
**HIDALGO COUNTY AFFILIATED DEPARTMENTS RETIREMENT
PLAN**

**HIDALGO COUNTY AFFILIATED DEPARTMENTS RETIREMENT
PLAN
CASH OR DEFERRED PROFIT SHARING PLAN
AND TRUST**

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PREAMBLE

THIS AGREEMENT is made this 1st day of February, 2016, by and between County of Hidalgo Community Service; Hidalgo Urban County Program & Hidalgo County Head Start ("the Employer"), and Ramon Garcia, Jaime Longoria, Diana R. Serna, and Teresa Flores (collectively "the Trustee").

PART 1

ARTICLE 1

INTRODUCTION

1.1.1 Adoption and Title. The Employer and the Trustee hereby amend, restate, and adopt the Plan and Trust to be known as Hidalgo County Affiliated Departments Retirement Plan.

1.1.2 Effective Date. Except as otherwise specifically provided herein, the provisions of this amended and restated Plan and Trust that was originally effective January 1, 1993 shall be effective as of January 1, 2016, hereinafter known as the "Effective Date." Effective dates pertaining to changes required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 107-147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458, and the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240, are provided herein.

1.1.3 Purpose. The Employer has established this Plan and Trust to recognize the contribution made by Employees to the successful conduct of its business by providing Eligible Employees with retirement, Disability, and death benefits in accordance with the Plan.

ARTICLE 2

DEFINITIONS

As used in this Plan and Trust, the following terms shall have the following meanings:

"Account": One or more accounts, as listed in Section 3.1.1., established as necessary by the Plan Administrator and maintained to account for assets held for the benefit of a Participant.

"Actual Contribution Percentage" (ACP): The Actual Contribution Percentage determined in accordance with the provisions of Part II, Article VII.

"Actual Deferral Percentage" (ADP): The Actual Deferral Percentage determined in accordance with the provisions of Part II, Article VII.

"ACP Test Safe Harbor Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of ACP Test Safe Harbor Matching Contributions.

"ACP Test Safe Harbor Matching Contributions": Matching Contributions made pursuant to Section 2.8.4.

"Act": The Employee Retirement Income Security Act of 1974, as amended from time to time.

"ADP Test Safe Harbor Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of ADP Test Safe Harbor Contributions.

"ADP Test Safe Harbor Contributions": Matching Contributions and Non-Elective Contributions made pursuant to Section 2.8.3.

"Alternate Payee": Any spouse, former spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this or any other plan of the Employer with respect to such Participant.

"Anniversary Date": The last day of the Plan Year.

"Beneficiary": The person or persons entitled to receive any benefits that may be payable upon or after a Participant's death pursuant to Sections 3.9.1 and 3.9.2.

"Benefiting": A Participant is treated as Benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treasury Regulations section 1.410(b)-3(a).

"Break in Service": The failure of an Employee to complete more than a specified amount of service during a twelve (12) consecutive month computation period. A Break in Service for eligibility purposes shall occur if the Employee has not been credited with more than 500 Hours of Service. A Break in Service for vesting purposes shall occur if the Participant has not been credited with more than 500 Hours of Service. The determination of whether the Participant has earned a Year of Service (or partial year) or a Break in Service shall be measured on the same computation period, as specified in the definitions of Eligibility Computation Period or Year(s) of Vesting Service in this Article, as appropriate. An individual reemployed pursuant to section 414(u) of the Code shall be treated with respect to the Plan as not having incurred a Break in Service with the Employer maintaining the Plan by reason of such individual's period of Qualified Military Service.

"Catch-up Contributions": Elective Deferrals made to the Plan that are in excess of an otherwise applicable Plan limit and that are made by Participants who are age fifty (50) or over by the end of their

applicable taxable year. See Subsection 2.3.2(b) for further discussion of Catch-up Contributions.

"Code": The Internal Revenue Code of 1986, as amended from time to time.

"Compensation": Total compensation that is actually paid to the Participant by the Employer during the applicable twelve (12) consecutive month period and including simplified Code section 415(c)(3) compensation defined as the employee's wages, salaries, 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 (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, commissions paid to salespersons, 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 Treasury Regulations section 1.62-2(c).in 1.415(c)-2(d)(2).

In the case of an employee who is an employee within the meaning of Code section 401(c)(1) and regulations promulgated under Code section 401(c)(1), the employee's earned income (as described in Code section 401(c)(2) and regulations promulgated under Code section 401(c)(2)), plus amounts deferred at the election of the employee that would be includible in gross income but for the rules of Code sections 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

In the case of a Self-Employed Individual, Compensation means Earned Income during such period.

Code section 415(c)(3) compensation includes amounts contributed by the Employer pursuant to a salary reduction agreement that is not includable in the gross income of the Employee under Code sections 125, 132(f)(4), 402(e)(3), 402(h), 402(k), 408(p)(2)(A)(i), 457(b) and amounts received during the year by an Employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income. It also includes Deemed Section 125 Compensation.

In general, for Limitation Years beginning prior to July 1 2007 but on or after June 30, 2007 any compensation described in the Plan does not fail to be Compensation merely because it is paid after the Employee's Severance from Employment with the Employer, provided the Compensation is paid by the later of 2-1/2 months after Severance from Employment with the Employer or the end of the Limitation Year that includes the date of Severance from Employment with the Employer, and provided that the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and the payment would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer. In addition, Compensation paid after Severance from Employment shall not include amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan in the year the amounts are actually received to the extent includible in gross income. Unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued if those amounts are paid by the later of 2-1/2 months after Severance from Employment with the Employer or the end of the Limitation Year that includes the date of Severance from Employment with the Employer; and would have been included in the definition of Compensation if they were paid prior to the Employee's Severance from Employment with the Employer.

Notwithstanding the provisions of this definition of Compensation, Compensation for a Limitation Year excludes amounts earned during that Limitation Year but not paid during that Limitation Year solely because of the timing of pay periods and pay dates if:

- (1) These amounts are paid during the first few weeks of the next Limitation Year;
- (2) The amounts are excluded on a uniform and consistent basis with respect to all similarly situated Employees; and
- (3) No compensation is included in more than one Limitation Year.

Compensation shall include amounts paid as compensation to nonresident aliens who do not participate in

the Plan to the extent the compensation is excludable from gross income and not effectively connected with a U.S. trade or business.

Effective for wages paid on or after December 31, 2008, the Plan shall treat Differential Wage Payments to active duty members in Qualified Military Service as a payment of wages by the Employer to an Employee. In the case of Differential Wage Payments, an individual receiving a Differential Wage Payment shall be treated as an Employee of the Employer that is making the payment; the Differential Wage Payment shall be treated as Compensation; and the Plan shall not be treated as failing to meet the requirements of any plan qualification requirements under Code section 401(a) where a contribution or benefit is based on the Differential Wage Payment.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Code, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and Compensation that would otherwise be included under this definition.

Any payments not described in the definition of Compensation shall not be considered Compensation if paid after Severance from Employment, even if they are paid by the later of 2-1/2 months after the date of Severance from Employment or the end of the Limitation Year that includes the date of Severance from Employment.

A Participant who is in Qualified Military Service shall be credited with Compensation for such period based on the rate of Compensation he would have received had he been in the employment of the Employer, or if such rate is not ascertainable, the average Compensation for the twelve (12) consecutive month period, (or his entire period of employment, if shorter), preceding his Qualified Military Service.

For any Plan Year beginning after December 31, 2001, the annual compensation of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B). Annual compensation means Compensation during the Plan Year or such other consecutive twelve (12) month period over which Compensation is otherwise determined under the Plan (the Compensation Computation Period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the Compensation Computation Period that begins with or within such calendar year.

For Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation of each Participant taken into account for determining all allocations provided under the Plan for any Plan Year, shall not exceed one hundred fifty thousand dollars (\$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 twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

If Compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining allocations in Plan Years beginning on or after January 1, 1989, the annual compensation limit in effect for determination periods beginning before that date is two hundred thousand dollars (\$200,000). In addition, in determining allocations in Plan Years beginning on or after January 1, 1994, the annual compensation limit in effect for determination periods beginning before that date is one hundred fifty thousand dollars (\$150,000).

"Compensation Computation Period": There shall be a Compensation Computation Period for each portion of the Plan. For purposes of determining Non-Elective Contributions, the Compensation Computation Period shall be each Plan Year, and Compensation for a Participant's initial year of participation shall be measured over the twelve (12) month period ending in the initial year of participation. For purposes of determining Elective Deferrals, the Compensation Period shall be each pay period ending

with or within the Plan Year, and Compensation for a Participant's initial year of participation shall be measured over the twelve (12) month period ending in the initial year of participation. For purposes of determining Matching Contributions, the Compensation Period shall be each pay period ending with or within the Plan Year, and Compensation for a Participant's initial year of participation shall be measured over the twelve (12) month period ending in the initial year of participation.

"Controlled Account": An Account established and maintained for a Participant for accounting purposes over which he is permitted, under the terms of the Plan and the Plan's investment policy, to exercise investment control.

"Deductible Voluntary Account": An Account established and maintained for a Participant for accounting purposes with respect to his Voluntary Employee Contributions that were deductible by the Participant at the time they were made.

"Deemed IRA Account" (Deemed IRA): An Account established and maintained for a Participant that meets the applicable requirements for an Individual Retirement Account under Sections 2.2.5 and 2.2.6 and Code sections 408(q) and 408A to which he may make Deemed IRA Contributions. For taxable years beginning after 2005, a qualified rollover contribution includes a rollover from a designated Roth account described in Code section 402A; and for taxable years beginning after 2007, a qualified rollover contribution also includes a rollover from an eligible retirement plan described in section 402(c)(8)(B)

"Deemed IRA Contribution": A Participant contribution designated as an IRA contribution to a Deemed IRA Account. Deemed IRA Contributions include Pre-tax IRA Contributions and Roth IRA Contributions.

"Deemed Section 125 Compensation": An amount not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. An amount will be treated as an amount under Code section 125 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.

"Designated Beneficiary": The individual or Trust that is designated as the Beneficiary pursuant to Section 3.9.1 and who is a designated beneficiary under Code section 401(a)(9) and Treasury Regulations section 1.401(a)(9)-4.

"Differential Wage Payment": a Differential Wage Payment is a payment that:

- (a) is made by the Employer to an individual with respect to any period on or after December 31, 2008 during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days; and
- (b) represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer.

"Direct Rollover": A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

"Disability": An Employee has a "Disability" if the Social Security Administration has determined that the Employee is eligible to receive Social Security disability benefits. For purposes of the Plan, the Plan Administrator shall consider an Employee to have a Disability on the Employee's actual date of Disability, as determined by the Plan Administrator, in a uniform and nondiscriminatory manner.

The Plan Administrator shall make all determinations in connection with such issues in a uniform, nondiscriminatory manner and shall make all determinations in connection with the permanence and degree of a physical or mental impairment in a uniform, nondiscriminatory manner based on medical evidence.

"Disabled": An Employee is Disabled if he has a Disability.

"Distributee": An Employee or former Employee. In addition, an Employee's or former Employee's surviving spouse and an Employee's or former Employee's spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relations Order are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006, a Distributee includes the Employee's or former Employee's nonspouse Designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse Designated Beneficiary for the purpose of receiving the distribution.

"Early Retirement Age": The Plan does not provide an Early Retirement Age.

"Early Retirement Date": The Plan does not provide an Early Retirement Date.

"Earned Income": The net earnings from self-employment in the trade or business with respect to which the Plan is established for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items but with regard to the deduction allowed to the taxpayer by Code section 164(f). Net earnings shall be reduced by contributions to a qualified plan to the extent deductible under Code section 404.

"Eligibility Computation Period": For purposes of determining Years of Eligibility Service and Breaks in Service for purposes of eligibility, the initial Eligibility Computation Period is the twelve (12) consecutive month period beginning with the Employee's Employment Commencement Date. Subsequent Eligibility Computation Periods are each Plan Year commencing with the first Plan Year that commences prior to the first anniversary of the Employee's Employment Commencement Date regardless of whether the Employee is entitled to be credited with 1 Hours of Service during the initial Eligibility Computation Period. An Employee who is credited with 1 Hours of Service in both the initial Eligibility Computation Period and the first Plan Year that commences prior to the first anniversary of the Employee's initial Eligibility Computation Period shall be credited with two (2) Years of Service for purposes of eligibility to participate.

"Eligible Automatic Contribution Arrangement" (EACA): An Eligible Automatic Contribution Arrangement is an ACR under a cash or deferred profit sharing plan in which:

- (a) a Covered Employee may elect to have the Employer defer a portion of their Compensation as a pre-tax contribution under the Plan or receive such amounts directly in cash;
- (b) a Covered Employee, who fails to make an affirmative election is treated as having elected to have the Employer make such contributions in an amount equal to a uniform percentage of Compensation (default elective contributions);
- (c) the Employer has identified the group of Employees who will be covered under the EACA and to whom the default percentage will apply

"Eligible Employee": An Employee, as defined in this Article, is eligible to participate in the Plan, including Leased Employees subject to Code sections 414(n) or (o).

"Eligible Retirement Plan": An eligible plan under Code section 457(b) that 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 that agrees to separately account for amounts transferred into such plan from this Plan, 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), an annuity contract described in Code section 403(b), or a qualified plan described in Code section 401(a), that accepts the Distributee's Eligible Rollover Distribution. 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 an Alternate Payee under a Qualified Domestic Relation Order. If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

"Eligible Rollover Distribution": Any distribution of all or a portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

- (a) 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 (10) years or more;
- (b) Any distribution to the extent such distribution is required under Code section 401(a)(9);
- (c) Any Hardship distribution;
- (d) The portion of any other distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and
- (e) Any other distribution that is reasonably expected to total less than two hundred dollars (\$200) during a year. For purposes of the \$200 rule, a distribution from a designated Roth Account and a distribution from other Accounts under the Plan are treated as made under separate plans.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code sections 408(a) or (b), or to a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible.

"Employee": A person who is currently or hereafter employed by the Employer, or by any other employer aggregated under Code sections 414(b), (c), (m) or (o) and the regulations thereunder. Effective for wages paid after December 31, 2008, an individual receiving a Differential Wage Payment shall be treated as an Employee of the Employer making the payment; the Differential Wage Payment shall be treated as Compensation; and the Plan shall not be treated as failing to meet the requirements of any plan qualification requirements under Code section 401(a) where a contribution or benefit is based on the Differential Wage Payment.

Employee shall include a Self-Employed Owner of a business that is not incorporated.

Unless otherwise provided under this Plan, individuals who are not contemporaneously classified as Employees of the Employer for purposes of the Employer's payroll system (including, without limitation, individuals employed by temporary help firms, technical help firms, staffing firms, employee leasing firms, professional employer organizations, or other staffing firms whether or not deemed to be "common law" employees or "leased employees" within the meaning of Code sections 414(n) or (o)) are not considered to be Eligible Employees of the Employer and shall not be eligible to participate in the Plan. The preceding sentence shall not apply in the case of the Employer outsourcing its human resource functions for Employees that the Employer would otherwise treat as "common law" Employees. In the event any such individuals are reclassified as Employees for any purpose, including without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action, or administrative proceeding, such individuals shall notwithstanding such reclassification, remain ineligible for participation hereunder. In addition to and not in derogation of the foregoing, the exclusive means for individuals who are not classified as an Employee of the Employer on the Employer's payroll system to become eligible to participate in this Plan is through an amendment to this Plan, duly executed by the Employer, that specifically renders such individuals eligible for participation hereunder.

The Plan Administrator shall have full and complete discretion to determine eligibility for participation and benefits under this Plan, including, without limitation, the determination of those individuals who are deemed Employees of the Employer (or any controlled group member). The Plan Administrator's decision shall be final, binding, and conclusive on all parties having or claiming a benefit under this Plan. This Plan

is to be construed to exclude, and the Plan Administrator is authorized to exclude, all individuals who are not considered Employees for purposes of the Employer's payroll system, despite the fact that such decision may inadvertently result in the loss of the Plan's tax qualification requiring the amendment of the Plan's eligibility provisions.

"Employer": The Employer that is a party to this Agreement, maintaining the Plan and those Employers required to be aggregated with the Employer under Code sections 414(b), (c), (m) or (o). An individual who owns the entire interest of an unincorporated trade or business is treated as the Employer. Also, a partnership is treated as the Employer of each partner and each Employee of the partnership as well as any of its affiliates and respective successors or assigns that adopt the Plan, provided, however, that no mere change in the identity, form, or organization of the Employer shall affect its status under the Plan in any manner, and, if the name of the Employer is hereinafter changed, a corresponding change shall be deemed to have been made in the name of the Plan and references herein to the Employer shall be deemed to refer to the Employer as it is then known.

"Employer Contributions": Any contribution made by the Employer, including Non-Elective Contributions, Qualified Non-Elective Contributions, Matching Contributions, Qualified Matching Contributions, ADP Test Safe Harbor Contributions, and ACP Test Safe Harbor Matching Contributions. The term as used in this Plan does not include Elective Deferrals made on behalf of a Participant.

"Employment Commencement Date": The date on which an Employee first performs an Hour of Service within the meaning of Labor Regulations section 2530.200b-2(a)(1) for the Employer or Employers maintaining this Plan.

"Entry Date": The date that an Eligible Employee actually becomes a Participant in the Plan. Eligibility requirements are defined in Section 2.1.1, and the specific Entry Dates for the Plan are listed in Section 2.1.2.

"Excess Aggregate Contributions": Matching Contributions and other contributions that exceed the amount permitted by the ACP Test. For an explanation of the calculation of Excess Aggregate Contributions, see Sections 2.7.3 and 2.7.10(c).

"Excess Annual Addition": The portion of the allocation of contributions and Forfeitures that cannot be added to a Participant's Accounts due to the limitations on Annual Additions, as determined in Part III, Article II.

"Excess Contributions": The amount of Elective Deferrals and other contributions that exceed the amount permitted by the ADP Test. For an explanation of the calculation of Excess Contributions, see Sections 2.7.2 and 2.7.10(d).

"Excess Elective Deferrals": Those Elective Deferrals that are made either:

- (a) During the Participant's taxable year and exceed the dollar limitation under such Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in Code Section 414(v)) for such year), as adjusted for cost of living increases under Code section 402(g)(4), or any lesser limitation contained in Section 2.3.2(a), if any; or
- (b) During a calendar year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in Code section 414(v)) for the Participant's taxable year beginning in such calendar year, or any lesser limitation contained in Section 2.3.2(a), if any, counting only Elective Deferrals made under this Plan and any other plan, contract, or arrangement maintained by the Employer.

Excess Elective Deferrals shall be treated as Annual Additions under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

"Fiduciary": The Plan Administrator, the Trustee, and any other person who has discretionary authority or control in the management of the Plan or the disposition of Trust assets.

"5-Percent Owner": A Participant who satisfies the definition of a 5-percent owner within the meaning of Code section 416(i) at any time during the Plan Year ending with or within the calendar year.

"Forfeitures": The non-vested portion of a Participant's Account balance that is forfeited on or after his termination of employment in accordance with Section 2.4.8 and may be allocated to other Participants, used to defray the administrative expenses of the Plan, or considered as part of the Employer's contribution if permitted by Section 2.3.8.

"Gap Period Income": The term "Gap Period Income" means gain or loss allocable to the period that is between the end of the Plan Year and the date of a corrective distribution.

"Governmental Plan": A "Governmental Plan" is:

- (a) a plan established and maintained by:
 - (i) a Government of the United States, the government of any State or a political subdivision, or any agency or instrumentality of thereof; or
 - (ii) an Indian tribal government, a subdivision of an Indian tribal government or an agency or instrumentality of the government or its subdivision;
- (b) a plan to which the Railroad Retirement Act of 1936 or 1937 applies and that is financed by contributions required under that Act; or
- (c) a plan sponsored by an international organization that is exempt from taxation under the International Organizations Immunities Act.

"Highly Compensated Employee" (HCE):

- (a) Any Employee of an employer required to be aggregated under Code sections 414(b), (c), (m), or (o) and the regulations thereunder, during a Plan Year who:
 - (1) Was a 5-Percent Owner of the Employer at any time during the year or the preceding year; or
 - (2) For the preceding year
 - (i) Had "compensation" (as defined below) from the Employer in excess of eighty thousand dollars (\$80,000) (as adjusted by the Secretary of the Treasury pursuant to Code section 415(d)); and
 - (ii) Was in the "top-paid group" (as defined below) of Employees for such preceding year.

For this purpose, an Employee is in the top-paid group of Employees for any year if such Employee is in the group consisting of the top twenty percent (20%) of Employees when ranked on the basis of compensation paid during such year.

The year for which a determination is being made is called a "determination year" and the preceding twelve (12) month period is called a "look-back year." For purposes of this Subsection, the term "compensation" means compensation within the meaning of Section 3.2.5(a) for the determination year or look-back year.

The determination of whether an Employee had compensation in excess of eighty thousand dollars (\$80,000) (as adjusted by the Secretary of the Treasury), shall be made based on compensation paid during the preceding Plan Year.

The Employee data for all plans of the Employer shall be based on the preceding Plan Year.

- (b) Generally, a former Employee shall be treated as a Highly Compensated Employee if:

- (1) The Employee was a Highly Compensated Employee when the Employee separated from service; or
- (2) The Employee was an active Highly Compensated Employee for any Plan Year that ended on or after the Employee's fifty-fifth (55th) birthday.

The determination of whether a former Employee is a Highly Compensated Employee shall be based on the rules applicable to determining Highly Compensated Employee status as in effect for that "determination year", in accordance with temporary Treasury Regulations sections 1.414(q)-1T, A-7 and A-4 and Notice 97-45.

- (c) The Plan Administrator shall apply rules to determine who is a Highly Compensated Employee, as set forth in an administrative policy, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

"Hour of Service": An hour for which:

- (1) The Employee is paid or entitled to payment by the Employer for the performance of duties. These hours will be credited to the Employee for the computation period in which the duties are performed.
- (2) The Employee is paid or entitled to payment by the Employer during 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. These hours will be credited to the Employee for the computation period during which no duties are performed, beginning with the first Hour of Service to which the payment relates. No more than 501 Hours of Service will be credited under this Subsection for any single continuous period (whether or not such period occurs in a single computation period).
- (3) Back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These hours will be credited to the Employee for the period to which the award or agreement pertains rather than the period in which the award, agreement, or payment is made.

Hours of Service shall not be credited under both (a) and (b), above, as the case may be, and under (c) above. Notwithstanding the preceding, no Hours of Service shall be credited to the Employee by reason of a payment made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws, and no Hours of Service shall be credited by reason of a payment that solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The determination of Hours of Service for reasons other than the performance of duties and the crediting of Hours of Service to computation periods shall be made in accord with the provisions of Labor Regulations sections 2530.200b-2(b) and (c), which are incorporated herein by reference.

Solely for purposes of determining whether an Employee has incurred a Break in Service, an Employee shall be credited with the number of Hours of Service that would otherwise have been credited to such individual but for the absence, and in any case in which such Hours cannot be determined, with eight (8) Hours of Service for any day that the Employee is absent from work by reason of the Employee's pregnancy, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of such child by the Employee, or for purposes of caring for such child for a period beginning immediately following such birth or placement. Such Hours of Service shall be credited in the computation period in which the absence from work begins only if such crediting is necessary to prevent the Employee from incurring a Break in Service in such period, and in any other case, in the immediately following computation period. Notwithstanding the foregoing, no credit shall be given for such service unless the Employee furnishes to the Plan Administrator information to establish that the absence from work is for the reasons indicated and the number of days for which there was such an absence.

