current year testing method.

A Member is a Highly Compensated Employee for a particular Plan Year if he meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Member is a Nonhighly Compensated Employee for a particular Plan Year if he does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

The Deferral Percentage for any Eligible Member who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferral Contributions (and Qualified Nonelective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferral Contributions for purposes of the ADP Test) allocated to his account under two or more arrangements described in Code Section 401(k) that are maintained by us or a Controlled Group member shall be determined as if such Elective Deferral Contributions (and, if applicable, such Qualified Nonelective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. The foregoing notwithstanding, certain plans shall be treated as separate if mandatorily disaggregated under the regulations of Code Section 401(k).

In the event this Plan satisfies the requirements of Code Section 401(k), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, then this section shall be applied by determining the Deferral Percentage of Employees as if all such plans were a single plan. Any adjustments to the Nonhighly Compensated Employee ADP for the prior year shall be made in accordance with Internal Revenue Service Notice 98-1 (or superseding guidance), unless we have elected in Item K(2)(a) to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same plan year and use the same testing method for the ADP Test.

For purposes of the ADP Test, Elective Deferral Contributions, Qualified Nonelective Contributions, and Qualified Matching Contributions must be made before the end of the 12-month period immediately following the Plan Year to which the contributions relate.

We shall maintain records sufficient to demonstrate satisfaction of the ADP Test and the amount of Qualified Nonelective Contributions or Qualified Matching Contributions, or both, used in such test.

If the Plan Administrator should determine during the Plan Year that the ADP Test is not being met, the Plan Administrator may limit the amount of future Elective Deferral Contributions of the Highly Compensated Employees.

Notwithstanding any other provision of this Plan, Excess Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than the last day of each Plan Year to Members to whose Accounts such Excess Contributions were allocated for the preceding Plan Year. Excess Contributions are allocated to the Highly Compensated Employees with the largest amounts of employer contributions taken into account in calculating the ADP Test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such employer contributions and continuing in descending order until all of the Excess Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution of any Excess Contributions. If such excess amounts are distributed more than 2 1/2 months after the last day of the Plan Year in which such excess amounts arose, a 10 percent excise tax shall be imposed on the employer maintaining the plan with respect to such amounts.

Excess Contributions shall be treated as Annual Additions, as defined in Section 3.06.

The Excess Contributions shall be adjusted for any income or loss. The income or loss allocable to such Excess Contributions allocated to each Member shall be equal to the income or loss allocable to the Member's Elective Deferral Contributions (and, if applicable, Qualified Nonelective Contributions or Qualified Matching Contributions, or both) for the Plan Year in which the excess occurred multiplied by a fraction. The numerator of the fraction is the Excess Contributions. The denominator of the fraction is the closing balance without regard to any income or loss occurring during such Plan Year (as of the end of such Plan Year) of the Member's Account resulting from Elective Deferral Contributions (and Qualified Nonelective Contributions or Qualified Matching Contributions, or both, if such contributions are included in the ADP Test).

Excess Contributions allocated to a Member shall be distributed from the Member's Account resulting from Elective Deferral Contributions. If such Excess Contributions exceed the balance in the Member's Account resulting from Elective Deferral Contributions, the balance shall be distributed from the Member's Account resulting from Qualified Matching Contributions (if applicable) and Qualified Nonelective Contributions, respectively.

Any Matching Contributions which were based on the Elective Deferral Contributions which are distributed as Excess Contributions, plus any income and minus any loss allocable thereto, shall be forfeited.

d) ACP Test. As of the end of each Plan Year, the Plan must satisfy the ACP Test. The ACP Test shall be satisfied using the prior year testing method, unless we have elected in Item K(2)(a) to use the current year testing method.

1) Prior Year Testing Method. The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for each Plan Year and the prior year's ACP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

- i) The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's ACP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 1.25; or
- ii) The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year:
  - A. shall not exceed the prior year's ACP for Eligible Members who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 2, and

- B. the difference between such ACPs is not more than 2.

If this is not a successor plan, for the first Plan Year the Plan permits any Member to make Member Contributions, provides for Matching Contributions, or both, for purposes of the foregoing tests, the prior year's Nonhighly Compensated Employees' ACP shall be 3 percent, unless we have elected in Item K(2)(c)(i) to use the Plan Year's ACP for these Eligible Members.

2) Current Year Testing Method. The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for each Plan Year and the ACP for Eligible Members who are Nonhighly Compensated Employees for the Plan Year must satisfy one of the following tests:

- i) The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year shall not exceed the ACP for Eligible Members who are Nonhighly Compensated Employees for the Plan Year multiplied by 1.25; or
- ii) The ACP for a Plan Year for Eligible Members who are Highly Compensated Employees for the Plan Year:
  - A. shall not exceed the ACP for Eligible Members who are Nonhighly Compensated Employees for the Plan Year multiplied by 2, and
  - B. the difference between such ACPs is not more than 2.

If we have elected in Item K(2)(a) to use the current year testing method, that election cannot be changed unless (i) the Plan has been using the current year testing method for the preceding five Plan Years, or if less, the number of Plan Years the Plan has been in existence; or (ii) the Plan otherwise meets one of the conditions specified in Internal Revenue Service Notice 98-1 (or superseding guidance) for changing from the current year testing method.

A Member is a Highly Compensated Employee for a particular Plan Year if he meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Member is a Nonhighly Compensated Employee for a particular Plan Year if he does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

Multiple Use. If one or more Highly Compensated Employees participate in both a cash or deferred arrangement and a plan subject to the ACP Test maintained by us or a Controlled Group member, and the sum of the ADP and ACP of those Highly Compensated Employees subject to either or both tests exceeds the Aggregate Limit, then the Contribution Percentage of those Highly Compensated Employees who also participate in a cash or deferred arrangement will be reduced in the manner described below for allocating Excess Aggregate Contributions so that the limit is not exceeded. The amount by which each Highly Compensated Employee's Contribution Percentage is reduced shall be treated as an Excess Aggregate Contribution. The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP Test and ACP Test and are deemed to be the maximum permitted under such tests for the Plan Year. Multiple use does not occur if either the ADP or ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP, respectively, of the Nonhighly Compensated Employees.

The Contribution Percentage for any Eligible Member who is a Highly Compensated Employee for the Plan Year and who is eligible to have Contribution Percentage Amounts allocated to his account under two or more plans described in Code Section 401(a) or arrangements described in Code Section 401(k) that are maintained by us or a Controlled Group member shall be determined as if the total of such Contribution Percentage Amounts was made under each plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall

be treated as a single arrangement. The foregoing notwithstanding, certain plans shall be treated as separate if mandatorily disaggregated under the regulations of Code Section 401(m).

In the event this Plan satisfies the requirements of Code Section 401(m), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, then this section shall be applied by determining the Contribution Percentage of Employees as if all such plans were a single plan. Any adjustments to the Nonhighly Compensated Employee ACP for the prior year shall be made in accordance with Internal Revenue Service Notice 98-1 (or superseding guidance), unless we have elected in Item K(2)(a) to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same plan year and use the same testing method for the ACP Test.

For purposes of the ACP Test, Member Contributions are considered to have been made in the Plan Year in which contributed to the Plan. Matching Contributions and Qualified Nonelective Contributions will be considered made for a Plan Year if made no later than the end of the 12-month period beginning on the day after the close of the Plan Year.

We shall maintain records sufficient to demonstrate satisfaction of the ACP Test and the amount of Qualified Nonelective Contributions or Qualified Matching Contributions, or both, used in such test.

Notwithstanding any other provision of this Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if not vested, or distributed, if vested, no later than the last day of each Plan Year to Members to whose Accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year. Excess Aggregate Contributions are allocated to the Highly Compensated Employees with the largest Contribution Percentage Amounts taken into account in calculating the ACP Test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Contribution Percentage Amounts and continuing in descending order until all of the Excess Aggregate Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution of any Excess Aggregate Contributions. If such Excess Aggregate Contributions are distributed more than 2 1/2 months after the last day of the Plan Year in which such excess amounts arose, a 10 percent excise tax will be imposed on the employer maintaining the plan with respect to such amounts.

Excess Aggregate Contributions shall be treated as Annual Additions, as defined in Section 3.06.

The Excess Aggregate Contributions shall be adjusted for any income or loss. The income or loss allocable to such Excess Aggregate Contributions allocated to each Member shall be equal to the income or loss allocable to the Member's Contribution Percentage Amounts for the Plan Year in which the excess occurred multiplied by a fraction. The numerator of the fraction is the Excess Aggregate Contributions. The denominator of the fraction is the closing balance without regard to any income or loss occurring during such Plan Year (as of the end of such Plan Year) of the Member's Account resulting from Contribution Percentage Amounts.

Excess Aggregate Contributions allocated to a Member shall be distributed from the Member's Account resulting from Member Contributions that are not required as a condition of employment or participation or for obtaining additional benefits from Employer Contributions. If such Excess Aggregate Contributions exceed the balance in the Member's Account resulting from such Member Contributions, the balance shall be forfeited, if not vested, or distributed, if vested, on a pro-rata basis from the Member's Account resulting from Contribution Percentage Amounts.

## SECTION 3.08 – 401(k) SAFE HARBOR PROVISIONS.

### a) Rules of Application.

- 1) If we have elected in Item O to have the 401(k) safe harbor provisions apply or we amend the Plan in accordance with the provisions in (2) below, and such provisions apply for the entire Plan Year, then the provisions of this section shall apply for the Plan Year.

If the 401(k) safe harbor provisions apply for the Plan Year, any provisions relating to the ADP Test in Section 3.07 and any provisions relating to the ACP Test in Section 3.07 with respect to Matching Contributions do not apply.

- 2) If the notice requirements described in (b)(2)(ii) below are met, we may amend the Plan during the Plan Year to elect to (i) have the 401(k) safe harbor provisions apply and (ii) make a Qualified Nonelective Contribution of at least 3% of a Member's Pay.
- 3) The provisions of this section shall not apply unless (i) the Plan Year is 12 months long, or (ii) in the case of the first Plan Year of a newly established plan (other than a successor plan), the Plan Year is at least 3 months long (or any shorter period if we are a newly established employer that establishes the Plan as soon as administratively feasible after we come into existence).
- 4) However, if a cash or deferred arrangement is added to an existing profit sharing, stock bonus, or pre-ERISA money purchase pension plan for the first time during a plan year, the requirements in (1) and (3) above will be treated as being satisfied for the entire Plan Year provided:
  - i) the Plan is not a successor plan (within the meaning of Internal Revenue Service Notice 98-1 or superseding guidance),
  - ii) the cash or deferred arrangement is made effective no later than 3 months prior to the end of the Plan Year, and
  - iii) the requirements of Internal Revenue Service Notice 98-52 are otherwise satisfied for the entire period from the effective date of the cash or deferred arrangement to the end of the Plan Year.Thus, an existing calendar-year profit sharing plan that does not contain a cash or deferred arrangement may be amended as late as October 1 to add a cash or deferred arrangement and elect to apply the 401(k) safe harbor provisions for that Plan Year. The Pay that would be used to calculate the Qualified Matching Contributions or the Qualified Nonelective Contributions for such Plan Year will be the Member's Pay received while the 401(k) safe harbor provisions apply, October 1 through December 31.
- 5) To the extent that any other provision of the Plan is inconsistent with the provisions of this section, the provisions of this section shall govern.

### b) ADP Test Safe Harbor.

- 1) Contributions. If Item O(4)(b) is selected, the Plan is satisfying the ADP Test Safe Harbor using Qualified Matching Contributions as required in Item O(4)(b). If Item O(4)(c) is selected, the Plan is satisfying the ADP Test Safe Harbor using Qualified Nonelective Contributions as required in Item O(4)(c).
- 2) Notice Requirement.
  - i) If the 401(k) safe harbor provisions apply for the Plan Year, at least 30 days, but not more than 90 days, before the beginning of the Plan Year, we shall provide each Active Member a comprehensive notice of his rights and obligations under the Plan, including a description of the Qualified Matching Contributions or Qualified Nonelective Contributions that will be made to the Plan to satisfy the ADP Test Safe Harbor.

- ii) If at least 30 days, but not more than 90 days, before the beginning of the Plan Year we provide each Active Member a comprehensive notice of his rights and obligations under the Plan, including a statement that we may amend the Plan during the Plan Year to elect to make a Qualified Nonelective Contribution of at least 3% of a Member's Pay, we shall have the option to amend the Plan to have the 401(k) safe harbor provisions apply. If the Plan is so amended, a supplemental notice will be provided no later than 30 days before the end of such Plan Year informing the Member of such amendment.

The notice shall be written in a manner calculated to be understood by the average Active Member.

If an Employee becomes an Active Member after the 90th day before the beginning of the Plan Year and does not receive the notices described above for that reason, the applicable notice must be provided no more than 90 days before he becomes an Active Member but not later than the date he becomes an Active Member.

For a Plan Year that begins on or before April 1, 1999, the notice requirement is satisfied if the notice in (i) above is given on or before March 1, 1999. For a Plan electing to apply the 401(k) safe harbor provisions for the first time in 2000, for a Plan Year that begins on or after January 1, 2000 and on or before June 1, 2000, the notice requirement is satisfied if the notice in (i) or (ii) above is given on or before May 1, 2000.

- 3) Supplemental Notice. If the notice requirements of (2)(ii) above apply, we shall provide each Active Member a supplemental notice no later than 30 days before the end of the applicable Plan Year. The supplemental notice shall state that a Qualified Nonelective Contribution will be made for such Plan Year and disclose the amount of such Qualified Nonelective Contribution. Such notice may be provided separately or as a part of the notice in (2) above for the following Plan Year.
- 4) Election Periods. In addition to any other election periods provided under the Plan, each Active Member may make or modify a deferral election during the 30-day period immediately following receipt of the notice described in (2)(i) or (ii) above.

c) ACP Test Safe Harbor.

1) Matching Contributions.

- i) If the Plan allows for Matching Contributions, such Matching Contributions shall be limited as provided in Items O(4)(b) and P.
- ii) If the Plan is satisfying the ADP Test Safe Harbor using Qualified Matching Contributions, all Matching Contributions shall be Qualified Matching Contributions. If the Plan is satisfying the ADP Test Safe Harbor using Qualified Nonelective Contributions, Matching Contributions shall not be Qualified Matching Contributions unless Item P(6) is selected.

d) ACP Test.

- 1) Continued Application. If the Plan is satisfying the ADP Test Safe Harbor and the ACP Test Safe Harbor, the Plan must still satisfy the ACP Test in the manner specified in (2) below with respect to Member Contributions.
- 2) Special Rules. If the Plan is satisfying the ADP Test Safe Harbor and the ACP Test Safe Harbor, we may elect to disregard, with respect to all Eligible Members, as defined in Section 3.07, all Matching Contributions. If the Plan is satisfying the ADP Test Safe Harbor using Qualified Nonelective Contributions, but is not satisfying the ACP Test Safe Harbor, such Qualified Nonelective Contributions that do not exceed 3% of each Member's Pay must be disregarded. Qualified Matching Contributions shall not be treated as being taken into account for purposes of the ADP

Test and may only be disregarded as provided above. Elective Deferral Contributions may not be taken into account for purposes of the ACP Test.

- 3) Multiple Use. If this Plan is the only cash or deferred arrangement in which a Highly Compensated Employee participates, the provisions in Section 3.07 regarding the Aggregate Limit, as defined in Section 3.07, shall not apply. If this Plan satisfies the ACP Test Safe Harbor and provides for no Member Contributions, the provisions in Section 3.07 regarding the Aggregate Limit, as defined in Section 3.07, shall not apply.

- e) Revocation of 401(k) Safe Harbor Election. If the ADP Test Safe Harbor is satisfied using Qualified Matching Contributions, we may amend the Plan to revoke the 401(k) safe harbor election for the Plan Year. Active Members shall be provided a supplemental notice that explains the consequences of the amendment, informs them of the effective date of the elimination of the Qualified Matching Contributions and gives them a reasonable opportunity (including a reasonable period) to change the amount of their Elective Deferral Contributions. The effective date of the revocation cannot be earlier than the later of (i) 30 days after the Active Members are given such notice, and (ii) the date the amendment revoking such provisions is adopted.

If elected in Item O(4)(b)(iv), we shall revoke the 401(k) safe harbor election for the Plan Year and perform the ADP Test and ACP Test, if applicable, for the entire Plan Year using the current year testing method described in Section 3.07. We shall make the Qualified Matching Contributions for the period prior to the effective date of the revocation.

**SECTION 3.09 – 401(k) SIMPLE PROVISIONS.**

a) Rules of Application.

- 1) If we have elected in Item O to have the 401(k) SIMPLE provisions apply, then the provisions of this section shall apply for a Year only if:
  - i) we are an Eligible Employer, and
  - ii) no contributions are made, or benefits are accrued for services during the Year, on behalf of any Eligible Employee under any other plan, contract, pension, or trust described in Code Section 219(g)(5)(A) or (B), maintained by us or a Controlled Group member.
- 2) To the extent that any other provision of the Plan is inconsistent with the provisions of this section, the provisions of this section shall govern.

- b) Definitions. For purposes of applying the provisions of this section, the following terms are defined:

**Compensation** means the sum of the wages, tips, and other compensation from us subject to Federal income tax withholding (as described in Code Section 6051(a)(3)) and the Employee's salary reduction contributions made under this or any other Code Section 401(k) plan, and, if applicable, elective deferrals under a Code Section 408(p) SIMPLE IRA plan, a SARSEP, or a Code Section 403(b) annuity contract and compensation deferred under a Code Section 457 plan, required to be reported by us on Form W-2 (as described in Code Section 6051(a)(8)). For Self-employed Individuals, Compensation means net earnings from self-employment determined under Code Section 1402(a) prior to subtracting any contributions made under this Plan on behalf of the individual. The provisions of the Plan implementing the limit on compensation under Code Section 401(a)(17) apply to the Compensation under (c) below.

**Eligible Employer** means, with respect to any Year, an employer that had no more than 100 employees who received at least \$5,000 of Compensation from the employer for the preceding Year. In applying the preceding sentence, all employees of controlled groups of corporations under Code Section 414(b), all employees of trades or businesses (whether incorporated or not) under common control under Code Section 414(c), all employees of affiliated service groups under Code Section 414(m), and



leased employees required to be treated as the employer's employees under Code Section 414(n), are taken into account.

An Eligible Employer that elects to have the 401(k) SIMPLE provisions apply to the Plan and that fails to be an Eligible Employer for any subsequent Year, is treated as an Eligible Employer for the two Years following the last Year the Employer was an Eligible Employer. If the failure is due to any acquisition, disposition, or similar transaction involving an Eligible Employer, the preceding sentence applies only if the provisions of Code Section 410(b)(6)(C)(i) are satisfied.

**Eligible Employee** means any Employee who is entitled to make elective deferrals under the terms of the Plan.

**Year** means the calendar year.

c) Contributions.

1) Salary Reduction Contributions.

- i) Each Eligible Employee may make a salary reduction election to have his Compensation reduced for the Year in any amount selected by the Employee subject to the limitation set forth in (ii) below. We will make a salary reduction contribution to the Plan, as an elective deferral, in the amount by which the Employee's Compensation has been reduced.
- ii) The total salary reduction contribution for the Year cannot exceed \$6,000 for any Employee. To the extent permitted by law, this amount will be adjusted to reflect any annual cost-of-living increases announced by the Internal Revenue Service.

For purposes of the Plan, these contributions shall be Elective Deferral Contributions.

2) Other Contributions.

- i) Matching Contributions. Each Year we will contribute a matching contribution to the Plan on behalf of each Employee who makes a salary reduction election under (c)(1)(i) above. The amount of the matching contribution will be equal to the Employee's salary reduction contribution up to a limit of 3% of the Employee's Compensation for the full Year.

For purposes of the Plan, these contributions shall be Matching Contributions.

- ii) Nonelective Contributions. For any Year, instead of a matching contribution, we may elect to contribute a nonelective contribution of 2% of Compensation for the full Year for each Eligible Employee.

For purposes of the Plan, these contributions shall be Employer Contributions.

- 3) Limitations on Other Contributions. No employer or member contributions may be made to this Plan for the Year other than salary reduction contributions described in (c)(1) above, matching or nonelective contributions described in (c)(2) above, and roll-over contributions described in Regulations section 1.402(c)-2, Q&A-1(a).

- 4) The provisions of the Plan implementing the limitations of Code Section 415 apply to contributions made pursuant to (c)(1) and (c)(2) above.

d) Election and Notice Requirements.

1) Election Period.

- i) In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a salary reduction election during the 60-day period immediately preceding each January 1.
- ii) For the Year an Employee becomes eligible to make salary reduction contributions under the 401(k) SIMPLE provisions, the 60-day election period requirement of (i) above is deemed satisfied if the Employee may make

or modify a salary reduction election during a 60-day period that includes either the date the Employee becomes eligible or the day before.

- iii) Each Employee may terminate a salary reduction election at any time during the Year.

2) Notice Requirements.

- i) We will notify each Eligible Employee prior to the 60-day election period described in (d)(1) above that he can make a salary reduction election or modify a prior election during that period.
- ii) The notification will indicate whether we will provide a 3% matching contribution described in (c)(2)(i) above or a 2% nonelective contribution described in (c)(2)(ii) above.

- e) Vesting Requirements. All benefits attributable to contributions described in (c)(1) and (c)(2) above are nonforfeitable at all times and all previous contributions made under the Plan are nonforfeitable as of the beginning of the Year the 401(k) SIMPLE provisions apply. If these provisions were previously adopted without a requirement that all previous contributions be nonforfeitable, this requirement will not apply until the date a plan that requires these contributions to be nonforfeitable is adopted.

- f) Top-heavy Rules. The Plan is not treated as a top-heavy plan under Code Section 416 for any Year for which this section applies.

- g) Nondiscrimination Tests. The ADP and ACP tests described in Section 3.07 are treated as satisfied for any Year for which this section applies.

**ARTICLE IV  
INVESTMENT OF CONTRIBUTIONS**

**SECTION 4.01 – INVESTMENT AND TIMING OF CONTRIBUTIONS.**

- a) Trusteed Plans. The provisions of this subparagraph apply to trustee plans.

The handling of Contributions is governed by the provisions of the Trust Agreement, the Annuity Contract, and any other funding arrangement in which the Plan Fund is or may be held or invested. To the extent permitted by the Trust Agreement, Annuity Contract, or other funding arrangement, the parties established by Item U shall direct the Contributions to any Insurance Policy, the guaranteed benefit policy portion of the Annuity Contract, any of the investment options available under the Trust Agreement and may request the transfer of amounts resulting from those Contributions between such investment options and investment vehicles or the transfer of amounts between the guaranteed benefit policy portion of the Annuity Contract and such investment options and investment vehicles. A Member may not direct the Trustee, or Insurer to invest the Member's Account in collectibles. Collectibles mean any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or other tangible personal property specified by the Secretary of the Treasury. However, for tax years beginning after December 31, 1997, certain coins and bullion as provided in Code Section 408(m)(3) shall not be considered collectibles. To the extent that a Member who has investment direction fails to give timely direction, we shall direct the investment of his Account. If we have investment direction, such Account shall be invested ratably in the guaranteed benefit policy portion of the Annuity Contract, the investment options available under the Annuity Contract, or the investment vehicles available under the Trust Agreement in the same manner as the Accounts of all other Members who do not direct their investments. We shall have investment direction for amounts which have not been allocated to Members. To the extent an investment is no longer available, we may require that amounts currently held in such investment be reinvested in other investments.

At least annually, the Named Fiduciary shall review all pertinent Employee information and Plan data in order to establish the

funding policy of the Plan and to determine appropriate methods of carrying out the Plan's objectives. The Named Fiduciary shall inform the Trustee and any Investment Manager of the Plan's short-term and long-term financial needs so the investment policy can be coordinated with the Plan's financial requirements.

However, the Named Fiduciary may delegate to the Investment Manager investment direction for Contributions and amounts which are not subject to Member direction.

- b) Nontrusteed Plans. The provisions of this subparagraph apply to plans which are not trusteed.

The handling of Contributions which are directed to the Annuity Contract is governed by the provisions of the annuity contract. To the extent permitted by the Annuity Contract, the parties established by Item U shall direct the Contributions to the guaranteed benefit policy portion of the Annuity Contract or any of the investment options available under the Annuity Contract and may request the transfer of amounts resulting from those Contributions between such investment options or the transfer of amounts between the guaranteed benefit policy portion of the Annuity Contract and such investment options. To the extent that a Member who has investment direction fails to give timely direction, we shall direct the investment of his Account. If we have investment direction, such Account shall be invested ratably in the guaranteed benefit policy portion of the Annuity Contract, or the investment options available under the Annuity Contract in the same manner as the Accounts of all other Members who do not direct their investments. We shall have investment direction for amounts which have not been allocated to Members. To the extent an investment is no longer available, we may require that amounts currently held in such investment be reinvested in other investments.

At least annually, the Named Fiduciary shall review all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine appropriate methods of carrying out the Plan's objectives. The Named Fiduciary shall inform any Investment Manager of the Plan's short-term and long-term financial needs so the investment policy can be coordinated with the Plan's financial requirements.

However, the Named Fiduciary may delegate to the Investment Manager investment direction for Contributions and amounts which are not subject to Member direction, including any Contributions made by us before the end of the Plan Year which are not allocated when made.

- c) All Plans. The provisions of this subparagraph apply to all plans.

We shall pay to the Insurer or Trustee, as applicable, the Elective Deferral Contributions, Qualified Matching Contributions, and Qualified Nonelective Contributions for each Plan Year not later than the end of the 12-month period immediately following the Plan Year for which they are deemed to be paid.

If Items O(4)(b) and O(4)(b)(iii)A are selected, we shall pay to the Insurer or Trustee, as applicable, the Qualified Matching Contributions calculated based on Elective Deferral Contributions and Pay for the pay period not later than the last day of the following Plan-year Quarter.

All Contributions are forwarded by us to the Trustee to be deposited in the Trust Fund or to the Insurer to be deposited under the Annuity Contract, as applicable. Contributions that are accumulated through payroll deduction shall be paid to the Trustee or Insurer, as applicable, by the earlier of (i) the date the Contributions can reasonably be segregated from our assets, or (ii) the 15th business day of the month following the month in which the Contributions would otherwise have been paid in cash to the Member.

#### **SECTION 4.01A – INVESTMENT IN QUALIFYING EMPLOYER SECURITIES.**

The provisions of this section apply to plans which allow investment in Qualifying Employer Securities.

All or some portion of the Member's Account may be invested in the Qualifying Employer Securities Fund. In the absence of an election to invest in Qualifying Employer Securities, Members shall be deemed to have elected to have their Accounts invested wholly in other investment options of the Investment Fund. Once an election is made, it shall be considered to continue until a new election is made.

For purposes of determining the annual valuation of the Plan, and for reporting to Members and regulatory authorities, the assets of the Plan shall be valued at least annually on the Valuation Date which corresponds to the last day of the Plan Year. The fair market value of Qualifying Employer Securities shall be determined on such Valuation Date. The prices of Qualifying Employer Securities as of the date of the transaction shall apply for purposes of valuing distributions and other transactions of the Plan to the extent such value is representative of the fair market value of such securities in the opinion of the Plan Administrator. The value of a Member's Account held in the Qualifying Employer Securities Fund may be expressed in units.

If the Qualifying Employer Securities are not publicly traded, or if an extremely thin market exists for such securities so that reasonable valuation may not be obtained from the market place, then such securities must be valued at least annually by an independent appraiser who is not associated with us, the Plan Administrator, the Trustee, or any person related to any fiduciary under the Plan. The independent appraiser may be associated with a person who is merely a contract administrator with respect to the Plan, but who exercises no discretionary authority and is not a Plan fiduciary.

If there is a public market for Qualifying Employer Securities of the type held by the Plan, then the Plan Administrator may use as the value of the securities the price at which such securities traded in such market. If the Qualifying Employer Securities do not trade on the relevant date, or if the market is very thin on such date, then the Plan Administrator may use for the valuation the next preceding trading day on which the trading prices are representative of the fair market value of such securities in the opinion of the Plan Administrator.

Cash dividends payable on the Qualifying Employer Securities shall be reinvested in additional shares of such securities. In the event of any cash or stock dividend or any stock split, such dividend or split shall be credited to the Accounts based upon the number of shares of Qualifying Employer Securities credited to each Account as of the payable date of such dividend or split.

All purchases of Qualifying Employer Securities shall be made at a price, or prices, which, in the judgment of the Plan Administrator, do not exceed the fair market value of such securities.

In the event that the Trustee acquires Qualifying Employer Securities by purchase from a "disqualified person" as defined in Code Section 4975(e)(2) or from a "party-in-interest" as defined in ERISA Section 3(14), the terms of such purchase shall contain the provision that in the event there is a final determination by the Internal Revenue Service, the Department of Labor, or court of competent jurisdiction that the fair market value of such securities as of the date of purchase was less than the purchase price paid by the Trustee, then the seller shall pay or transfer, as the case may be, to the Trustee an amount of cash or shares of Qualifying Employer Securities equal in value to the difference between the purchase price and such fair market value for all such shares. In the event that cash or shares of Qualifying Employer Securities are paid or transferred to the Trustee under this provision, such securities shall be valued at their fair market value as of the date of such purchase, and interest at a reasonable rate from the date of purchase to the date of payment or transfer shall be paid by the seller on the amount of cash paid.

The Plan Administrator may direct the Trustee to sell, resell, or otherwise dispose of Qualifying Employer Securities to any person, including us, provided that any such sales to any disqualified person or a party-in-interest, including us, will be made at not less than the fair market value and no commission will be charged. Any such sale shall be made in conformance with ERISA Section 408(e).

We are responsible for compliance with any applicable Federal or state securities law with respect to all aspects of the Plan. If the Qualifying Employer Securities or interests in this Plan are required to be registered in order to permit investment in the Qualifying Employer Securities Fund then such investment will not be effective until the later

of the effective date of the Plan or the date such registration or qualification is effective. We, at our own expense, will take or cause to be taken any and all such actions as may be necessary or appropriate to effect such registration or qualification. Further, if the Trustee is directed to dispose of any Qualifying Employer Securities held under the Plan under circumstances which require registration or qualification of the securities under applicable Federal or state securities laws, then we will, at our expense, take or cause to be taken any and all such action as may be necessary or appropriate to effect such registration or qualification. We are responsible for all compliance requirements under Section 16 of the Securities Act.

#### **SECTION 4.02 – PURCHASE OF INSURANCE.**

If permitted under Item U(4), the purchase of life insurance is available under this Plan for the purpose of providing incidental death benefits. If life insurance is available, an Active Member may elect to have any part of his Account which does not result from accumulated deductible employee contributions, as defined in Code Section 72(o)(5)(B), applied to purchase life insurance coverage on his life.

The Trustee shall apply for and will be the owner of any Insurance Policy purchased under the terms of this Plan. The purchase shall be subject to the provisions of this section, the distribution of benefits provisions of Article VI or VIA, whichever applies, and the beneficiary provisions of Section 10.07.

If Item AA(1)(a) is selected and the Member has a spouse, such spouse shall be his Beneficiary under the Insurance Policy, unless (i) a qualified election has been made according to the provisions of Section 6A.03, or (ii) the Trustee has been named as Beneficiary. If Item AA(1)(a) is not selected and the Member has a spouse to whom he has been continuously married for at least one year, such spouse shall be his Beneficiary under the Insurance Policy, unless (i) a qualified election has been made according to the provisions of Section 6.03, or (ii) the Trustee has been named as Beneficiary.

If the Trustee is named as Beneficiary, upon the death of the Member, the Trustee shall be required to pay over all proceeds of the Insurance Policy to the Member's Beneficiary or spouse, as the case may be, according to the distribution of benefits provisions of Article VI or VIA, whichever applies.

Under no circumstances shall the Trust Fund retain any part of the proceeds. In the event of any conflict between the terms of this Plan and the terms of any Insurance Policy purchased hereunder, the Plan provisions shall control.

The purchase of insurance shall be subject to the limitations that may be imposed by the Insurer under the applicable Insurance Policy. The Insurance Policy may provide for waiver of premium for disability.

The total of all insurance premiums for insurance coverage on the life of a Member provided by our Contributions shall be limited to a percentage of all our Contributions made for that Member. All such ordinary life insurance premiums shall be limited to a percentage which is less than 50 percent. All such term life and universal life insurance premiums shall be limited to a percentage which is not more than 25 percent. If both ordinary life insurance and term life or universal life insurance are purchased, one-half of all such ordinary life insurance premiums and all such other life insurance premiums shall be limited to a percentage which is not more than 25 percent. Ordinary life insurance policies are policies with both nondecreasing death benefits and nonincreasing premiums.

Any dividends declared upon an amount of insurance in force on the life of a Member may, within the terms of the Insurance Policy, be applied to reduce the earliest premium due, purchase paid-up insurance coverage, accumulate under the policy to provide additional death benefit, or be credited to the Member's Account which is included in the Plan Fund. In the absence of any direction, such dividends shall be applied to reduce the earliest premium due for such amount of insurance.

A Member may elect to have amounts deducted from his Account to pay insurance premiums. The total amount deducted cannot exceed the amount of Contributions credited to his Account which were not used to provide insurance, but could have been.

If a decrease in the amount of life insurance is necessary, any cash value of the terminated insurance shall be retained in the Member's Account.

#### **SECTION 4.03 – TRANSFER OF OWNERSHIP.**

Any transfer of ownership under this section shall be subject to the distribution of benefits provisions of Article VI or VIA, whichever applies.

Upon the request of a Member, we may purchase for its cash value a personal life insurance policy issued to, and insuring the life of, the Member. Such policy shall be immediately transferred from us to the Trustee. The cash value of the purchased policy shall be a part of our Contribution for the Plan Year. Any such purchase shall be accomplished only under an appropriate written agreement between the Member, the Trustee, and us. In lieu of our purchase of such policy and at our direction, the Trustee may purchase the policy directly from the Member. These provisions shall not be available if the policy is subject to a policy loan or similar lien. The purchase of and future premiums for any such policy shall be subject to the limitations in Section 4.02.

If the Insurance Policy on a Member's life allows transfer of ownership, he may pay the Trustee an amount equal to the cash value of such policy. Such payment shall become a part of his Account. Upon receiving the payment, the Trustee shall transfer ownership of the policy to the Member. This transfer of ownership is not a distribution from the Plan. This option shall only be available to a Member if the policy would, but for the sale, be surrendered by the Plan.

If the Insurance Policy on a Member's life allows transfer of ownership and a distribution of his Vested Account would include the cash value of such policy, he may have ownership of such policy transferred to himself without paying the cash value to the Trustee. Any Insurance Policy transferred to the Member for which he has not paid the cash value to the Trustee is a distribution from the Plan.

In applying the provisions of this section, all Members in similar circumstances shall be treated in a similar manner. Members who are Highly Compensated Employees shall not be treated in a manner more favorable than that afforded all other Members.

#### **SECTION 4.04 – TERMINATION OF INSURANCE.**

The termination of insurance under this section shall be subject to the distribution of benefits provisions of Article VI or VIA, whichever applies.

No premium payments shall be made under this Plan for an Inactive Member. If a Member becomes an Inactive Member before his Retirement Date, the Trustee may either use the cash value of the Insurance Policy on his life to provide paid-up insurance or may surrender the Insurance Policy. The cash value of a surrendered Insurance Policy is retained in the Member's Account and added to the Investment Fund. The purchase of paid-up insurance shall be subject to the provisions of the Insurance Policy. If the Member ceases to be an Employee before his Retirement Date, he may elect to have the ownership of the Insurance Policy transferred as provided in Section 4.03.

On a Member's Retirement Date, any Insurance Policy on his life, the ownership of which has not been transferred to him, shall terminate. The cash value shall be paid to the Member in cash or applied to provide an income for him according to the provisions of the Insurance Policy. In any event, no portion of the value of any Insurance Policy shall be used to continue life insurance protection under the Plan beyond actual retirement.

### **ARTICLE V BENEFITS**

#### **SECTION 5.01 – RETIREMENT BENEFITS.**

On a Member's Retirement Date, his Vested Account shall be distributed to him according to the distribution of benefits provisions of Article VI or VIA, whichever applies, and the provisions of Section 10.11.

## SECTION 5.02 – DEATH BENEFITS.

If a Member dies before his Annuity Starting Date, his Vested Account shall be distributed according to the distribution of benefits provisions of Article VI or VIA, whichever applies, and the provisions of Section 10.11.

## SECTION 5.03 – VESTED BENEFITS.

If an Inactive Member's Vested Account is not payable under the provisions of Section 10.11, he may elect, but is not required, to receive a distribution of his Vested Account after he ceases to be an Employee. If Item AA(1)(a) is not selected, the Member's election shall be subject to his spouse's consent as provided in Section 6.03. A distribution under this paragraph shall be a retirement benefit and shall be distributed to the Member according to the distribution of benefits provisions of Article VI or VIA, whichever applies.

A Member may not elect to receive a distribution under the provisions of this section after he again becomes an Employee until he subsequently ceases to be an Employee and again meets the requirements of this section.

If an Inactive Member does not receive an earlier distribution, upon his Retirement Date or death, his Vested Account shall be distributed according to the provisions of Section 5.01 or 5.02.

The Nonvested Account of an Inactive Member who ceases to be an Employee shall remain a part of his Account until it becomes a Forfeiture. However, if he again becomes an Employee so that his Vesting Percentage may increase, the Nonvested Account may become part of his Vested Account.

## SECTION 5.04 – WHEN BENEFITS START.

- a) Unless otherwise elected, benefits shall begin before the 60th day following the close of the Plan Year in which the latest date below occurs:
- 1) The date the Member attains age 65 (or Normal Retirement Age, if earlier).
  - 2) The 10th anniversary of the Member's Entry Date.
  - 3) The date the Member ceases to be an Employee.

Notwithstanding the foregoing, the failure of a Member and spouse, if applicable, to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 6.03 or 6A.03, whichever applies, shall be deemed to be an election to defer the start of benefits sufficient to satisfy this section.

The Member may elect to have benefits begin after the latest date for beginning benefits described above, subject to the following provisions of this section. The Member shall make the election in writing. Such election must be made before his Normal Retirement Date or the date he ceases to be an Employee, if later. The Member shall not elect a date for beginning benefits or a form of distribution which would result in a benefit payable when he dies which would be more than incidental within the meaning of governmental regulations.

Benefits shall begin on an earlier date if otherwise provided in the Plan. For example, the Member's Retirement Date or Required Beginning Date, as defined in Section 7.02.

- b) The Member's Vested Account which results from Elective Deferral Contributions, Qualified Nonelective Contributions, and Qualified Matching Contributions may not be distributed to a Member or to his Beneficiary (or Beneficiaries) in accordance with the Member's or Beneficiary's (or Beneficiaries') election, earlier than separation from service, death, or disability. Such amount may also be distributed upon:
- 1) Termination of the Plan as permitted in Article VIII.
  - 2) The disposition by us, if we are a corporation, to an unrelated corporation of substantially all of the assets, within the meaning of Code Section 409(d)(2), used in a trade or business of ours if we continue to maintain the Plan after the disposition, but only with respect to Employees who continue employment with the corporation acquiring such assets.

- 3) The disposition by us, if we are a corporation, to an unrelated entity of our interest in a subsidiary, within the meaning of Code Section 409(d)(3), if we continue to maintain the Plan, but only with respect to Employees who continue employment with such subsidiary.
- 4) The attainment of age 59 1/2 as permitted in Section 5.05.
- 5) The hardship of the Member as permitted in Section 5.05.