An Employee shall be credited with Hours of Service equal to the actual hours for which the Employee is paid or entitled to payment.

Service with another business entity that is, along with the Employer, a member of a controlled group of corporations under Code section 414(b), an affiliated service group under Code section 414(m), or trades or businesses under common control as defined in Code section 414(c), or that is otherwise required to be aggregated with the Employer pursuant to Code section 414(o) and the regulations issued thereunder shall be treated as service for the Employer. Hours of Service shall be credited for any individual considered an Employee for purposes of this Plan under Code sections 414(n) or (o) and the regulations issued thereunder.

Except to the extent inconsistent with Treasury Regulations, if the Employer maintains the plan of a predecessor employer, service with such predecessor shall be treated as service for the Employer.

"Insurer": Any insurance company that has issued a Life Insurance Policy to the Plan.

"Joint and Survivor Annuity": An annuity for the life of the Participant with a survivor annuity for the life of the spouse (or other Beneficiary) that is not less than fifty percent (50%) and not more than one hundred percent (100%) of the amount of the annuity that is payable during the joint lives of the Participant and the spouse or other Beneficiary and that is the amount of benefit that can be purchased with the Participant's vested Account balances.

"Key Employee": For Plan Years beginning after December 31, 2001, an Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the Determination Date (as defined in Subsection 2.6.2(c)) is either:

- (a) An officer of the Employer having an Annual Compensation (as defined in Subsection 2.6.2(b)) greater than one hundred thirty thousand dollars (\$130,000) (as adjusted under Code section 416(i)(1)) for Plan Years beginning after December 31, 2002;
- (b) A 5-Percent Owner; or
- (c) Any person who owns directly or indirectly more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer and having an Annual Compensation (as defined in Subsection 2.6.2(b)) from the Employer of more than one hundred fifty thousand dollars (\$150,000).

The determination of who is a Key Employee shall be made in accordance with Code section 416(i)(1) and the regulations thereunder.

"Leased Employee": Any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (the "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 (1) year, and such services are performed under the primary direction or control by the recipient, provided that any such person shall not be taken into account if:

- (a) Such person is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Subsection 3.2.5(a), but including in compensation amounts contributed by the employer pursuant to a salary reduction agreement that are excludable from the person's gross income under Code sections 125, 132(f)(4), 402(e)(3), or 402(h); (2) immediate participation; and (3) full and immediate vesting; and
- (b) Leased Employees do not constitute more than twenty percent (20%) of the workforce of the recipient employer who are not Highly Compensated Employees.

Contributions or allocations provided for a Leased Employee by the leasing organization, which are attributable to services performed for the recipient employer, shall be treated as provided by the recipient employer.

"Life Insurance Policy": A life insurance, group or individual annuity, deposit administration, or endowment policy or contract owned by the Trust, including any Life Insurance Policy on the life of a Participant or a family member in whom the Participant has an insurable interest, or the joint lives of a Participant and a family member in whom the Participant has an insurable interest.

"Limitation Year": The Plan Year, provided that all qualified plans maintained by the Employer use the same Limitation Year.

"Matching Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Matching Contributions and Forfeitures.

"Matching Contribution": A contribution to the Plan by the Employer that matches in whole or in part a Participant's Elective Deferrals.

"Minimum Top-Heavy Allocation": The minimum allocation of a Participant for which provision is made in Section 2.6.1.

"Non-Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Non-Elective Contributions and Forfeitures.

"Non-Elective Contribution": A contribution to the Plan by the Employer that is not an Elective Deferral, Qualified Non-Elective Contribution, Matching Contribution, or Qualified Matching Contribution.

"Non-Highly Compensated Employee": Any Employee who does not meet the definition of a Highly Compensated Employee in effect for a particular Plan Year.

"Non-Key Employee": An Employee who is not a Key Employee.

"Normal Retirement Age": The date that the Employee attains age 65 and completes 5 Years of Participation, but not to exceed the later of the date that he attains age sixty-five (65) or the fifth (5th) anniversary of his "participation commencement date." For purposes of this Subsection only, a Participant's "participation commencement date" is the first day of the first Plan Year in which the Employee became a Participant.

"Normal Retirement Date": The first day of the month coincident with or next following the date Normal Retirement Age is attained. But in no event later than six (6) months after a Participant's Normal Retirement age.

"Owner-Employee": An individual who is a sole proprietor or who is a partner owning more than ten percent (10%) of either the capital or profits interest of the partnership.

"Participant": Any Eligible Employee who enters the Plan after meeting the requirements of Part II, Article I.

"Plan": The cash or deferred profit sharing plan for Employees as set forth in this Agreement, together with any amendments or supplements thereto.

"Plan Administrator": The person, persons, or entity appointed by the Employer to administer the Plan or, if the Employer fails to make such appointment, the Employer.

"Plan Year": The calendar year. In the event that a short Plan Year exists, each Employee shall be credited with a Year of Credited Service, a Year of Eligibility Service, or a Year of Vesting Service if he is credited with Hours of Service equal to the Hours of Service required for a full year multiplied by the number of months in the short Plan Year divided by twelve (12).

"Preretirement Survivor Annuity": A survivor annuity for the life of the surviving spouse (or other

Beneficiary) of the Participant purchasable with an amount equal to at least fifty percent (50%) of the vested Account balance of the Participant as of the date of the Participant's death, reduced if necessary, to reflect any security interest held by the Plan by reason of an outstanding loan to the Participant for which a valid spousal consent has been obtained.

"Pre-tax Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his Pre-tax Elective Deferrals.

"Pre-tax Elective Deferral": Any Elective Deferral that is not includible in the Participant's gross income at the time deferred.

"Qualified Domestic Relations Order" (QDRO): A domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive all, or a portion of, the benefits payable with respect to a Participant under this or any other plan of the Employer, and that the Plan Administrator has determined to satisfy the conditions of Code section 414(p).

"Qualified Joint and Survivor Annuity": A Joint and Survivor Annuity that is immediately payable and for which the Beneficiary is the Participant's spouse. The percentage of the survivor annuity shall be fifty percent (50%).

"Qualified Matching Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Qualified Matching Contributions.

"Qualified Matching Contribution": A Matching Contribution that is one hundred percent (100%) vested and non-forfeitable when made and that is distributable only in accordance with the distribution restrictions applicable to Elective Deferrals in Section 2.5.12, except that a Qualified Matching Contribution may not be distributed on account of hardship.

"Qualified Military Service": Any service in the uniformed services, whether on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive training, full-time National Guard duty, and the period of time a person is absent to determine his fitness to perform any such duty. Uniformed services refers to the Armed Forces, the Army National Guard, the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

"Qualified Non-Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Qualified Non-Elective Contributions.

"Qualified Non-Elective Contribution": An Employer Contribution that is neither a Non-Elective Contribution, Matching Contribution, Qualified Matching Contribution, nor an Elective Deferral, that is one hundred percent (100%) vested and non-forfeitable when made, that a Participant may not elect to receive in cash, and that is distributable only in accordance with the distribution restrictions applicable to Elective Deferrals under the Plan, except that Qualified Non-Elective Contributions may not be distributed on account of hardship.

"Qualified Optional Survivor Annuity": An immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the Participant and the spouse and which is the amount of benefit which can be purchased with the Participant's vested Account Balance. If the percentage of the survivor annuity is less than seventy-five percent (75%), the applicable percentage is seventy-five percent (75%). If the percentage of the survivor annuity is greater than or equal to seventy-five percent (75%), the applicable percentage is fifty percent (50%).

"Qualified Preretirement Survivor Annuity": A Preretirement Survivor Annuity for which the Beneficiary is the spouse of the Participant and the benefit the Participant would have received is a Qualified Joint and Survivor Annuity (or the actuarial equivalent thereof).

- (a) In the case of a Participant who dies after the date on which the Participant attained the earliest retirement age under the Plan on which he could elect to receive retirement benefits, such survivor annuity shall be immediately payable; and
- (b) In the case of a Participant who dies on or before such date, such survivor annuity shall be an immediate annuity payable commencing in the month in which the Participant would have attained the earliest retirement age under the Plan.

"Qualifying Employer Securities or Real Property": Securities or real property of the Employer that the Trustee may acquire and hold pursuant to the applicable provisions of the Code and the Act.

"Rollover Account": An Account established and maintained for a Participant for accounting purposes with respect to amounts the Participant has rolled over to this Plan.

"Roth Deferral" (an after-tax contribution): Any Employer contributions made to the Plan at the election of the Participant that are: (1) designated irrevocably by the Participant at the time of the cash or deferred election as Roth Deferrals; (2) treated by the Employer as includible in the Participant's income at the time the Participant would have received the contribution amounts in cash if the Participant had not made the deferral election and (3) maintained by the Plan in a separate account. Roth Deferrals must satisfy all Plan restrictions applicable to Elective Deferrals.

Under the separate accounting requirement, contributions and withdrawals of designated Roth Deferrals must be credited and debited to a designated Roth Deferral Account maintained for the Participant who made the designation, and the Plan must maintain a record of the Participant's investment in the contract (i.e., designated Roth Deferrals that have not been distributed) with respect to the Participant's designated Roth Deferral Account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth Deferral Account and other accounts under the Plan. However, Forfeitures may not be allocated to the designated Roth Deferral Account. The separate accounting requirement applies at the time the designated Roth Deferral is contributed to the Plan and must continue to apply until the designated Roth Deferral Account is completely distributed.

A designated Roth Deferral must satisfy the requirements applicable to Elective Deferrals made under the Plan. Thus, Roth Deferrals are subject to the nonforfeatability and distribution restrictions applicable to Elective Deferrals and are taken into account under the ADP Test of Section 2.7.1 in the same manner as Pre-tax Elective Deferrals.

Distributions from Roth Deferral Accounts (other than corrective distributions) are not includible in the Participant's gross income if made after the Participant's death, disability, or age 59-1/2, provided that such distribution occurs after five (5) years from the establishment of the Roth Deferral Account for the Participant. Earnings on corrective distributions of Roth Deferrals are includible in gross income in the same manner as earnings on corrective distributions of Pre-tax Elective Deferrals.

"Roth Deferral Account": An Account established and maintained for a Participant for accounting purposes with respect to his Roth Deferrals.

"Segregated Account": An Account established and maintained for a Participant for accounting purposes with respect to his interest in a Segregated Fund.

"Segregated Fund": Assets held in the name of the Trustee that have been segregated from the other assets of the Trust Fund in accordance with any of the provisions of the Plan. The Plan Administrator may establish and maintain a Segregated Fund with assets that either are deposited initially to the Trust Fund or are transferred to the Segregated Fund at some time after the assets were deposited to the Trust Fund.

"Self-Employed Individual": An individual who has Earned Income for the taxable year from the trade or business for which the Plan is established or who would have had Earned Income but for the fact that the trade or business had no net profit for the taxable year.

"Straight Life Annuity": An annuity payable in equal installments over the life of the Participant that terminates upon the Participant's death.

"True-Up": The process of adjusting a contribution that has been calculated for a specified period of time to the amount determined by recalculating the contribution over a longer period of time.

"Trustee": The persons, corporations, associations, or combination of them who shall act as such from time to time hereunder. The term "Trustee" as used herein shall also include a person holding the assets of a custodial account, an annuity contract, or other contract that is treated as a qualified trust pursuant to Code section 401(f), and references to the Trust Fund shall be construed to apply to such custodial account, annuity contract, or other contract.

"Trust Fund": All money and property of every kind and character held by the Trustee pursuant to the Plan.

"Valuation Date": A date on which the assets of the Trust Fund are valued and Participants' Accounts determined. Assets of the Trust are invested and valued on a daily basis.

"Voluntary Account": An Account established and maintained for a Participant for accounting purposes with respect to his Voluntary Employee Contributions that were not deductible by the Participant at the time they were made.

"Voluntary Employee Contributions": Pre-tax contributions made by a Participant at his discretion, prior to Plan Years beginning in 1987, and after-tax contributions made by a Participant at his discretion, but not including Roth Deferrals or Roth IRA Contributions.

"Year(s) of Eligibility Service": An Eligibility Computation Period in which the Employee completes 1 Hours of Service. Once an Eligible Employee completes the required Hours of Service, he will enter on the Entry Date coincident with or next following such completion, rather than waiting for the end of the Eligibility Computation Period.

"Year(s) of Vesting Service": Each Plan Year during which the Employee completes 1000 Hours of Service.

PART 2

ARTICLE 1

PARTICIPATION

2.1.1 Eligibility Requirements. An Employee that is a member of an employee classification that indirectly imposes an Hours of Service requirement (i.e., part-time, seasonal or temporary) shall be eligible to participate in the Plan in any Eligibility Computation Period in which the Employee attains age 21 and is credited with at least 1000 Hours of Service, or such lesser number of Hours of Service as required by the Plan.

- (a) **Non-Elective Contributions.** Each Eligible Employee shall be eligible to participate in the Non-Elective (Profit Sharing) portion of this Plan on the date the Eligible Employee first performs an Hour of Service with the Employer.
- (b) **Elective Deferrals.** Each Eligible Employee shall be eligible to have the Employer make Elective Deferrals on his behalf on the date the Eligible Employee first performs an Hour of Service with the Employer.
- (c) **Matching Contributions.** Each Eligible Employee shall be eligible for Matching Contributions on the date the Eligible Employee first performs an Hour of Service with the Employer.

2.1.2 Commencement of Participation. Each portion of the Plan has a separate Entry Date. Provided an individual is an Eligible Employee on such date, he shall become a Participant with respect to Non-Elective Contributions on the first day of the Plan Year in which he satisfies the eligibility requirements. Provided an individual is an Eligible Employee on such date, he shall become a Participant with respect to Elective Deferrals on the first day of each calendar month in the Plan Year, coincident with or next following satisfaction of the eligibility requirements. Provided an individual is an Eligible Employee on such date, he shall become a Participant with respect to Matching Contributions on the first day of each calendar month in the Plan Year, coincident with or next following satisfaction of the eligibility requirements.

2.1.3 Participation upon Reemployment.

- (a) **Reemployment After Satisfying Eligibility Requirements.** A Participant whose employment terminates and who is subsequently reemployed shall reenter the Plan as a Participant immediately on the date of his reemployment. If an Eligible Employee completes the requirements set forth in Section 2.1.1 above but his employment terminates prior to becoming a Participant and he is subsequently reemployed after the date he would have become a Participant, such Eligible Employee shall be deemed to have met those requirements as of the date of his reemployment and shall become a Participant on the date of his reemployment. If such Eligible Employee is reemployed prior to the date he would have become a Participant if his employment had not terminated, he shall become a Participant as of the date he would have become a Participant if his employment had not terminated.
- (b) **Reemployment Before Satisfying Eligibility Requirements.** Any Eligible Employee who did not become a Participant before his employment terminated and who is subsequently reemployed shall become a Participant in accordance with the provisions of Sections 2.1.1 and 2.1.2.

2.1.4 Termination of Participation. An Eligible Employee who becomes a Participant shall remain a Participant until his entire vested and non-forfeitable Account balance is distributed to him, or his Beneficiary, in the event of his death.

2.1.5 Plan Administrator's Determination. In the event any question arises regarding the eligibility of any person to become a Participant or the commencement of participation, the Plan Administrator shall

determine such question and the Plan Administrator's decision shall be conclusive and binding, except to the extent of a claimant's right to appeal the denial of a claim.

2.1.6 Existing Participants. An Employee who, on the Effective Date of this Plan, was a Participant under the provisions of the Plan as in effect immediately prior to the Effective Date shall be a Participant on the Effective Date and the provisions of Sections 2.1.1 and 2.1.2, pertaining to participation, shall not be applicable to such Employee unless such Participant is excluded from participation because such Participant has become a member of an excluded class, as provided in Section 2.1.7. The rights of a Participant whose employment terminated prior to the Effective Date shall be determined under the provisions of the Plan as in effect at the time of such termination.

2.1.7 Change in Status. If any Participant continues in the employ of the Employer or an affiliate for which service is required to be taken into account but ceases to be an Eligible Employee by becoming a member of any ineligible class for any reason (such as becoming covered by a collective bargaining agreement unless the collective bargaining agreement otherwise provides), the Participant shall continue to be a Participant until his entire Account balance is distributed, but the individual shall not be entitled to receive an allocation of contributions or Forfeitures during the period that the Participant is not an Eligible Employee for such reason. Such Participant shall continue to receive credit for Years of Vesting Service completed during the period for purposes of determining his vested and non-forfeitable interest in his Accounts. In the event that the individual subsequently becomes a member of an eligible class of Employees, the individual shall participate immediately upon the date of such change in status. If such Participant incurs a Break in Service and is subsequently reemployed, eligibility to participate shall be determined in accordance with Section 2.1.3. In the event that an individual who is not a member of an eligible class of Employees becomes a member of an eligible class, the individual shall participate immediately if such individual has satisfied the eligibility requirements and would have otherwise previously become a Participant and shall receive credit for Years of Vesting Service completed while in the ineligible class for purposes of determining his vested and non-forfeitable interest in his Accounts.

2.1.8 Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to Qualified Military Service will be provided in accordance with Code section 414(u) and applicable Labor and Treasury rules and regulations.

2.1.9 One-Time Election Not to Participate.

(a) Notwithstanding anything contained in the Plan to the contrary, an Eligible Employee may elect, with the approval of the Employer, not to participate in the Plan. The election must:

- (1) Include plans not yet established;
- (2) Be for the duration of the Employee's employment with the Employer;
- (3) Be a one-time irrevocable election; and
- (4) Be made no later than the first date an Employee becomes eligible under the Plan or any plan or arrangement of the Employer that is described in Code section 219(g)(5)(A) (whether or not such other plan or arrangement has terminated).

Such a one-time irrevocable election described in this Section shall not be treated as having been made pursuant to a cash or deferral election.

(b) In the case of an irrevocable election made on or before December 23, 1994:

- (1) The election does not fail to be treated as a one-time irrevocable election under this Section merely because an Employee was previously eligible under another plan of the Employer (whether or not such other plan has terminated); and
- (2) In the case of a plan in which partners may participate, the election does not fail to be treated as a one-time irrevocable election under this Section merely because the election was made after the

partner's Employment Commencement Date or after the Employee first became eligible under any plan of the Employer, provided that the election was made before the first day of the first Plan Year beginning after December 31, 1988, or, if later, March 31, 1989.

ARTICLE 2

CONTRIBUTIONS

2.2.1 Employer Contributions. The Employer intends to continue the Plan and make regular contributions to the Trust Fund each year. Except as provided in Section 2.2.2, such contributions are irrevocable once transferred to the Trust Fund.

- (a) Non-Elective Contributions. The Employer shall make Non-Elective Contributions to the Profit Sharing portion of the Plan each year in an amount specified by the Employer annually, such amount not limited to the profits of the Employer.
- (b) Matching Contributions. The Employer shall make Matching Contributions to the Plan each year in an amount specified by the Employer annually.
- (c) Qualified Non-Elective Contributions and Qualified Matching Contributions. This Plan does not provide either Qualified Non-Elective Contributions or Qualified Matching Contributions.

Further, the Employer may always make Qualified Non-Elective Contributions and Qualified Matching Contributions pursuant to a correction permitted under Rev. Proc. 2013-12, the Employee Plans Compliance Resolution System, as it is amended from time to time.

- (d) Limitation. The Employer's contribution for any Plan Year shall not exceed the maximum amount deductible from the Employer's income for such Year for federal income tax purposes under the applicable Code sections.
- (e) Time of Contribution. All contributions described in this Section shall be delivered to the Trustee not later than the date fixed by law for the filing of the Employer's federal income tax return for the Year for which such contribution is made (including any extensions of time granted by the Internal Revenue Service for filing such return).
- (f) Determination of Amount to be Final. The Employer's determination of the amount to be contributed by the Employer hereunder shall be in all respects final, binding, and conclusive on all persons or parties having or claiming any rights under this Agreement or under the Plan and related Trust. Under no circumstances and in no event shall any Participant, Beneficiary, or other person or party have any right to examine the Employer's books or records. This subparagraph shall not operate to limit any right to review granted by ERISA.

2.2.2 Return of Contributions. The Trustee shall return Employer Contributions to the Employer in the following instances:

- (a) If the Employer made the contribution because of a mistake of fact, then the Trustee shall return such contribution within one (1) year after its payment upon the Employer's written request.
- (b) Each contribution by the Employer is conditioned on initial qualification of the Plan under the applicable sections of the Code. If the Commissioner of Internal Revenue determines that the Plan does not initially qualify, then the contribution made incident to the initial qualification by the Employer shall be returned within one (1) year after the date of denial of initial qualification of the Plan, but only if the application for initial qualification is made by the time prescribed by law for filing the Employer's tax return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.
- (c) Each contribution by the Employer is conditioned upon the deductibility of the contribution under the applicable sections of the Code. If the deduction for part or all of the contribution is disallowed, the Trustee shall return the contribution to the Employer, to the extent of such disallowance, within one (1)

year after such disallowance.

2.2.3 Voluntary Employee Contributions. Voluntary Employee Contributions are not permitted under this Plan.

2.2.4 Elective Deferrals. The Employer shall transfer to the Trustee or other custodian any Elective Deferrals made by a Participant. Such transfer shall occur **on the earliest date** that the Elective Deferrals can be segregated from other assets of the Employer, but not later than the fifteenth (15th) business day of the month following the month in which the Elective Deferrals are withheld from the Participant or otherwise received by the Employer.

2.2.5 Deemed Pre-tax IRA. This Plan does not permit deemed pre-tax IRA contributions.

2.2.6 Deemed Roth IRA. This Plan does not permit Roth IRA contributions.

ARTICLE 3

ALLOCATIONS

2.3.1 Non-Elective Contributions.

- (a) Eligible Participants. As of each Valuation Date, the Non-Elective Contribution (including any applicable Forfeitures as specified in 2.3.8) shall be allocated among the Non-Elective Accounts of all Participants who are employed on the last day of the Plan Year.

Individuals who die or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service, with respect to the Employer maintaining the Plan, shall be treated as if the individual has resumed employment in accordance with the individual's reemployment rights under Code section 414(u) on the day preceding death or Disability (as the case may be) and terminated employment on the actual date of death or Disability. In the case of any such treatment, and subject to the following Paragraphs, any full or partial compliance by the Plan with respect to the Employer Contribution requirements of Code section 414(u)(8) with respect to such individual, shall be treated for purposes of Code section 414(u)(1) as if such compliance were required under such section.

The prior Paragraph shall apply only if all individuals performing Qualified Military Service with respect to the Employer maintaining the Plan (as determined under Code sections 401(b), (c), (m), and (o)) who die or became Disabled as a result of performing Qualified Military Service prior to reemployment by the Employer are credited with service and benefits on reasonably equivalent terms. The amount of Employee Contributions and the amount of Elective Deferrals of an individual treated as reemployed under the Paragraph above, for purposes of applying Code section 414(u)(8)(C), shall be determined on the basis of the individual's average actual Employee Contributions or Elective Deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to Qualified Military Service; or (ii) the actual length of continuous service with the Employer, if service with the Employer is less than such 12-month period. The death benefit provisions of this section are effective on or after January 1, 2007 and shall apply to any death or Disability occurring under the Plan.