All distributions that may be made pursuant to one or more of the foregoing distributable events will be a retirement benefit and shall be distributed to the Member according to the distribution of benefits provisions of Article VI or VIA, whichever applies. In addition, distributions that are triggered by any of the first three events enumerated above must be made in a lump sum.

## SECTION 5.05 – WITHDRAWAL BENEFITS.

- a) Financial Hardship Withdrawals. If elected by us in Item Y(3), withdrawals of part of the Member's Account as provided in Item Y(3) will be permitted in the event of hardship due to an immediate and heavy financial need.

Immediate and heavy financial need shall be limited to: (i) expenses incurred or necessary for medical care, described in Code Section 213(d), of the Member, the Member's spouse, or any dependents of the Member (as defined in Code Section 152); (ii) the purchase (excluding mortgage payments) of a principal residence for the Member; (iii) payment of tuition, related educational fees, and room and board expenses, for the next 12 months of post-secondary education for the Member, his spouse, children, or dependents; (iv) the need to prevent the eviction of the Member from, or foreclosure on the mortgage of, the Member's principal residence; or (v) any other distribution which is deemed by the Commissioner of Internal Revenue to be made on account of immediate and heavy financial need as provided in Treasury regulations.

No withdrawal shall be allowed which is not necessary to satisfy such immediate and heavy financial need. Such withdrawal shall be deemed necessary only if all of the following requirements are met: (i) the distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any Federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution); (ii) the Member has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by us; (iii) the Plan, and all other plans maintained by us, provide that the Member's elective contributions and member contributions will be suspended for at least 12 months after receipt of the hardship distribution; and (iv) the Plan, and all other plans maintained by us, provide that the Member may not make elective contributions for the Member's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such next taxable year less the amount of such Member's elective contributions for the taxable year of the hardship distribution. The Plan will suspend elective contributions and member contributions for 12 months and limit elective deferrals as provided in the preceding sentence. A Member shall not cease to be an Eligible Member, as defined in Section 3.07, merely because his elective contributions or member contributions are suspended.

- b) Other Withdrawals. A Member may withdraw any part of his Account resulting from Voluntary Contributions or Rollover Contributions at any time. If elected by us in Item Y(4), withdrawals of any part of the Member's Account will be permitted at any time after he attains age 59 1/2.

A request for withdrawal shall be made in such manner and in accordance with such rules as we will prescribe for this purpose (including by means of voice response or other electronic means under circumstances we permit). Withdrawals shall be a retirement benefit and shall be distributed to the Member according to the distribution of benefits provisions of Article VI or VIA, whichever applies. A forfeiture shall not occur solely as a result of a withdrawal.

## SECTION 5.06 – LOANS TO MEMBERS.

If permitted under Item U, loans shall be made available to all Members on a reasonably equivalent basis. For purposes of this section, and unless otherwise specified, Member means any Member or Beneficiary who is a party-in-interest as defined in ERISA. Loans shall not be made to Highly Compensated Employees in an amount greater than the amount made available to other Members.

No loans shall be made to any shareholder-employee or Owner-employee. For purposes of this requirement, a shareholder-employee means an employee or officer of an electing small business (Subchapter S) corporation who owns (or is considered as owning within the meaning of Code Section 318(a)(1)), on any day during the taxable year of such corporation, more than 5 percent of the outstanding stock of the corporation.

A loan to a Member shall be a Member-directed investment of his Account. The portion of the Member's Account held in the Qualifying Employer Securities Fund may be redeemed for purposes of a loan only after the amount held in other investment options has been depleted. The loan is a Trust Fund investment but no Account other than the borrowing Member's Account shall share in the interest paid on the loan or bear any expense or loss incurred because of the loan.

The number of outstanding loans shall be limited to one, unless otherwise specified in Item U. If Item U(3)(a)(i) is selected, the minimum amount of any loan shall be the amount specified in that Item.

Loans must be adequately secured and bear a reasonable rate of interest.

The amount of the loan shall not exceed the maximum amount that may be treated as a loan under Code Section 72(p) (rather than a distribution) to the Member and shall be equal to the lesser of (a) or (b) below:

- a) \$50,000, reduced by the highest outstanding loan balance of loans during the one-year period ending on the day before the new loan is made.
- b) The greater of (1) or (2), reduced by (3) below:
  - 1) One-half of the Member's Vested Account.
  - 2) \$10,000.
  - 3) Any outstanding loan balance on the date the new loan is made.

For purposes of this maximum, a Member's Vested Account does not include any accumulated deductible employee contributions, as defined in Code Section 72(o)(5)(B), and all qualified employer plans, as defined in Code Section 72(p)(4), of ours and any Controlled Group member shall be treated as one plan.

The foregoing notwithstanding, the amount of such loan shall not exceed 50 percent of the amount of the Member's Vested Account reduced by any outstanding loan balance on the date the new loan is made. For purposes of this maximum, a Member's Vested Account does not include any accumulated deductible employee contributions, as defined in Code Section 72(o)(5)(B). No collateral other than a portion of the Member's Vested Account (as limited above) shall be accepted. The Loan Administrator shall determine if the collateral is adequate for the amount of the loan requested.

A Member must obtain the consent of his spouse, if any, to the use of the Vested Account as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 90-day period that ends on the date on which the loan to be so secured is made. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a plan representative or a notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the Vested Account is used for collateral upon renegotiation, extension, renewal, or other revision of the loan. If Item AA(1)(a) is selected, no consent shall be required. If AA(1)(a) is not selected and subparagraph (d) of Section 6.03 applies, no consent shall be required.

If a valid spousal consent has been obtained in accordance with the above, or spousal consent is not required, then, notwithstanding any other provision of this Plan, the portion of the Member's Vested Account used as a security interest held by the Plan by reason of a loan outstanding to the Member shall be taken into account for purposes of determining the amount of the Vested Account payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If spousal consent is required and less than 100 percent of the Member's Vested Account (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Vested Account shall be adjusted by first reducing the Vested Account by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

Each loan shall bear a reasonable fixed rate of interest to be determined by the Loan Administrator. In determining the interest rate, the Loan Administrator shall take into consideration fixed interest rates currently being charged by commercial lenders for loans of comparable risk on similar terms and for similar durations, so that the interest will provide for a return commensurate with rates currently charged by commercial lenders for loans made under similar circumstances. The Loan Administrator shall not discriminate among Members in the matter of interest rates; but loans granted at different times may bear different interest rates in accordance with the current appropriate standards.

The loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan. If Item U(3)(a)(iii)A is selected and the loan is used to acquire a dwelling unit, which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Member, the repayment period may extend beyond five years from the date of the loan. The period of repayment for any loan shall be arrived at by mutual agreement between the Loan Administrator and the Member and if the loan is for a principal residence, shall not be for a period longer than the repayment period consistent with commercial practices.

The Member shall make an application for a loan in such manner and in accordance with such rules as we will prescribe for this purpose (including by means of voice response or other electronic means under circumstances we permit). The application must specify the amount and duration requested.

Information contained in the application for the loan concerning the income, liabilities, and assets of the Member will be evaluated to determine whether there is a reasonable expectation that the Member will be able to satisfy payments on the loan as due. Additionally, the Loan Administrator will pursue any appropriate further investigations concerning the creditworthiness and credit history of the Member to determine whether a loan should be approved.

Each loan shall be fully documented in the form of a promissory note signed by the Member for the face amount of the loan, together with interest determined as specified above.

There will be an assignment of collateral to the Plan executed at the time the loan is made.

In those cases where repayment through payroll deduction is available, installments are so payable, and a payroll deduction agreement shall be executed by the Member at the time the loan is made. Loan repayments that are accumulated through payroll deduction shall be paid to the Trustee by the earlier of (i) the date the loan repayments can reasonably be segregated from our assets, or (ii) the 15th business day of the month following the month in which such amounts would otherwise have been paid in cash to the Member.

Where payroll deduction is not available, payments in cash are to be timely made. Any payment that is not by payroll deduction shall be made payable to us or the Trustee, as specified in the promissory note, and delivered to the Loan Administrator, including prepayments, service fees and penalties, if any, and other amounts due under the note. The Loan Administrator shall deposit such amounts into the Plan as soon as administratively practicable after they are received, but in no event later than the 15th business day of the month after they are received.

The promissory note may provide for reasonable late payment penalties and service fees. Any penalties or service fees shall be applied to all Members in a nondiscriminatory manner. If the promissory note so provides, such amounts may be assessed and collected from the Account of the Member as part of the loan balance.

Each loan may be paid prior to maturity, in part or in full, without penalty or service fee, except as may be set out in the promissory note.

The Plan shall suspend loan payments for a period not exceeding one year during which an approved unpaid leave of absence occurs other than a military leave of absence. The Loan Administrator shall provide the Member a written explanation of the effect of the suspension of payments upon his loan.

If a Member separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his Vested Account, the Plan shall suspend loan payments until the Member's completion of military service or until the Member's fifth anniversary of commencement of military service, if earlier, as permitted under Code Section 414(u). The Loan Administrator shall provide the Member a written explanation of the effect of his military service upon his loan.

If any payment of principal and interest, or any portion thereof, remains unpaid for more than 90 days after due, the loan shall be in default. For purposes of Code Section 72(p), the Member shall then be treated as having received a deemed distribution regardless of whether or not a distributable event has occurred.

Upon default, the Plan has the right to pursue any remedy available by law to satisfy the amount due, along with accrued interest, including the right to enforce its claim against the security pledged and execute upon the collateral as allowed by law. The entire principal balance, whether or not otherwise then due, along with accrued interest, shall become immediately due and payable without demand or notice, and subject to collection or satisfaction by any lawful means, including specifically, but not limited to, the right to enforce the claim against the security pledged and to execute upon the collateral as allowed by law.

In the event of default, foreclosure on the note and attachment of security or use of amounts pledged to satisfy the amount then due shall not occur until a distributable event occurs in accordance with the Plan, and shall not occur to an extent greater than the amount then available upon any distributable event which has occurred under the Plan.

All reasonable costs and expenses, including but not limited to attorney's fees, incurred by the Plan in connection with any default or in any proceeding to enforce any provision of a promissory note or instrument by which a promissory note for a Member loan is secured, shall be assessed and collected from the Account of the Member as part of the loan balance.

If payroll deduction is being utilized, in the event that a Member's available payroll deduction amounts in any given month are insufficient to satisfy the total amount due, there will be an increase in the amount taken subsequently, sufficient to make up the amount that is then due. If any amount remains past due more than 90 days, the entire principal amount, whether or not otherwise then due, along with interest then accrued, shall become due and payable, as above.

If no distributable event has occurred under the Plan at the time that the Member's Vested Account would otherwise be used under this provision to pay any amount due under the outstanding loan, this will not occur until the time, or in excess of the extent to which, a distributable event occurs under the Plan. An outstanding loan will become due and payable in full 60 days after a Member ceases to be an Employee and a party-in-interest as defined in ERISA or after complete termination of the Plan.

#### **SECTION 5.07 – DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS.**

The Plan specifically permits distributions to an Alternate Payee under a qualified domestic relations order as defined in Code Section 414(p), at any time, irrespective of whether the Member has attained his earliest retirement age, as defined in Code Section 414(p), under the Plan. A distribution to an Alternate Payee before the Member has

attained his earliest retirement age is available only if the order specifies that distribution shall be made prior to the earliest retirement age or allows the Alternate Payee to elect a distribution prior to the earliest retirement age.

Nothing in this section shall permit a Member to receive a distribution at a time otherwise not permitted under the Plan nor shall it permit the Alternate Payee to receive a form of payment not permitted under the Plan.

The benefit payable to an Alternate Payee shall be subject to the provisions of Section 10.11 if the value of the benefit does not exceed \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997).

The Plan Administrator shall establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator shall promptly notify the Member and the Alternate Payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator shall determine the qualified status of the order and shall notify the Member and each Alternate Payee, in writing, of its determination. The Plan Administrator shall provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with Department of Labor regulations. The Plan Administrator may treat as qualified any domestic relations order entered before January 1, 1985, irrespective of whether it satisfies all the requirements described in Code Section 414(p).

If any portion of the Member's Vested Account is payable during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, a separate accounting shall be made of the amount payable. If the Plan Administrator determines the order is a qualified domestic relations order within 18 months of the date amounts are first payable following receipt of the order, the payable amounts shall be distributed in accordance with the order. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the payable amounts shall be distributed in the manner the Plan would distribute if the order did not exist and the order shall apply prospectively if the Plan Administrator later determines the order is a qualified domestic relations order.

The Plan shall make payments or distributions required under this section by separate benefit checks or other separate distribution to the Alternate Payee(s).

#### **ARTICLE VI DISTRIBUTION OF BENEFITS FOR PLANS WHICH PROVIDE FOR LIFE ANNUITIES**

The provisions of this article shall apply if Item AA(1)(a) is not selected. The provisions of Article VIA shall apply if Item AA(1)(a) is selected.

The provisions of this article shall apply to any Member who is credited with at least one Hour of Service on or after August 23, 1984, and to such other Members as provided in Section 6.05.

#### **SECTION 6.01 – AUTOMATIC FORMS OF DISTRIBUTION.**

Unless an optional form of benefit is selected pursuant to a qualified election within the election period (see Section 6.03), the automatic form of benefit payable to or on behalf of a Member is determined as follows:

- a) Retirement Benefits. The automatic form of retirement benefit for a Member who does not die before his Annuity Starting Date shall be:
  - 1) The Qualified Joint and Survivor Annuity for a Member who has a spouse.
  - 2) The Normal Form for a Member who does not have a spouse.
- b) Death Benefits. The automatic form of death benefit for a Member who dies before his Annuity Starting Date shall be:

- 1) A Qualified Preretirement Survivor Annuity for a Member who has a spouse to whom he has been continuously married throughout the one-year period ending on the date of his death. The spouse may elect to start receiving the death benefit on any first day of the month on or after the Member dies and by the date the Member would have been 70 1/2. If the spouse dies before benefits start, the Member's Vested Account, determined as of the date of the spouse's death, shall be paid to the spouse's Beneficiary.
- 2) A single sum payment to the Member's Beneficiary for a Member who does not have a spouse who is entitled to a Qualified Preretirement Survivor Annuity.

Before a death benefit shall be paid on account of the death of a Member who does not have a spouse who is entitled to a Qualified Preretirement Survivor Annuity, it must be established to the satisfaction of a plan representative that the Member does not have such a spouse.

#### SECTION 6.02 – OPTIONAL FORMS OF DISTRIBUTION.

- a) Retirement Benefits. The optional forms of retirement benefit shall be the following: (i) a straight life annuity; (ii) single life annuities with certain periods of 5, 10, or 15 years; (iii) a single life annuity with installment refund; (iv) survivorship life annuities with installment refund and survivor percentages of 50%, 66 2/3% or 100%; (v) fixed period annuities for any period of whole months which is not less than 60 and does not exceed the Life Expectancy, as defined in Article VII, of the Member where the Life Expectancy, as defined in Article VII, is not recalculated; and (vii) a single sum payment. That portion of a Member's Account which is held in the Qualifying Employer Securities Fund may be distributed in kind. That portion of a Member's Account which is held in the Self-directed Brokerage Account may be distributed in kind.

Election of an optional form is subject to the qualified election provisions of Section 6.03 and the distribution requirements of Article VII.

Any annuity contract distributed shall be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Member or spouse shall comply with the requirements of this Plan.

- b) Death Benefits. The optional forms of death benefit are a single sum payment and any annuity that is an optional form of retirement benefit.

Election of an optional form is subject to the qualified election provisions of Section 6.03 and the distribution requirements of Article VII.

#### SECTION 6.03 – ELECTION PROCEDURES.

The Member, Beneficiary, or spouse shall make any election under this section in writing. The Plan Administrator may require such individual to complete and sign any necessary documents as to the provisions to be made. Any election permitted under (a) and (b) below shall be subject to the qualified election provisions of (c) below.

- a) Retirement Benefits. A Member may elect his Beneficiary or Contingent Annuitant and may elect to have retirement benefits distributed under any of the optional forms of retirement benefit available in Section 6.02.
- b) Death Benefits. A Member may elect his Beneficiary and may elect to have death benefits distributed under any of the optional forms of death benefit available in Section 6.02.

If the Member has not elected an optional form of distribution for the death benefit payable to his Beneficiary, the Beneficiary may, for his own benefit, elect the form of distribution, in like manner as a Member.

The Member may waive the Qualified Preretirement Survivor Annuity by naming someone other than his spouse as Beneficiary.

In lieu of the Qualified Preretirement Survivor Annuity described in Section 6.01, the spouse may, for his own benefit, waive the Qualified Preretirement Survivor Annuity by electing to have the benefit distributed under any of the optional forms of death benefit available in Section 6.02.

- c) Qualified Election. The Member, Beneficiary, or spouse may make an election at any time during the election period. The Member, Beneficiary, or spouse may revoke the election made (or make a new election) at any time and any number of times during the election period. An election is effective only if it meets the consent requirements below.

- 1) Election Period for Retirement Benefits. The election period as to retirement benefits is the 90-day period ending on the Annuity Starting Date. An election to waive the Qualified Joint and Survivor Annuity may not be made before the date the Member is provided with the notice of the ability to waive the Qualified Joint and Survivor Annuity.

- 2) Election Period for Death Benefits. A Member may make an election as to death benefits at any time before he dies. The spouse's election period begins on the date the Member dies and ends on the date benefits begin. The Beneficiary's election period begins on the date the Member dies and ends on the date benefits begin.

An election to waive the Qualified Preretirement Survivor Annuity may not be made by the Member before the date he is provided with the notice of the ability to waive the Qualified Preretirement Survivor Annuity. A Member's election to waive the Qualified Preretirement Survivor Annuity which is made before the first day of the Plan Year in which he reaches age 35 shall become invalid on such date. An election made by a Member after he ceases to be an Employee will not become invalid on the first day of the Plan Year in which he reaches age 35 with respect to death benefits from that part of his Account resulting from Contributions made before he ceased to be an Employee.

- 3) Consent to Election. If the Member's Vested Account exceeds \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997), any benefit which is (i) immediately distributable or (ii) payable in a form other than a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity, requires the consent of the Member and the Member's spouse (or where either the Member or the spouse has died, the survivor). Such consent shall also be required if the Member's Vested Account at the time of any prior distribution exceeded \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997). The rule in the preceding sentence shall not apply effective October 17, 2000. However, consent will still be required if the Member had previously had an Annuity Starting Date with respect to any portion of such Vested Account.

The consent of the Member or spouse to a benefit which is immediately distributable must not be made before the date the Member or spouse is provided with the notice of the ability to defer the distribution. Such consent shall be in writing.

The consent shall not be made more than 90 days before the Annuity Starting Date. Spousal consent is not required for a benefit which is immediately distributable in a Qualified Joint and Survivor Annuity. Furthermore, if spousal consent is not required because the Member is electing an optional form of retirement benefit that is not a life annuity pursuant to (d) below, only the Member need consent to the distribution of a benefit payable in a form that is not a life annuity and which is immediately distributable. Neither the consent of the Member nor the Member's spouse shall be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or 415.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider), and if we (or any entity within the same Controlled Group) do not maintain another defined contribution plan

(other than an employee stock ownership plan as defined in Code Section 4975(e)(7)), the Member's Account balance will, without the Member's consent, be distributed to the Member. However, if any entity within the same Controlled Group maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) then the Member's Account will be transferred, without the Member's consent, to the other plan if the Member does not consent to an immediate distribution.

A benefit is immediately distributable if any part of the benefit could be distributed to the Member (or surviving spouse) before the Member attains (or would have attained if not deceased) the older of Normal Retirement Age or age 62.