- (b) Basic Allocation. Each eligible Participant (as determined in Subsection 2.3.1(a) above) shall receive an allocation equal to a dollar amount, such dollar amount determined by dividing the Non-Elective Contribution for the Plan Year by the number of eligible Participants for the Plan Year. In the event that the resulting dollar amount is not an even number, those eligible Participants with the most Hours of Service shall receive the residual pennies.

2.3.2 Elective Deferrals, Deemed Elections, Catch-up Contributions, and Roth Deferrals.

- (a) Elective Deferrals. Each Eligible Employee may elect to have the Employer contribute on his behalf a percentage or dollar amount of his Compensation that would otherwise be immediately payable. Such amounts may not exceed the limits imposed by section 402(g) of the Code.

The Plan Administrator shall determine the manner in which a Participant may elect to have the Employer make Elective Deferrals on his behalf and may require the Participant to elect a deferral in whole dollars, whole percentages, or both. The Plan Administrator must establish reasonable periods during which the Participant may make or modify such an election and must allow at least one opportunity per Plan Year to make or modify an election. Unless otherwise specified, an election may be made or modified during the first and last months of the Plan Year. An election may be revoked at any time. A Participant may not make a retroactive election, and once an election is made, it shall stay in effect until the Participant modifies or revokes it.

- (b) Catch-up Contributions. The Plan does not permit Catch-up Contributions.

- (c) Roth Deferrals. The Plan does not permit Roth Deferrals.

2.3.3 Matching Contributions.

- (a) Eligible Participants. As of the last day of each pay period, the Matching Contribution (including any applicable Forfeitures as specified in 2.3.8) shall be allocated among the Matching Accounts of all Participants during the Plan Year.
- (b) Matching Allocation. Each eligible Participant (as determined in Subsection (a) above) shall receive an allocation equal to a discretionary percentage of the Matching Contribution determined by the Employer, according to each tier of a Participant's Elective Deferrals, as determined by the Employer according to the tiered matching formula that the Employer adopts in its discretion, provided that the Employer communicates such formula to Participants.

The Plan will not allocate any Matching Contributions to Elective Deferrals in excess of 7.000% of his Compensation for the Plan Year.

2.3.4 Qualified Non-Elective Contributions.

- (a) Eligible Participants. Any Qualified Non-Elective Contribution made by the Employer shall be allocated among the Qualified Non-Elective Accounts of all Participants who are employed on the last day of the Plan Year.
- (b) Allocation. Each eligible Participant (as determined in Subsection 2.3.4(a) above) shall receive an allocation equal to a percentage of the Qualified Non-Elective Contribution for the Plan Year, such percentage to equal to the ratio that the Participant's Compensation for the Plan Year bears to the aggregate Compensation for all eligible Participants.
- (c) Timing of Allocation. Any allocation of Qualified Non-Elective Contributions under this Section shall be made and deposited to the Qualified Non-Elective Accounts of all eligible Participants prior to the last day of the Plan Year following the Plan Year for which the ADP Test or ACP Test is being performed.

2.3.5 Qualified Matching Contributions.

- (a) Eligible Participants. Any Qualified Matching Contribution made by the Employer shall be allocated among the Qualified Matching Accounts of all Participants who are employed on the last day of the Plan Year.
- (b) Allocation. Each eligible Participant (as determined in Subsection 2.3.5(a) above) shall receive an allocation equal to the amount necessary to satisfy the ADP or ACP Tests, beginning with the lowest paid Non-Highly Compensated Employees and allocated in a manner that complies with Treasury Regulations sections 1.401(k)-2(a)(6)(v) or 1.401(m)-2(a)(5)(ii), respectively.
- (c) Timing of Allocation. Any allocation of Qualified Matching Contributions under this Section shall be made and deposited to the Qualified Matching Accounts of all eligible Participants prior to the last day of the Plan Year following the Plan Year for which the ADP Test or ACP Test is being performed.

2.3.6 Minimum Top-Heavy Allocation. In the event that the Plan is Top-Heavy for the Plan Year, the provisions of Section 2.6.1 shall apply.

2.3.7 Allocations on Behalf of Disabled Participants. No special provisions are made with respect to Disabled Participants. A Participant shall share in the Non-Elective Contribution and, if applicable, the Matching Contribution, if he meets the requirements of Subsection 2.3.1(a).

2.3.8 Forfeiture Allocations. As of each Anniversary Date, Forfeitures that arose from Section 2.4.8 during the Plan Year shall be applied according to this Section. Forfeitures attributable to Non-Elective Contributions shall be used to restore any Participant's Account balance that was forfeited and for which the Participant has repaid his vested distribution or has made a valid claim. Any remaining Forfeitures shall be used by the Employer to offset administrative expenses of the Plan to the extent they are Plan expenses

and not settlor expenses. Any remaining Forfeitures shall be used to reduce Employer Contributions otherwise payable to the Plan. For each Plan Year that Forfeitures are allocated, the Plan Administrator shall designate the specific Employer Contribution or Contributions that the Forfeitures reduce. Forfeitures attributable to Matching Contributions shall be used to restore any Participant's Account balance that was forfeited and for which the Participant has repaid his vested distribution or has made a valid claim. Any remaining Forfeitures shall be used by the Employer to offset administrative expenses of the Plan to the extent they are Plan expenses and not settlor expenses. Any remaining Forfeitures shall be used to reduce Employer Contributions otherwise payable to the Plan. For each Plan Year that Forfeitures are allocated, the Plan Administrator shall designate the specific Employer Contribution or Contributions that the Forfeitures reduce.

2.3.9 Restoration of Forfeitures. If a Participant is entitled to a restoration of his Forfeitures under Section 2.4.8, such amount shall be restored from Forfeitures that would otherwise be applied according to Section 2.3.8. To the extent that such Forfeitures are insufficient to restore the Participant's Non-Elective Account (or Matching Account), an additional Non-Elective Contribution (or Matching Contribution) shall be made and specifically allocated to the Participant's Accounts.

2.3.10 Fail Safe Allocations. The Plan may satisfy the minimum coverage requirements of Code section 410(b) by meeting either the ratio percentage test of Code section 410(b)(1) and Treasury Regulations section 1.410(b)-2(b)(2) or the average benefit test of Code section 410(b)(2) and Treasury Regulations section 1.410(b)-2(b)(3). The Plan does not use any fail-safe provisions; thus if the Plan would otherwise fail to satisfy Code section 410(b) and the regulations thereunder, it must be amended to bring the Plan into compliance.

2.3.11 Maximum Permitted Disparity. A Participant's allocation, as determined in Subsection 2.3.1(b), is not restricted by the maximum permitted disparity limitations of Code section 401(l).

ARTICLE 4

VESTED BENEFITS

2.4.1 Non-Elective Account. The vested and non-forfeitable interest in a Participant's Non-Elective Account shall be determined by this Section.

- (a) Normal or Postponed Retirement. If a Participant terminates employment at or after attaining Normal Retirement Age, he shall be one hundred percent (100%) vested and have a non-forfeitable interest in his Non-Elective Account. If a Participant continues in active employment following his Normal Retirement Age, he shall continue to participate under the Plan.
- (b) Early Retirement. The Plan does not provide for Early Retirement.
- (c) Disability. If a Participant terminates employment prior to Normal Retirement Age due to Disability, the Participant shall continue to accrue Years of Vesting Service as if he were still employed by the Employer, until the Participant is either employed by another employer or no longer classified as being Disabled. A Participant who returns to the employ of the Employer will continue to accrue Years of Vesting Service as if he had never terminated employment with the Employer and will have his vested percentage determined as of his subsequent date of termination.
- (d) Death. In the event of the death of a Participant before termination of employment with the Employer and before Normal Retirement Age, the Participant shall be one hundred percent (100%) vested and have a non-forfeitable interest in his Non-Elective Account.
- (e) Resignation or Discharge. Subject to Section 2.4.6, if a Participant terminates by reason of resignation or discharge prior to his Normal Retirement Age, he shall be vested and have a non-forfeitable interest in a percentage of his Non-Elective Account, determined, unless otherwise specified in Section 2.4.5, by taking into account all of his Years of Vesting Service as of such termination date in accordance with the following schedule, or if applicable, the schedule in Section 2.6.1:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 1	0%
1	33.000%
2	66.000%
3	100.000%
4	100.000%
5	100.000%
6 or more	100%

In the event that a Participant receives a distribution of a portion of his vested Account balance in accordance with Section 2.5.12 or another provision of the Plan, and the Participant is less than one hundred percent (100%) vested in his Non-Elective Account, then his vested and non-forfeitable Non-Elective Account at any future time shall equal:

- (1) The vested percentage determined above or in Section 2.6.1 multiplied by his Non-Elective Account, less
- (2) His non-vested percentage multiplied by his actual distribution multiplied by the ratio of his Non-Elective Account at the time of determination, but disregarding any increase attributable to Non-Elective Contributions or Forfeitures after the distribution, over his Non-Elective Account immediately after the distribution.

$$[P(A+RD)-RD=PA+PRD-RD=PA+(P-1)RD=PA-(1-P)DR]$$

[P = vested percent at relevant time

A = account balance at relevant time

D = amount of distribution

R = the ratio of the account balance at the relevant time to the account balance after the distribution]

2.4.2 Elective Account. A Participant shall at all times be one hundred percent (100%) vested and have a non-forfeitable interest in his Elective Account.

2.4.3 Matching Account. The vested and non-forfeitable interest in a Participant's Matching Account shall be determined by this Section.

- (a) Normal or Postponed Retirement. If a Participant terminates employment at or after attaining Normal Retirement Age, he shall be one hundred percent (100%) vested and have a non-forfeitable interest in his Matching Account. If a Participant continues in active employment following his Normal Retirement Age, he shall continue to participate under the Plan.
- (b) Early Retirement. The Plan does not provide for Early Retirement.
- (c) Disability. If a Participant terminates employment prior to Normal Retirement Age due to Disability, the Participant shall continue to accrue Years of Vesting Service as if he were still employed by the Employer, until the Participant is either employed by another employer or no longer classified as being Disabled. A Participant who returns to the employ of the Employer will continue to accrue Years of Vesting Service as if he had never terminated employment with the Employer and will have his vested percentage determined as of his subsequent date of termination.
- (d) Death. In the event of the death of a Participant before termination of employment with the Employer and before Normal Retirement Age, the Participant shall be one hundred percent (100%) vested and have a non-forfeitable interest in his Matching Account.
- (e) Resignation or Discharge. Subject to Section 2.4.6, if a Participant terminates by reason of resignation or discharge prior to his Normal Retirement Age, he shall be vested and have a non-forfeitable interest in a percentage of his Matching Account, determined, unless otherwise specified in Section 2.4.5, by taking into account all of his Years of Vesting Service as of such termination date in accordance with the following schedule, or if applicable, the schedule in Section 2.6.1:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 1	0%
1	33%
2	66%
3	100%
4	100%
5	100%
6 or more	100%

In the event that a Participant receives a distribution of a portion of his vested Account balance in accordance with Section 2.5.12 or another provision of the Plan, and the Participant is less than one hundred percent (100%) vested in his Matching Account, then his vested and non-forfeitable Matching Account at any future time shall equal:

- (1) The vested percentage determined above or in Section 2.6.1 multiplied by his Matching Account, less
- (2) His non-vested percentage multiplied by his actual distribution multiplied by the ratio of his Matching Account at the time of determination, but disregarding any increase attributable to Matching Contributions or Forfeitures after the distribution, over his Matching Account immediately after the

distribution.

$$[P(A+RD)-RD=PA+PRD-RD=PA+(P-1)RD=PA-(1-P)DR]$$

2.4.4 Other Accounts. The vested and nonforfeitable interest of the Participant in his Controlled Account shall be determined by reference to the Account from which the funds were originally transferred. Unless otherwise specified, all other Accounts of a Participant shall be one hundred percent (100%) vested and non-forfeitable at all times.

2.4.5 Service Not Taken into Account. In determining a Participant's vesting percentage in Subsections 2.4.1(e) and 2.4.3(e), all Years of Vesting Service with the Employer shall be included.

2.4.6 Reemployment. In the case of a Participant who has incurred a Break in Service, the Plan Administrator will not take into account Years of Vesting Service before such break until the Participant has completed a Year of Vesting Service after such Break in Service.

In the case of a Participant who has five (5) or more consecutive Breaks in Service, the Plan Administrator will count Participant's pre-break service in vesting of the post-break Non-Elective Account (or Matching Account) only if either:

- (a) Such Participant had any non-forfeitable interest in his Non-Elective Account (or Matching Account) at the time of his termination of employment, or
- (b) Upon returning to service, the number of consecutive Breaks in Service is less than the Participant's Years of Vesting Service before such breaks.

Any Years of Vesting Service not taken into account because of such Breaks in Service shall not be taken into account in applying the foregoing to a subsequent period of Breaks in Service.

In the case of a Participant who does not have five (5) consecutive Breaks in Service, the Participant's pre-break service will count in vesting of the post-break Non-Elective Account (or Matching Account).

A Participant's post-break service will count in vesting of the pre-break Non-Elective Account (or Matching Account) if the Participant either (a) did not receive a distribution of his vested Non-Elective Account (or Matching Account) before his reemployment, or (b) he repays such amount pursuant to Section 2.4.8.

2.4.7 Leave of Absence. A temporary cessation from active employment with the Employer pursuant to an authorized leave of absence in accordance with the nondiscriminatory policy of the Employer, whether occasioned by illness, military service, or any other reason shall not be treated as either a termination of employment or a Break in Service provided that the Employee returns to employment in a manner consistent with the authorized leave of absence.

2.4.8 Forfeitures. If a Participant terminates service with the Employer, and the Participant receives a distribution of the entire vested portion of his Account balance, the Participant shall forfeit the non-vested portion. If the value of a Participant's vested Account balance is zero, the Participant shall be deemed to have received a distribution of such vested Account balance as of the last day of the Plan Year in which he terminates employment with the Employer.

The Plan Administrator shall recognize non-vested portions as Forfeitures as of the last day of the Plan Year in which the Participant's entire vested interest is distributed. Notwithstanding the foregoing, a Participant's non-vested portion of his Non-Elective Account (or Matching Account) shall not be deemed a Forfeiture for any Plan Year or any allocation date in which the Participant is entitled to an allocation of Forfeitures.

If a Participant has less than a one hundred percent (100%) vested and non-forfeitable interest in his Non-Elective Account (or Matching Account), receives a distribution from such Account, and later resumes employment covered under the Plan, his entire Non-Elective Account (or Matching Account) shall be restored to the amount on the date of distribution if the Participant repays to the Plan the full amount of the

distribution from such Account. Such repayment must be made within five (5) years of the first date on which the Participant is subsequently reemployed by the Employer. A Participant who does not repay his distribution within such period will permanently forfeit the non-vested portion of such Account. In the event of repayment, neither the Trust nor the Employer shall be liable for any federal or state income tax resulting from the distribution and the Participant shall indemnify and hold harmless the Trust and the Employer for and from any such liability.

If a Participant is deemed to receive a distribution pursuant to this Section, and the Participant resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, his Non-Elective Account (or Matching Account) shall be restored to the amount on the date of the deemed distribution as of the date of the reemployment of such Participant.

2.4.9 Partial Termination of the Plan. Determining whether a partial termination of the Plan pursuant to Code section 411(d)(3) has occurred depends on the facts and circumstances including the extent to which participating Employees have had a severance from employment. If the turnover rate is at least twenty percent (20%), there is a presumption that a partial termination of the Plan has occurred. The partial plan termination provisions of this Section are effective for Plan Years beginning on or after December 31, 2007.

2.4.10 Termination of Plan. In the event of Plan termination (including termination due to a complete discontinuance of contributions by the Employer), each Participant employed by the Employer as of the date of such termination shall be one hundred percent (100%) vested and have a non-forfeitable interest in all of his Accounts. In the event of a partial Plan termination, each Participant employed by the Employer with respect to whom such partial termination has occurred shall be one hundred percent (100%) vested and have a non-forfeitable interest in all of his Accounts.

ARTICLE 5

DISTRIBUTIONS

2.5.1 General Rules.

- (a) The requirements of this Article shall apply to any distribution of a Participant's vested Account balance and will 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, 2002.
- (b) All distributions required under this Article shall be determined and made in accordance with Code section 401(a)(9) and the applicable regulations, including the minimum distribution incidental benefit requirements of Code section 401(a)(9)(G). In the event that a provision of this Plan conflicts with such requirements, such requirements shall govern.
- (c) As of the first Distribution Calendar Year (defined in Subsection 2.5.4(i)(1)), distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):
 - (1) The life of the Participant;
 - (2) The life of the Participant and a Designated Beneficiary;
 - (3) A period certain not extending beyond the Life Expectancy of the Participant; or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary.
- (d) If the value of the Participant's vested and nonforfeitable interest in the Plan at the time of his termination of employment is zero, the Participant shall be deemed to have received a distribution of such interest as of the date his employment terminated.

2.5.2 Immediate Distributions. A Participant whose employment terminates on account of death, Disability, or retirement may elect (or his Beneficiary may elect) to commence distribution of his vested benefits within a reasonable period after the date specified in Section 2.5.5, or delay the commencement of benefits, subject to the provisions of Sections 2.5.3, 2.5.4 and 2.5.7(d). A Participant whose employment is terminated because of resignation or discharge before meeting the eligibility requirements of Normal Retirement may elect to commence distribution of his vested benefits within a reasonable period after the date specified in Section 2.5.5, or delay the commencement, subject to the provisions of Sections 2.5.3, 2.5.4 and 2.5.7(d).

2.5.3 Deferred Distributions. Unless the Participant elects otherwise, or for amounts subject to Subsection 2.5.7(d), for which a Participant's consent is not required, a Participant's vested and non-forfeitable Account balance shall be dispersed no later than the sixtieth (60th) day after the last day of the Plan Year in which the latest of the following occurs:

- (a) The Participant attains the earlier of age sixty-five (65) or the Normal Retirement Age;
- (b) The Participant reaches the tenth (10th) anniversary of participating in the Plan; or
- (c) The Participant terminates his employment with the Employer.

A Participant who terminates employment before satisfying the age requirement for Normal Retirement but has satisfied any service requirement shall be entitled to a distribution of his vested benefits in accordance with Section 2.5.2 upon attaining such age.

If the Participant becomes Disabled after termination of employment, he shall be entitled to commence distribution of his vested Account balance as if he became Disabled prior to termination of employment.

The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution while the Participant's Account balance in the Plan is Immediately Distributable, as defined in Subsection 2.5.4(i)(2). The Plan Administrator shall give such notice to the Participant at least thirty (30), but no more than ninety (90), days before the distribution. The Participant and the Participant's spouse may elect a distribution commencing less than thirty (30) days after the notice is provided to the Participant if the notice clearly indicates that the Participant has at least thirty (30) days to decide whether to consent to the distribution. The failure of a Participant, or the Participant's spouse, to consent to a distribution while the benefit is Immediately Distributable shall be deemed an election to defer commencement of benefits under this Section. If the Plan meets the requirements of Subsection 2.5.8(j), only the Participant must consent to the distribution of an Account balance that is Immediately Distributable.

2.5.4 Required Minimum Distributions.

(a) Required Beginning Date. Notwithstanding anything herein to the contrary, unless the Participant has made an appropriate TEFRA 242(b)(2) election, as described in Subsection 2.5.4(j), that has not been revoked or modified, the Participant's entire benefit shall be distributed, or begin to be distributed, to the Participant no later than the Required Beginning Date, as defined in Subsection 2.5.4(i)(5).

(b) Timing of Distributions if Participant Dies Before Distributions Begin.

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

- (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to 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.
- (ii) 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.
- (iii) If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year the Participant died, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) 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 Subsection 2.5.4(b), other than Subsection 2.5.4(b)(1)(i), will apply as if the surviving spouse were the Participant.

(2) For purposes of this Subsection 2.5.4(b) and Subsections 2.5.4(f) and (g), distributions are considered to begin on the Participant's Required Beginning Date unless Subsection 2.5.4(b)(1)(iv) applies. If Subsection 2.5.4(b)(1)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Subsection 2.5.4(b)(1)(i). 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 Subsection 2.5.4(b)(1)(i)), the date distributions are considered to begin is the date distributions actually commence.

(c) 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, distributions will be made in accordance with Subsections 2.5.4(d) and (f) as of the first Distribution Calendar Year. 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 Code section 401(a)(9) and the applicable regulations. Notwithstanding any other provision of the Plan to the contrary, a Beneficiary may elect to receive distributions pursuant to this Section in the form of installment payments. If payments are in the form of an annuity distributions will be paid in periodic payments made at intervals not longer than one year, once payments have begun over a period certain, the period certain will not be changed and annuity payments will be nonincreasing or increase only as provided with Treasury Regulation 1.401(a)(9)-6, Q&A 14.

(d) Required Minimum Distributions During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (1) The quotient obtained by dividing the Participant's Account balance by the distribution period set forth in the Uniform Lifetime Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
- (2) 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 Treasury Regulations section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(e) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Subsection 2.5.4(d) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

(f) Required Minimum Distributions On or After Date Required Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date required 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:

- (i) The Participant's remaining Life Expectancy is calculated in accordance with the Single Life Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated using the Single Life Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-1, 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.
- (iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated under the Single Life Table using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a 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 under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(g) Distribution Amount If Participant Dies Before Date Required Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required 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 Subsection 2.5.4(f).
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and all Designated Beneficiaries, if any, as of the Participant's date of death are no longer Beneficiaries as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If all of the following are true, this Subsection 2.5.4(g) will apply as if the surviving spouse were the Participant:
 - (i) The Participant dies before the date distributions begin,
 - (ii) The Participant's surviving spouse is the Participant's sole Designated Beneficiary, and
 - (iii) The surviving spouse dies before distributions are required to begin to the surviving spouse under Subsection 2.5.4(b)(1).

(h) Asset Rollovers and Transfers.

- (1) If a Participant requests a rollover of his benefits to a qualified plan not maintained by the Employer during his first or subsequent Distribution Calendar Year, or a Participant's benefits are transferred to another qualified plan, such rollover or transfer shall be reduced by the required minimum distribution for the Distribution Calendar Year under Code section 401(a)(9) and the reduction shall be distributed to the Participant by the appropriate date.
- (2) If the Plan receives a rollover or transfer with respect to a Participant who has reached his Required Beginning Date, the Plan shall distribute the required minimum distribution under Code section 401(a)(9) beginning with the following calendar year. In the event that the beneficiary or method of distribution with respect to transferred assets differs from the Beneficiary or method of distribution of this Plan, the Plan will segregate the transferred assets and continue to distribute the benefits from the originating plan in accordance with the method of distribution and Life Expectancy of the originating plan.