If the Qualified Joint and Survivor Annuity is waived, the spouse has the right to limit consent only to a specific Beneficiary or a specific form of benefit. The spouse can relinquish one or both such rights. Such consent shall be made in writing. The consent shall not be made more than 90 days before the Annuity Starting Date. If the Qualified Preretirement Survivor Annuity is waived, the spouse has the right to limit consent only to a specific Beneficiary. Such consent shall be in writing. The spouse's consent shall be witnessed by a plan representative or notary public. The spouse's consent must acknowledge the effect of the election, including that the spouse had the right to limit consent only to a specific Beneficiary or a specific form of benefit, if applicable, and that the relinquishment of one or both such rights was voluntary. Unless the consent of the spouse expressly permits designations by the Member without a requirement of further consent by the spouse, the spouse's consent must be limited to the form of benefit, if applicable, and the Beneficiary (including any Contingent Annuitant), class of Beneficiaries, or contingent Beneficiary named in the election.

Spousal consent is not required, however, if the Member establishes to the satisfaction of the plan representative that the consent of the spouse cannot be obtained because there is no spouse or the spouse cannot be located. A spouse's consent under this paragraph shall not be valid with respect to any other spouse. A Member may revoke a prior election without the consent of the spouse. Any new election will require a new spousal consent, unless the consent of the spouse expressly permits such election by the Member without further consent by the spouse. A spouse's consent may be revoked at any time within the Member's election period.

- d) Special Rule for Profit Sharing Plans. This subparagraph (d) applies if the Plan is not a direct or indirect transferee after December 31, 1984, of a defined benefit plan, money purchase plan, target benefit plan, stock bonus plan, or profit sharing plan which is subject to the survivor annuity requirements of Code Sections 401(a)(11) and 417. If the above condition is met, spousal consent is not required for electing an optional form of retirement benefit that is not a life annuity. If such condition is not met, such consent requirements shall be operative.

#### SECTION 6.04 – NOTICE REQUIREMENTS.

- a) Optional Forms of Retirement Benefit and Right to Defer. The Plan Administrator shall furnish to the Member and the Member's spouse a written explanation of the optional forms of retirement benefit in Section 6.02, including the material features and relative values of these options, in a manner that would satisfy the notice requirements of Code Section 417(a)(3) and the right of the Member and the Member's spouse to defer distribution until the benefit is no longer immediately distributable.

The Plan Administrator shall furnish the written explanation by a method reasonably calculated to reach the attention of the Member and the Member's spouse no less than 30 days, and no more than 90 days, before the Annuity Starting Date.

The Member (and spouse, if applicable) may waive the 30-day election period if the distribution of the elected form of retirement benefit begins more than 7 days after the Plan Administrator provides the Member (and spouse, if applicable) the written

explanation provided that: (i) the Member has been provided with information that clearly indicates that the Member has at least 30 days to consider the decision of whether or not to elect a distribution and a particular distribution option, (ii) the Member is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation is provided to the Member, and (iii) the Annuity Starting Date is a date after the date that the written explanation was provided to the Member.

- b) Qualified Joint and Survivor Annuity. The Plan Administrator shall furnish to the Member a written explanation of the following: the terms and conditions of the Qualified Joint and Survivor Annuity; the Member's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity; the rights of the Member's spouse; and the right to revoke an election and the effect of such a revocation.

The Plan Administrator shall furnish the written explanation by a method reasonably calculated to reach the attention of the Member no less than 30 days, and no more than 90 days, before the Annuity Starting Date.

The Member (and spouse, if applicable) may waive the 30-day election period if the distribution of the elected form of retirement benefit begins more than 7 days after the Plan Administrator provides the Member (and spouse, if applicable) the written explanation provided that: (i) the Member has been provided with information that clearly indicates that the Member has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent, if applicable) a form of distribution other than a Qualified Joint and Survivor Annuity, (ii) the Member is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Member, and (iii) the Annuity Starting Date is a date after the date that the written explanation was provided to the Member.

After the written explanation is given, a Member or spouse may make a written request for additional information. The written explanation must be personally delivered or mailed (first class mail, postage prepaid) to the Member or spouse within 30 days from the date of the written request. The Plan Administrator does not need to comply with more than one such request by a Member or spouse.

The Plan Administrator's explanation shall be written in nontechnical language and will explain the terms and conditions of the Qualified Joint and Survivor Annuity and the financial effect upon the Member's benefit (in terms of dollars per benefit payment) of electing not to have benefits distributed in accordance with the Qualified Joint and Survivor Annuity.

- c) Qualified Preretirement Survivor Annuity. The Plan Administrator shall furnish to the Member a written explanation of the following: the terms and conditions of the Qualified Preretirement Survivor Annuity; the Member's right to make, and the effect of, an election to waive the Qualified Preretirement Survivor Annuity; the rights of the Member's spouse; and the right to revoke an election and the effect of such a revocation.

The Plan Administrator shall furnish the written explanation by a method reasonably calculated to reach the attention of the Member within the applicable period. The applicable period for a Member is whichever of the following periods ends last:

- 1) the period beginning one year before the date the individual becomes a Member and ending one year after such date; or
- 2) the period beginning one year before the date the Member's spouse is first entitled to a Qualified Preretirement Survivor Annuity and ending one year after such date.

If such notice is given before the period beginning with the first day of the Plan Year in which the Member attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Member attains age 35, an additional notice shall be given within such period. If a Member ceases to be an Employee



before attaining age 35, an additional notice shall be given within the period beginning one year before the date he ceases to be an Employee and ending one year after such date.

After the written explanation is given, a Member or spouse may make a written request for additional information. The written explanation must be personally delivered or mailed (first class mail, postage prepaid) to the Member or spouse within 30 days from the date of the written request. The Plan Administrator does not need to comply with more than one such request by a Member or spouse.

The Plan Administrator's explanation shall be written in nontechnical language and will explain the terms and conditions of the Qualified Preretirement Survivor Annuity and the financial effect upon the spouse's benefit (in terms of dollars per benefit payment) of electing not to have benefits distributed in accordance with the Qualified Preretirement Survivor Annuity.

#### **SECTION 6.05 – TRANSITIONAL RULES.**

- a) Any living Member not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous sections of this article, must be given the opportunity to elect to have the prior sections of this article apply if such Member is credited with at least one Hour of Service under this Plan, or a predecessor plan, in a Plan Year beginning on or after January 1, 1976, and such Member had at least ten Years of Service when he separated from service.
- b) Any living Member not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan, or a predecessor plan, on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to elect to have his benefits paid in accordance with (d) below.
- c) The respective opportunities to elect (as described in (a) and (b) above) must be afforded to the appropriate Members during the period beginning on August 23, 1984, and ending on the date benefits would otherwise begin to such Members.
- d) Any Member who has elected according to (b) above and any Member who does not elect under (a) above or who meets the requirements of (a) above except that such Member does not have at least ten Years of Service when he separates from service, shall have his benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:
  - 1) Automatic Joint and Survivor Annuity. If benefits in the form of a life annuity become payable to a married Member who:
    - i) begins to receive payments under the Plan on or after his Normal Retirement Age; or
    - ii) dies on or after his Normal Retirement Age while still working for us; or
    - iii) begins to receive payments on or after his qualified early retirement age; or
    - iv) separates from service on or after attaining his Normal Retirement Age (or his qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits;

then such benefits shall be paid under the Qualified Joint and Survivor Annuity, unless the Member has elected otherwise during the election period. The election period must begin at least six months before the Member attains his qualified early retirement age and end not more than 90 days before benefits begin. Any election hereunder shall be in writing and may be changed by the Member at any time.

- 2) Election of Early Survivor Annuity. A Member who is employed after attaining his qualified early retirement age shall be given the opportunity to elect, during the election period, to have a Qualified Preretirement Survivor Annuity

payable on death. If the Member elects the Qualified Preretirement Survivor Annuity, payments under such annuity must not be less than the payments which would have been made to the spouse under the Qualified Joint and Survivor Annuity if the Member had retired on the day before his death.

Any election under this provision shall be in writing and may be changed by the Member at any time. The election period begins on the later of (i) the 90th day before the Member attains his qualified early retirement age, or (ii) the date on which participation begins, and ends on the date he terminates employment.

- 3) For purposes of this subparagraph (d), qualified early retirement age is the latest of:
  - i) the earliest date, under the Plan, on which the Member may elect to receive retirement benefits,
  - ii) the first day of the 120th month beginning before the Member reaches his Normal Retirement Age, or
  - iii) the date the Member begins participation.

#### **ARTICLE VIA DISTRIBUTION OF BENEFITS FOR PLANS WHICH DO NOT PROVIDE FOR LIFE ANNUITIES**

The provisions of this article shall apply if Item AA(1)(a) is selected. The provisions of Article VI shall apply if Item AA(1)(a) is not selected.

#### **SECTION 6A.01 – AUTOMATIC FORMS OF DISTRIBUTION.**

Unless an optional form of benefit is selected pursuant to a qualified election within the election period (see Section 6A.03), the automatic form of benefit payable to or on behalf of a Member is determined as follows:

- a) Retirement Benefits. The automatic form of retirement benefit for a Member who does not die before his Annuity Starting Date shall be a single sum payment.
- b) Death Benefits. The automatic form of death benefit for a Member who dies before his Annuity Starting Date shall be a single sum payment to the Member's Beneficiary.

#### **SECTION 6A.02 – OPTIONAL FORMS OF DISTRIBUTION.**

- a) Retirement Benefits.
  - 1) The only form of retirement benefit is a single sum payment except as provided below:
    - i) The optional forms of retirement benefit for that portion of a Member's Account which is held in the Qualifying Employer Securities Fund are a single sum payment and a distribution in kind.
    - ii) The optional forms of retirement benefit for that portion of a Member's Account which is held in the Self-directed Brokerage Account are a single sum payment and a distribution in kind.

Election of an optional form is subject to the qualified election provisions of Section 6A.03 and the distribution requirements of Article VII.

- b) Death Benefits. The only form of death benefit is a single sum payment.

#### **SECTION 6A.03 – ELECTION PROCEDURES.**

The Member or spouse shall make any election under this section in writing. The Plan Administrator may require such individual to complete and sign any necessary documents as to the provisions to be made. Any election permitted under (a) and (b) below shall be subject to the qualified election provisions of (c) below.

- a) Retirement Benefits. A Member may elect to have retirement benefits from that portion of his Account which is held in the Qualifying Employer Securities Fund distributed in kind. A Member may elect to have retirement benefits from that portion of

his Account which is held in the Self-directed Brokerage Account distributed in kind.

- b) Death Benefits. A Member may elect his Beneficiary.
- c) Qualified Election. The Member may make an election at any time during the election period. The Member may revoke the election made (or make a new election) at any time and any number of times during the election period. An election is effective only if it meets the consent requirements below.
  - 1) Election Period for Retirement Benefits. The Member may make an election as to retirement benefits at any time before the Annuity Starting Date.
  - 2) Election Period for Death Benefits. A Member may make an election as to death benefits at any time before he dies.
  - 3) Consent to Election. If the Member's Vested Account exceeds \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997), any benefit which is immediately distributable requires the consent of the Member. Such consent shall also be required if the Member's Vested Account at the time of any prior distribution exceeded \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997). However, for distributions made after March 21, 1999, such consent shall only be required if the Member's Vested Account exceeds \$5,000.

The consent of the Member to a benefit which is immediately distributable must not be made before the date the Member is provided with the notice of the ability to defer the distribution. Such consent shall be made in writing.

The consent shall not be made more than 90 days before the Annuity Starting Date. The consent of the Member shall not be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or 415.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider), and if we (or any entity within the same Controlled Group) do not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)), the Member's Account balance will, without the Member's consent, be distributed to the Member. However, if any entity within the same Controlled Group maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) then the Member's Account will be transferred, without the Member's consent, to the other plan if the Member does not consent to an immediate distribution.

A benefit is immediately distributable if any part of the benefit could be distributed to the Member before the Member attains the older of Normal Retirement Age or age 62.

Spousal consent is needed to name a Beneficiary other than the Member's spouse. If the Member names a Beneficiary other than his spouse, the spouse has the right to limit consent only to a specific Beneficiary. The spouse can relinquish such right. Such consent shall be made in writing. The spouse's consent shall be witnessed by a plan representative or notary public. The spouse's consent must acknowledge the effect of the election, including that the spouse had the right to limit consent only to a specific Beneficiary and that the relinquishment of such right was voluntary. Unless the consent of the spouse expressly permits designations by the Member without a requirement of further consent by the spouse, the spouse's consent must be limited to the Beneficiary, class of Beneficiaries, or contingent Beneficiary named in the election.

Spousal consent is not required, however, if the Member establishes to the satisfaction of the plan representative that the consent of the spouse cannot be obtained because there is no spouse or the spouse cannot be located. A spouse's consent under this paragraph shall not be valid with respect to any other spouse. A Member may revoke a prior election without the consent of the spouse. Any new election will

require a new spousal consent, unless the consent of the spouse expressly permits such election by the Member without further consent by the spouse. A spouse's consent may be revoked at any time within the Member's election period.

## SECTION 6A.04 – NOTICE REQUIREMENTS.

Optional Forms of Retirement Benefit and Right to Defer. The Plan Administrator shall furnish to the Member a written explanation of the optional forms of retirement benefit in Section 6A.02, including the material features and relative values of these options, in a manner that would satisfy the notice requirements of Code Section 417(a)(3) and the right of the Member to defer distribution until the benefit is no longer immediately distributable.

The Plan Administrator shall furnish the written explanation by a method reasonably calculated to reach the attention of the Member no less than 30 days, and no more than 90 days, before the Annuity Starting Date.

However, distribution may begin less than 30 days after the notice described in this subparagraph is given, provided the Plan Administrator clearly informs the Member that he has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and if applicable, a particular distribution option), and the Member, after receiving the notice, affirmatively elects a distribution.

## ARTICLE VII DISTRIBUTION REQUIREMENTS

### SECTION 7.01 – APPLICATION.

The optional forms of distribution are only those provided in Article VI and VII, whichever applies. An optional form of distribution shall not be permitted unless it meets the requirements of this article. The timing of any distribution must meet the requirements of this article.

### SECTION 7.02 – DEFINITIONS.

For purposes of this article, the following terms are defined:

**Applicable Life Expectancy** means Life Expectancy (or Joint and Last Survivor Expectancy) calculated using the attained age of the Member (or Designated Beneficiary) as of the Member's (or Designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date Life Expectancy was first calculated. If Life Expectancy is being recalculated, the Applicable Life Expectancy shall be the Life Expectancy as so recalculated. The applicable calendar year shall be the first Distribution Calendar Year, and if Life Expectancy is being recalculated, such succeeding calendar year.

**Designated Beneficiary** means the individual who is designated as the beneficiary under the Plan in accordance with Code Section 401(a)(9) and the proposed regulations thereunder.

**Distribution Calendar Year** means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to subparagraph (e) of Section 7.03.

**5-percent Owner** means a 5-percent owner as defined in Code Section 416. A Member is treated as a 5-percent Owner for purposes of this article if such Member is a 5-percent Owner at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2.

In addition, a Member is treated as a 5-percent Owner for purposes of this article if such Member becomes a 5-percent Owner in a later Plan Year. Such Member's Required Beginning Date shall not be later than the April 1 of the calendar year following the calendar year in which such later Plan Year ends.

Once distributions have begun to a 5-percent Owner under this article, they must continue to be distributed, even if the Member ceases to be a 5-percent Owner in a subsequent year.

**Joint And Last Survivor Expectancy** means joint and last survivor expectancy computed using the expected return multiples in Table VI of section 1.72-9 of the Income Tax Regulations.

Unless otherwise elected by the Member by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Member and shall apply to all subsequent years. The life expectancy of a nonspouse Beneficiary may not be recalculated.

**Life Expectancy** means life expectancy computed using the expected return multiples in Table V of section 1.72-9 of the Income Tax Regulations.

Unless otherwise elected by the Member (or spouse, in the case of distributions described in (e)(2)(ii) of Section 7.03) by the time distributions are required to begin, life expectancy shall be recalculated annually. Such election shall be irrevocable as to the Member (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse Beneficiary may not be recalculated.

**Member's Benefit** means:

- a) The Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the Account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date.
- b) Exception For Second Distribution Calendar Year. For purposes of (a) above, if any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year.

**Required Beginning Date** means, for a Member who is a 5-percent Owner, is the April 1 of the calendar year following the calendar year in which he attains age 70 1/2.

Required Beginning Date means, for any Member who is not a 5-percent Owner, the April 1 of the calendar year following the later of the calendar year in which he attains age 70 1/2 or the calendar year in which he retires.

The preretirement age 70 1/2 distribution option is only eliminated with respect to Members who reach age 70 1/2 in or after a calendar year that begins after the later of December 31, 1998, or the adoption date of the amendment which eliminated such option. The preretirement age 70 1/2 distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefits begin) begin at a time during the period that begins on or after January 1 of the calendar year in which the Member attains age 70 1/2 and ends April 1 of the immediately following calendar year.

The options available for Members who are not 5-percent Owners and attained age 70 1/2 in calendar years before the calendar year that begins after the later of December 31, 1998, or the adoption date of the amendment which eliminated the preretirement age 70 1/2 distribution shall be the following:

Any such Member attaining age 70 1/2 in years after 1995 may elect by April 1 of the calendar year following the calendar year in which he attained age 70 1/2 (or by December 31, 1997, in the case of a Member attaining age 70 1/2 in 1996) to defer distributions until the calendar year following the calendar year in which he retires.

Any such Member attaining age 70 1/2 in years prior to 1997 may elect to stop distributions which are not purchased annuities and recommence by the April 1 of the calendar year following the year in which he retires. There shall be a new Annuity Starting Date upon recommencement.

## SECTION 7.03 – DISTRIBUTION REQUIREMENTS.

### a) General Rules.

- 1) Subject to Section 6.01, joint and survivor annuity requirements, if applicable, the requirements of this article shall apply to any distribution of a Member's interest and shall take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 1984.
- 2) All distributions required under this article shall be determined and made in accordance with the proposed regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the proposed regulations.
- 3) With respect to distributions under the Plan made on or after June 14, 2001, for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) that were proposed on January 17, 2001 (the 2001 Proposed Regulations), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a Member for 2001 prior to June 14, 2001, are equal to or greater than the amount of required minimum distributions under the 2001 Proposed Regulations, then no additional distributions are required for such Member for 2001 on or after such date. If the total amount of required minimum distributions made to a Member for 2001 prior to June 14, 2001, are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. These provisions shall continue in effect until the last calendar year beginning before the effective date of final regulations under Code Section 401(a)(9) or such other date as may be published by the Internal Revenue Service.

b) Required Beginning Date. The entire interest of a Member must be distributed or begin to be distributed no later than the Member's Required Beginning Date.

c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions, if not made in a single sum, may only be made over one of the following periods (or combination thereof):

- 1) the life of the Member,
- 2) the life of the Member and a Designated Beneficiary,
- 3) a period certain not extending beyond the Life Expectancy of the Member, or
- 4) a period certain not extending beyond the Joint and Last Survivor Expectancy of the Member and a Designated Beneficiary.

d) Determination of Amount To Be Distributed Each Year. If the Member's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

#### 1) Individual Account.

- i) If a Member's Benefit is to be distributed over
  - A. a period not extending beyond the Life Expectancy of the Member or the Joint and Last Survivor Expectancy of the Member and the Member's Designated Beneficiary, or
  - B. a period not extending beyond the Life Expectancy of the Designated Beneficiary,

the amount required to be distributed for each calendar year beginning with the distributions for the first Distribution Calendar Year, must be at least equal to

the quotient obtained by dividing the Member's Benefit by the Applicable Life Expectancy.

- ii) For calendar years beginning before January 1, 1989, if the Member's spouse is not the Designated Beneficiary, the method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution is paid within the Life Expectancy of the Member.
- iii) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Member's Benefit by the lesser of:
  - A. the Applicable Life Expectancy, or
  - B. if the Member's spouse is not the Designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of section 1.401(a)(9)-2 of the proposed regulations.

Distributions after the death of the Member shall be distributed using the Applicable Life Expectancy in (1)(i) above as the relevant divisor without regard to section 1.401(a)(9)-2 of the proposed regulations.

- iv) The minimum distribution required for the Member's first Distribution Calendar Year must be made on or before the Member's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Member's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

- 2) Other Forms. If the Member's Benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the proposed regulations thereunder.

e) Death Distribution Provisions.

- 1) Distribution Beginning Before Death. If the Member dies after distribution of his interest has begun, the remaining portion of such interest shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Member's death.

- 2) Distribution Beginning After Death.

- i) If the Member dies before distribution of his interest begins, distribution of the Member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death except to the extent that an election is made to receive distributions in accordance with A or B below:
  - A. if any portion of the Member's interest is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the Designated Beneficiary beginning on or before December 31 of the calendar year immediately following the calendar year in which the Member died;
  - B. if the Designated Beneficiary is the Member's surviving spouse, the date distributions are required to begin in accordance with A above shall not be earlier than the later of:
    1. December 31 of the calendar year immediately following the calendar year in which the Member died, or
    2. December 31 of the calendar year in which the Member would have attained age 70 1/2.

- ii) If the Member has not made an election pursuant to this (e)(2) by the time of his death, the Member's Designated Beneficiary must elect the method of distribution no later than the earlier of:

- A. December 31 of the calendar year in which distributions would be required to begin under this subparagraph, or
- B. December 31 of the calendar year which contains the fifth anniversary of the date of death of the Member.

- iii) If the Member has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution, distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

- 3) For purposes of (e)(2) above, if the surviving spouse dies after the Member, but before payments to such spouse begin, the provisions of (e)(2) above, with the exception of (e)(2)(i)B therein, shall be applied as if the surviving spouse were the Member.

- 4) For purposes of this (e), distribution of a Member's interest is considered to begin on the Member's Required Beginning Date (or if (e)(3) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to (e)(2) above). If distribution in the form of an annuity irrevocably begins to the Member before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually begins.

**SECTION 7.04 – TRANSITIONAL RULE.**

- a) Notwithstanding the other requirements of this article and subject to the joint and survivor annuity requirements of Article VI, if applicable, distribution on behalf of any Member, including a 5-percent Owner, may be made in accordance with all of the following requirements (regardless of when such distribution begins):

- 1) The distribution by the Plan is one which would not have disqualified such Plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
- 2) The distribution is in accordance with a method of distribution designated by the Member whose interest in the Plan is being distributed or, if the Member is deceased, by a Beneficiary of such Member.
- 3) Such designation was in writing, was signed by the Member or the Beneficiary, and was made before January 1, 1984.
- 4) The Member had accrued a benefit under the Plan as of December 31, 1983.
- 5) The method of distribution designated by the Member or the Beneficiary specifies the time at which distribution will begin, the period over which distributions will be made, and in the case of any distribution upon the Member's death, the Beneficiaries of the Member listed in order of priority.

- b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Member.
- c) For any distribution which begins before January 1, 1984, but continues after December 31, 1983, the Member, or Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (a)(1) and (5) above.
- d) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the

proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs, the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the proposed regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the proposed regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and J-3 in section 1.401(a)(9)-2 of the proposed regulations shall apply.

#### **ARTICLE VIII TERMINATION OF THE PLAN**

We expect to continue the Plan indefinitely, but reserve the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned. Complete discontinuance of Contributions constitutes complete termination of the Plan.

The Account of each Member shall be fully (100%) vested and nonforfeitable as of the effective date of complete termination of the Plan. The Account of each Member who is included in the group of Members deemed to be affected by the partial termination of the Plan shall be fully (100%) vested and nonforfeitable as of the effective date of the partial termination of the Plan. The Member's Vested Account shall continue to participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund until his Vested Account is distributed.

A Member's Account which does not result from Elective Deferral Contributions, Qualified Nonelective Contributions and Qualified Matching Contributions may be distributed to the Member after the effective date of the complete termination of the Plan. A Member's Account resulting from such Contributions may be distributed upon complete termination of the Plan, but only if neither we nor any Controlled Group member maintain or establish a successor defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7), a simplified employee pension plan as defined in Code Section 408(k) or a SIMPLE IRA plan as defined in Code Section 408(p)) and such distribution is made in a lump sum. A distribution under this article shall be a retirement benefit and shall be distributed to the Member according to the provisions of Article VI or VIA, whichever applies.

The Member's entire Vested Account shall be paid in a single sum to the Member as of the effective date of complete termination of the Plan if (i) the requirements for distribution of Elective Deferral Contributions in the above paragraph are met and (ii) consent of the Member is not required in Plan Section 6.03 or 6A.03, whichever is applicable, to distribute a benefit which is immediately distributable. This is a small amounts payment. The small amounts payment is in full settlement of all benefits otherwise payable.

Upon complete termination of the Plan, no more Employees shall become Members and no more Contributions shall be made.

The assets of this Plan shall not be paid to us at any time, except that, after the satisfaction of all liabilities under the Plan, any assets remaining may be paid to us. The payment may not be made if it would contravene any provision of law.

#### **ARTICLE IX ADMINISTRATION OF THE PLAN**

##### **SECTION 9.01 – ADMINISTRATION.**

Subject to the provisions of this article, the Plan Administrator has complete control of the administration of the Plan. The Plan Administrator has all the powers necessary for it to properly carry out its administrative duties. Not in limitation, but in amplification of the foregoing, the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions, if any, and to determine all questions that may arise under the Plan, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Member, Beneficiary, spouse, or Contingent Annuitant may become entitled. The Plan Administrator's decisions upon all matters within the scope of its authority are final.

Unless otherwise set out in the Plan or Trust Agreement, the Plan Administrator may delegate recordkeeping and other duties which are necessary to assist it with the administration of the Plan to any person or firm which agrees to accept such duties. The Plan Administrator shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by the consultant or actuary appointed by the Plan Administrator and upon all opinions given by any counsel selected or approved by the Plan Administrator.

The Plan Administrator shall receive all claims for benefits by Members, former Members, Beneficiaries, spouses, and Contingent Annuitants. The Plan Administrator shall determine all facts necessary to establish the right of any Claimant to benefits and the amount of those benefits under the provisions of the Plan. The Plan Administrator may establish rules and procedures to be followed by Claimants in filing claims for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan.

##### **SECTION 9.02 – EXPENSES.**

Expenses of the Plan, to the extent that we do not pay such expenses, may be paid out of the assets of the Plan provided that such payment is consistent with ERISA. Such expenses include, but are not limited to, expenses for bonding required by ERISA; expenses for recordkeeping and other administrative services; fees and expenses of the Trustee; expenses for investment education service; and direct costs that we incur with respect to the Plan.

##### **SECTION 9.03 – RECORDS.**

All acts and determinations of the Plan Administrator shall be duly recorded. All these records, together with other documents necessary for the administration of the Plan, shall be preserved in the Plan Administrator's custody.

Writing (handwriting, typing, printing), photostating, photographing, micro-filming, magnetic impulse, mechanical or electrical recording, or other forms of data compilation shall be acceptable means of keeping records.

##### **SECTION 9.04 – INFORMATION AVAILABLE.**

Any Member in the Plan or any Beneficiary may examine copies of the Plan description, latest annual report, any bargaining agreement, this Plan, the Annuity Contract, or any other instrument under which the Plan was established or is operated. The Plan Administrator shall maintain all of the items listed in this section in its office, or in such other place or places as it may designate in order to comply with governmental regulations. These items may be examined during reasonable business hours. Upon the written request of a Member or Beneficiary receiving benefits under the Plan, the Plan Administrator shall furnish him with a copy of any of these items. The Plan Administrator may make a reasonable charge to the requesting person for the copy.

##### **SECTION 9.05 – CLAIM AND APPEAL PROCEDURES.**

A Claimant must submit any required forms and pertinent information when making a claim for benefits under the Plan.

If a claim for benefits under the Plan is denied, the Plan Administrator shall provide adequate written notice to any Claimant whose claim for benefits under the Plan has been denied. The notice must be furnished within 90 days of the date that the claim is received by the Plan Administrator. The Claimant shall be notified in writing within this initial 90-day period if special circumstances require an extension of time needed to process the claim and the date by which the Plan Administrator's decision is expected to be rendered. The written notice shall be furnished no later than 180 days after the date the claim was received by the Plan Administrator.

The Plan Administrator's notice to the Claimant shall specify the reason for the denial; specify references to pertinent Plan provisions on which denial is based; describe any additional material and information needed for the Claimant to perfect his claim for benefits; explain why the material and information is needed; inform the Claimant that any appeal he wishes to make must be made in writing to the Plan Administrator within 60 days after receipt of the Plan Administrator's notice of denial of benefits and that failure to make the written appeal within such 60-day period renders the Plan Administrator's determination of such denial final, binding and conclusive.

If the Claimant appeals to the Plan Administrator, the Claimant (or his authorized representative) may submit in writing whatever issues and comments the Claimant (or his authorized representative) feels are pertinent. The Claimant (or his authorized representative) may review pertinent Plan documents. The Plan Administrator shall reexamine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Plan Administrator shall advise the Claimant of its decision within 60 days of his written request for review, unless special circumstances (such as a hearing) would make rendering a decision within the 60-day limit unfeasible. The Claimant shall be notified within the 60-day limit if an extension is necessary. The Plan Administrator shall render a decision on a claim for benefits no later than 120 days after the request for review is received.

#### **SECTION 9.06 – DELEGATION OF AUTHORITY.**

All or any part of the administrative duties and responsibilities under this article may be delegated by the Plan Administrator to a retirement committee. The duties and responsibilities of the retirement committee shall be set out in a separate written agreement.

#### **SECTION 9.07 – EXERCISE OF DISCRETIONARY AUTHORITY.**

The Employer, Plan Administrator, and any other person or entity who has authority with respect to the management, administration, or investment of the Plan may exercise that authority in its/his full discretion, subject only to the duties imposed under ERISA. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration. The exercise of authority will be binding upon all persons; will be given deference in all courts of law to the greatest extent allowed under law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious or made in bad faith.

#### **SECTION 9.08 – VOTING AND TENDER OF QUALIFYING EMPLOYER SECURITIES.**

Voting rights with respect to Qualifying Employer Securities will be passed through to Members. Members will be allowed to direct the voting rights of Qualifying Employer Securities for any matter put to the vote of shareholders. Before each meeting of the shareholders, we shall cause to be sent to each person with the power to control such voting rights a copy of any notice or other information provided to shareholders, and, if applicable and subject to the terms of the Trust Agreement regarding voting and tendering, a form instructing the Trustee how to vote at such meeting (or any adjournment thereof) the number of full and fractional shares subject to such person's voting control. The Trustee may establish a deadline in advance of the meeting by which such forms must be received in order to be effective.

Each Member shall be entitled to one vote for each share credited to his Account.

If some or all of the Members have not directed or have not timely directed the Trustee on how to vote, then the Trustee shall vote such Qualifying Employer Securities in the same proportion as those shares of Qualifying Employer Securities for which the Trustee has received proper direction for such matter.

Tender rights or exchange offers for Qualifying Employer Securities will be passed through to Members. As soon as practicable after the commencement of a tender or exchange offer for Qualifying Employer Securities, we shall cause each person with power to control the response to such tender or exchange offer to be advised in writing the terms of the offer and, if applicable, to be provided with a form for instructing the Trustee, or for revoking such instruction, to tender or exchange shares of Qualifying Employer Securities, to the extent permitted under the terms of such offer. In advising such persons of the terms of the offer, we may include statements from the board of directors setting forth its position with respect to the offer.

If some or all of the Members have not directed or have not timely directed the Trustee on how to tender, then the Trustee shall tender such Qualifying Employer Securities in the same proportion as those shares of Qualifying Employer Securities for which the Trustee has received proper direction for such matter.

If the tender or exchange offer is limited so that all of the shares that the Trustee has been directed to tender or exchange cannot be sold or exchanged, the shares that each Member directed to be tendered or exchanged shall be deemed to have been sold or exchanged in the same ratio that the number of shares actually sold or exchanged bears to the total number of shares that the Trustee was directed to tender or exchange.

The Trustee shall hold the Member's individual directions in confidence and, except as required by law, shall not divulge or release such individual directions to anyone associated with us. We may require verification of the Trustee's compliance with the directions received from Members by any independent auditor selected by us, provided that such auditor agrees to maintain the confidentiality of such individual directions.

We may develop procedures to facilitate the exercise of votes or tender rights, such as the use of facsimile transmissions for the Members located in physically remote areas.

#### **SECTION 9.09 – VOTING AND TENDER OF SELF-DIRECTED BROKERAGE ACCOUNTS.**

Rights of ownership of securities held in the Self-directed Brokerage Account, including voting rights, tender rights, and rights to exercise exchange offers, shall be passed through to Members with respect to whom the Self-directed Brokerage Account was established. These rights shall be exercised by the Member through the mechanism (including the course of dealing and practices and procedures) consistent with the Trust Agreement and the applicable Self-directed Brokerage Account documents.

### **ARTICLE X GENERAL PROVISIONS**

#### **SECTION 10.01 – AMENDMENTS.**

We may amend a selection or specification in the Adoption Agreement at any time, including any remedial retroactive changes (within the time specified by Internal Revenue Service regulation), to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

An amendment may not diminish or adversely affect any accrued interest or benefit of Members or their Beneficiaries nor allow reversion or diversion of Plan assets to us at any time, except as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

No amendment to this Plan shall be effective to the extent that it has the effect of decreasing a Member's accrued benefit. However, a Member's Account may be reduced to the extent permitted under Code Section 412(c)(8). For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Member's Account with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule

of the Plan is amended, in the case of an Employee who is a Member as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his employer-derived accrued benefit shall not be less than his percentage computed under the Plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit with respect to benefits attributable to service before the amendment except as provided in Section 10.03 and below:

- a) The Plan is amended to eliminate or restrict the ability of a Member to receive payment of his Account balance under a particular optional form of benefit and the amendment satisfies the conditions in (1) and (2) below:
  - 1) The amendment provides a single sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Member) except with respect to the timing of payments after commencement.
  - 2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of:
    - i) the 90th day after the date the Member receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications, or
    - ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.
- b) The Plan is amended to eliminate or restrict in-kind distributions and the conditions in Q&A 2(b)(2)(iii) in section 1.411(d)-4 of the regulations are met.

We may amend the Plan by adding overriding plan language to the Adoption Agreement in order to satisfy Code Sections 415 and 416 because of the required aggregation of multiple plans under those sections. We may amend the Plan by adding certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the Plan to be treated as individually designed. An amendment to this Plan will be forwarded to Trustar Retirement Services, the prototype plan sponsor.

We may attach an addendum which lists the Code Section 411(d)(6) protected benefits that must be preserved due to a restatement or amendment of the Plan. Such a list would not be considered an amendment to the Plan and will not cause the Plan to be treated as individually designed. We may attach an addendum which identifies those provisions which are not amended retroactively when the Plan is amended retroactively due to changes in the Code. This would apply when the Plan is amended for the law changes through the Internal Revenue Service Restructuring and Reform Act of 1998. This would include a snap-off addendum which reflects the operation of the Plan between the earliest effective date and the date the Plan reflecting such changes is adopted.

If we amend the Plan for any reason other than those set out above, our Plan shall no longer participate in this prototype plan and shall be considered an individually designed plan. As the Employer, we reserve the right to continue our retirement program under a document separate and distinct from this Plan. In such event, all rights and obligations of ours, or of any Member or Beneficiary, under this document, shall cease. Assets held in support of this Plan will be transferred to the designated funding medium under the new or restated plan and, if applicable, Trust Agreement, in the manner permitted under, and subject to the provisions of, the Annuity Contract.

If, as a result of an amendment, an Employer Contribution is removed that is not 100% immediately vested when made, the vesting schedule in effect as of the last day such Contributions were permitted shall remain in effect with respect to that part of his Account resulting from

such Contributions. The Member shall not become immediately 100% vested in such Contributions as a result of the elimination of such Contribution except as otherwise specifically provided in the Plan.

We delegate authority to amend this Plan to Trustar Retirement Services as the prototype plan sponsor. We hereby consent to any such amendment. However, no such amendment shall increase the duties of the Named Fiduciary without his consent. Such an amendment shall not deprive any Member or Beneficiary of any accrued benefit except to the extent necessary to comply with any law or regulation issued by any governmental agency to which this Plan is subject. Such an amendment shall not provide that the Plan Fund be used for any purpose other than the exclusive benefit of Members or their Beneficiaries or that such Plan Fund ever revert to or be used by us.

Any amendment to this Plan by Trustar Retirement Services, as the prototype plan sponsor, shall be deemed to be an amendment to this Plan by us. The effective date of any amendment shall be specified in the written instrument of amendment.

An amendment shall not decrease a Member's vested interest in the Plan. If an amendment to the Plan, or a deemed amendment in the case of a change in top-heavy status of the Plan as provided in Section 11.03, changes the computation of the percentage used to determine that portion of a Member's Account attributable to our Contributions which is nonforfeitable (whether directly or indirectly), each Member or former Member

- a) who has completed at least three Years of Service on the date the election period described below ends (five Years of Service if the Member does not have at least one Hour of Service in a Plan Year beginning after December 31, 1988) and
- b) whose Vesting Percentage will be determined on any date after the date of the change

may elect, during the election period, to have the nonforfeitable percentage of his Account which results from our Contributions determined without regard to the amendment. This election may not be revoked. If after the Plan is changed, the Member's nonforfeitable percentage will at all times be as great as it would have been if the change had not been made, no election needs to be provided. The election period shall begin no later than the date the Plan amendment is adopted, or deemed adopted in the case of a change in the top-heavy status of the Plan, and end no earlier than the 60th day after the latest of the date the amendment is adopted (deemed adopted) or becomes effective, or the date the Member is issued written notice of the amendment (deemed amendment) by us or the Plan Administrator.

#### **SECTION 10.02 – DIRECT ROLLOVERS.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

#### **SECTION 10.03 – MERGERS AND DIRECT TRANSFERS.**

The Plan may not be merged or consolidated with, nor have its assets or liabilities transferred to, any other retirement plan, unless each Member in the Plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Member would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had then terminated). We may enter into merger agreements or direct transfer of assets agreements with the employers under other retirement plans which are qualifiable under Code Section 401(a), including an elective transfer, and may accept the direct transfer of plan assets, or may transfer plan assets, as a party to any such agreement. We shall not consent to, or be a party to a merger, consolidation, or transfer of assets with a defined benefit plan if such action would result in a defined benefit feature being maintained under this Plan.

Notwithstanding any provision of the Plan to the contrary, to the extent any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, disability, or severance from

employment, and prior to plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to voluntary employee contributions).

The Plan may accept a direct transfer of plan assets on behalf of an Eligible Employee. If the Eligible Employee is not an Active Member when the transfer is made, the Eligible Employee shall be deemed to be an Active Member only for the purpose of investment and distribution of the transferred assets. Our Contributions shall not be made for or allocated to the Eligible Employee until the time he meets all of the requirements to become an Active Member.

The Plan shall hold, administer, and distribute the transferred assets as a part of the Plan. The Plan shall maintain a separate account for the benefit of the Employee on whose behalf the Plan accepted the transfer in order to reflect the value of the transferred assets.

Unless a transfer of assets to the Plan is an elective transfer, as described below, the Plan shall apply the optional forms of benefit protections described in Section 10.01 to all transferred assets.

A Member's protected benefits may be eliminated upon transfer between qualified defined contribution plans if the conditions in Q&A 3(b)(1) in section 1.411(d)-4 of the regulations are met. The transfer must meet all of the other applicable qualification requirements.

A Member's protected benefits may be eliminated upon transfer between qualified plans (both defined benefit and defined contribution) if the conditions in Q&A 3(c)(1) in section 1.411(d)-4 of the regulations are met. Beginning January 1, 2002, if the Member is eligible to receive an immediate distribution of his entire nonforfeitable accrued benefit in a single sum distribution that would consist entirely of an eligible rollover distribution under Code Section 401(a)(31), such transfer will be accomplished as a direct rollover under Code Section 401(a)(31). The rules applicable to distributions under the plan would apply to the transfer, but the transfer would not be treated as a distribution for purposes of the minimum distribution requirements of Code Section 401(a)(9).