(i) Definitions. For this Section 2.5.4, the terms below shall have the following meanings:

- (1) "Distribution Calendar Year": A calendar year for which a minimum distribution is required. For distributions beginning before a Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after a Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Subsection 2.5.4(b)(1). 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 Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (2) "Immediately Distributable": A Participant's Account balance is Immediately Distributable if any part of the balance could be distributed to the Participant, (or surviving spouse), before the Participant attains, (or would have attained if not deceased), the later of age sixty-two (62) or his Normal Retirement Age.
- (3) "Life Expectancy": Life expectancy as computed by use of one of the following tables, found in Treasury Regulations section 1.401(a)(9)-9, as appropriate:
- (i) Single Life Table;
 - (ii) Uniform Life Table; or
 - (iii) Joint and Last Survivor Table
- (4) "Participant's Account Balance" (For purposes of required minimum distributions only):
- (i) General Rule. The calendar year immediately preceding the Distribution Calendar Year is the "valuation calendar year." The Participant's Account Balance as of the last Valuation Date in the valuation calendar year is increased by the amount of any contributions made and allocated or Forfeitures allocated to the Participant's 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. If an amount is distributed or transferred from another source during the valuation calendar year, that amount is included in the Participant's Account Balance for the valuation calendar year regardless if such amount is transferred or rolled over to the Plan in the valuation calendar year or in the Distribution Calendar Year.
 - (ii) Exception for second Distribution Calendar Year. For purposes of Subsection (i) 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.
- (5) "Required Beginning Date": The date on which benefits must commence to a Participant or his Beneficiary, determined as follows:
- (i) The Required Beginning Date of a Participant who is not a 5-Percent Owner (as modified by Subsection (iii) below) shall be the April 1 of the calendar year following the later of the calendar year in which the Participant retires or the calendar year in which the Participant attains age seventy and one-half (70-1/2). If the Participant is a 5-Percent Owner, his Required Beginning Date is the April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70-1/2).
 - (ii) Transition Rule That Remains Relevant Due To Code Section 411(d)(6).
 - (A) If previously provided by the Plan, any Participant who is not a 5-Percent Owner and attains age 70-1/2 in years after 1995 may elect by April 1 of the calendar year following the year in which the Participant attained age 70-1/2, (or by December 31, 1997 in the case of a Participant attaining age 70-1/2 in 1996) to defer distributions until the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant who is not a 5-Percent Owner will begin receiving distributions by April 1 of the calendar year following the year in which the Participant attained age 70-1/2 (or by December 31, 1997 in the case of a Participant attaining age 70-1/2 in 1996).
 - (B) If previously provided by the Plan, any Participant who attained age 70-1/2 in years prior to 1997 but not earlier than January 1, 1996, was permitted to elect to stop distributions and recommence by the April 1 of the calendar year following the year in which the Participant retires. An Employer who adopted this option selected either:

(1) A new Annuity Starting Date (as defined in Subsection 2.5.8(e)(1)) upon recommencement, or

(2) No new Annuity Starting Date upon recommencement.

(C) If previously provided by the Plan, the pre-retirement age 70-1/2 distribution option was only eliminated with respect to Employees who reach age 70-1/2 in or after a calendar year that begins after the later of December 31, 1998, or the date that the Employer adopted the GUST Restatement of this Plan.

(iii) **5-Percent Owner.** A Participant is treated as a 5-Percent Owner for purposes of this Section if such Participant is a 5-Percent Owner as defined in Part I, Article II at any time during the Plan Year ending with or within the calendar year in which such owner attains age seventy and one-half (70-1/2). Once distributions have begun to a 5-Percent Owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-Percent Owner in a subsequent year.

(j) TEFRA Section 242(b)(2) Election.

(1) Notwithstanding the other requirements of this Article and subject to the requirements of Sections 2.5.7 and 2.5.8, distribution on behalf of any Employee, including a 5-Percent Owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(i) The distribution by the Plan is one that would not have disqualified the Plan under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.

(iii) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.

(iv) The Employee had an Account balance under the Plan as of December 31, 1983.

(v) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.

(2) 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 Employee.

(3) For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the Employee or the 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 Subsections 2.5.4(j)(1)(i) and (v).

(4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code section 401(a)(9) and the applicable regulations. If a designation is revoked subsequent to the date distributions to a Participant were 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 that would have been required to have been distributed to the Participant to satisfy Code section 401(a)(9) and the applicable regulations, but for the TEFRA section 242(b)(2) election. For

calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered 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 to be 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).

- (5) If an amount is transferred or rolled over from one plan to another plan, the rules in Treasury Regulations section 1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

2.5.5 Distribution Determination Date.

- (a) Resignation or Discharge. The value of the vested Account balance for a Participant whose employment terminates due to resignation or discharge shall be determined as soon as administratively feasible following the date of termination, based on the preceding Valuation Date.
- (b) Death, Disability, or Retirement. The value of the vested Account balance for a Participant whose employment terminates due to death, Disability, or retirement shall be determined as soon as administratively feasible following the date of termination, based on the preceding Valuation Date.
- (c) Voluntary, Deductible Voluntary, and Rollover Accounts. Notwithstanding any other provisions of this Section, the balance in a Participant's Voluntary, Deductible Voluntary, and Rollover Accounts shall be determined as soon as administratively feasible following the date of termination, based on the preceding Valuation Date.
- (d) Termination of Plan. In the event of Plan termination (including termination resulting from a complete discontinuance of contributions by the Employer), the Distribution Determination Date shall be the date of such termination. In the event of a partial Plan termination, the Distribution Determination Date for each Participant with respect to whom such partial termination has occurred shall be the last day of the Plan Year coinciding with or immediately following the date of such partial termination.
- (e) Valuations Determined at Other Times. If any Participant receives a distribution pursuant to the terms of the Plan as of any date other than a Valuation Date, then such distribution will include actual earnings credited to the date of distribution.

Notwithstanding the foregoing, if any portion of a Participant's Account balance is invested in Accounts that are valued on a daily basis, the value of that portion of his Account balance shall be the value on the actual date of distribution.

2.5.6 Time of Distribution.

- (a) Termination for reasons other than retirement, death, or Disability. A Participant who resigns or is discharged prior to retirement for reasons other than death or Disability shall be entitled to a distribution of his entire Account balance within a reasonable period following the Distribution Determination Date.
- (b) Termination due to retirement, death, or Disability. A Participant who retires, dies, or terminates employment due to Disability shall be entitled to a distribution of his entire Account balance within a reasonable period following the Distribution Determination Date.
- (c) Plan Termination and Partial Termination. In the event that the Plan terminates, including a termination resulting from a complete discontinuance of contributions, or has a partial plan termination, each Participant shall be entitled to his Account balance as soon as administratively feasible following such termination.
- (d) Rehires. Subject to Subsection (b) above, a distribution shall not be made under this Section to any Participant who is rehired before the date his benefits are distributed.

- (e) Consents. Subject to Subsection (b) above, a distribution is contingent upon the consent of the Participant, and if applicable, the Participant's spouse, as described in Subsections 2.5.8(c) and 2.5.8(h), unless the amount of the distribution satisfies the requirements of Subsection 2.5.7(d) or this Plan meets the requirements of Subsection 2.5.8(j). A Participant may elect to defer distribution of his vested Account balance subject to Sections 2.5.2 and 2.5.4.

2.5.7 Methods of Distribution. Each Participant (and his spouse, if applicable) shall receive distributions according to the following optional forms of payment. Available options are available to all Participants on a nondiscriminatory basis.

- (a) Lump Sum Payments. A single distribution shall be made on the Participant's date of distribution. No other payments are due from the Plan.
- (b) Mandatory Cash-out. If the value of a Participant's vested Account balance, determined as of a date following the Participant's date of termination of employment with the Employer, is \$5,000.00 or less, the Participant will receive an immediate cash-out of his vested Account balance as soon as administratively feasible and no further benefits will be payable from the Plan. If the value of a Participant's vested Account balance exceeds the threshold amount, an immediate cash-out shall not be made unless the Participant, and if applicable, his spouse, or his Beneficiary consent to such distribution.

For purposes of this Section, a Participant's vested Account balance includes benefits derived from both Employer and Employee contributions, including any rollover contributions, but excluding any accumulated deductible Employee contributions (within the meaning of Code section 72(o)(5)(B)) for Plan Years beginning prior to January 1, 1989. A Participant's vested Account balance shall also include the proceeds of any Life Insurance Policy, if any, on the Participant's life or the life of a family member in whom the Participant has an insurable interest and the value of any outstanding loans originating from this Plan.

- (c) Automatic Rollovers. Effective for distributions on and after March 28, 2005, in the event of a mandatory distribution greater than \$1,000.00 in accordance with the provisions of Subsection (b) above, if the Participant does not elect to have such distribution paid directly himself or to an Eligible Retirement Plan specified by the Participant in a Direct Rollover, then the Plan Administrator will pay the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator. For purposes of determining whether a mandatory distribution is greater than \$1,000.00, the portion of the participant's distribution attributable to any rollover contribution and attributable earnings must be included.
- (d) Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Subsection, 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 that is equal to at least five hundred dollars (\$500) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. If the entire Eligible Rollover Distribution is less than five hundred dollars (\$500), but more than two hundred dollars (\$200), the entire amount may be paid directly to an Eligible Retirement Plan.

2.5.8 Annuity and Consent Requirements.

- (a) Requirement of Annuity Payment. Except as otherwise provided in Subsections 2.5.8(f) (regarding short marriages) and 2.5.8(j) (regarding situations when spousal consent is not required), a married Participant's vested Account balance shall be provided in the form of a Qualified Joint and Survivor Annuity, and the vested Account balance of an unmarried Participant shall be provided in the form of a Straight Life Annuity, unless the Participant makes a qualified election of an optional form of benefit within the 90-day period ending on the Annuity Starting Date, as defined in Subsection 2.5.8(e)(1). Unless the Participant has made a qualified election of an optional form of benefit within the election period, if the Participant dies before the Annuity Starting Date and has a surviving spouse, the Participant's vested Account balance shall be used to purchase a Qualified Preretirement Survivor Annuity.

Plans to which the Annuity and Consent requirements of Code sections 401(a)(11) and 417 apply must provide a Qualified Optional Survivor Annuity. The Qualified Optional Survivor Annuity provisions are effective for Plan Years beginning after December 31, 2007, subject to certain special effective date rules for collectively bargained plans.

A Participant's vested Account balance is the aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life or the life of a family member in whom the Participant has an insurable interest. The provisions hereof shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

The Participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the Plan. A surviving spouse may elect to have such annuity distributed within the ninety (90) day period commencing on the date of the Participant's death.

- (b) Election to Waive Annuity Payment. At any time during the Applicable Election Period, a Participant and his spouse may elect to waive the Qualified Joint and Survivor Annuity form of benefit or the Qualified Preretirement Survivor Annuity form of benefit (or both) and may revoke any such election. There is no limit to the number of times that a Participant may make an election or a revocation.
- (c) Spousal Consent Required. An election to waive any annuity form of benefit shall not take effect unless (1) the spouse of the Participant consents in writing to the election, such election designates a specific Beneficiary, including any class of Beneficiaries or contingent Beneficiaries, or, solely in the case of a waiver of a Qualified Joint and Survivor Annuity, a form of benefits that may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the Participant without any requirement of further consent by the spouse), and the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or a notary public; or (2) the Participant establishes to the satisfaction of the Plan Administrator that such consent cannot be obtained because there is no spouse, because the spouse cannot be located, or because of other circumstances permitted by applicable regulations.

Any consent by a spouse (or establishment that the consent of a spouse cannot be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights.

A Participant may revoke a prior waiver without the consent of the spouse at any time before the commencement of benefits. The number of waivers and revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Subsection (d) below.

- (d) Written Explanations. The notification shall be provided no less than thirty (30) days and no more than one hundred and eighty (180) days (Ninety (90) days for notices given in plan years beginning before January 1, 2007) prior to the distribution Date or Annuity Starting Date. However, a distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given provided the distribution is one to which Code sections 411(a)(11) and 417 do not apply. The Plan Administrator shall provide each Participant a written explanation of:
- (1) The terms and conditions of a Qualified Joint and Survivor Annuity;
 - (2) The Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;
 - (3) The rights of the Participant's spouse to consent to a Participant's election; and

- (4) The right to make and the effect of a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.
- (5) The Participant has a right to a period of at least thirty (30) days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option);
- (6) The consequences for failing to defer receipt of a distribution;
- (7) The Participant must affirmatively elect a distribution after receiving the thirty (30) day notice; and
- (8) The relative values of the various optional forms of benefit under the Plan as provided in Treasury Regulations section 1.417(a)-3.

The Plan Administrator shall provide to each Participant within the applicable period a written explanation of a Qualified Preretirement Survivor Annuity comparable to that provided with respect to a Qualified Joint and Survivor Annuity.

(e) Definitions. For this Section, the terms below shall have the following meanings:

- (1) "Annuity Starting Date". The first day of the first period for which an amount is payable as an annuity, or, if not payable as an annuity, the first day on which the Participant is entitled to such an amount.
- (2) "Applicable Election Period". The time period in which a Participant may elect to waive a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity.
 - (i) In the case of a Qualified Joint and Survivor Annuity, the ninety (90) day period ending on the Annuity Starting Date; and
 - (ii) In the case of a Qualified Preretirement Survivor Annuity, the period that begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) or the date the Participant severs employment with the Employer, and ends on the earlier of the date the Participant retires or the date of his death.

A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special qualified election to waive the Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Subsection (d). Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Section.

- (3) "Applicable Period". The time period in which the Employer must provide an explanation of the Qualified Preretirement Survivor Annuity to a Participant. Such period is whichever one of the following periods ends last:
 - (i) The period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
 - (ii) A reasonable period after the individual becomes a Participant;
 - (iii) A reasonable period after the Participant severs employment with the Employer before attaining age (35); or
 - (iv) A reasonable period after the Plan ceases to fully subsidize the costs of the Qualified

Preretirement Survivor Annuity.

For purposes of this Subsection (3), a reasonable period means a two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two-year period beginning prior to separation and ending one (1) year after separation. If a Participant who severs employment with the Employer is later rehired, the Applicable Period shall be redetermined.

- (f) Exception if Participant not Married for a Year. Notwithstanding the foregoing, the benefits under the Plan shall not be provided in the form of a Joint and Survivor Annuity or a Preretirement Survivor Annuity unless the Participant and his spouse have been married throughout the one (1) year period ending on the earlier of the Participant's Annuity Starting Date or the date of the Participant's death.

If a Participant marries within one (1) year before the Annuity Starting Date and the Participant and his spouse in such marriage have been married for at least a one (1) year period ending on or before the date of the Participant's death, the Participant and such spouse shall be treated as having been married throughout the required period. A former spouse shall be treated as the spouse or surviving spouse, and a current spouse will not be treated as the spouse or surviving spouse, to the extent provided under a Qualified Domestic Relations Order as described in Code section 414(p).

- (g) Terms of Annuity Contracts. Any annuity contract distributed from the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or spouse shall comply with the requirements of the Plan. If the Participant'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 regulations thereunder.

- (h) Consent to Distributions. If payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant and either the value of a Participant's vested Account balance derived from Employer and Employee contributions exceeds the amount specified in Subsection 2.5.7(d), if any, or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the Account balance is Immediately Distributable, as defined in Subsection 2.5.4(i)(2), the Participant must consent to any distribution of such Account balance.

If payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to a Participant and the value of a Participant's vested Account balance derived from Employer and Employee contributions exceeds the amount specified in Subsection 2.5.7(d), if any, and the Account balance is Immediately Distributable, as defined in Subsection 2.5.4(i)(2), the Participant and the Participant's spouse (or where either the Participant or the spouse has died, the survivor) must consent to any distribution of such Account balance. The consent shall be obtained in writing within the 90-day period ending on the Annuity Starting Date. The need for spousal consent is subject to the requirements of Subsection 2.5.8(j).

Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy Code sections 401(a)(9) or 415. In addition, upon termination of the Plan if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer or any entity within the same controlled group does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code section 4975(e)(7)), the Plan Administrator shall distribute the Participant's Account balance in the Plan to the Participant without the Participant's consent. However, if any entity within the same controlled group as the Employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code section 4975(e)(7)), then the Plan Administrator will transfer the Participant's Account balance to the other Plan, without the Participant's consent, if the Participant does not consent to an immediate distribution.

- (i) Restrictions on Immediate Distributions. The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution until the Participant's Account balance in the Plan is no longer Immediately Distributable. Such notification shall include a general description of the

material features and an explanation of the relative values of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code section 417(a)(3) and shall be provided no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date.

Such distribution may commence less than thirty (30) days after the notice required under Treasury Regulations section 1.411(a)-11(c) is given, provided that:

- (1) The Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (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),
 - (2) The Participant, after receiving the notice, affirmatively elects a distribution,
 - (3) The distribution commences more than seven (7) days after such explanation is provided,
 - (4) The Participant 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 Participant, and
 - (5) The Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.
- (j) Exceptions to Spousal Consent Requirement. Notwithstanding any other provision of the Plan, no spousal consent shall be required for any distribution or Participant Loan if the following conditions are satisfied:
- (1) The Participant does not or cannot elect payments in the form of a life annuity; and
 - (2) On the death of a Participant, the Participant's vested Account balance will be paid to the Participant's surviving spouse, but if there is no surviving spouse, or if the surviving spouse has consented in a manner conforming to a qualified election, then to the Participant's Designated Beneficiary.

The surviving spouse may elect to have distribution of the vested Account balance commence with the 90-day period following the date of the Participant's death. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

This Subsection shall not apply to that portion of a Participant's Segregated Account that was directly or indirectly transferred from a defined benefit, money purchase, target benefit, stock bonus, or profit sharing plan and that is subject to the survivor annuity requirements of Code sections 401(a)(11) and 417.

(k) Transitional Rules.

- (1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Sections of this Article shall be given the opportunity to elect to have the prior Sections of this Article apply if such Participant is credited with at least one (1) Hour of Service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant has at least ten (10) Years of Vesting Service when the Participant separated from service.
- (2) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one (1) 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 have his benefits paid in accordance with Subsection (4) below.

- (3) The respective opportunities to elect (as described above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to such Participants.
- (4) Any Participant who has elected pursuant to Subsection (2) above and any Participant who does not elect under Subsection (1) or who meets the requirements of Subsection (1) except that such Participant does not have at least ten (10) Years of Vesting 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:

(i) Automatic Qualified Joint and Survivor Annuity. If benefits in the form a life annuity become payable to a married Participant who:

(A) Begins to receive payments under the Plan on or after Normal Retirement Age;

(B) Dies on or after Normal Retirement Age while still working for the Employer;

(C) Begins to receive payments on or after the Qualified Early Retirement Age; or

(D) Separates from service on or after attaining Normal Retirement Age (or the 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 will be received under this Plan in the form of a Qualified Joint and Survivor Annuity unless the Participant has elected otherwise during the election period. The election period must begin at least six (6) months before the Participant attains Qualified Early Retirement Age and end not more than ninety (90) days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(ii) Election of early survivor annuity. A Participant who is employed after attaining the Qualified Early Retirement Age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments that would have been made to the spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of (A) the ninetieth (90th) day before the Participant attains the Qualified Early Retirement Age, or (B) the date on which participation begins, and ends on the date the Participant terminates employment with the Employer.

(iii) Qualified Early Retirement Age. For purposes of this Subsection (4) a Participant's Qualified Early Retirement Age is the later of:

(A) The earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(B) The first day of the one hundred twentieth (120th) month beginning before the Participant reaches Normal Retirement Age, or

(C) The date the Participant begins participation.

2.5.9 Nature of Distributions.

(a) Trust Fund and Segregated Funds. Except as provided in Subsection (b) below with regard to Life Insurance Policies and the Joint and Survivor Annuity requirements in Section 2.5.8, the distribution of a Participant's vested Account balance shall consist of cash, property, an annuity (if offered by the Plan in Section 2.5.7), or a combination thereof. If a distribution includes property, the property shall be valued at its fair market value as of the date of distribution.

(b) Insurance Policies. In the event that the Trustee has purchased one or more Life Insurance Policies on the life of the Participant, or a family member in whom the Participant has an insurable interest, the values and benefits available with respect to each such Policy shall be distributed as follows:

- (1) If the Participant's employment terminates for any reason other than death, the Trustee, at the election of the Participant, shall either (i) surrender the Life Insurance Policy for its available cash value and distribute the proceeds as provided in Subsection (a) above, or (ii) distribute the Life Insurance Policy to the Participant, provided the Participant's vested Account balance is at least equal to the policy's cash value.
- (2) If the Participant dies, the Participant's Beneficiary shall be entitled to the full amount of the policy proceeds.
- (3) In the event the Trustee purchases a Life Insurance Policy on the life of someone other than the Participant pursuant to this Plan, and such other person shall die, the Participant may withdraw the life insurance proceeds to the extent they exceed the policy's cash value immediately prior to such death.

2.5.10 Distributions in the Event of Incapacity. In the sole judgment of the Plan Administrator, if any person entitled to benefits under the Plan is not capable of managing the benefit about to be distributed, such distribution may be made to legal representative of that Beneficiary, or in the case of a minor Beneficiary, the guardian or person in loco parentis to the minor Beneficiary, or the Plan Administrator may require an order of a court of competent jurisdiction before making such distribution.

If any person entitled to benefits is declared legally incapacitated by a court of proper jurisdiction, then the Plan Administrator shall direct the Trustee to make payments to the legal guardian or legal representative of the person or his estate.

2.5.11 Minimum Distributable Amount.

A Participant shall be entitled to his vested and non-forfeitable Account balance as determined in Part II, Article IV or Part II, Article VI, if applicable. No other benefits shall be payable from the Plan.

2.5.12 In Service Distributions.

- a) Elective Deferrals, ADP Test Safe Harbor Contributions, Qualified Non-Elective Contributions, and Qualified Matching Contributions (Matching Contributions Used in the ADP Test). Upon the attainment of Normal Retirement Age (provided the Participant is at least fifty-nine and one-half (59-1/2)), a Participant employed with the Employer shall be entitled to an in service distribution of all or part of his Elective Account but not his Roth Deferral Account and Qualified Non-Elective Account. No other in service distributions are authorized by this Subsection.
- (b) Non-Elective, Matching, and ACP Test Safe Harbor Matching Contributions. A Participant employed with the Employer shall be entitled to an in service distribution of all or part of his interest in the Plan, provided that no distribution shall be made unless the Participant's entire interest in the Plan is fully vested and non-forfeitable; and further provided, he has attained Normal Retirement Age. Such distribution may be taken from his Non-Elective Account, Matching Account (to the extent Matching Contributions were not used in the ADP Test as Qualified Matching Contributions) and ACP Test Safe Harbor Matching Account. No other in service distributions are authorized by this Subsection.
- (c) Rollovers and Voluntary Employee Contributions. Regardless of a Participant's age or period of participation, a Participant employed with the Employer shall be entitled to an in service distribution of all or a part of his Rollover Account. No other in service distributions are authorized by this Subsection.
- (d) Other Requirements. A Participant shall file a written request with the Plan Administrator, on a form specified by the Plan Administrator, to receive an in service distribution. Unless this Plan meets the requirements of Subsection 2.5.8(j), an in service distribution shall only be available if the spouse consents in writing, the consent acknowledges the effect of such consent, the consent is witnessed by a

Plan representative or notary public, and the Participant complies with any other spousal consent requirements contained in Code sections 401(a)(11) and 417. The spouse must consent to each in service distribution.

2.5.13 Distributions Due to Hardship. The Plan does not provide for distributions on account of hardship.

2.5.14 Required Diversification For Plans That Hold Publicly Traded Securities. This Plan shall provide Applicable Individuals with the right to divest Employer Securities in his Accounts and reinvest those amounts in certain diversified investments.