#### **SECTION 10.04 – PROVISIONS RELATING TO THE INSURER AND OTHER PARTIES.**

The obligations of an Insurer shall be governed solely by the provisions of the Annuity Contract or Insurance Policy. The Insurer shall not be required to perform any act not provided in or contrary to the provisions of the Annuity Contract or Insurance Policy. Each Annuity Contract and Insurance Policy when purchased will comply with the Plan. See Section 10.09.

Any issuer or distributor of investment contracts or securities is governed solely by the terms of its policies, written investment contract, prospectuses, security instruments, and any other written agreements entered into with the Trustee with regard to such investment contracts or securities.

Such Insurer, issuer, or distributor is not a party to the Plan, nor bound in any way by the Plan provisions. Such parties shall not be required to look to the terms of this Plan, nor to determine whether we, the Plan Administrator, the Trustee, or the Named Fiduciary have the authority to act in any particular manner or to make any contract or agreement.

Until notice of any amendment or termination of this Plan, or of a change in Trustee has been received by the Insurer at its home office or an issuer or distributor at their principal address, they are and shall be fully protected in assuming that the Plan has not been amended or terminated and in dealing with any party acting as Trustee according to the latest information which they have received at their home office or principal address.

#### **SECTION 10.05 – EMPLOYMENT STATUS.**

Nothing contained in this Plan gives any Employee the right to be retained in our employ or to interfere with our right to discharge any Employee.

#### **SECTION 10.06 – RIGHTS TO PLAN ASSETS.**

An Employee shall not have any right to or interest in any assets of the Plan upon termination of employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Employee according to the Plan provisions.

Any final payment or distribution to a Member or his legal representative or to any Beneficiaries, spouse, or Contingent Annuitant of such Member under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Named Fiduciary, the Plan Administrator, the Insurer, the Trustee, and us arising under or by virtue of the Plan.

#### **SECTION 10.07 – BENEFICIARY.**

Each Member may name a Beneficiary to receive any death benefit (other than any income payable to a Contingent Annuitant) which may arise out of his participation in the Plan. The Member may change his Beneficiary from time to time. If Item AA(1)(a) is selected, unless a qualified election has been made, for purposes of distributing any death benefits before the Member's Retirement Date, the Beneficiary of a Member who has a spouse shall be the Member's spouse. If Item AA(1)(a) is not selected, unless a qualified election has been made, for purposes of distributing any death benefits before the Member's Retirement Date, the Beneficiary of a Member who has a spouse who is entitled to a Qualified Preretirement Survivor Annuity shall be the Member's spouse. The Member's Beneficiary designation and any change of Beneficiary shall be subject to the provisions of Section 6.03 or 6A.03, whichever applies. It is the responsibility of the Member to give written notice to the Insurer of the name of the Beneficiary on a form furnished for that purpose.

With our consent, the Plan Administrator may maintain records of Beneficiary designations for Members before their Retirement Dates. In that event, the written designations made by Members shall be filed with the Plan Administrator. If a Member dies before his Retirement Date, the Plan Administrator shall certify to the Insurer the Beneficiary designation on its records for the Member.

If there is no Beneficiary named or surviving when a Member dies, the Member's Beneficiary shall be the Member's surviving spouse, or where there is no surviving spouse, the executor or administrator of the Member's estate.

#### **SECTION 10.08 – NONALIENATION OF BENEFITS.**

Benefits payable under the Plan are not subject to the claims of any creditor of any Member, Beneficiary, spouse, or Contingent Annuitant. A Member, Beneficiary, spouse, or Contingent Annuitant does not have any rights to alienate, anticipate, commute, pledge, encumber, or assign such benefits except in the case of a loan as provided in Section 5.06. The preceding sentences shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Member according to a domestic relations order, unless such order is determined by the Plan Administrator to be a qualified domestic relations order, as defined in Code Section 414(p), or any domestic relations order entered into before January 1, 1985. The preceding sentences shall not apply to any offset of a Member's benefits provided under the Plan against an amount the Member is required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, which meets the requirements of Code Sections 401(a)(13)(C) or (D).

#### **SECTION 10.09 – CONSTRUCTION.**

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state in which we have our principal office. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

In the event of any conflict between the provisions of the Plan and the terms of any Annuity Contract or Insurance Policy issued hereunder, the provisions of the Plan control.



## SECTION 10.10 – LEGAL ACTIONS.

No person employed by us; no Member, former Member, or their Beneficiaries; nor any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

## SECTION 10.11 – SMALL AMOUNTS.

If consent of the Member is not required for a benefit which is immediately distributable in Plan Section 6.03 or 6A.03, whichever applies, a Member's entire Vested Account shall be paid in a single sum as of the earliest of his Retirement Date, the date he dies, or the date he ceases to be an Employee for any other reason (the date we provide notice to the record keeper of the Plan of such event, if later). For purposes of this section, if the Member's Vested Account is zero, the Member shall be deemed to have received a distribution of such Vested Account. If a Member would have received a distribution under the first sentence of this paragraph but for the fact that the Member's consent was needed to distribute a benefit which is immediately distributable, and if at a later time consent would not be needed to distribute a benefit which is immediately distributable and such Member has not again become an Employee, such Vested Account shall be paid in a single sum. This is a small amounts payment.

If a small amounts payment is made as of the date the Member dies, the small amounts payment shall be made to the Member's Beneficiary (spouse if the death benefit is payable to the spouse). If a small amounts payment is made while the Member is living, the small amounts payment shall be made to the Member. The small amounts payment is in full settlement of all benefits otherwise payable.

No other small amounts payment shall be made.

## SECTION 10.12 – WORD USAGE.

The masculine gender, where used in this Plan, shall include the feminine gender and singular words, as used in this Plan, may include the plural, unless the context indicates otherwise.

The words "in writing" and "written," where used in this Plan, shall include any other forms (such as voice response or other electronic system) as permitted by any governmental agency to which the Plan is subject.

## SECTION 10.13 – CHANGE IN SERVICE METHOD.

a) Change of Service Method Under This Plan. If this Plan is amended to change the method of crediting service from the elapsed time method to the hours method for any purpose under this Plan, the Employee's service shall be equal to the sum of (1), (2), and (3) below:

- 1) The number of whole years of service credited to the Employee under the Plan as of the date the change is effective.
- 2) One year of service for the applicable service period in which the change is effective if he is credited with the required number of Hours of Service. If we do not have sufficient records to determine the Employee's actual Hours of Service in that part of the service period before the effective date of the change, the Hours of Service shall be determined using an equivalency. For any month in which he would be required to be credited with one Hour of Service, the Employee shall be deemed for purposes of this section to be credited with 190 Hours of Service.
- 3) The Employee's service determined under this Plan using the hours method after the end of the service period in which the change in service method was effective.

If this Plan is amended to change the method of crediting service from the hours method to the elapsed time method for any purpose under this Plan, the Employee's service shall be equal to the sum of (4), (5), and (6) below:

- 4) The number of whole years of service credited to the Employee under the Plan as of the beginning of the service period in which the change in service method is effective.
- 5) The greater of (i) the service that would be credited to the Employee for that entire service period using the elapsed time method or (ii) the service credited to him under the Plan as of the date the change is effective.
- 6) The Employee's service determined under this Plan using the elapsed time method after the end of the applicable service period in which the change in service method was effective.

b) Transfers Between Plans with Different Service Methods. If an Employee has been a member in another plan of ours which credited service under the elapsed time method for any purpose which under this Plan is determined using the hours method, then the Employee's service shall be equal to the sum of (1), (2), and (3) below:

- 1) The number of whole years of service credited to the Employee under the other plan as of the date he became an Eligible Employee under this Plan.
- 2) One year of service for the applicable service period in which he became an Eligible Employee if he is credited with the required number of Hours of Service. If we do not have sufficient records to determine the Employee's actual Hours of Service in that part of the service period before the date he became an Eligible Employee, the Hours of Service shall be determined using an equivalency. For any month in which he would be required to be credited with one Hour of Service, the Employee shall be deemed for purposes of this section to be credited with 190 Hours of Service.
- 3) The Employee's service determined under this Plan using the hours method after the end of the service period in which he became an Eligible Employee.

If an Employee has been a member in another plan of ours which credited service under the hours method for any purpose which under this Plan is determined using the elapsed time method, then the Employee's service shall be equal to the sum of (4), (5), and (6) below:

- 4) The number of whole years of service credited to the Employee under the other plan as of the beginning of the service period under that plan in which he became an Eligible Employee under this Plan.
- 5) The greater of (i) the service that would be credited to the Employee for that entire service period using the elapsed time method or (ii) the service credited to him under the other plan as of the date he became an Eligible Employee under this Plan.
- 6) The Employee's service determined under this Plan using the elapsed time method after the end of the applicable service period under the other plan in which he became an Eligible Employee.

If an Employee has been a member in a Controlled Group member's plan which credited service under a different method than is used in this Plan, in order to determine entry and vesting, the provisions in (b) above shall apply as though the Controlled Group member's plan were our plan.

Any modification of service contained in this Plan shall be applicable to the service determined pursuant to this section.

## SECTION 10.14 – MILITARY SERVICE.

Notwithstanding any provision of this Plan to the contrary, the Plan shall provide contributions, benefits, and service credit with respect to qualified military service in accordance with Code Section 414(u). Loan repayments shall be suspended under this Plan as permitted under Code Section 414(u).

## SECTION 10.15 – QUALIFICATION OF PLAN.

If the Plan is denied initial qualification upon timely application, it will be treated as void from the beginning. It will be terminated and all amounts contributed to the Plan, less expenses paid, shall be returned to us within one year after the date of denial. If amounts have been contributed by Employees, we shall refund to each Employee the amount made by him or, if less, the amount then in his Account resulting from such amounts. The Insurer and Trustee shall be discharged from all further obligations.

If the Plan fails to attain or retain qualification, it shall no longer participate in this prototype plan and shall be considered an individually designed plan.

## ARTICLE XI TOP-HEAVY PLAN REQUIREMENTS

### SECTION 11.01 – APPLICATION.

The provisions of this article shall supersede all other provisions in the Plan to the contrary.

For the purpose of applying the Top-heavy Plan requirements of this article, all members of the Controlled Group shall be treated as one Employer. The terms we, us, and our, as they are used in this article, shall be deemed to include all members of the Controlled Group, unless the terms as used clearly indicate only the Employer is meant.

The accrued benefit or account of a member which results from deductible employee contributions shall not be included for any purpose under this article.

The minimum vesting and contribution provisions of Sections 11.03 and 11.04 shall not apply to any Employee who is included in a group of Employees covered by a collective bargaining agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, including us, if there is evidence that retirement benefits were the subject of good faith bargaining between such representatives. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives.

### SECTION 11.02 – DEFINITIONS.

For purposes of this article, the following terms are defined:

**Aggregation Group** means:

- each of our qualified plans in which a Key Employee is a member during the Plan Year containing the Determination Date (regardless of whether the plan has terminated) or one of the four preceding Plan Years,
- each of our other qualified plans which allows the plan(s) described in (a) above to meet the nondiscrimination requirement of Code Section 401(a)(4) or the minimum coverage requirement of Code Section 410, and
- any of our other qualified plans not included in (a) or (b) above which we desire to include as part of the Aggregation Group. Such a qualified plan shall be included only if the Aggregation Group would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

The plans in (a) and (b) above constitute the "required" Aggregation Group. The plans in (a), (b), and (c) above constitute the "permissive" Aggregation Group.

**Compensation** means compensation as defined in Item S for purposes of Section 3.06. For purposes of determining who is a Key Employee in years beginning before January 1, 1998, Compensation shall include, in addition to compensation as defined in Item S for purposes of Section 3.06, elective contributions. Elective contributions are amounts excludible from the gross income of the Employee under Code Sections 125, 402(e)(3), 402(h)(1)(B), or 403(b), and contributed by us, at the Employee's election, to a Code Section 401(k) arrangement, a simplified employee pension, cafeteria plan, or tax-

sheltered annuity. Elective contributions also include amounts deferred under a Code Section 457 plan maintained by us.

**Determination Date** means as to any plan, for any plan year subsequent to the first plan year, the last day of the preceding plan year. For the first plan year of the plan, the last day of that year.

**Key Employee** means any Employee or former Employee (and the Beneficiaries of a deceased Employee) who at any time during the determination period was:

- an officer of ours if such individual's annual Compensation exceeds 50 percent of the dollar limitation under Code Section 415(b)(1)(A),
- an owner (or considered an owner under Code Section 318) of one of the ten largest interests in us if such individual's annual Compensation exceeds 100 percent of the dollar limitation under Code Section 415(c)(1)(A),
- a 5-percent owner of us, or
- a 1-percent owner of us who has annual Compensation of more than \$150,000.

The determination period is the Plan Year containing the Determination Date and the four preceding Plan Years.

The determination of who is a Key Employee shall be made according to Code Section 416(i)(1) and the regulations thereunder.

**Non-key Employee** means any Employee who is not a Key Employee.

**Present Value** means the present value of a member's accrued benefit under a defined benefit plan based only on the interest and mortality rates specified in Item S.

**Top-heavy Plan** means a plan which is top-heavy for any plan year beginning after December 31, 1983. This Plan shall be top-heavy if any of the following conditions exist:

- The Top-heavy Ratio for this Plan exceeds 60 percent and this Plan is not part of any required Aggregation Group or permissive Aggregation Group.
- This Plan is a part of a required Aggregation Group, but not part of a permissive Aggregation Group, and the Top-heavy Ratio for the required Aggregation Group exceeds 60 percent.
- This Plan is a part of a required Aggregation Group and part of a permissive Aggregation Group and the Top-heavy Ratio for the permissive Aggregation Group exceeds 60 percent.

**Top-heavy Ratio** means:

- If we maintain one or more defined contribution plans (including any simplified employee pension plan) and we have not maintained any defined benefit plan which during the five-year period ending on the Determination Date(s) has or has had accrued benefits, the Top-heavy Ratio for this Plan alone or for the required or permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the five-year period ending on the Determination Date(s)), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the five-year period ending on the Determination Date(s)), both computed in accordance with Code Section 416 and the regulations thereunder. Both the numerator and denominator of the Top-heavy Ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code Section 416 and the regulations thereunder.
- If we maintain one or more defined contribution plans (including any simplified employee pension plan) and we maintain or have maintained one or more defined benefit plans which during the five-year period ending on the Determination Date(s) has or has had accrued benefits, the Top-heavy Ratio for the required or permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of account balances under the

aggregated defined contribution plan or plans of all Key Employees determined in accordance with (a) above, and the Present Value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all members, determined in accordance with (a) above, and the Present Value of accrued benefits under the defined benefit plan or plans for all members as of the Determination Date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top-heavy Ratio are increased for any distribution of an accrued benefit made in the five-year period ending on the Determination Date.

- c) For purposes of (a) and (b) above, the value of account balances and the Present Value of accrued benefits shall be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Code Section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a member (i) who is not a Key Employee but who was a Key Employee in a prior year or (ii) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the five-year period ending on the Determination Date will be disregarded. The calculation of the Top-heavy Ratio and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the Top-heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The accrued benefit of a member other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by us, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

**SECTION 11.03 – MODIFICATION OF VESTING REQUIREMENTS.**

If a Member's Vesting Percentage is determined under the vesting schedule selected in Item V(2), and such Vesting Percentage is not as great as the Vesting Percentage would be if it were determined under a schedule permitted in Code Section 416, the following shall apply. During any Plan Year in which the Plan is a Top-heavy Plan, the Member's Vesting Percentage shall be the greater of the Vesting Percentage determined under the schedule selected in Item V(2) or,

- a) if the vesting schedule selected in Item V(2) provides for partial vesting between 0% and 100%, the schedule below.

VESTING SERVICE (whole years)	VESTING PERCENTAGE
Less than 2	0
2	20
3	40
4	60
5	80
6 or more	100

- b) if the vesting schedule selected in Item V(2) provides for only 0% or 100% vesting, the schedule below.

VESTING SERVICE (whole years)	VESTING PERCENTAGE
Less than 3	0
3 or more	100

The applicable schedule above shall not apply to Members who are not credited with an Hour of Service after the Plan first becomes a Top-heavy Plan. The Vesting Percentage determined above applies to the portion of the Member's Account which is multiplied by a Vesting Percentage to determine his Vested Account, including benefits accrued before the effective date of Code Section 416 and benefits accrued before this Plan became a Top-heavy Plan.

If, in a later Plan Year, this Plan is not a Top-heavy Plan, a Member's Vesting Percentage shall be determined according to the provisions of Item V. A Member's Vesting Percentage determined under either Item V or the applicable schedule above shall never be reduced and the election procedures of Section 10.01 shall apply when changing to or from the above schedule as though the automatic change were the result of an amendment.

The part of the Member's Vested Account resulting from the minimum contributions required pursuant to Section 11.04 (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Section 411(a)(3)(B) or (D).

**SECTION 11.04 – MODIFICATION OF CONTRIBUTIONS.**

During any Plan Year in which this Plan is a Top-heavy Plan, we shall make a minimum contribution as of the last day of the Plan Year for each Non-key Employee who is an Employee on the last day of the Plan Year and who was an Active Member at any time during the Plan Year. A Non-key Employee is not required to have a minimum number of Hours of Service or minimum amount of Compensation in order to be entitled to this minimum. A Non-key Employee who fails to be an Active Member merely because his Compensation is less than a stated amount or merely because of a failure to make mandatory member contributions or, in the case of a cash or deferred arrangement, elective contributions shall be treated as if he were an Active Member. The minimum is the lesser of (a) or (b) below:

- a) 3 percent of such person's Compensation for such Plan Year.
- b) The "highest percentage" of Compensation for such Plan Year at which our Contributions are made for or allocated to any Key Employee. The highest percentage shall be determined by dividing our Contributions made for or allocated to each Key Employee during the Plan Year by the amount of his Compensation for such Plan Year, and selecting the greatest quotient (expressed as a percentage). To determine the highest percentage, all our defined contribution plans within the Aggregation Group shall be treated as one plan. The minimum shall be the amount in (a) above if this Plan and a defined benefit plan of ours are required to be included in the Aggregation Group and this Plan enables the defined benefit plan to meet the requirements of Code Section 401(a)(4) or 410.

For purposes of (a) and (b) above, Compensation shall be limited by Code Section 401(a)(17).

If our contributions and allocations otherwise required under the defined contribution plan(s) are at least equal to the minimum above, no additional contribution shall be required. If our total contributions and allocations are less than the minimum above, we shall contribute the difference for the Plan Year.

The minimum contribution applies to all of our defined contribution plans in the aggregate which are Top-heavy Plans. A minimum contribution under a profit sharing plan shall be made without regard to whether or not we have profits.

To the extent a member covered under this Plan can be covered under any other plan or plans of ours, we may provide in Item S that the minimum contribution or benefit requirement applicable to Top-heavy Plans shall be made in only one of the plans.

For purposes of this section, any employer contribution made according to a salary reduction or similar arrangement and employer contributions which are matching contributions, as defined in Code Section 401(m), shall not apply in determining if the minimum contribution requirement has been met, but shall apply in determining the minimum contribution required.

The requirements of this section shall be met without regard to any Social Security contribution.

## **SECTION 11.05 – MODIFICATION OF CONTRIBUTION LIMITATION.**

If the provisions of subparagraph (m) of Section 3.06 are applicable for any Limitation Year during which this Plan is a Top-heavy Plan, the contribution limitations shall be modified. The definitions of Defined Benefit Plan Fraction and Defined Contribution Plan Fraction in Section 3.06 shall be modified by substituting "100 percent" in lieu of "125 percent." In addition, an adjustment shall be made to the numerator of the Defined Contribution Plan Fraction. The adjustment is a reduction of that numerator similar to the modification of the Defined Contribution Plan Fraction described in Section 3.06 and shall be made with respect to the last Plan Year beginning before January 1, 1984.

The modifications in the paragraph above shall not apply with respect to a Member so long as employer contributions, forfeitures, or nondeductible employee contributions are not credited to his account under this or any of our other defined contribution plans and benefits do not accrue for such Member under our defined benefit plan(s), until the sum of his Defined Contribution and Defined Benefit Plan Fractions is less than 1.0.

The modification of the contribution limitation shall not apply if both of the following requirements are met:

- a) This Plan would not be a Top-heavy Plan if "90 percent" were substituted for "60 percent" in the definition of Top-heavy Plan.
- b) A Non-key Employee who is covered only under a defined benefit plan of ours, accrues a minimum benefit on, or adjusted to, a straight life basis equal to the lesser of (i) 3 percent of his average compensation multiplied by his years of service or (ii) 30 percent of his average compensation. Average compensation and years of service shall have the meaning set forth in such defined benefit plan for this purpose.

The account of a Non-key Employee who is covered only under one or more defined contribution plans of ours, is credited with a minimum employer contribution under such plan(s) equal to 4 percent of the person's Compensation for each plan year in which the plan is a Top-heavy Plan.

If a Non-key Employee is covered under both defined contribution and defined benefit plans of ours, (i) a minimum accrued benefit for such person equal to the amount determined above for a person who is covered only under a defined benefit plan is accrued in the defined benefit plan(s) or (ii) a minimum contribution equal to 7.5 percent of the person's Compensation for a plan year in which the plans are Top-heavy Plans will be credited to his account under the defined contribution plans.

If a member can be covered under this Plan and a defined benefit plan of ours, we may provide in Item S for an increased minimum contribution or benefit so that the modification of the contribution limitation provided in this section shall not apply.

This section shall cease to apply effective as of the first Limitation Year beginning on or after January 1, 2000.

## **ATTACHMENT A TRUSTAR® RETIREMENT SERVICES TRUST AGREEMENT**

Unless the context of this Trust Agreement clearly indicates otherwise, the terms defined in Section 1.02 of the Plan entered into by the Employer, of which this Trust Agreement forms a part shall, when used herein, have the same meaning as in the Plan.

### **SECTION 1 – APPOINTMENT OF TRUSTEE AND TRUST FUND**

#### **1.1 Trust**

The Employer hereby appoints the individual(s) employed by the Employer, a Bank or Trust company listed in Section 8 of this Trust Agreement as Trustee(s) for the Plan (hereafter, "Trustee") and accepted by the Trustee in writing. The Employer hereby establishes with the Trustee a trust Account or Accounts on behalf of the Plan consisting of such sums of money and such other property acceptable to the Trustee as shall from time to time be contributed, paid or delivered to the Trustee pursuant to this Trust Agreement at the address specified by the Trustee. All such money and property, all

investments and reinvestments made therewith and proceeds thereof, less any payments or distributions made by the Trustee pursuant to the terms of this Trust Agreement, are referred to herein as the "Trust." The Trust shall be held by the Trustee in accordance with the express provisions of this Trust Agreement and the requirements of law.

#### **1.2 Delegation of Authority**

The Trustee may delegate to a custodian or other agent the custodianship of all or part of the assets of the Trust. The Trustee may arrange for the delegation by the Trustee to the Plan Administrator (or any agent of the Employer) of any powers or functions of the Trustee hereunder other than the custody of the Trust assets. The Trustee shall not be responsible for any act or omission of such person or persons arising from any such delegation, except to the extent provided in Section 4.7.

#### **1.3 Limitations of Trustee's Duties**

With respect to its duties hereunder, the Trustee is a non-discretionary trustee and shall have no duty to: (a) determine or enforce payment of any contribution due under the Plan; (b) inquire into the accuracy of or monitor the timing of any contribution to the Trust; (c) determine the adequacy of the funding policy adopted by the Employer to meet its obligations under the Plan; (d) look into the propriety of any investment or distribution made under the Plan; (e) locate missing Members, (f) determine the reasonableness of any fees to be paid from the Trust, (g) in the event of the Employer's bankruptcy or insolvency, take any action until directed to do so by the bankruptcy trustee or a court that has jurisdiction over Plan assets, and (h) ensure the qualification of the Plan under the Code. The Trustee shall not be deemed to be the Plan Administrator, the Plan Sponsor or a Named Fiduciary of the Plan as defined in sections 3(16)(A), 3(16)(B) and 402(a)(2), respectively, of ERISA.

### **SECTION 2 – ACCOUNTS**

#### **2.1 Establishing Accounts**

Subject to Section 1.1, the Trustee shall open and maintain a Trust account for the Plan. Upon receipt of written instructions from the Employer, the Trustee also shall maintain such Member Accounts as the Employer may direct. The Trustee may also, upon written instructions from the Employer, open and maintain such other accounts as may be appropriate to aid in the administration of the Plan. The Employer shall give written instructions to the Trustee specifying the Members' Accounts to which contributions and forfeitures are to be credited, and the amounts of such contributions and forfeitures which are to be credited.

#### **2.2 Charges Against Accounts**

Upon receipt of written instructions from the Employer, the Trustee shall charge:

- (a) the appropriate Account of a Member for any withdrawals, distributions or the disposition of any Forfeiture made according to the terms of the Plan; and
- (b) any reasonable fees, as determined by the Employer, which may be charged against the Trust assets.

### **SECTION 3 – INVESTMENT OF TRUST ASSETS**

#### **3.1 Investment of Trust Assets**

The Trustee shall not have any discretion, and is specifically prohibited from having or exercising any discretion, with respect to the investment of Trust assets. Except as provided in Section 3.3 (Member Directed Investments) hereof, the Employer shall be solely responsible for giving the Trustee directions as to the investment and disposition of the Trust assets. Assets of the Trust may be invested in shares of stock in any regulated investment company registered under the Investment Company Act of 1940, including Qualifying Employer Securities, Annuity Contracts, Self-directed Brokerage Accounts, bonds, debentures, notes, mortgages or other securities or other real or personal property which is administratively feasible to the Trustee. A decision by the Trustee that an investment is not administratively feasible shall not constitute a determination by the Trustee of the prudence or advisability of the investment nor shall it constitute investment advice on the part of the Trustee.

### **3.2 Written Instruction**

Any action of the Employer pursuant to any provisions of this Trust Agreement shall be written from the Employer, and the Trustee shall be fully protected in relying upon such written notification as actions of the Employer. The term "Employer," as used throughout this Trust Agreement includes any duly authorized designee of the Employer, such as a Plan Administrator, Named Fiduciary or Investment Manager or any individual having apparent authority as such. If written instructions are not received by the Trustee, or if such instructions are received but are deemed by the Trustee to be unclear, upon notice to the Employer, the Trustee may elect to hold all or part of any such contribution in cash, without liability for rising security prices or distributions made, pending receipt by it from the Employer of written instructions or other clarification.

If any contributions received by the Trustee from the Employer are less than any minimum which a directed investment requires, the Trustee may hold the specified portion of such contributions in cash, without interest, until such time as the proper amount has been contributed so that the directed investment may be made. The Trustee shall receive all directions or instructions in writing.

### **3.3 Member Directed Investments**

When so instructed by the Employer, the Trustee shall invest all or any portion of the Member's Account as directed by such Member. Such directed investment shall be accounted for separately for each Member. The Employer shall have the duty to select and monitor all investment options made available to Members under the Plan. The Employer shall ensure that all Members who are entitled to direct the investment of assets in their Accounts previously received or receive a copy of all material describing such investment options that is required by law. Delivery of investment directions by the Employer in accordance with the instructions of a Member or by the Member directly to the Trustee shall entitle the Trustee to assume that the Member has received all such descriptive material. Each Member who directs the investment of his or her Accounts shall be solely and absolutely responsible for the investment or reinvestment of any such directed Plan investment held on his or her behalf in the Trust, and, except as otherwise provided herein, the Trustee shall not question any such direction, review any securities or other such assets, or make suggestions with respect to the investment, reinvestment, retention or disposition of any such assets. The Trustee shall not have any liability or responsibility for diversification of such assets or for any loss to or depreciation of such assets because of the purchase, retention or sale of assets in accordance with a Member's direction. The Member shall have sole responsibility for the overall diversification, liquidity and prudence of the investments of his or her Account. If a Member fails to direct the investments of his or her Account, the Trustee shall invest the Member's Account in accordance with the written directions of the Employer.

### **3.4 Employer Directed Investments**

The Employer, by written direction to the Trustee, is authorized to designate all or a portion of the Trust assets of which the Employer will direct investments, and the Trustee may segregate such assets into one or more separate accounts or administer the Trust as one Account. In the event the Employer shall employ or appoint an Investment Manager to direct the Trustee with respect to a portion of the Trust, the Employer will notify the Trustee in writing of the appointment of the Investment Manager, including his or her name and address. Whether or not the Trust is segregated into separate accounts, the Trustee shall invest such portion of the Trust as directed by the Employer or its duly appointed Investment Manager. The Trustee shall have no duty to question any action or direction of the Employer or Investment Manager or any failure of the Employer or Investment Manager to give directions, or to review the securities or other investments which are held pursuant to the Employer's or Investment Manager's direction or to make suggestions to the Employer or Investment Manager as to the investment, reinvestment, retention or disposition of any such assets.

The Trustee shall not have any liability or responsibility for diversification of such assets, or for any loss to or depreciation of such assets because of the purchase, retention or sale of assets in accordance with the Employer's or Investment Manager's direction.

The Employer shall have responsibility for the overall diversification of the Trust.

### **3.5 Trustee's Liability with Respect to Employer or Member Directed Accounts**

The Trustee shall not be liable for, and the Employer will indemnify and hold harmless the Trustee (including its employees, affiliates, representatives and agents) from and against, any liability or expense (including counsel fees) because of: (a) any investment action taken or omitted by the Trustee in accordance with any direction of the Employer, Investment Manager or a Member, or (b) any investment inaction in the absence of investment directions or clarification of investment directions from the Employer, Investment Manager or a Member.

### **3.6 Investment Procedures**

Notwithstanding any other provision of this Trust Agreement to the contrary, the Trustee may establish such reasonable rules and regulations, applied on a uniform basis to all Members, with respect to the requirements for, and the form and manner of, effecting transactions with respect to Member directed investments as the Trustee shall determine to be consistent with the purposes of the Plan. Any such rules and regulations shall be binding upon all persons interested in the Trust.

### **3.7 Knowledge of Trustee**

Although it is understood that when the Trustee is subject to the direction of the Employer or a Member, the Trustee will perform certain ministerial duties with respect to the portion of the Trust subject to such direction, such duties do not involve the exercise of any discretionary authority to manage or control Trust assets. Such ministerial duties will be performed in the normal course of business by employees of the Trustee, its affiliates or agents. It is agreed that the Trustee is not undertaking any duty or obligation, express or implied, to review, and will not be deemed to have any knowledge or responsibility with respect to any transaction involving the investment of the Trust as a result of the performance of these ministerial duties. Therefore, in the event that the Employer or a Member engages in any transaction which results in a claim against the Trustee, and knowledge of the Trustee is a prerequisite to imposing a duty upon or determining liability of the Trustee under: (i) the Plan, (ii) this Trust Agreement, or (iii) any law regulating the conduct of trustees with respect to the investment of trust assets, then the Trustee's receipt and processing of investment orders and other documents relating to the Trust assets shall be considered the performance of purely ministerial duties and shall not constitute knowledge on the part of the Trustee. For the purpose of this section, Trustee shall include its employees, agents and affiliates.

## **SECTION 4 – DUTIES OF THE TRUSTEE**

### **4.1 Duties of the Trustee**

The Trustee is authorized and empowered with respect to the Trust:

- (a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate to execute the Trustee's duties.
- (b) To register any investment held in the Trust in the name of the Trustee or in the name of a nominee, and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust.
- (c) To employ suitable agents, actuaries, custodians and counsel (who may also be agents and/or counsel for the Employer) as needed to carry out its Trustee duties and to pay their reasonable expenses and compensation.
- (d) To consult with legal counsel, including the Employer's counsel, with respect to the meaning or construction of the Trustee's obligations or duties under the Plan and Trust, or with respect to any action or proceeding or any question of law. The Trustee shall be fully protected with respect to any action it takes in good faith pursuant to the advice of counsel.

- (e) To open Self-directed Brokerage Accounts with a broker dealer on behalf of the Trust as may be necessary to effect transactions in securities held in the Trust.

Each and all of the foregoing powers may be exercised without a court order or approval. No one dealing with the Trustee need inquire concerning the validity or propriety of anything that is done by the Trustee or need to see the application of any money paid or property transferred to or upon the order of the Trustee.

#### **4.2 General Powers**

The Trustee shall have all of the powers necessary to do all acts and exercise all such rights and privileges, whether or not expressly authorized herein, which it may deem necessary or proper for the protection of the Trust and to accomplish any action provided for in this Trust Agreement. Any surviving spouse or Beneficiary shall be bound by the terms of this Trust Agreement regarding investments and administrations of their interest.

#### **4.3 Valuation of Trust**

The Trust shall be valued by the Trustee at current fair market value as of the last day of the Plan year and, at the discretion of the Trustee, may be valued more frequently. The Trustee may adopt such methods of valuation as it deems advisable taking into consideration, among other things, investment earnings and losses, expenses charged, payments made and changes in value of the assets held in the Trust. Any report that the Trustee files with the Employer is open to inspection by a Member for a period of thirty (30) days following the date it is filed. At the end of the sixty day period, the Trustee is released and discharged as to any matters set forth in the report, except with respect to any act or omissions by the Trustee for which a Member, the Plan Administrator, the Named Fiduciary or the Employer has filed a written objection within the thirty day period.

#### **4.4 Trust Records**

The Trustee shall keep records required to be maintained hereunder with respect to the Trust. The Trustee agrees to treat as confidential all records and other information related to the Trust. The Trustee shall not disclose such records and other information to parties other than the Employer, except to the extent required by law or as requested in writing by the Employer.

#### **4.5 Distribution**

At the direction of the Employer, the Trustee shall mail or arrange for mailing distributions from the Trust to the Employer for the benefit of the Members and, to the extent agreed to by the Trustee, shall make distributions directly to the Members. The Trustee shall not be liable or responsible for any errors made by the Employer with respect to distributions. The Trustee shall be entitled to rely conclusively upon the Employer's directions. Notwithstanding any other provision of the Trust Agreement, the Trustee may condition its delivery, transfer or distribution of any Trust assets upon the Trustee's receiving satisfactory assurances that the approval of appropriate governmental agencies or other authorities has been secured and that all notice and other procedures required by applicable law have been satisfied.

#### **4.6 Trustee's Fees**

The Trustee's fees (if applicable) for performing its duties hereunder shall be such reasonable amounts as shall be established by it from time to time. The Trustee shall furnish to the Employer its current schedule of fees and give written notice to the Employer whenever its fees are changed or revised. Such fees, any taxes of any kind whatsoever which may be levied or assessed upon the Trust, and any expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, shall, unless paid by the Employer, be paid from the Trust.

#### **4.7 Duties not Assigned**

The duties of the Trustee with respect to the Trust are limited to those assumed by the Trustee under the terms of this Trust Agreement. The Trustee shall not be responsible for filing reports, returns or disclosures with any government agency except as may otherwise be required by its duties as Trustee under applicable law or agreed to in writing by the Trustee. The Plan is operated and administered by the Plan

Administrator. The Trustee is not responsible for any aspect of its operation or administration.

#### **4.8 Standards for the Trustee's Powers**

Notwithstanding any other provision of this Trust Agreement, the Trustee shall discharge its duties hereunder solely in the interest of the Members and for the exclusive purpose of providing benefits to the Members and defraying reasonable expenses of administering the Trust, with the skill, care, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustee shall perform its duties in accordance with this Trust Agreement. The Trustee shall not be responsible in any way for any action or omission of the Employer with respect to the performance of its duties and obligations set forth in this Trust Agreement and in the Plan.

The Trustee may rely upon such information, direction, action or inaction of the Employer as being proper under the Plan or the Trust Agreement and is not required to inquire into the propriety of any such information, direction, action, or inaction. The Trustee shall not be responsible for any action or omission of any of its agents or with respect to reliance upon advice of its counsel (whether or not such counsel is also counsel to the Employer), provided the Trustee relied in good faith upon the action of such agent or the advice of such counsel.

### **SECTION 5 – DUTIES OF THE EMPLOYER**

#### **5.1 Duties of the Employer**

It is understood that the Employer shall be responsible for the performance of the following functions with respect to the Trust:

- (a) Transmitting contributions made by the Employer or on behalf of each Member in accordance with the instructions of each Member to the Trustee at such times and in such manner as is mutually agreed between the Employer and the Trustee and as required by applicable federal and state laws and regulations.
- (b) Providing to the Trustee, on a timely basis, a copy of the Plan document including all amendments and restatements. All such documents shall have been duly and timely adopted at the time of their delivery to the Trustee.
- (c) Determining that the contributions made by or on behalf of each Member are in accordance with any applicable federal and state laws and regulations including but not limited to those governing these calculations, limitations, the manner and timing or withholdings and the timing of remittance to the Trustee.
- (d) Assuring that the Plan maintains qualified status under all applicable Sections of the Code.
- (e) The Employer is responsible for determining if the Plan will comply with Section 404(c). If the aforementioned section applies, the Employer is responsible for assuring that the Plan complies with ERISA section 404(c) and any regulations issued thereunder.
- (f) The Employer is responsible for maintaining the adequacy of the Trust Fund.

#### **5.2 Bonding**

The Employer agrees to obtain and maintain, in an amount sufficient to meet applicable federal regulations, a fiduciary bond and to include as those covered by such bond the employees of the Employer, the Plan Administrator, the Named Fiduciary and the Trustee, including any of the Trustee's employees, officers and agents, as required by law to be so covered. The cost of any such bond shall be paid by the Employer.

#### **5.3 Information and Data to be Furnished to the Trustee**

The Employer shall furnish the Trustee with such information and data relevant to the Plan as is necessary for the Trustee to properly perform its duties assumed hereunder, including, but not limited to, a copy of the Plan's qualification letter or opinion letter from the Internal Revenue Service and Plan promissory notes.

#### **5.4 Limitation of Duties**

Neither the Trustee nor any of its officers, directors, partners affiliates or agents shall have any duties or obligations with respect to this Trust Agreement, except those expressly set forth herein and in the Plan.

### **SECTION 6 – TERMINATION OF TRUST**

#### **6.1 Resignation or Removal of Trustee**

The Trustee may resign at any time upon thirty (30) days prior written notice to the Employer or may be removed by the Employer at any time upon thirty days prior written notice to the Trustee. Upon resignation or removal of the Trustee, the Employer shall appoint a successor trustee. Upon receipt by the Trustee of written acceptance of such appointment by the successor trustee, the Trustee shall transfer to the successor the assets of the Trust and all records (or copies) pertaining thereto. The Trustee is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all fees, compensation, costs and expenses, or for payment of any liabilities constituting a charge on or against the assets of the Trust or on or against the Trustee, with any balance of such reserve remaining after payment of all such items to be paid over to the successor trustee. Upon the assignment and transfer of the assets of the Trust, and obtaining a receipt thereof from the successor trustee, the Trustee shall be released and discharged from any and all claims, demands, duties and obligations arising out of the Trust and its management thereof, excepting claims based only upon the Trustee's willful misconduct or gross negligence. If on the date upon which the Trustee's resignation or removal is effective, the Employer has not appointed a successor trustee which has accepted such appointment, the Trustee shall appoint the Employer as successor trustee and shall deem automatic acceptance of such appointment. In the event of a Trustee's death, the remaining Trustees, if any, shall assume such trustee duties; if there are no remaining Trustees, then the Employer shall immediately appoint a successor trustee or the Employer will be deemed to be Trustee.

#### **6.2 Termination of the Trust**

The Trust shall continue with respect to the Employer so long as the Plan is in full force and effect. If the Plan ceases to be in full force and effect, this Trust shall terminate and Trust assets shall be distributed according to the terms of the Plan.