- (a) In the case of the portion of an Applicable Individual's Account attributable to Voluntary Employee Contributions and Elective Deferrals (Including Roth Deferrals) invested in Employer Securities, the Plan shall provide the Applicable Individual the right to direct the Plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of Paragraph (c).
 - (1) An Applicable Individual with respect to Elective Deferrals and Employee Contributions is:
 - (i) a Participant in the Plan;
 - (ii) an Alternate Payee who has an account under the Plan; or
 - (iii) a Beneficiary of a deceased Participant
 - (b) In the case of the portion of the Account attributable to Employer Contributions other than Elective Deferrals invested in Employer Securities, an Applicable Individual may elect to direct the Plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of Paragraph (c).
 - (1) An Applicable Individual with respect to the Employer Contributions is:
 - (i) a Participant who has completed at least three (3) Years of Service;
 - (ii) an Alternate Payee who has an Account under the Plan with respect to a Participant who has completed at least three Years of Service; or
 - (iii) a Beneficiary of a deceased Participant
- (c) Investment options.
 - (1) The Plan shall offer not less than three (3) investment options, other than Employer Securities, to which an Applicable Individual may direct the proceeds from the divestment of Employer Securities. Each investment option must be diversified and have materially different risk and return characteristics.
 - (2) The Plan shall permit an election to divest or reinvest at least quarterly.
 - (3) The Plan shall not meet the requirements of this Section if the Plan imposes restrictions or conditions with respect to the investment of Employer Securities that are not imposed on the investment of other Plan assets. Notwithstanding, any restrictions or conditions imposed by under applicable securities laws shall apply.

(d) Definitions.

- (1) Applicable Defined Contribution Plan. For purposes of this Section, the term "Applicable Defined Contribution Plan" means:
 - (i) any defined contribution plan which holds any Publicly Traded Employer Securities and
 - (ii) does not include a one-participant retirement plan.
- (2) "Elective Deferrals" means an Employer Contribution as described in Code section 402(g)(3)(A).
- (3) "Employer Security" has the meaning given by Code section 407(d)(1) of the Employee Retirement Income Security Act of 1974.
- (4) "Employee Stock Ownership Plan" has the meaning given by Code section 4975(e)(7). (3) The term "one-participant retirement plan" means a retirement plan that on the first day of the Plan Year:
 - (i) covers only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or
 - (ii) covers only one or more partners (or partners and their spouses) in the plan sponsor.
- (5) The term "partner" includes a two percent (2%) shareholder (as defined in Code section 1372(b)) of an S Corporation.
- (6) "Publicly Traded Employer Securities" means Employer Securities that are readily tradable on an established securities market.
- (7) "Year of Service" has the meaning given by Code section 411(a)(5).

(e) Certain plans treated as holding Publicly Traded Employer Securities.

- (1) In the case of Employer Securities that are not Publicly Traded Employer Securities, the Plan shall be treated as holding Publicly Traded Employer Securities if any Employer corporation, or any member of a Controlled Group of Corporations, which includes such Employer corporation, has issued a class of stock that is a Publicly Traded Employer Security.
- (2) Exception for certain controlled groups with publicly traded securities, Clause (1) shall not apply to the Plan if:
 - (i) no Employer Corporation or Parent Corporation of an Employer Corporation has issued any publicly traded Employer Security, and
 - (ii) no Employer Corporation or Parent Corporation of an Employer Corporation has issued any special class of stock that grants particular rights to, or bears particular risks for the holder or issuer with respect to any corporation described in Subparagraph (1) that has issued any Publicly Traded Employer Security.
- (iii) Definitions. For purposes of this Subparagraph:
 - (A) "Controlled Group of Corporations" has the meaning given such term by Code section 1563(a), except that "50 percent" shall be substituted for "80 percent" each place it appears;
 - (B) "Employer Corporation" means a corporation which is an Employer maintaining the Plan; and

(C) "Parent Corporation" has the meaning given such term by Code section 424(e).

(f) Transition rule for securities attributable to Employer Contributions.

(1) Rules phased in over 3 years.

(i) In the case of the portion of an Employer Account other than Elective Deferral Account consisting of Employer Securities acquired in a Plan Year beginning before January 1, 2007, Section 2.5.14(b) shall only apply to the Applicable Percentage of such securities. This subparagraph applies separately with respect to each class of securities.

(ii) Exception for certain Participants aged 55 or over. The Transition Rules of Subparagraph (i) shall not apply to an Applicable Individual who is a Participant who has attained age 55 and completed at least 3 Years of Service before the first Plan Year beginning after December 31, 2005.

(2) Applicable Percentage. For purposes of Subparagraph (i), the Applicable Percentage shall be determined as follows:

Plan year to which Section 2.5.14(b) applies	The Applicable Percentage is
First Year	33
Second Year	66
Third and following Years	100

(g) Effective Date. The Diversification requirements of Section 2.5.14 shall apply to the Plan and are effective with respect to Plan Years beginning after December 31, 2006, subject to certain special effective date rules, including a special rule with respect to plans maintained pursuant to a collective bargaining agreement.

2.5.15 Qualified Reservist Distribution. Distributions to Participants Called to Active Duty. Any Participant who receives a Qualified Reservist Distribution may, at any time during the two (2) year period beginning on the day after the end of the active duty period, make one or more repayment contributions to an Individual Retirement Plan of such Participant in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to Individual Retirement Plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this Section. For purposes of this Subparagraph, the term "Qualified Reservist Distribution" means any distribution to a Participant if:

(a) such distribution is from an Individual Retirement Plan, or from amounts attributable to elective deferrals under a 401(k) plan, 403(b) annuity contract, or certain similar arrangements;

(b) such Participant was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code) was ordered or called to active duty for a period in excess of one hundred and seventy-nine (179) days or for an indefinite period; and

(c) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(d) This Paragraph 2.5.15 is effective August 17, 2001, and applies to Participants ordered or called to active duty after September 11, 2001, and before December 31, 2007. Effective June 17, 2008, it also applies to Participants ordered or recalled to active duty after December 31, 2007.

(e) The Participant's service in the uniformed services while on active duty for a period of at least 30 days. If a Participant receives a distribution under this provision, the Participant's Elective Deferrals (and Employee Contributions) will be suspended for 6 months after receipt of the distribution.

2.5.16 Death Benefits Under USERRA-Qualified Military Service. The Plan shall provide that the

survivors of a Participant who dies while performing Qualified Military Service (as defined in Code section 414(u)), are entitled to any additional benefits provided under the Plan as if the Participant resumed service with the Employer and then terminated employment on account of death. The additional benefits shall not include Employer Contributions relating to the period of Qualified Military Service. This provision shall be effective on or after January 1, 2007.

2.5.17 Federally Declared Disaster. In the case of a Federally Declared Disaster due to severe storms, tornadoes and flooding in a federally declared Midwestern disaster area between May 20, 2008 and August 1, 2008., all distributions that may be made pursuant to one or more of the foregoing distributable events are subject to the spousal and Participant consent requirements, if applicable, contained in Code sections 401(a)(11) and 417. Any distribution made pursuant to this paragraph must meet the requirements of the guidance provided in Notices 2005-70 and 2005-92.

ARTICLE 6

CONTINGENT TOP-HEAVY PROVISIONS

2.6.1 Top-Heavy Requirements. If the Plan becomes a Top-Heavy Plan during any Plan Year beginning after December 31, 1983, the following provisions shall supersede any conflicting provisions in the Plan and apply for such Plan Year:

- (a) Minimum Top-Heavy Allocation. Notwithstanding any other Section of the Plan to the contrary, each Participant who is employed by the Employer on the last day of the Plan Year shall receive an allocation (to be provided solely by Employer Contributions) of not less than three percent (3%), or the largest "allocation percentage" received by a Key Employee, if less, of the Participant's Annual Compensation, as defined in Subsection 2.6.2(b). The minimum allocation is determined without regard to any Social Security contribution. The minimum allocation shall be made even though under other provisions of the Plan the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because (1) the Participant fails to complete one thousand (1,000) Hours of Service (or any equivalent provided in the Plan), (2) the Participant fails to make mandatory contributions (including Elective Deferrals to a cash or deferred arrangement described in Code section 401(k)) to this Plan or another, (3) the Participant's Compensation is less than a stated amount, or (4) the Plan is integrated with Social Security. The minimum allocation shall not include a Participant's Elective Deferrals or, for Plan Years beginning before 2002, his share of Matching Contributions and Qualified Matching Contributions.

The allocation percentage of a Key Employee is determined by dividing his share of Employer Contributions, Elective Deferrals (but not Catch-up Contributions), and Forfeitures by his Annual Compensation, as defined in Subsection 2.6.2(b). For this purpose only, the calculation of the allocation percentage for a Key Employee shall also include any Elective Deferral (within the meaning of Code sections 401(k) and 402A) (but not any catch-up contributions within the meaning of Code section 414(v)), any matching contribution (within the meaning of Code section 401(m)), or any other contribution made by the Employer on behalf of such Key Employee to any plan that is included in this Plan's Required Aggregation Group or Permissive Aggregation Group.

- (b) Multiple Plans. The minimum allocation provided above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided that the minimum allocation or benefit requirement applicable to Top-Heavy plans will be met in the other plan or plans. In the case where the Employer has another plan or plans, and the Participant receives the minimum allocation or benefit under such plan or plans. It is intended that the minimum Top-Heavy requirements will be met in this Plan.

- (c) Minimum Vesting Schedule.

If the Plan becomes Top-Heavy, the vested and non-forfeitable interest of each Participant in his Non-Elective Account shall equal the greater of the percentage determined under the vesting schedule specified in Section 2.4.1(e) or the percentage determined under the following schedule:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 1	0%
1	33.000%
2	66.000%
3	100.000%
4	100.000%
5	100.000%
6 or more	100%

The Top-Heavy minimum vesting schedule for a Participant's Matching Account shall be the vesting schedule specified in Section 2.4.3.

The Top-Heavy minimum vesting schedule applies to all benefits within the meaning of Code section 411(a)(7), except those attributable to Elective Deferrals and Voluntary Employee Contributions, including benefits accrued before the effective date of Code section 416 and benefits accrued before the Plan becomes Top-Heavy.

No decrease in a Participant's non-forfeitable percentage may occur in the event the Plan's status as Top-Heavy changes for any Plan Year. Any minimum benefit required (to the extent required to be non-forfeitable under Code section 416(b)) may not be forfeited under Code sections 411(a)(3)(B) or (D).

- (d) Employees subject to Collective Bargaining. In the event that this Plan covers Employees that are the subject of a bona fide collectively bargained agreement between the Employer and Employee representatives, the requirements of this Section shall continue to apply to such Employees in the same manner as all other Employees.

2.6.2 Top-Heavy Definitions. The following terms, as used in this Article, shall have the following meaning:

- (a) "Accrued Benefit": The benefit accrued for a Participant under a defined benefit plan or plans of the Employer belonging to the Required Aggregation Group or Permissive Aggregation Group, such Accrued Benefit determined as of the Valuation Date, based on the provisions of that plan, except that if the accrual rates of more than one plan differ, the Accrued Benefit will be determined using the slowest accrual rate for all plans.
- (b) "Annual Compensation": Compensation as defined in Subsection 3.2.5(a) but measured over the Limitation Year. Compensation shall not be limited for partial Years of Participation.
- (c) "Determination Date": 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 Plan Year.
- (d) "Permissive Aggregation Group": The Required Aggregation Group plus any other plan or plans of the Employer that, when considered as a group with the Required Aggregation Group, continues to satisfy the requirements of Code sections 401(a)(4) and 410.
- (e) "Present Value": The Present Value of Accrued Benefits referred to in Subsection (i) below shall be based on the interest rate and mortality table specified in the Employer's defined benefit plan.
- (f) "Required Aggregation Group":
- (1) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the Determination Date (regardless of whether the plan has terminated), together with
 - (2) Any other qualified plan of the Employer that enables a plan described in Subsection (i) below to meet the requirements of Code sections 401(a)(4) or 410.
- (g) "Super Top-Heavy": For any Plan Year, the Plan is Super Top-Heavy if the Plan is Top-Heavy and the Top-Heavy Ratio exceeds ninety percent (90%).
- (h) "Top-Heavy Plan": For any Plan Year beginning after December 31, 1983, the plan is Top-Heavy if any of the following conditions exists:
- (1) If the Top-Heavy Ratio for the Plan exceeds sixty percent (60%) and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.
 - (2) If the Plan is a part of a Required Aggregation Group of plans but not part of a Permissive

Aggregation Group and the Top-Heavy Ratio for the group of plans exceeds sixty percent (60%).

- (3) If the Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

(i) "Top-Heavy Ratio":

- (1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan that during the one (1) year period (five (5) year period in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002) ending on the Determination Date(s) has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the Required Aggregation Group, or the Permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of the Account balances of all Key Employees as of the Determination Date(s) (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s)) (five (5) year period ending on the Determination Date(s) in the case of a distribution made for a reason other than severance from employment, death or Disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s)) five (5) year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death or Disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002), 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.
- (2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans that during the one (1) year period (five (5) year period in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002) ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any Required Aggregation Group 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 for all Key Employees, determined in accordance with (1) 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 Participants, determined in accordance with (1) above, and the Present Value of Accrued Benefits under the defined benefit plan or plans for all Participants 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 one (1) year period ending on the Determination Date (five (5) year period ending on the Determination Date(s) in the case of a distribution made for a reason other than severance from employment, death or Disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002).
- (3) For purposes of (1) and (2) above, the value of Account balances and the Present Value of Accrued Benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (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 Participant (i) who is not a Key Employee but was a Key Employee in a prior year, or (ii) who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the one (1) year period (five (5) year period in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002) 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 Participant other than a Key Employee shall be determined under the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or 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).

- (j) "Valuation Date": The date as of which Account balances and Accrued Benefits are valued for purposes of calculating the Top-Heavy Ratio. The Valuation Date shall be December 31st of each Plan Year.

ARTICLE 7

LIMITATIONS ON CONTRIBUTIONS

2.7.1 General Limitation on Contributions. The Actual Deferral Percentage test of Code section 401(k) (hereinafter the "ADP Test"), described in Section 2.7.2, must be satisfied with respect to Elective Deferrals. If the ADP Test is not initially satisfied, the Employer shall choose one of the correction approaches described in Section 2.7.2(b). If the Plan provides Matching Contributions or permits Voluntary Employee Contributions, the Actual Contribution Percentage test of Code section 401(m) (hereinafter the "ACP Test"), described in Section 2.7.3 must be satisfied. If the ACP Test is not initially satisfied, the Employer shall choose one of the correction approaches described in Section 2.7.3(b).

2.7.2 Actual Deferral Percentage Test.

(a) The current year Actual Deferral Percentage ("ADP") for all eligible Highly Compensated Employees must not exceed the greater of:

- (1) the ADP for the current Plan Year of all Participants who were Non-Highly Compensated Employees during such year multiplied by one and twenty-five one-hundredths (1.25), or
- (2) the ADP for the current Plan Year for all such Non-Highly Compensated Employees multiplied by two (2.0), but not to exceed such ADP plus two (2.0) percentage points.

The Employer can amend this Plan to use the ADP for Non-Highly Compensated Employees in the prior Plan Year ("Prior Year Testing") only if the Plan meets the requirements of Treasury Regulations section 1.401(k)-2(c)(1)(ii), including that:

- (1) The Plan has used the ADP for Non-Highly Compensated Employees in the current Plan Year ("Current Year Testing") for each of the preceding five (5) Plan Years or, if lesser, the number of Plan Years that the Plan has been in existence; or
- (2) As a result of a merger or acquisition described in Code section 410(b)(6)(C)(i), the Employer maintains both a plan using Prior Year Testing and a plan using Current Year Testing, and the change is made within the transition period described in Code section 410(b)(6)(C)(ii).

(b) Failure of the Plan to satisfy the ADP Test requires the Employer to employ one of the following correction methods (or a combination thereof):

- (1) make a Qualified Non-Elective Contribution to the Plan in an amount that is at least sufficient to cause the Plan to pass the ADP Test; (Only available if using Current Year testing method in Section 2.7.2(a)(1))
- (2) distribute Elective Deferrals to the necessary Highly Compensated Employees as Excess Contributions, as described in Section 2.7.7.

2.7.3 Actual Contribution Percentage Test.

(a) The current year Actual Contribution Percentage ("ACP") for eligible Highly Compensated Employees must not exceed the greater of:

- (1) the ACP for the current Plan Year of all Participants who were Non-Highly Compensated Employees in such year multiplied by one and twenty-five one-hundredths (1.25), or
- (2) the ACP for the current Plan Year for all such Non-Highly Compensated Employees multiplied by two (2.0), but not to exceed such ACP plus two (2.0) percentage points.

The Employer can amend this Plan to use the ACP for Non-Highly Compensated Employees in the prior Plan Year ("Prior Year Testing") only if the Plan meets the requirements of Treasury Regulations sections 1.401(m)-2(c)(1) and 1.401(k)-2(c)(1)(ii), including that:

- (1) The Plan has used the ACP for Non-Highly Compensated Employees in the current Plan Year ("Current Year Testing") for each of the preceding five (5) Plan Years or, if lesser, the number of Plan Years that the Plan has been in existence; or
 - (2) As a result of a merger or acquisition described in Code section 410(b)(6)(C)(i), the Employer maintains both a plan using Prior Year Testing and a plan using Current Year Testing, and the change is made within the transition period described in Code section 410(b)(6)(C)(ii).
- (b) Failure of the Plan to pass the ACP Test requires the Employer employ one of the following correction methods (or a combination thereof):
- (1) make a Qualified Matching Contribution to the Plan in an amount that is at least sufficient to cause the Plan to pass the ACP Test; (Only available if using Current Year testing method in Section 2.7.3(a)(1))
 - (2) distribute Matching Contributions to the necessary Highly Compensated Employees as Excess Aggregate Contributions, as described in Section 2.7.8; or
 - (3) forfeit any non-vested Matching Contributions as necessary pursuant to Section 2.7.9.

2.7.4 Multiple Plans.

- (a) The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Non-Elective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) allocated to his or her Accounts under two or more arrangements described in Code section 401(k), that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-Elective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement. If a Highly Compensated Employee participates in two or more CODAs of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. For Plan Years beginning before 2006, all such CODAs ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(k).
- (b) In the event that this Plan satisfies the requirements of Code sections 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 sections of the Code only if aggregated with this Plan, then this section shall be applied by determining the ADP of Employees as if all such plans were a single plan. If more than 10 percent of the Employer's Non-Highly Compensated Employees are involved in a plan coverage change as defined in Regulations section 1.401(k)-2(c)(4), then any adjustments to the Non-Highly Compensated Employees' ADP for the prior year will be made in accordance with such Regulations, unless the Employer has elected 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 ADP testing method.
- (c) For purposes of determining the ADP test, Elective Deferrals, Qualified Non-Elective 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.
- (d) The ACP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals, Employee Contributions or Matching Contributions (and Qualified Non-Elective Contributions or Qualified Matching Contributions, or both, if treated as Matching Contributions for purposes of the ACP test) allocated to his or her Accounts under two or more

arrangements described in Code section 401(m), that are maintained by the Employer, shall be determined as if such Matching Contributions and Employee Contributions (and, if applicable, such Qualified Non-Elective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement. If a Highly Compensated Employee participates in two or more CODAs of the Employer that have different plan years, all Matching Contributions, Employee Contributions and Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. For Plan Years beginning before 2006, all such CODAs ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(m).

- (e) In the event that this Plan satisfies the requirements of Code sections 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 sections of the Code only if aggregated with this Plan, then this section shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than 10 percent of the Employer's Non-Highly Compensated Employees are involved in a plan coverage change as defined in Regulations section 1.401(m)-2(c)(4), then any adjustments to the Non-Highly Compensated Employees' ACP for the prior year will be made in accordance with such Regulations, unless the Employer has elected in the Adoption Agreement 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 ACP testing method.
- (f) For purposes of determining the ACP test, Elective Deferrals, Employee Contributions, Matching Contributions, Qualified Non-Elective 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.

2.7.5 Different Testing Methods for Elective Deferrals and Matching Contributions. The Plan must use the same testing method for the ADP Test under Section 2.7.2 and the ACP Test under Section 2.7.3 unless the Employer does not permit recharacterization of Excess Contributions, does not use Elective Deferrals in the ACP Test, and does not use Qualified Matching Contributions in the ADP Test.

2.7.6 Distribution of Excess Deferrals. In the event that the Participant has made Elective Deferrals to this Plan and another plan that produce Excess Elective Deferrals for a calendar year, he shall be responsible for notifying the Employer or Plan Administrator on or before the March 1st following such year of the amount of Excess Elective Deferrals to be assigned to this Plan. If the other plan is sponsored by the Employer, the Participant is deemed to have notified the Employer that the Excess Elective Deferrals are assigned to the plan that produces the most beneficial result to him.

The amount of Excess Elective Deferrals assigned to this Plan, plus any allocated income and minus any allocated loss, shall be distributed to the Participant no later than the April 15th following the year in which the Excess Elective Deferrals arose. For years beginning after 2005, distribution of Excess Elective Deferrals for a year shall be made first from the Participant's Pre-tax Elective Deferral Account to the extent Pre-tax Elective Deferrals were made for the year, unless the Participant specifies otherwise.

Excess Elective Deferrals distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss. For taxable years beginning before January 1, 2006, income or loss allocable to the period between the end of the taxable year and the date of distribution (the "gap-period") could be disregarded in determining income or loss on Excess Elective Deferrals for such years. Gap-period income loss must be included in any distribution of Excess Elective Deferrals occurring in taxable years beginning in 2007, but must be excluded from any distribution of Excess Elective Deferrals occurring in taxable years beginning after 2007. The income allocable to Excess Deferrals is equal to the allocable gain or loss through the end of the Plan Year for which the Deferrals were made.

One reasonable method treats the income and loss allocable to Excess Elective Deferrals as the sum of:

- (a) The gain or loss of his Elective Account for the Plan Year multiplied by a fraction, the numerator of which is the amount of Excess Elective Deferrals to be distributed from this Plan, and the denominator of which is the sum of the Elective Account at the beginning of the Plan Year and any Elective Deferrals made during the Plan Year; plus
- (b) Ten percent (10%) of such amount multiplied by a fraction, the numerator of which is the number of nearest months that have elapsed since the last day of the Plan Year to the date of distribution and the denominator of which is twelve (12).

Any Excess Elective Deferrals distributed on or before April 15th shall be taxable in the year in which they arose. Any Excess Elective Deferrals distributed after April 15th shall be taxable in both the year in which they arose and the year in which they are distributed.

2.7.7 Distribution of Excess Contributions. Excess Contributions are allocated to Highly Compensated Employees with the largest amounts of Elective Deferrals taken into account when calculating the ADP Test for the Plan Year in which the excess arose, beginning with the Highly Compensated Employee with the largest contribution and continuing in descending order until all the Excess Contributions have been allocated. To the extent that Catch-up Contributions are permitted under the Plan and a Highly Compensated Employee has not reached his Catch-up Contribution limit under the Plan, Excess Contributions allocated to such Highly Compensated Employee will be treated as Catch-up Contributions and will not be treated as Excess Contributions.