### **SECTION 7 – MISCELLANEOUS**

#### **7.1 Exclusive Purpose**

This Trust has been established for the exclusive benefit of the Plan's Members. Except as provided herein, it shall be impossible at any time prior to the satisfaction of all liabilities to the Members for any part of the principal or income of the Trust, other than such part as is required to pay taxes, administrative expenses or refund contributions as provided herein, to be paid or diverted to the Employer or to be used for any purpose whatsoever other than for the exclusive benefit of the Members.

#### **7.2 Indemnification**

The Employer shall indemnify and hold harmless the Trustee (including its affiliates, employees, representatives and agents) from and against any liability, cost or other expense, including, but not limited to, the payment of attorney's fees which the Trustee may incur in connection with the Trust or the Plan unless such liability, cost or expense arises from the Trustee's own willful misconduct or gross negligence. The Trustee shall not be obligated or expected to commence or defend any legal action or proceeding in connection with the Trust unless agreed upon in writing by the Trustee and the Employer and unless the Trustee is fully indemnified for doing so to its satisfaction.

#### **7.3 Construction**

In any action or proceeding involving the Trust or the administration of the Trust, only the Trustee and the Employer shall be necessary parties. Unless otherwise ordered by the court entertaining jurisdiction thereover, no other person having or claiming to have an interest in the Trust or this Trust Agreement shall be entitled to any notice or service of process. Any final judgment entered in such action or proceeding

shall be conclusive upon all persons claiming under this Trust Agreement.

#### **7.4 Headings**

Headings in this Trust Agreement are inserted solely for convenience of reference and shall neither constitute a part of this Trust Agreement, nor affect its meaning, construction or intent.

#### **7.5 Severability**

If any provision of this Trust Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Trust Agreement shall be construed and enforced as if such provision had not been included.

#### **7.6 Return of Contributions**

Contributions are conditioned on initial qualification of the Plan under section 401(a) of the Code, and if the Plan and Trust do not qualify, the Trustee may return such contributions to the Employer upon the Employer's written direction due to a "mistake of fact" as described in section 403(c) of ERISA. Contributions made by the Employer by "mistake of fact" may revert and be paid to the Employer within one year after the payment of such mistake contributions. In making such a return of assets to the Employer, the Trustee may accept the Employer's written direction as its evidence that such payment complies with the Plan and section 403(c) of ERISA, and the Trustee need make no further investigation.

#### **7.7 Voting and Tendering**

The Employer shall direct the Trustee how to vote or tender any Trust assets for which the Trust has voting or tendering rights. The Employer may not, however, appoint the Trustee as its designee for purpose of this Section unless the Trustee agrees to such a designation in writing. Absent involvement by the Trustee, voting and tendering of securities in Self-directed Brokerage Accounts and Qualifying Employer Securities are subject to the applicable provisions of the Plan.

#### **7.8 Nonalienation of Benefits**

No rights or claims to any of the monies or other assets of the Trust shall be assignable, nor shall such rights or claims be subject to garnishment, attachment, execution or levy of any kind; and any attempt to transfer, assign or pledge the same, except as specifically permitted by law, shall not be recognized by the Trustee.

#### **7.9 Amendments**

The Employer and the Trustee may amend this Trust Agreement at any time by a written agreement between them; provided, however, that no such amendment shall make it possible for any part of the corpus or income of the Trust to be used or diverted to purposes other than the exclusive benefit of Members and defraying reasonable expenses of administering the Plan and Trust.

#### **7.10 Inspection of Plan Records by Employer**

The Trustee agrees to permit the Employer to inspect the records of the Trust maintained by the Trustee during regular business hours by giving reasonable notice to the Trustee. The Trustee further agrees that it will provide the Employer with information and records that the Employer may reasonably require.

#### **7.11 Law Governing**

This Agreement shall be administered, construed and enforced according to the laws of the state of the principal place of business of the Trustee to the extent not superseded by applicable federal law. All contributions to the Trustee shall be deemed to take place in the state in which the principal place of business of the Trustee is located.

#### **7.12 Merger, Consolidation or Transfer**

In the event of the merger, consolidation or transfer of any portion of the Trust to a trust fund held under any other plan, the Trustee shall dispose of all or part, as the case may be, of the Trust in accordance with the written directions of the Employer, subject to the right of the Trustee to reserve funds as provided in Section 6.1 hereof.

**7.13 Trustee as Successor Trustee**

If the Trustee is acting as a successor trustee with respect to the Trust, the Employer shall indemnify the Trustee against all liabilities with respect to the Trust arising prior to the appointment of the Trustee and its acceptance thereof.

**7.14 Successor and Assigns**

This Agreement shall be binding upon the successor and assigns of the parties hereto.

**7.15 Notices**

Any notice from the Trustee to the Employer or from the Employer to the Trustee provided for in the Plan or in this Trust Agreement shall be effective if sent by first class mail to their respective last address of record or other medium agreed upon by the Employer and the Trustee.

**SECTION 8 – EXECUTION**

This Trust Agreement shall be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the undersigned have executed this Trust Agreement to be effective as

of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The undersigned hereby accepts appointment as Trustee hereunder and agrees to be bound by the terms of this Trust Agreement. *(Can be either a corporate trust (i.e. bank or trust company) or an individual trust. If corporate trust, such bank or trust company shall be the trustee and any designation of an individual(s) shall have no effect. If individual trust, any number of trustees can be named.)*

**ACCEPTANCE OF THE TRUSTEE**

By Carol Bailey Burns  
(Signature)

Business Title Vice President

Print Name Carol Bailey Burns

Bank or Trust Company *(If corporate trust.)*

Delaware Charter Guarantee & Trust Company conducting business as Trustar® Retirement Services

Address *(If other than the Employer.)*  
1013 Centre Road

Wilmington, DE 19805



# Unilateral Good Faith Compliance Amendment For The Economic Growth And Tax Relief Reconciliation Act Of 2001 (EGTRRA)

Delaware Charter Guarantee & Trust Company, conducting business as Trustar® Retirement Services ("Trustar"), hereby amends the following prototype plans and by such amendment, amends each retirement plan set forth on any such prototype by an adopting employer.

Trustar Prototypes for 401(k) Plans:

With an approval date of March 19, 1997  
Delaware Charter Guarantee & Trust Company  
Standardized Prototype

Letter Serial No.: D245268b Plan No.: 001  
Basic Plan No.: 03

Delaware Charter Guarantee & Trust Company  
Non-Standardized Prototype

Letter Serial No.: D346123b Plan No.: 001  
Basic Plan No.: 04

With an approval date of October 19, 2001 (GUST prototype)  
Prototype Standardized Profit  
Sharing Plan with CODA

Letter Serial No.: K239434a Plan No.: 001  
Basic Plan No.: 01

Prototype Non-Standardized Profit  
Sharing Plan with CODA

Letter Serial No.: K339435a Plan No.: 002  
Basic Plan No.: 01

With an approval date of August 16, 2002  
Prototype Standard for Savings Plans

Letter Serial No. K274245a Plan No. 001  
Basic Plan. No.: 001

This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001.

The term "Member" as used in this Amendment and the term "Participant" in all other Trustar documents shall be deemed to have the same definition and can be used interchangeably.

This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

## ELECTIVE DEFERRALS – CONTRIBUTION LIMITATION

No Member shall be permitted to have elective deferral contributions made under this Plan, or any other qualified plan maintained by us, during any taxable year in excess of the dollar limitation contained in Code Section 402(g) in effect for such taxable year, except to the extent permitted in the Catch-up Contributions section of this amendment that provides for catch-up contributions under EGTRRA section 631 and Code Section 414(v), if applicable.

## MAXIMUM SALARY REDUCTION CONTRIBUTIONS - 401(k) SIMPLE

Except to the extent permitted in the Catch-up Contributions section of this amendment that provides for catch-up contributions under EGTRRA section 631 and Code Section 414(v), if applicable, the maximum salary reduction contribution that can be made to this Plan is the amount determined under Code Section 408(p)(2)(A)(ii) for the calendar year.

**INCREASE IN COMPENSATION LIMIT (for pre-GUST prototype plan documents with an approval date prior to October 19,**

## **2001) and PAY LIMIT (for GUST plan prototype documents with an approval date of October 19, 2001)**

For Plan Years beginning on and after January 1, 2002, the annual pay of each Member taken into account for determining all benefits provided under the Plan for any determination period shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.

If pay for any prior determination period is taken into account in determining a Member's contributions or benefits for the current Plan Year, the pay for such prior determination period is subject to the applicable annual pay limit in effect for that determination period. For this purpose, in determining contributions or benefits in Plan Years beginning on or after January 1, 2002, the annual pay limit in effect for determination periods beginning before that date is \$200,000.

The Compensation item in the pre-GUST Adoption Agreement and the Pay Limit item in the GUST Adoption Agreement shall be amended to include the following section:

**PAY LIMIT.** The annual pay of each Member taken into account for determining all benefits provided under the Plan for any determination period shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B), unless otherwise specified in the Model Good Faith Compliance Amendment to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

## LIMITATIONS ON CONTRIBUTIONS

**Effective date.** This section shall be effective for Limitation Years beginning after December 31, 2001.

**Maximum annual addition.** Except to the extent permitted in the Catch-up Contributions section of this amendment that provides for catch-up contributions under EGTRRA section 631 and Code Section 414(v), if applicable, the Annual Addition that may be contributed or allocated to a Member's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or
- 100 percent of the Member's Compensation, for the Limitation Year.

The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or 419A(f)(2)) which is otherwise treated as an Annual Addition.

**Elective deferral limits.** The Elective Deferral Contributions item in the Adoption Agreement is amended to allow a Member to defer more than 20% of Pay for the Plan Year.

**Other limits.** The Contribution Modifications item in the Adoption Agreement is amended to allow a percentage greater than 25%.

## CATCH-UP CONTRIBUTIONS

**Effective date.** This section shall apply to Contributions received after December 31, 2001.

**Catch-up contributions.** If elected by the Employer in the Adoption Agreement, all Employees who are eligible to make Elective Deferral Contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-up Contributions in accordance with, and subject to

the limitations of, Code Section 414(v). Such Catch-up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such Catch-up Contributions.

The Elective Deferral Contributions item in the Adoption Agreement is amended to add the following section:

**CATCH-UP CONTRIBUTIONS.** Catch-up Contributions are not permitted, unless otherwise specified in the Model Good Faith Compliance Amendment to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

**MODIFICATION OF TOP-HEAVY RULES**

**Effective date.** This section shall apply for purposes of determining whether the Plan is a Top-heavy Plan for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Code Section 416(c) for such years.

**Determination of top-heavy status.**

**Key Employee** means any Employee or former Employee (and the Beneficiaries of such Employee) who at any time during the determination period was:

- a) an officer of ours if such individual's annual Compensation is more than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002),
- b) a 5-percent owner of us, or
- c) a 1-percent owner of us who has annual Compensation of more than \$150,000.

The determination period is the Plan Year containing the Determination Date.

The determination of who is a Key Employee shall be made according to Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

**Determination of present values and amounts.** This section shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of Employees as of the Determination Date.

**Distributions during year ending on the Determination Date.**

The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

**Employees not performing services during year ending on the Determination Date.** The accrued benefits and accounts of any individual who has not performed services for us during the one-year period ending on the Determination Date shall not be taken into account.

**Minimum benefits.**

**Matching contributions.** Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching

contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Code Section 401(m).

**Contributions under other plans.** We may provide in the Adoption Agreement that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions with respect to which the requirements of Code Section 401(m)(11) are met).

**MODIFICATION OF TOP-HEAVY RULES – 401(k) Safe Harbor**

The top-heavy requirements of Code Section 416 and of the Plan shall not apply in any year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions with respect to which the requirements of Code Section 401(m)(11) are met.

**VESTING OF EMPLOYER MATCHING CONTRIBUTIONS**

**Applicability.** This section shall apply to Members with accrued benefits derived from matching contributions who complete an hour of service under the Plan in a Plan Year beginning after December 31, 2001.

**Vesting schedule.** If the vesting schedule selected applies to matching contributions and does not provide for a vesting schedule that is at least as fast as either the 3-year cliff or the 6-year graded vesting schedule required by EGTRRA, the vesting schedule for matching contributions shall be based on the following:

Current Vesting Schedule for Matching Contributions		EGTRRA Vesting Schedule for Matching Contributions	
<b><u>7-year graded</u></b>		<b><u>6-year graded</u></b>	
less than 1	0		0
1	0		0
2	0		20
3	20		40
4	40		60
5	60		80
6	80		100
7	100		

Current Vesting Schedule for Matching Contributions		EGTRRA Vesting Schedule for Matching Contributions	
<b><u>5-year cliff</u></b>		<b><u>3-year cliff</u></b>	
less than 1	0		0
1	0		0
2	0		0
3	0		100
4	0		
5	100		

Current Vesting Schedule for Matching Contributions		EGTRRA Vesting Schedule for Matching Contributions	
<b><u>4-year cliff</u></b>		<b><u>3-year cliff</u></b>	
less than 1	0		0
1	0		0
2	0		0
3	0		100
4	100		

If the current vesting schedule for matching contributions provides for partial vesting between 0% and 100% (other than a 7-year graded vesting schedule), a blended schedule shall apply which would provide the better of the current vesting schedule or the 6-year graded vesting schedule for each year of service.

#### **ROLLOVERS FROM OTHER PLANS**

If rollover contributions are allowed, the Plan will accept Member rollover contributions and/or direct rollovers of distributions made after December 31, 2001 from the types of plans specified below beginning January 1, 2002.

##### **Direct Rollovers**

The Plan will accept a direct rollover of an Eligible Rollover Distribution from:

- a) qualified plan described in Code Section 401(a) or 403(a), including after-tax employee contributions.
- b) an annuity contract described in Code Section 403(b), excluding after-tax employee contributions.
- c) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

##### **Member Rollover Contributions from Other Plans**

The Plan will accept a Member contribution of an Eligible Rollover Distribution from:

- a) a qualified plan described in Code Section 401(a) or 403(a).
- b) an annuity contract described in Code Section 403(b).
- c) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

##### **Member Rollover Contributions from IRAs**

The Plan will accept a Member rollover contribution of the portion of a distribution from an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b) that is eligible to be rolled over and would otherwise be includible in gross income.

#### **DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS**

**Effective date.** This section shall apply to distributions made after December 31, 2001.

**Modification of definition of Eligible Retirement Plan.** For purposes of the direct rollover provisions of the Plan, an Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

**Modification of definition of Eligible Rollover Distribution to exclude hardship distributions.** For purposes of the direct rollover provisions of the Plan, any amount that is distributed on account of hardship shall not be an Eligible Rollover Distribution and the distributee may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.

**Modification of definition of Eligible Rollover Distribution to include after-tax employee contributions.** For purposes of the direct rollover provisions of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

The Adoption Agreement for all pre-GUST prototype plan documents with an approval date prior to October 19, 2001 is amended to add the following section.

**ROLLOVER CONTRIBUTIONS.** Rollover Contributions are permitted.

#### **REPEAL OF MULTIPLE USE TEST**

The multiple use test described in Treasury Regulation section 1.401(m)-2 and the Plan shall not apply for Plan Years beginning after December 31, 2001.

#### **SUSPENSION PERIOD FOLLOWING HARDSHIP DISTRIBUTION**

A Member who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and member contributions under this and all other plans of ours for six months after receipt of the distribution. A Member who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and member contributions under this and all other plans of ours for six months after receipt of the distribution or until January 1, 2002, if later.

#### **DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT**

**Effective date.** This section shall apply for distributions due to severance from employment occurring after December 31, 2001, and distributions that are processed after December 31, 2001, regardless of when the severance from employment occurred.

**New distributable event – Distribution upon severance from employment.** A Member's Elective Deferral Contributions, Qualified Nonelective Contributions, Qualified Matching Contributions, and earnings attributable to these Contributions shall be distributed on account of the Member's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

#### **PLAN LOANS FOR OWNER-EMPLOYEES AND SHAREHOLDER EMPLOYEES**

Effective for plan loans made after December 31, 2001, plan provisions prohibiting loans to any shareholder-employee or Owner-employee shall cease to apply.

Executed by Delaware Charter Guarantee & Trust Company, conducting business as Trustar® Retirement Services on

\_\_\_\_\_ January 2 \_\_\_\_\_, 2002.

By Carol Bailey  
Officer

# Unilateral Amendment – Model Amendments To Comply With The 401(A)(9) Final And Temporary Regulations And To Use The Alternative Definition Of Compensation As Set Forth In Revenue Ruling 2002-27

Delaware Charter Guarantee & Trust Company, conducting business as Trustar® Retirement Services hereby amends the following prototype plans and by such amendment, amends each retirement plan set forth on any such prototype by an adopting employer:

Trustar® Retirement Services Prototype for Profit Sharing Plans	
Standardized	Letter Serial No.: K239440a
	Plan No.: 005
	Basic Plan No.: 02
Standardized	Letter Serial No.: K239436a
	Plan No.: 001
	Basic Plan No.: 02

Trustar® Retirement Services Prototype for Money Purchase Plans	
Standardized	Letter Serial No.: K239441a
	Plan No.: 006
	Basic Plan No.: 02
Standardized	Letter Serial No.: K239438a
	Plan No.: 003
	Basic Plan No.: 02

Trustar® Retirement Services Prototype for 401(k) Profit Sharing Plans	
Standardized	Letter Serial No.: K274245a
	Plan No.: 001
	Basic Plan No.: 01

## MODEL AMENDMENT TO COMPLY WITH THE 401(a)(9) FINAL AND TEMPORARY REGULATIONS

The plan's existing minimum distribution provisions are superseded to the extent they are inconsistent with the provisions of this model amendment, but those provisions that are not inconsistent (such as the plan's definition of required beginning date) shall be retained. The plan's minimum distribution provisions are amended as follows:

### ARTICLE VII. MINIMUM DISTRIBUTION REQUIREMENTS.

#### Section 1. General Rules

1.1. Effective Date. The provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

Coordination with Minimum Distribution Requirements Previously in Effect. This amendment is effective with calendar years beginning with the 2002 calendar year. Required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

#### Section 2. Time and Manner of Distribution.

2.1. Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2. Death of Participant Before Distributions Begin. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 1/2 if later, except to the extent that an election is made to receive distributions in accordance with the 5-year rule. Under the 5-year rule, the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, except to the extent that an election is made to receive distributions in accordance with the 5-year rule. Under the 5-year rule, the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required

beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3. Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

### **Section 3. Required Minimum Distributions During Participant's Lifetime.**

3.1. Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or
- (b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

3.2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death.

### **Section 4. Required Minimum Distributions After Participant's Death.**

4.1. Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows:

- (1) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.
- (2) If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated

using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2. Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1, except to the extent that an election is made to receive distributions in accordance with the 5-year rule. Under the 5-year rule, the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.

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

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before the distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

### **Section 5. Definitions**

5.1. Designated beneficiary. The individual who is designated as the beneficiary under Plan Section 10.07 and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

5.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the

participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- 5.3. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- 5.4. Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- 5.5. Required beginning date. The date specified Plan Section 7.02.

**Section 6. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.**

Participant's or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article VII of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article VII of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with the life expectancy rule under sections 2.2 and 4.2 of Article VII of the plan.

**Section 7. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.**

A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

**MODEL AMENDMENT TO USE THE ALTERNATIVE DEFINITION OF COMPENSATION AS SET FORTH IN REVENUE RULING 2002-27**

The plan's definition of compensation is amended as follows:

- 1. Effective Date. This amendment shall apply to plan years and limitation years beginning on or after January 1, 1998.
- 2. For purposes of the definition of compensation under Item Q(2) and Plan Section 3.07 Item S(2) amounts under section 125 of the Internal Revenue Code include any amounts not available to a participant in cash in lieu of group health coverage because the participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under section 125 of the Code only if the Employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

Executed by Trustar Retirement Services on November 15, 2002

By Carol Bailey Burns  
Carol Bailey Burns  
Vice President





## **Delaware Charter Guarantee & Trust Company**

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