The amount to be distributed to each Highly Compensated Employee to whose Account such Excess Contributions were allocated, except to the extent such Excess Contributions are classified as Catch-up Contributions, plus any associated earnings or losses, shall be distributed by the last day of the Plan Year following the Plan Year in which the Elective Deferrals were made. If such excess amounts (other than Catch-up Contributions) are distributed more than two and one-half (2-1/2) months after the last day of the Plan Year in which such contributions were made, the Employer shall be responsible for payment of the ten percent (10%) excise tax imposed by Code section 4979. No Elective Deferrals shall be forfeited under this Section. For years beginning after 2005, distribution of Excess Contributions for a year shall be made first from the Participant's Pre-tax Elective Deferral Account to the extent Pre-tax Elective Deferrals were made for the year, unless the Participant specifies otherwise.

Excess Contributions distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. For Plan Years beginning after 2005, income or loss allocable to the period between the end of the Plan Year and the date of distribution may not be disregarded in determining income or loss. For Plan years beginning before 2006, income or loss allocable to the period between the end of the Plan Year and the date of distribution (the "gap-period") could be disregarded in determining income or loss on Excess Aggregate Contributions for such years. Gap-period income or loss must be included in any distribution of Excess Aggregate Contributions occurring in Plan Years beginning in 2006 and 2007, but must be excluded from any distribution of Excess Aggregate Contributions occurring in Plan Years beginning after 2007.

One reasonable method treats the income and loss allocable to the Participant's Excess Contributions as the sum of:

- (a) The gain or loss of his Elective Account for the Plan Year multiplied by a fraction, the numerator of which is the amount to be distributed from the Elective Account, and the denominator of which is the sum of the Elective Account at the beginning of the Plan Year and any Elective Deferrals made during the Plan Year; plus
- (b) Ten percent (10%) of such amount multiplied by a fraction, the numerator of which is the number of nearest months that have elapsed since the last day of the Plan Year to the date of distribution and the denominator of which is twelve (12).

2.7.8 Distribution of Excess Aggregate Contributions. Excess Aggregate Contributions are allocated to Highly Compensated Employees with the largest amounts of Matching and Voluntary Employee Contributions taken into account in calculating the ACP Test for the Plan Year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of Matching and Voluntary Employee Contributions and continuing in descending order until all the Excess Aggregate Contributions have been allocated.

The amount to be distributed to each Highly Compensated Employee to whose Account such Excess Aggregate Contributions were allocated, plus any associated earnings or losses, shall be distributed by the last day of the Plan Year following the Plan Year in which the Matching Contribution was allocated or the Voluntary Employee Contributions were made. If such excess amounts are distributed more than two and one-half (2-1/2) months after the last day of the Plan Year in which such contributions were made, the Employer shall be responsible for payment of the ten percent (10%) excise tax imposed by Code section 4979. No Voluntary Employee Contributions shall be forfeited under this Section.

Excess Aggregate Contributions distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. For Plan Years beginning after 2005, income or loss allocable to the period between the end of the Plan Year and the date of distribution may not be disregarded in determining income or loss. For Plan Years beginning after 2005, Gap Period Income may not be disregarded in determining gain or loss on Excess Deferral. For Plan Years beginning after December 31, 2008, a corrective distribution of Excess Aggregate Contributions (adjusted for any income or loss) shall be included in an Employee's gross income in the tax year in which the distribution occurs.

However, for Plan Years beginning on or after January 1, 2010 where all eligible Non-Highly Compensated Employees and all eligible Highly Compensated Employees are Covered Employees under the Eligible Automatic Contribution Arrangement for the entire Plan Year, the Plan Administrator must distribute Excess Aggregate Contributions from the Plan no later than six (6) months after the last day of the Plan Year in which the excess amounts were determined.

For Plan Years beginning on or after January 1, 2008, the income allocable to Excess Aggregate Contributions is equal to the allocable gain or loss through the end of the Plan Year for which the ACP Test is being corrected.

One reasonable method treats the income and loss allocable to the Participant's Excess Aggregate Contributions as the sum of:

- (a) The gain or loss of his Matching Account (or Voluntary Account) for the Plan Year multiplied by a fraction, the numerator of which is the amount to be distributed from the Matching Account (or Voluntary Account), and the denominator of which is the sum of the Matching Account (or Voluntary Account) at the beginning of the Plan Year and any Matching Contribution (or Voluntary Employee Contributions) made during the Plan Year; plus
- (b) Ten percent (10%) of such amount multiplied by a fraction, the numerator of which is the number of nearest months that have elapsed since the last day of the Plan Year to the date of distribution and the denominator of which is twelve (12).

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP Test, the portion of any Excess Aggregate Contributions to be distributed to an individual Highly Compensated Employee from this Plan shall be a percentage equal to the same percentage that his share of the Matching Contribution and his Voluntary Employee Contributions in this Plan bears to the total contributions attributable to such Participant and used determining the ACP.

2.7.9 Forfeiture of Matching Contributions: Matching Contributions shall be forfeited when:

- (a) The Elective Deferral or Roth Deferral to which the Matching Contribution or Qualified Matching Contribution relates is returned because it was determined to be an Excess Elective Deferral (unless the Excess Elective Deferrals are for Non-Highly Compensated Employees), Excess Contribution, or Excess Annual Addition;
- (b) The Employee Contribution to which the Matching Contribution relates is returned because it was determined to be either an Excess Aggregate Contribution or Excess Annual Addition.
- (c) The Matching Contribution is not fully vested, and the non-Vested portion that is determined to be an Excess Annual Addition.

The requirements of this Section shall be met in whole or in part if the Matching Contribution in question is returned to the Participant as an Excess Aggregate Contribution.

Following the Forfeiture of Matching Contributions pursuant to this Section, the highest rate of Matching Contribution allocated to any Highly Compensated Employee may not exceed the lowest rate of Matching Contribution allocated to any Non-Highly Compensated Employee eligible to receive an allocation of Matching Contributions under this Plan or under all plans in a mandatory or Permissive Aggregation Group. This provision shall not apply in the case of a Non-Highly Compensated Employee whose allocation of Matching Contributions is limited by the application of Code section 415. Allocation of Forfeitures under this Section shall be allocated in the same manner as Forfeitures of Matching Contributions under Section 2.3.8.

2.7.10 Definitions. The following terms, as used in this Article, shall have the following meanings:

- (a) **"Actual Contribution Percentage" (ACP):** The average of the ratios in the group consisting of Highly Compensated Employees or the group consisting of Non-Highly Compensated Employees, calculated separately for each Participant who is eligible to receive a share of the Matching Contribution (or would be eligible if he made Elective Deferrals) or is eligible to make Voluntary Employee Contributions, where such ratio equals the Participant's aggregate share of the Matching Contribution, and any Voluntary Employee Contributions for the Plan Year divided by his compensation for the Plan Year. For purposes of the ACP Test, compensation may be compensation for the entire Plan Year whether or not the Participant was a Participant for the entire Plan Year or compensation from a Participant's Plan Entry Date determined each year by the Plan Administrator and applied to all eligible Participants in a uniform and non-discriminatory manner. The Employer may also use Elective Deferrals in the ACP Test so long as the Plan meets the ADP Test before the Elective Deferrals are used in the ACP Test and continues to meet the ADP Test following the exclusion of the Elective Deferrals used to meet the ACP Test. The ACP for a group shall be expressed to the nearest hundredth of a percentage point. In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP Test, the ACP will be modified in the manner described in Section 2.7.4. If another plan requires employee contributions as a condition of participating in that plan, then the ACP shall include those Participants who choose not to contribute, their ratio being zero.

Qualified Matching Contributions may be used with Current Year testing method only if the contribution is made within the 12-month period following the last day of the Prior Year. Use of Qualified Non-Elective Contributions in the ADP or ACP test requires compliance with Reg. 1.401(k)-2(a)(6)(iv) or Reg. 1.401(m)-2(a)(6)(v), respectively, that require the Qualified Non-Elective Contribution be no greater than 5% of a Participant's compensation or no more than twice a "representative contribution rate" determined by analyzing the Qualified Non-Elective Contributions provided to all Non-Highly Compensated Employees.

Pursuant to Code section 410(b)(4)(B), the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy the age and service requirements under the Elective Deferral portion of the Plan that are less than the greatest minimum age and service requirements permitted under Code section 410(a) (known as "Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service requirements permitted under Code section 410(a) (known as "Not Otherwise Excludable Employees") as two (2) separate plans, and the ADP Test need not be satisfied with respect to both plans in order for one (1) of the plans to pass

the ADP Test.

An Employee's membership in the class of Otherwise Excludible Employees shall be determined using either the Plan's Entry Date provision or the earlier of the first day of the next Plan Year of 6 months after completing the maximum age and service conditions of Code section 410(a) as determined each year by the Plan Administrator.

- (b) "Actual Deferral Percentage" (ADP): The average of the ratios in the group consisting of Highly Compensated Employees or the group consisting of Non-Highly Compensated Employees, calculated separately for each Participant who is eligible to make an Elective Deferral at any time during the Plan Year, where such ratio equals the Participant's Elective Deferrals (other than Catch-up Contributions) for the Plan Year divided by his compensation for the Plan Year. For purposes of the ADP Test, compensation may be compensation for the entire Plan Year whether or not the Participant was a Participant for the entire Plan Year or compensation from a Participant's Plan Entry Date determined each year by the Plan Administrator and applied to all eligible Participants in a uniform and non-discriminatory manner. Elective Deferrals may be taken into account in the ACP Test, but only if not included in the ADP Test, and only if the Plan satisfies the ADP Test both with and without such exclusion. The ADP for a group shall be expressed to the nearest hundredth of a percentage point. In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ADP Test, the ADP will be modified in the manner described in Section 2.7.4. If another plan requires Elective Deferrals as a condition of participating in that plan, then the ADP shall include those Participants who choose not to contribute, their ratio being zero.

Elective Deferrals that are made as Catch-up Contributions after a period of Qualified Military Service pursuant to Section 2.2.2(a) shall not be used to determine a Participant's deferral percentage when the ADP of Participants is calculated for a particular Plan Year

Use of Qualified Non-Elective Contributions in the ADP or ACP test requires compliance with Reg. 1.401(k)-2(a)(6)(iv) or Reg. 1.401(m)-2(a)(6)(v), respectively, that require the Qualified Non-Elective Contribution be no greater than of 5% of a Participant's compensation or no more than twice a "representative contribution rate" determined by analyzing the Qualified Non-Elective Contributions provided to all Non-Highly Compensated Employees.

Pursuant to Code section 410(b)(4)(B), the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy the age and service requirements under the Elective Deferral portion of the Plan that are less than the greatest minimum age and service requirements permitted under Code section 410(a) ("Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service requirements permitted under Code section 410(a) ("Not Otherwise Excludable Employees") as two (2) separate plans, and the ADP Test need not be satisfied with respect to both plans in order for one (1) of the plans to pass the ADP Test.

An Employee's membership in the class of Otherwise Excludible Employees shall be determined using either the Plan's Entry Date provision or the earlier of the first day of the next Plan Year of 6 months after completing the maximum age and service conditions of Code section 410(a) as determined each year by the Plan Administrator.

- (c) "Excess Aggregate Contributions": For a Plan Year, the excess of:
- (1) The aggregate amount of the allocated Matching Contribution, Voluntary Employee Contributions, and mandatory employee contributions attributable to Highly Compensated Employees over
 - (2) The maximum amount of such contributions permitted by the ACP Test (determined by hypothetically reducing contributions 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.
 - (3) Excess Aggregate Contributions will be calculated after first determining the amount of Excess

Contributions treated as Employee Contributions due to recharacterization.

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP Test, the Contributions will be modified to include the additional amounts described in Section 2.7.4 "Excess Contributions": For a Plan Year, the excess of:

- (1) The aggregate amount of the Elective Deferrals and other contributions actually taken into account in computing the ADP 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 order of their ADPs, beginning with the highest of such percentages).

Excess Contributions so determined will be reduced by Excess Deferrals previously distributed.

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ADP Test, the Excess Contributions will be modified to include the additional amounts described in Section 2.7.4.

ARTICLE 8

SAFE HARBOR CODA PROVISIONS

The Plan is not a "Safe Harbor 401(k) plan" and is not intended to satisfy the "Alternative Methods of Meeting Nondiscrimination Requirements" as described in Code sections 401(k)(12) or 401(m)(11).

ARTICLE 9

SIMPLE 401(k) LIMITATIONS

The Plan is not intended to be a SIMPLE 401(k) plan under Code sections 401(k)(11) and 401(m)(10).

ARTICLE 10

ACR

2.10.1 Automatic Compensation Reduction (ACR). An Employee who becomes eligible to participate in the Plan and does not affirmatively elect to receive cash or have a specified amount contributed to the Plan shall have his Compensation automatically reduced by 7.00 percent. This percentage shall be contributed to the Plan as a Pre-tax Elective Deferral. A Participant can make an affirmative election to make no Pre-Tax Elective Deferrals or to defer a different percentage of Compensation at any time.

(a) The ACR is effective for any period in which an Employee has not made an affirmative election or until superseded by a subsequent election that is made in writing and filed with the Employer. Under the ACR the Employer will automatically reduce the Employee's Compensation within a reasonable time after giving notice of the arrangement and providing the Employee with an effective opportunity to make an affirmative election.

(b) The ACR shall apply to a current Participant who has no Elective Deferral election in effect.

If that Participant thereafter makes an affirmative election to reduce his compensation by another percentage (or by zero percentage), then that affirmative election will be effective for pay periods beginning in the month following the date the Participant files the election with the Plan Administrator.

2.10.2 Notice. The Employee notice must explain the ACR and the Employee's right to elect to have no such ACR made or to alter the amount of those reductions, including the procedure for exercising that right and the timing for implementation of any such election. The Employee must be notified annually of his ACR and the Employee's right to change that percentage. Each notice period must provide the Employee with a reasonable period to exercise their right to make an affirmative election.

2.10.3 Top-Heavy. Effective for Plan Years beginning on or after December 31, 2007, the Plan shall not be considered Top-heavy pursuant to Section 2.6.1 if contributions to the Plan consist solely of Elective Deferrals and an automatic contribution arrangement under sections 401(k)(13)(D) and 401(m)(11)(B).

PART 3

ARTICLE 1

ACCOUNTING

3.1.1 Accounts. All income, profits, recoveries, contributions, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee shall be held as a commingled Trust Fund, except to the extent such assets are transferred to a Segregated Fund or Controlled Account. For accounting purposes, the Plan Administrator shall, as necessary, establish and maintain the following Accounts for each Participant:

- (a) Non-Elective Account
- (b) Controlled Account
- (c) Elective Account
- (d) Matching Account
- (e) Qualified Matching Account
- (f) Qualified Non-Elective Account
- (g) Pre-tax Elective Account
- (h) Roth Deferral Account
- (i) Rollover Account
- (j) Deemed IRA Account
- (k) Pre-tax IRA Account
- (l) Roth IRA Account
- (m) ADP Test Safe Harbor Account
- (n) ACP Test Safe Harbor Account
- (o) Segregated Account
- (p) In-Plan Roth Conversion Account
- (q) Paid Time-Off Contribution Account

3.1.2 Valuation Adjustments. As of each Valuation Date, the following adjustments shall be made to each Participant's Accounts in a manner consistent with the Plan's recordkeeping system:

- (a) Distributions. Any distribution made to or on behalf of a Participant since the immediately preceding Valuation Date shall be deducted from the Participant's Account from which the distribution was made.
- (b) Expenses. Expenses earmarked for an individual Participant, if any, shall reduce his Account balance.

- (c) Contributions. Each Participant's Account shall be increased by his portion of any Employer Contributions, Elective Deferrals, any allocated Forfeitures, and any other contributions made on behalf of the Participant.
- (d) Forfeitures. If a Participant terminates service with the Employer, is less than one hundred percent (100%) vested, and forfeits the non-vested portion of his Account, then his Account and the amount available for distribution shall be reduced by the amount of such Forfeiture. To the extent that the Plan provides additional allocations from Forfeitures, the Accounts of those eligible for such an allocation will increase.
- (e) Adjustment to Fair Market Value. The Trustee shall appraise all moneys, securities, and other property in the Trust Fund, including Segregated Funds and Controlled Accounts but excluding Life Insurance Policies, at the then fair market value for each asset. In determining such value, all income and contributions, if any, received by the Trustee from the Employer or Participants shall be included and all expenses shall be deducted, such amounts being determined under the accounting method of the Trust. If the total net value so determined by the Trustee exceeds (or is less than) the total amount in the respective Accounts of all Participants, the excess (or deficiency) shall be added to (or deducted from) the respective Accounts of all Participants in the ratio that each such Participant's Account bears to the total amount in all such Accounts.
- (f) Insurance. If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the Participant's Account balance. If this Plan is funded by group annuity contracts or group insurance contracts, premiums or other consideration received by the insurance company must be allocated to Participants' Accounts under the Plan. Payments made since the immediately preceding Valuation Date for Life Insurance Policies on the life of a Participant or a family member in whom the Participant has an insurable interest (including without limitation payments of premiums and interest on policy loans) shall be deducted from the Account of the Participant from which the payment was made. Dividends or credits received since the immediately preceding Valuation Date on any Life Insurance Policy on the life of a Participant or a family member in whom the Participant has an insurable interest shall be added to the Account of the Participant from which the premiums for such Life Insurance Policy have been paid.
- (g) Loans. The issuance of a loan to a Participant reduces the Account from which it is issued and increases the outstanding loan obligation. Loan repayments, including principal and interest, shall increase the Account to which the repayment is made and decreases the outstanding loan obligation.
- (h) Transfers To or From Segregated Funds. To the extent that funds are transferred to a Segregated Fund from the general assets of the Trust or from a Segregated Fund to the general assets of the Trust pursuant to any of the provisions of the Plan, the Account from which the funds were transferred shall be decreased and the Account to which the funds were transferred shall be increased for each affected Participant.

Every adjustment made pursuant to this Section shall be considered as having been made no later than the applicable Valuation Date pursuant to policies established by the Trustee in a nondiscriminatory manner. The Trustee's determination regarding the valuation of trust assets and charges or credits to the individual Accounts of the respective Participants shall be conclusive and binding on all persons.

3.1.3 Allocation of Earnings Gains and Losses. As of each Valuation Date, the net income of the Trust Fund recognized since the prior Valuation Date will be allocated among Participant Accounts in a nondiscriminatory manner according to policies established by the Trustee. Net income is the interest, dividends, net gains or losses from the sale of investments, and unrealized appreciation (depreciation) in Trust Fund assets, less investment expenses of the Trust Fund. The portion of a Participant's Account held in a Controlled Account shall not participate in the allocation of earnings of this Section, but instead shall be credited with the actual earnings of such Controlled Account. In the event that the Participant's Accounts (or portion thereof) are invested in assets that are valued on a daily basis, his Account balance shall reflect the daily activity of such assets and the method of allocating earnings described in this paragraph shall not apply.

3.1.4 Interim Valuations. It is contemplated that the Trust Fund will be valued by the Trustee and allocations made only on a Valuation Date. At any time that the Plan's valuations are not performed on a daily basis, should it be necessary to make distributions under the provisions hereof and the Plan Administrator in good faith determines that, because of (a) an extraordinary change in general economic conditions, (b) the occurrence of some casualty materially affecting the value of the Trust Fund or a substantial part thereof, or (c) a significant fluctuation in the value of the Trust Fund has occurred since the immediately preceding Valuation Date, the Plan Administrator may, in his sole discretion, to prevent the payee from receiving a substantially greater or lesser amount than what he would be entitled to, based on current values, cause a re-valuation of the Trust Fund to be made and a reallocation of the interests therein as of the date the payee's right of distribution becomes fixed. The Plan Administrator's determination to make such special valuation and the valuation of the Trust Fund as determined by the Trustee shall be conclusive and binding on all persons ever interested hereunder.

3.1.5 Earnings on Forfeitures. In the event that a Participant forfeits part of his Account balance, such Forfeiture shall be credited with earnings until the Forfeiture is reallocated. Any such earnings shall be considered as an Annual Addition for purposes of Section 3.2.2.

3.1.6 Plan Expenses. Reasonable expenses for administration, investments, and processing shall be charged against the Trust Fund earnings, paid by the Employer, or allocated among terminated and active Participants according to an expense policy adopted by the Employer and applied in a uniform manner consistent with Labor and Treasury regulations.

ARTICLE 2

LIMITATIONS

3.2.1 General Limitations on Annual Additions. The Annual Additions contributed or allocated to a Participant's Account for a Limitation Year shall not exceed the Maximum Permissible Amount, as determined in Section 3.2.2. If the total amounts contributed or allocated would otherwise produce Annual Additions in excess of the Maximum Permissible Amount, the allocations or contributions shall be reduced pursuant to Section 3.2.3 so that the Annual Additions for the Limitation Year equal the Maximum Permissible Amount.

If a Participant participates in, or has ever participated in, any of the following types of plans maintained by the Employer, then the Annual Additions derived from the allocations of all such plans and this Plan credited to a Participant shall not exceed the lesser of the Maximum Permissible Amount for the Limitation Year or any other limitation contained in the Plan:

- (a) Another qualified defined contribution plan,
- (b) A welfare benefit fund, as defined in Code section 419(e), under which amounts attributable to post-retirement medical benefits are held in separate accounts for key employees (as defined in Code section 419A(d)(3)),
- (c) An individual medical account, as defined in Code section 415(l)(2),
- (d) A simplified employee pension, as defined in Code section 408(k),
- (e) Exception for Restorative Payments. Restorative payments allocated to a Participant's Account, which include payments made to restore losses to the Plan resulting from actions (or a failure to act) by a Fiduciary for which there is a reasonable risk of liability under Title I of ERISA or under other applicable federal or state law, where similarly situated Participants are similarly treated, do not give rise to an Annual Addition for any Limitation Year, or
- (f) Exception for Qualified Military Service. If, in a particular Limitation Year, the Employer contributes an amount to an Employee's account with respect to a prior Limitation Year and such contribution is required by reason of a Period of Qualified Military Service, then such contribution is not considered an Annual Addition with respect to the Employee for that particular Limitation Year in which the contribution is made, but, in accordance with section 414(u)(1)(B) of the Code, is considered an Annual Addition for the Limitation Year to which the contribution relates.

If such Annual Additions exceed the Maximum Permissible Amount for the Limitation Year, the amounts contributed or allocated shall be reduced in accordance with Section 3.2.4 so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount.

3.2.2 Determination of Annual Additions and Maximum Permissible Amount.

(a) Annual Additions. The term "Annual Additions" shall mean the sum of the following amounts credited to a Participant's Accounts for the Limitation Year:

- (1) Employer Contributions;
- (2) Employee contributions;
- (3) Forfeitures;
- (4) Excess Elective Deferrals, Excess Contributions, and Excess Aggregate Contributions;

- (5) Amounts allocated after March 31, 1984, to an individual medical account, as defined in Code section 415(l)(2), that is part of a pension or annuity plan maintained by the Employer;
- (6) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits held in separate accounts for key employees (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
- (7) Allocations under a simplified employee pension, as defined in Code section 408(k).

For this purpose, Excess Elective Deferrals are disregarded to the extent distributed to the Participant. Excess Contributions and Excess Aggregate Contributions are included, even if distributed to the Participant. Any other amounts are disregarded if they are reallocated to other Participants in accordance with Section 3.2.3. Any excess amounts applied under Section 3.2.3 reduce Employer Contributions in a Limitation Year are considered Annual Additions for such Limitation Year.

- (b) Maximum Permissible Amount. Except for Catch-up Contributions, the term "Maximum Permissible Amount" shall mean, for any Limitation Year beginning on or after January 1, 2002, the lesser of:

- (1) Forty thousand dollars (\$40,000), as adjusted for increases in the cost-of-living under Code section 415(d); or
- (2) One hundred percent (100%) of a Participant's compensation, as defined in Subsection 3.2.5(a) for the Limitation Year.

The compensation limit referred to in Subsection (2) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code sections 401(h) or 419A(f)(2)) that is otherwise treated as an Annual Addition.

Prior to determining a Participant's actual compensation for a Limitation Year pursuant to Subsection 3.2.5(a) the Employer may determine the Maximum Permissible Amount for the Participant based on a reasonable estimate of the Participant's compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the Employer shall determine the Maximum Permissible Amount for the Limitation Year based on the Participant's actual compensation for the Limitation Year.

- (c) Short Limitation Year. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the limitation determined in Subsection (b)(1) above shall be multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12). Any new Limitation Year must begin within the Limitation Year in which the amendment is made.

3.2.3 Excess Annual Additions. If, due to the allocation of Forfeitures, a reasonable estimation of a Participant's Compensation that exceeds his actual Compensation, or a miscalculation in a Participant's Elective Deferrals, a Participant's Annual Additions exceed his Maximum Permissible Amount for the Limitation Year, the Employer may correct such amount using the methods permitted in the Employer Compliance Resolution System defined in Revenue Procedure 2008-50 as amended from time to time.

3.2.4 Participation in Certain Other Plans. If a Participant's Annual Additions under this Plan and under other plans or funds of the Employer exceed the Maximum Permissible Amount for a Limitation Year, such excess shall be distributed to the Participant, reallocated to other Participants, or held in a suspense account in the same order as Section 3.2.3. In addition, allocations to qualified defined contribution plans shall be adjusted first, followed by adjustments to allocations to a simplified employee pension, followed by adjustments to allocations to an individual medical account, followed by adjustments to allocations to a welfare benefit fund, as those terms are referenced in Section 3.2.1.

In the event that two (2) or more plans of the Employer have Voluntary Employee Contributions or Elective

Deferrals, the amounts contributed last shall be distributed first. If two (2) or more plans of the Employer receive Employer contributions, the amounts allocated last shall be adjusted first. If two (2) or more qualified defined contribution plans of the Employer, including this Plan, allocate contributions on the same date, then the allocations from this Plan shall be adjusted prior to the allocations in the other defined contribution plan(s).

3.2.5 Definitions. For purposes of this Article, the terms below have the following meanings:

- (a) Compensation. Compensation includes all wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash), for personal services actually rendered in the course of employment (Code section 415(c)(3) compensation) with the Employer maintaining the Plan to the extent that the amounts are includable 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 non-accountable plan (as described in Treasury Regulations section 1.62-2(c)), and excluding the following:
- (1) Employer contributions to a plan of deferred compensation that are not includable in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;
 - (2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
 - (3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
 - (4) Other amounts that received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity contract described in Code section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

Notwithstanding any provisions to the contrary, for purposes of applying the limitations of this Article, compensation for a Limitation Year is the compensation actually paid or made available in gross income during such year that does not exceed the dollar limitations of Code section 401(a)(17). In the case of a Self-Employed Individual, compensation means Earned Income. Compensation shall be measured over the Limitation Year.

Compensation shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount that is contributed or deferred by the Employer at the election of the Employee and that is not includable in the gross income of the Employee by reason of Code sections 125 and 457. Compensation shall also include any elective amount that is not includable in the gross income due to Code section 132(f)(4). Compensation for a Participant who is Disabled shall reflect only that Compensation received while actively employed.

- (b) Employer. 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 section 415(h)), or affiliated service groups (as defined in Code section 414(m)) of which the adopting Employer is part and any other entity required to be aggregated with the Employer pursuant to Code section 414(o).

3.2.6 Controlled Businesses. If this Plan provides contributions or benefits for one or more Owner-Employees who control both the business for which this Plan is established and one or more other trades or businesses, this Plan must, when looked at as a single plan, satisfy Code section 401(a), and contributions on behalf of any Owner-Employee may be made only with respect to the Earned Income of such Owner-Employee that is derived from the trade or business with respect to which this Plan is

established.

3.2.7 Governmental Plans. The Participation and Nondiscrimination Requirements of Code sections 401(a)(5), 401(a)(26) and 401(k)(3) shall not apply to a Governmental Plan including the plan of an Indian Tribal Government.

Employees participating under a Governmental Plan sponsored by an Indian tribal government must be:

- (a) an Employee for the tribal government entity and
- (b) an Employee who performs services that are essential governmental functions and not commercial activities.

For the purpose of these special requirements and the transitional relief granted below, an Employee performs commercial activities if they perform service for a hotel, casino, service station, convenience store, marina or a similar nongovernmental business operated by the Indian tribal government.

For the first day of the first plan year beginning on or after August 17, 2006, an existing plan established and maintained by an Indian tribal government covering Employees performing commercial activities who also perform governmental functions will be treated as satisfying the nondiscrimination requirements of the Code, if:

- (c) by September 30, 2007, the Indian tribal government took steps to adopt a separate plan covering the commercial employees that meets the qualification rules under Code section 401(a) for plan that are not Governmental Plans;
- (d) by September 30, 2007, the Indian tribal government took action to freeze benefit accruals under the existing plan covering the employees performing commercial activities; and
- (e) there is no reduction in the benefit formula provided in the continuing plan for the Employees performing the commercial activities.

The provisions of this Section 3.2.7 shall apply to the Plan and are effective for Plan Years beginning on or after August 17, 2006, except as provided as transitional relief.

ARTICLE 3

FIDUCIARIES

3.3.1 Standard of Conduct. The duties and responsibilities of the Plan Administrator and the Trustee with respect to the Plan shall be carried out (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, 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; (e) by diversifying the investments of the Plan to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

3.3.2 Individual Fiduciaries. Except for provisions regarding Trustees in Section 3.5.2 at any time that the Employer has appointed a group of individuals to act in the same Fiduciary capacity, the Employer shall also determine the number of such persons who shall act in such capacity. Such persons may or may not be Participants or Employees of the Employer. Unless otherwise provided for by agreement or by direction of the Employer, any action taken by a group of individuals acting in the same Fiduciary capacity shall be taken at the direction of a majority of such persons, or, if the number of such persons is two (2), by unanimous consent.

3.3.3 Disqualification from Service. No person shall be permitted to serve as a Fiduciary, custodian, counsel, agent, or employee of the Plan or as a consultant to the Plan who has been convicted of any of the criminal offenses specified in the Act.

3.3.4 Bonding. Except as otherwise permitted by law, every Fiduciary or other person who handles funds or other property or assets of the Plan shall be bonded in accordance with the requirements of the Act.

3.3.5 Prior Acts. No Fiduciary shall be liable for any acts occurring prior to the period of time during which the Fiduciary was actually serving in such capacity with respect to the Plan.

3.3.6 Insurance and Indemnity. The Employer may purchase or cause the Trustee to purchase and keep current as an authorized expense liability insurance for the Plan, its Fiduciaries, and any other person to whom any financial or other administrative responsibility with respect to the Plan or Trust is allocated or delegated, from and against any and all liabilities, costs, and expenses incurred by such persons as a result of any act or omission to act in connection with the performance of the duties, responsibilities, and obligations under the Plan and under the Act, provided that any such insurance policy purchased with Plan assets permits subrogation by the insurer against the Fiduciary in the case of breach by such Fiduciary.

Unless otherwise determined and communicated to affected parties by the Employer, the Employer shall indemnify and hold harmless each such person, other than a corporate trustee, for and from any such liabilities, costs, and expenses that are not covered by any such insurance, except to the extent that any such liabilities, costs, or expenses are judicially determined to be due to the gross negligence or willful misconduct of such person. No Plan assets may be used for any such indemnification.

3.3.7 Expenses. Expenses incurred by the Plan Administrator or the Trustee in the administration of the Plan and the Trust, including appropriate fees for legal services regarding the Plan, such compensation to the Trustee as may be agreed upon in writing from time to time between the Employer and the Trustee, and all other proper charges and expenses of the Plan Administrator or the Trustee and of their agents and counsel shall be paid by the Employer, or at its election at any time or from time to time, may be charged against the assets of the Trust, but until so paid shall constitute a charge upon the assets of the Trust.

The Trustee shall have the authority to charge the Trust Fund for its compensation and reasonable expenses unless paid or contested by written notice by the Employer within sixty (60) days after mailing of

the written billing by the Trustee. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the assets of the Trust or the income thereof shall be paid from such assets. Notwithstanding the foregoing, no compensation shall be paid to any Employee for services rendered under the Plan and Trust as a Trustee.

3.3.8 Agents, Accountants and Legal Counsel. The Plan Administrator shall have authority to employ suitable agents, custodians, investment counsel, accountants, and legal counsel who may, but need not be, legal counsel for the Employer. The Plan Administrator and the Trustee shall be fully protected in acting upon the advice of such persons. At no time shall the Trustee be obliged to institute any legal action or to become a party to any legal action unless the Trustee has been indemnified to the Trustee's satisfaction for any fees, costs, and expenses to be incurred in connection therewith.

3.3.9 Investment Manager. The Employer may employ an investment manager or managers to manage all or any part of the Trust Fund any (a) investment advisor registered under the Investment Advisors Act of 1940; (b) bank as defined in said Act; or (c) insurance company qualified to perform investment management services in more than one state. Any investment manager shall have all powers of the Trustee in the management of such part of the Trust Fund, including the power to acquire or dispose of assets.

In the event an investment manager is so appointed, the Trustee shall not be liable for the acts or omissions of such investment manager or be under any obligation to invest or otherwise manage that part of the Trust Fund that is subject to the management of the investment manager. The Employer shall notify the Trustee in writing of any appointment of an investment manager, and shall provide the Trustee with the investment manager's written acknowledgment that it is a Fiduciary with respect to the Plan.

3.3.10 Finality of Decisions or Acts. Except for the right of a Participant or Beneficiary to appeal the denial of a claim, any decision or action of the Plan Administrator or the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Plan Administrator or the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any Fiduciary within the scope of his duties in accordance with the terms of the Plan and Trust, such actions shall be upheld unless determined to have been arbitrary and capricious.

3.3.11 Compliance with Section 404(c) of the Act. The Employer intends that the investment alternatives meet the requirements of section 404(c) of the Act and the applicable regulations.

ARTICLE 4

PLAN ADMINISTRATOR

3.4.1 Administration of Plan.

- (a) The Employer shall designate a Plan Administrator from time to time. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy in his sole discretion. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of the Plan, provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified Plan pursuant to the Code, and shall comply with the terms of the Act. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under the Plan.
- (b) The Plan Administrator shall be responsible for the general administration of the Plan, including, but not limited to, the following duties:
 - (1) To determine all questions relating to the eligibility of an Employee to participate in the Plan or to remain a Participant in the Plan.
 - (2) To compute, certify, and direct the Trustee with respect to the amount and kind of benefits to which any Participant is entitled.
 - (3) To collect all contributions or other payments, as applicable, and transfer them to the Trustee.
 - (4) To authorize and direct the Trustee with respect to all disbursements from the Trust Fund.
 - (5) To maintain all the necessary records for the administration of the Plan.
 - (6) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its terms.
 - (7) To select the Insurer to provide any Life Insurance Policies for any Participant.
 - (8) To advise the Fiduciary responsible for Plan investments regarding the short and long-term liquidity needs of the Plan in order that the Trustee might direct its investment accordingly.
 - (9) To advise, counsel, and assist any Participant regarding any rights, benefits, or elections available under the Plan.
 - (10) To instruct the Trustee regarding the management, investment, and reinvestment of the Trust Fund unless the investment authority has been delegated to the Trustee or an investment manager.
- (c) The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor, the Secretary of the Treasury, or other governmental authorities.
- (d) Whenever the Plan Administrator determines it is in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

(e) The Plan Administrator shall procure bonding for all persons dealing with the Plan or its assets as may be required by law.

3.4.2 Disclosure Requirements. Every Participant covered under the Plan and every Beneficiary receiving benefits under the Plan shall receive from the Plan Administrator a summary plan description and such other information as may be required by law or by the terms of the Plan.

3.4.3 Information Generally Available. The Plan Administrator shall make copies of this Plan and the Trust, the summary plan description, latest annual report, Life Insurance Policies, or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of any of the above documents to the respective party.

3.4.4 Statement of Account Balance. Upon written request to the Plan Administrator once during any twelve (12) month period, a Participant or Beneficiary shall be furnished with a written statement, based on the latest available information, of his then vested Account balance and the earliest date upon which the same will become fully vested and non-forfeitable. The statement shall also include a notice to the Participant of any benefits that are forfeitable if the Participant dies before a certain date.

3.4.5 Explanation of Rollover Treatment. The Plan Administrator shall, when making a distribution eligible for rollover treatment, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an Eligible Retirement Plan within sixty (60) days after the date on which the recipient received the distribution and, if applicable, the provisions of law pertaining to the tax treatment of lump sum distributions.

3.4.6 Electromechanical Communications. Electromechanical communications are permitted, but not required, among all parties to a communication regarding the Plan, including the Employer, Trustee, Plan Administrator, and Participant. Each Plan Fiduciary may adopt policies to govern its use of electromechanical communications, including policies developed by third parties working with the Fiduciary on Plan matters.

The Trustee (or other agent appointed for this purpose) may, but is not required to, act upon receipt of directions (including, without limitation, directions pursuant to voice response systems, facsimile, or other electromechanical means) with regard to all Plan transactions. The Trustee may comply with such direction and will incur no liability for doing so. If the Trustee permits the use of electromechanical directions, the giving of such directions shall have the same meaning as if the directions were in writing and delivered as a document.

3.4.7 Elections on Behalf of an Incapacitated Person. In the sole judgment of the Plan Administrator, if any person entitled to benefits under the Plan is incapacitated, any election that such person is permitted to make under the Plan may be made by such person's legal representative.

If the Plan Administrator, in its sole discretion, is not satisfied with the power of a legal representative to act on behalf of a person, the Plan Administrator may require an order from a court of competent jurisdiction.

3.4.8 Use of Electronic Medium. The use of an electronic medium to provide applicable notices and to make Participant elections must comply with Treasury Regulation 1.401(a)-21 that reflects the requirements for electronic signatures contained in the Electronic Signatures in Global and National Commerce Act, Public Law 106-229 (114 Stat. 464 (2000) (ESIGN)).

ARTICLE 5

TRUSTEE

3.5.1 Acceptance of Trust. The Trustee, by joining in the execution of the Plan, agrees to act in accordance with the express terms and conditions hereof.

3.5.2 Trustee Capacity - Co-Trustees. The Trustee may be a bank, trust company, or other corporation possessing trust powers under applicable state or federal law or one or more individuals or any combination thereof. The Trustee shall be bound by any action taken by any 1 of the individuals acting in the capacity of the Trustee.

When there are two (2) or more Trustees, they may allocate specific responsibilities, obligations, or duties among themselves by their written agreement. An executed copy of such written agreement shall be delivered to and retained by the Plan Administrator.

3.5.3 Resignation, Removal, and Successors. Any Trustee may resign at any time by delivering to the Employer a written notice of resignation to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof; the Employer may waive such notice. The Trustee may be removed by the Employer with or without cause, by tendering to the Trustee a written notice of removal to take effect at a date specified therein.

Upon such removal or resignation of a Trustee, the Employer shall either appoint a successor Trustee who shall have the same powers and duties as those conferred upon the resigning or discharged Trustee, or, if a group of individuals is acting as Trustee, determine that a successor shall not be appointed and the number of Trustees shall be reduced by one (1).

3.5.4 Consultations. The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, in any case in which the Trustee shall deem such advice necessary. The Trustee shall not be liable for any action taken or omitted in good faith reliance upon the advice of such counsel. With the exception of those powers and duties specifically allocated to the Trustee by the express terms of the Plan, it shall not be the responsibility of the Trustee to interpret the terms of the Plan, and the Trustee may request, and is entitled to receive, guidance and written direction from the Plan Administrator on any point requiring construction or interpretation of the Plan documents.

3.5.5 Rights, Powers and Duties. The rights, powers, and duties of the Trustee are:

- (a) The Trustee shall have exclusive authority, discretion, and responsibility for the management and control of the assets of the Trust Fund in accordance with the provisions of the Plan and any amendments, but the Employer may limit the exclusive authority, discretion, and responsibility of the Trustee by written direction delivered to the Trustee. The duties of the Trustee shall be determined solely by the express provisions of the Plan and no other further duties or responsibilities shall be implied. Subject to the terms of this Plan, the Trustee shall be fully protected and shall incur no liability when acting in reliance upon the written instructions or directions of the Employer, the Plan Administrator, a duly designated investment manager, or any other named Fiduciary.
- (b) The Trustee shall have all powers necessary or convenient for the orderly and efficient performance of its duties, including but not limited to those specified in this Section. The Trustee shall have the power generally to do all acts, whether or not expressly authorized, that the Trustee in the exercise of its fiduciary responsibility may deem necessary or desirable for the protection of the Trust Fund and the assets thereof.
- (c) The Trustee shall have the power to collect and receive any and all moneys and other property due the Plan and to give full discharge and release thereof; to settle, compromise, or submit to arbitration any claims other than ERISA claims, debts, or damages due to or owing to or from the Trust Fund; to

commence or defend suits or legal proceedings whenever, in the Trustee's judgment, any interest of the Trust Fund requires it; and to represent the Trust Fund in all suits or legal proceedings in any court of law or equity or before any other body or tribunal.

- (d) The Trustee shall cause any Life Insurance Policies or assets of the Trust Fund to be registered in its name as Trustee and shall be authorized to exercise any and all ownership rights regarding these assets, subject to the terms of the Plan.
 - (i) The requirements of paragraph (d) of this Section will not fail to be satisfied merely because securities of a plan are held in the name of a nominee or in street name, provided such securities are held on behalf of the Plan by:
 - (A) A bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company;
 - (B) A broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer; or
 - (C) A "clearing agency," as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee.
 - (ii) Where a corporation described in section 501(c)(2) of the Internal Revenue Code holds property on behalf of the Plan, the requirements of paragraph (d) of this Section are satisfied with respect to such property if all the stock of such corporation is held in trust on behalf of the Plan by one or more trustees.
 - (iii) If the assets of an entity in which the Plan invests include Plan assets by reason of the Plan's investment in the entity, the requirements of paragraph (d) of this Section are satisfied with respect to such investment if the indicia of ownership of the Plan's interest in the entity are held in trust on behalf of the Plan by one or more trustees.
- (e) The Trustee may temporarily hold cash balances and shall be entitled to deposit any funds received in a bank account in the name of the Trust Fund in any bank selected by the Trustee, including the banking department of a corporate Trustee, if any, pending disposition of such funds in accordance with the Plan. Any such deposit may be made with or without interest.
- (f) The Trustee shall pay the premiums and other charges due and payable at any time on any Life Insurance Policies as the Plan Administrator may direct, provided funds for such payments are then available in the Trust. The Trustee shall be responsible only for such funds and Life Insurance Policies that it actually receives as Trustee and shall have no obligation to make payments other than from such funds and cash values of Life Insurance Policies.
- (g) If the whole or any part of the Trust Fund shall become liable for the payment of any estate, inheritance, income, or other tax that the Trustee shall be required to pay, the Trustee shall have full power and authority to pay such tax out of any moneys or other property in the Trust Fund for the Account of the person whose interest hereunder is so liable. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority as it shall deem necessary. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on instructions from the Plan Administrator.
- (h) The Trustee shall keep a full, accurate, and detailed record of all transactions of the Trust, which the Employer and the Plan Administrator shall have the right to examine at any time during the Trustee's regular business hours. As of the close of each Plan Year, the Trustee shall furnish the Plan Administrator with a statement of account setting forth all receipts, disbursements, and other transactions effected by the Trustee during the year. The Plan Administrator shall promptly notify the Trustee in writing of his approval or disapproval of the statement of account.

The Plan Administrator's failure to provide written disapproval of the statement within sixty (60) days

after receipt shall be considered an approval. Except as otherwise required by law, the Plan Administrator's approval shall be binding on all matters embraced in any statement to the same extent as if the statement of the Trustee had been settled by judgment or decree of a court of competent jurisdiction under which the Trustee, Employer, and all persons having or claiming any interest in the Trust Fund were parties, provided however, that the Trustee may have its account judicially settled if it so desires.

- (i) The Trustee is hereby authorized to execute all necessary receipts and releases to any parties concerned; and shall be under a duty, upon being advised by the Plan Administrator that the proceeds of any Life Insurance Policies are payable, to give reasonable assistance to the Beneficiary designated therein to collect such sums as may appear to be due, and upon payment, transfer such sums to the Beneficiary.
- (j) If, at any time, as the result of the death of the Participant, there is a dispute regarding the person to whom payment or delivery of moneys or property should be made by the Trustee, or regarding any action to be taken by the Trustee, the Trustee may postpone such payment, delivery, or action, retaining the funds or property involved, until such dispute is resolved in a court of competent jurisdiction, the Trustee shall have been indemnified to its satisfaction, or it has received written direction from the Plan Administrator.
- (k) Anything in this instrument to the contrary notwithstanding, the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become or remain a Participant hereunder, the amount of benefit to which any Participant or Beneficiary shall be entitled hereunder, or the size and type of any Life Insurance Policy to be purchased from any Insurer for any Participant hereunder; all such responsibilities being vested in the Plan Administrator.

3.5.6 Rights of Trustee to Contributions. Unless provided with written direction to the contrary, by the Employer or the Plan Administrator, the Trustee shall have no duty to require any contribution to be made or to determine whether contributions delivered to the Trustee by the Employer comply with the provisions of this Agreement. The Trustee shall be notified in writing of the Named Fiduciary to whom such responsibility has been assigned. In this case, the Trustee shall be accountable only for funds actually received by the Trustee.

If the Plan has two or more Named Fiduciaries or Trustees assigned this duty, it may be allocated to a single Named Fiduciary or Trustee. The Employer or Plan Administrator may also provide that a Named Fiduciary may direct the Trustee as to this responsibility or may appoint an Investment Manager to take on this duty. To the extent the nature and scope of the Trustee's responsibilities are specifically limited in the Plan documents, Trust Agreement or by written direction, it will be the responsibility of the Named Fiduciary with the authority to hire and monitor Trustees to assure that all Trustee responsibilities with respect to the management and control of the Plan's assets (including collecting delinquent contributions) have been properly assigned to a Trustee, Investment Manager or Named Fiduciary.

The Plan must make systematic, reasonable and diligent efforts to collect delinquent Employer Contributions. The steps necessary to discharge this duty to collect contributions will depend on the available facts. In determining what collection actions to take, a Named Fiduciary must weigh the value of the Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, the Named Fiduciary may take into account the Employer's solvency in deciding whether to expend Plan assets to pursue a claim.

3.5.7 Trustee Indemnification. The Employer shall indemnify and hold harmless the Trustee for and from the assertion or occurrence of any liability to a Participant or Beneficiary for any action taken or omitted by the Trustee pursuant to any written direction to the Trustee from the Employer or the Plan Administrator. Such indemnification obligation of the Employer shall not be applicable to the extent that any such liability is covered by insurance.

3.5.8 Changes in Trustee Authority. If a successor Trustee is appointed, neither an Insurer nor any other person who has previously had dealings with the former Trustee shall be chargeable with knowledge of such appointment or such change until furnished with written notice. Until such notice, the Insurer and

any other such party shall be fully protected in relying on any action taken or any signature presented that would have been proper in accordance with information previously received.

ARTICLE 6

TRUST ASSETS

3.6.1 Trustee Is Exclusive Owner. All assets held by the Trustee, whether in the Trust Fund or Segregated Funds, shall be owned exclusively by the Trustee, and no Participant or Beneficiary shall have any individual ownership thereof. Participants and their Beneficiaries shall share in the assets of the Trust, its net earnings, profits, and losses, only as provided in this Plan.

3.6.2 Investments. The Trustee shall invest and reinvest the Trust Fund without distinction between income and principal in one or more of the following ways, as the Trustee shall from time to time determine:

- (a) The Trustee may invest the Trust Fund or any portion thereof in obligations issued or guaranteed by the United States of America or of any instrumentality thereof, or in other bonds, notes, debentures, mortgages, preferred or common stocks, options to buy or sell stocks or other securities, mutual fund shares, limited partnership interests, commodities, real estate or any interest therein, or in such other property, real or personal, as the Trustee shall determine.
- (b) The Trustee may cause the Trust Fund or any portion thereof to be invested in a common trust fund established and maintained by a national bank or other bank regulated by the Federal Deposit Insurance Corporation, for the collective investment of fiduciary funds, even though the bank is acting as the Trustee or an investment manager, provided such common trust fund is a qualified trust under the applicable Code section, or corresponding provisions of future federal internal revenue laws, and is exempt from income tax under the applicable Code section. In the event any assets of the Trust Fund are invested in such a common trust fund, the Declaration of Trust creating such common trust fund, as it may be amended from time to time, shall be incorporated into this Plan by reference and made a part hereof.

Further, all or any portion of the assets subject to this Trust Agreement may be invested in any collective investment fund maintained exclusively for the investment of assets of (i) exempt, qualified employee benefit trusts and (ii) collective investment funds consisting exclusively of assets of such qualified trust. The assets so invested shall be subject to all the provisions of the instrument establishing such collective investment fund, as such instrument may be amended from time to time. Such instrument, as amended from time to time, is hereby incorporated and made a part of this Trust Agreement and shall control notwithstanding any contrary provision of this Trust Agreement or the Plan.

- (c) The Trustee may deposit any portion of the Trust Fund in savings accounts in federally insured banks or savings and loan associations or invest in certificates of deposit issued by any such bank or savings and loan association. The Trustee may retain, without liability for interest, any portion of the Trust Fund in cash balances pending investment thereof or payment of expenses.
- (d) The Trustee may buy and sell put and call options, covered or uncovered, engage in spreads, straddles, ratio writing and other forms of options trading, including sales of options against convertible bonds, and sales of Standard & Poor's futures contracts, and trade in and maintain a brokerage account on a cash or margin basis.
- (e) The Trustee may invest any portion or all of the assets of the Trust Fund that are attributable to the vested and nonforfeitable interest in the Accounts of a Participant in the purchase of group or individual Life Insurance Policies issued on the life of the Participant or a family member in whom the Participant has an insurable interest and for the benefit of the Participant with the consent of the Participant, subject to the following conditions, as they are represented by the Plan Administrator:
 - (1) If ordinary Life Insurance Policies are used, the aggregate life insurance premiums must be less than one-half (1/2) of the aggregate Employer Contributions and Forfeitures allocated to the Participant's Account at any particular time, without regard to Trust earnings, capital gains and

losses; for purposes of this Plan, the term "Ordinary Life Insurance Policies" shall mean Policies with both nondecreasing death benefits and nonincreasing premiums.

- (2) The aggregate premiums paid for Life Insurance Policies on the life of any Participant or a family member in whom the Participant has an insurable interest that are either term, universal or any other contracts which are not ordinary whole life Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
- (3) The sum of one-half of the aggregate premiums for ordinary whole Life Insurance Policies and all premiums for other Life Insurance Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
- (4) If the Plan permits in-service distributions to a Participant prior to his Normal Retirement Date in accordance with Section 2.5.12, the amount that may be distributed to the Participant may be applied to the purchase of Life Insurance Policies.
- (f) The Trustee may invest the Trust Fund or any portion thereof to acquire or hold Qualifying Employer Securities or Real Property, provided that the portion so invested shall not exceed the amount allowed as an investment under the Act. There shall be no limit on the acquisition of Qualifying Employer Securities in an individual account balance plan in which Participants may direct the Trustee to buy Qualifying Employer Securities on their behalf.
- (g) If permitted, the Participant may direct the purchase of life insurance on his life, on the joint lives of the Participant and a family member in whom the Participant has an insurable interest, or on the life of family member in whom the Participant has an insurable interest. The amount that can be used to pay life insurance premiums shall be determined according to this Section.

3.6.3 Administration of Trust Assets. Subject to the limitations expressly set forth in this Plan, the Trustee shall have the following powers and authority in connection with the administration of the assets of the Trust:

- (a) To hold and administer all contributions made by the Employer to the Trust Fund and all income or other property derived therefrom as a single Trust Fund, except as otherwise provided in this Plan;
- (b) To manage, control, sell, convey, exchange, petition, divide, subdivide, improve, repair, grant options, sell upon deferred payments, lease without limit as determined for any purpose, compromise, arbitrate, or otherwise settle claims in favor of or against the Trust Fund, institute, compromise, and defend actions and proceedings, and to take any other action necessary or desirable in connection with the administration of the Trust Fund;
- (c) To vote any stock, bonds, or other securities of any corporation or other issuer; otherwise consent to or request any action on the part of any such corporation or other issuer; to give general or special proxies or powers of attorney, with or without power of substitution; to participate in any reorganization, recapitalization, consolidation, merger, or similar transaction with respect to such securities; to deposit such stocks or other securities in any voting trusts, or with any protective or like committee, or with the trustee of such trusts, or with the depositories designated thereby; to exercise any subscription rights and conversion privileges or other options and to make any payments incidental thereto; and generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights, powers, and privileges with respect to the stock or other securities or property constituting the Trust Fund as if the Trustee were the absolute owner thereof;
- (d) To apply for and procure, at the election of any Participant, Life Insurance Policies on the life of the Participant or someone in whom the Participant has an insurable interest; to exercise whatever rights and privileges may be granted to the Trustee under such Policies, and to cash in, receive, and collect such Policies or the proceeds therefrom as and when entitled to do so under the provisions thereof;

- (e) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (f) To register any investment held in the Trust in the Trustee's own name or in the name of a nominee for the benefit of the Plan, or to hold any investment in bearer form, provided that the books and records of the Trustee shall at all times show that all such investments are part of the Trust;
- (g) To borrow money for the purposes of the Plan in such amounts and upon such terms and conditions as the Trustee deems appropriate;
- (h) To commingle the assets of the Trust Fund with the assets of other similar trusts that are exempt from income tax, whether sponsored by the Employer, an affiliate of the Employer, or an unrelated employer, provided that the books and records of the Trustee shall at all times show the portion of the commingled assets that are part of the Trust; and
- (i) To do all acts whether or not expressly authorized that the Trustee may deem necessary or proper for the protection of the property held hereunder.

3.6.4 Segregated Funds. Unless otherwise determined by the Trustee to be imprudent, the Trustee shall invest and reinvest each Segregated Fund without distinction between income and principal. Such accounts shall be held for the benefit of the Participant for whom such Segregated Fund is established in accordance with the terms of the Plan, and the Participant's Segregated Account shall be credited with any interest earned in connection with such accounts. If the Trustee determines that an alternative investment is appropriate, the Trustee may invest the Segregated Fund in any manner permitted with respect to the Trust Fund and such Segregated Fund shall be credited with the net income or loss or net appreciation or depreciation in value of such investments. No Segregated Fund shall share in any Employer Contributions or Forfeitures, any net income or loss from, or net appreciation or depreciation in value of, any investments of the Trust Fund, or any allocation for which provision is made in this Plan that is not specifically attributable to the Segregated Fund.

It is not the intent of this Section 3.6.4 to create sub-trusts to own plan assets but rather to establish investment accounts to be managed individually. Such assets would continue to be subject to all other provisions of the Plan and the Participant's Plan Beneficiary designation.

3.6.5 Investment Control. Each Participant may elect to transfer funds that do not exceed the balances in his Trustee-directed Accounts to a Controlled Account and exercise investment control of those funds by appropriate direction to the Trustee.

To the extent that the funds to be transferred from a Participant's Account include his share of an Employer Contribution or other funds that have not yet been received by the Trustee, such transfer shall not occur until the Trustee receives such funds. Funds transferred to a Controlled Account on behalf of the Participant shall thereafter be invested by the Trustee in such property, real or personal (other than collectibles), as the Participant shall direct from time to time in writing, unless policies adopted pursuant to Section 3.4.6 permit electromechanical communications in this context. The Participant may not direct the Trustee to make loans to himself, nor to make loans to the Employer, and the Trustee may limit the investment alternatives available to the Participant in a uniform and nondiscriminatory manner.

A Participant shall make such election by giving notice thereof to the Trustee in a manner that the Trustee deems necessary, and such notice shall specify the source and amount of such funds to be transferred. Any such election shall be at the absolute discretion of the individual Participant and shall be binding upon the Trustee unless the Trustee has actual knowledge that such transaction is a prohibited transaction under the Code or the Act. Upon any such election being made, the amount of such funds to be transferred shall be deducted from his Trustee-directed Accounts as appropriate and added to a Controlled Account of the Participant. All earnings thereafter received with respect to such transferred funds, as well as any appreciation or depreciation in his investments, shall be added to or deducted from his Controlled Account.

If a Participant elects to transfer funds from his Trustee-directed Accounts to a Controlled Account as of a

date other than a Valuation Date, the Trustee shall make such transfer, provided the Trustee determines that the assets in the Trust Fund are such that it is feasible and practical to make such transfer. As of the date of such transfer, adjustments to the Participant's Accounts shall be made as if such date is a Valuation Date.

As of any Valuation Date, the Participant may elect to have all or any portion of any cash contained in his Controlled Account transferred back to the general assets of the Trust Fund, in which case the Trustee shall again invest such cash as part of the general assets of the Trust Fund. A Participant shall make such election by giving notice to the Trustee, in the manner that the Trustee deems necessary, and the notice shall specify the amount of cash to be transferred. The amount of such funds so transferred shall be deducted from the Participant's Controlled Account and added to the appropriate Account of the Participant. Any such election shall be at the absolute discretion of the individual Participant and shall be binding upon the Trustee.

The Trustee shall not have any investment responsibility with respect to a Participant's Controlled Account. In the event that a Participant elects to have any such funds transferred to a Controlled Account and invested in particular securities or assets pursuant to this Section, the Trustee shall not be liable for any loss or damage resulting from the investment decision of the Participant.

ARTICLE 7

INSURANCE

The Plan does not provide for the purchase of life insurance.

ARTICLE 8

PARTICIPANT LOANS

3.8.1 Authorization. Loans are permitted under the Plan. The Plan Administrator shall establish a "Participant loan program" in compliance with applicable Treasury Regulations and Labor Regulations section 2550.408b. The terms of such Participant loan program shall be in writing and shall constitute part of the Plan. Such terms shall include:

- (a) The identity of the person or positions authorized to administer the Participant loan program;
- (b) A procedure for applying for loans;
- (c) The basis on which loans will be approved or denied;
- (d) Limitations (if any) on the types and amount of loans offered;
- (e) The procedure under the program for determining a reasonable rate of interest;
- (f) The types of collateral that may secure a Participant loan; and
- (g) The events constituting default and the steps that will be taken to preserve Plan assets in the event of default.

3.8.2 Spousal Consent. Subject to the requirements of Subsection 2.5.8(j), a Participant must obtain the written consent of his spouse, if any, to the use of the Participant's interest in the Plan as security for a Participant loan within ninety (90) days before the date on which the loan is to be so secured. A new consent must be obtained whenever the amount of the loan is increased or if the loan is renegotiated, extended, renewed, or otherwise revised. The consent must acknowledge the effect of such consent and 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.

If a valid spousal consent has been obtained, then notwithstanding any other provision of the Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than the entire amount of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, the Account balance shall first be reduced by the amount of the security used as repayment of the loan before determining the benefit payable to each Beneficiary, including the surviving spouse.

3.8.3 Limitations. Except as provided in the Participant loan program, in no event shall the amount loaned to any Participant or Beneficiary, when added to the outstanding balance of all other loans to the Participant or Beneficiary, exceed the lesser of (a) fifty thousand dollars (\$50,000.00) (reduced by the excess, if any, of the highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which the loan was made over the outstanding balance of loans from the Plan on the date on which such loan was made) or (b) one-half (1/2) of the vested and non-forfeitable interest in his Accounts, determined as of the Valuation Date coinciding with or immediately preceding such loan or ten thousand dollars (\$10,000), if greater. For purposes hereof, all loans from all plans of the Employer and other members of a group of employers described in Code sections 414(b), (c), (m), and (o) shall be aggregated. No Participant loan shall exceed the Participant's vested Account balance.

Any 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 (5) years from the date of the loan, unless such loan is used to acquire a dwelling unit that within a reasonable time (determined at the

time the loan is made) will be used as the principal residence of the Participant. An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any Life Insurance Policy will be treated as a loan under this Section.

All loans must be adequately secured and bear a reasonable interest rate. In the event of a default, foreclosure on the note evidencing the loan and attachment of the security shall not occur until a distributable event occurs.

3.8.4 Availability. Loans must be available to all Participants and Beneficiaries on a reasonably equivalent basis without regard to any individual's race, color, religion, sex, age, or national origin. Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Employees.

3.8.5 Qualified Military Service. The obligation to repay any loan made to a Participant who is performing service in the uniformed services, is suspended, as permitted under Code section 414(u)(4). Such a suspension of loan repayments shall not trigger a distribution under Code section 72(p) or constitute a loan default.

3.8.6 Default. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs for the Participant.

ARTICLE 9

BENEFICIARIES

3.9.1 Designation of Beneficiaries. Subject to the provisions of Section 2.5.8, each Participant shall have the right to designate a Beneficiary or Beneficiaries and contingent or successive Beneficiaries to receive any benefits provided by this Plan that become payable upon the Participant's death. The Participant may change the Beneficiaries at any time or times by the filing of a new designation with the Plan Administrator, and the most recent designation shall govern. In the absence of a designation, the Designated Beneficiary shall be the surviving spouse of the Participant, unless such surviving spouse consents in writing to an alternate designation and the terms of such consent acknowledge the effect of such alternate designation and the consent is witnessed by a representative of the Plan or by a notary public. The designation of a Beneficiary other than the spouse of the Participant or an optional form of benefit with the consent of such spouse may not be changed without the consent of such spouse, and any consent must acknowledge the specific non-spouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, unless the spouse expressly permits designations by the Participant without any further spousal consent. Regardless of any prior designation, a Participant, at any time, may designate his spouse as Beneficiary, and with respect to Accounts providing annuities, may also designate the form of benefit as a Qualified Joint and Survivor Annuity.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A Participant may revoke a prior waiver without the consent of the spouse at any time prior to the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Subsection 2.5.8(d).

In the event the Participant is divorced, the ex-spouse shall be treated as having predeceased the Participant and benefits will go to the secondary Designated Beneficiaries or if none survive the Participant, to his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select. In the event the Participant intends that his ex-spouse remain his Beneficiary, a post-divorce Beneficiary designation must be completed naming the ex-spouse as a Designated Beneficiary.

3.9.2 Absence or Death of Beneficiaries. Except with respect to the process of any life insurance payable upon the death of the Participant, if a Participant dies without having a Beneficiary designation then in force, or if all of the Designated Beneficiaries predecease him, his Beneficiary shall be his surviving spouse, or if none, his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select.

Unless otherwise designated by the Participant, if a Participant dies and is survived by some, but not all, of the Designated Beneficiaries, such surviving Beneficiaries shall be deemed his sole Beneficiaries. In the event that a surviving Beneficiary dies before the complete distribution of the deceased Participant's interest, the estate of such Designated Beneficiary shall be deemed to be the Beneficiary of the undistributed portion of such interest.

3.9.3 Surviving Spouse Election. If the Participant does not elect a life annuity form of distribution, a surviving spouse, who has not consented to an alternate designation under Section 2.5.8(c) above, may elect to have distribution of the Participant's vested Account balance commence within the 90-day period following the date of the Participant's death. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions, as well as for the outstanding balance of any Plan loan to the Participant.

3.9.4 Right to Direct on Behalf of a Participant or Beneficiary. In the sole judgment of the Plan Administrator, if any Participant or Beneficiary entitled to benefits is not capable of managing his benefits under the Plan, any election that may be made by a Participant or Beneficiary may be made by the legal representative of such individual, or in the case of a minor Beneficiary, the guardian or person in loco parentis to the minor Beneficiary recognized under state law.

If the Plan Administrator, in his sole discretion is not satisfied with the power of a legal representative to act on behalf of a Participant or Beneficiary the Plan Administrator may require an order of a court of competent jurisdiction.

ARTICLE 10

CLAIMS

3.10.1 Claim Procedure (Non-Disability). Any Participant or Beneficiary who is entitled to a payment of a benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as furnished by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant or Beneficiary in writing of the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If the Plan Administrator denies a claim for benefits, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefits has been denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, the Plan Administrator shall furnish written notice to the Participant or Beneficiary indicating the special circumstances and the date by which a final decision is expected to be rendered. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall include (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding, and conclusive. Benefits under this Plan will be paid only if the Plan Administrator decides in his discretion that the applicant is entitled to them.

3.10.2 Appeal (Non-Disability). If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The Employer's decision shall be made within sixty (60) days after the Plan Administrator receives the notice of appeal, unless special circumstances require an extension of time for processing, in which case the Employer shall render a decision as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Employer's decision shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based, and shall be promptly furnished to the claimant. Benefits under this Plan granted pursuant to such an appeal will be paid only if the Employer decides in its discretion that the applicant is entitled to them.

3.10.3 Claims Involving Disability. Any Participant who is entitled to a payment of a Disability benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as shall be furnished to him by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant in writing of the approval or denial of the claim within forty-five (45) days of the date the claim was filed. If the claim is approved, the Plan Administrator shall furnish a written explanation of the amount of Disability benefit to which the Participant is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If the Plan Administrator denies a claim for a Disability benefit, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant whose claim for benefit has been denied within a reasonable time after the claim is filed but no later than forty-five (45) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. Such an extension shall be for a period no greater than thirty (30) days. If such an extension of time for processing is required, the Plan Administrator shall furnish written notice to the Participant within the initial forty-five (45) day period indicating the special circumstances and the date by which a final decision is expected to be rendered. If, prior to the end of the first thirty (30) day extension period, the Plan Administrator determines that due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional thirty (30) days, provided that the Plan Administrator notifies the claimant, prior to the expiration of the first thirty (30) day extension period, of the circumstances requiring the extension and the date as of which the Plan expects to render a decision. In the case of such an extension the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least forty-five (45) days with which to provide the specified information. The Participant (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding, and conclusive. Benefits under this Plan will be paid only if the Plan Administrator determines in his sole discretion that the Participant is entitled to them.

3.10.4 Claims Appeal Involving Disability. If the Plan Administrator receives from a Participant, within one hundred eighty (180) days of the denial of the claim, a notice of an appeal of the denial, the Plan Administrator shall immediately submit such notice and all relevant materials to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The Employer's decision shall be made within forty-five (45) days after the Plan Administrator receives the notice of appeal, unless special circumstances require an extension of time for processing, in which case the Employer shall render a decision as soon as possible but not later than ninety (90) days after receipt of the request for review by the Plan Administrator. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Employer's decision shall be in writing, shall include specific reasons for the decision, be written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based, and shall be promptly furnished to the claimant. Benefits under this Plan will be paid only if the Employer determines in his sole discretion that the Participant is entitled to them.

ARTICLE 11

AMENDMENT AND TERMINATION

3.11.1 Right to Amend. The sponsoring Employer may at any time or times amend the Plan and Trust, in whole or in part, and specifically reserves the right to amend the Plan retroactively if specifically required or permitted by law. The sponsoring Employer may also add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

3.11.2 Delegation. Each employer that is a party to this Agreement expressly delegates authority to County of Hidalgo Community Service; Hidalgo Urban County Program & Hidalgo County Head Start the right to amend any part of the Plan on its behalf. County of Hidalgo Community Service; Hidalgo Urban County Program & Hidalgo County Head Start shall submit a copy of the amendment to each other employer that has adopted the Plan. Each employer may revoke such authority to amend the Plan on its behalf by written notice to County of Hidalgo Community Service; Hidalgo Urban County Program & Hidalgo County Head Start of such revocation.

However, for purposes of reliance on an opinion or determination letter, the Plan Sponsor will no longer have the authority to amend the Plan on behalf of the Employer as of the date (1) the Employer amends the plan to incorporate a type of plan described in section 16.03 of Rev. Proc. 2011-49 that is not permitted under the M&P program, or (2) the Internal Revenue Service notifies the Employer, in accordance with section 24.03 of Rev. Proc. 2011-49, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan.

3.11.3 Manner of Amending. The Employer shall make each Plan amendment by delivery to the Trustee of a copy of the Employer resolution that sets forth such amendment.

3.11.4 Limitations on Amendments.

(a) No Plan amendment shall:

- (1) Directly or indirectly operate to give the Employer any interest whatsoever in the assets of the Trust or custodial account or to deprive any Participant or Beneficiary of his vested and non-forfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries;
- (2) Increase the duties or liabilities of the Trustee without the Trustee's prior written consent;
- (3) Change the vesting schedule under the Plan if the non-forfeitable percentage of the Account balance derived from Non-Elective Contributions or Matching Contributions (determined as of the later of the date such amendment is adopted or the date such amendment becomes effective) of any Participant is less than such non-forfeitable percentage computed without regard to such amendment; or
- (4) Reduce the accrued benefit of a Participant within the meaning of Code section 411(d)(6), except to the extent permitted under Code section 412(d)(2) or to the extent permitted under sections 1.411(d)-3 and 1.411(d)-4 of the regulations.). An amendment that has the effect of decreasing a Participant's Account balance with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit.

(b) If a Plan amendment changes the vesting schedule or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's non-forfeitable percentage or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Participant who has

completed three (3) Years of Vesting Service (or in the case of Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after 1988, five (5) or more Years of Vesting Service) may elect within a reasonable period after the adoption of such amendment to have his non-forfeitable percentage computed without regard to such amendment or change. The period during which such Participant may make the election shall commence with the date the amendment is adopted or deemed to be made and shall end sixty (60) days after the latest of the date:

(1) the amendment is adopted;

(2) the amendment becomes effective; or

(3) the Employer or Plan Administrator issues the Participant written notice of the amendment.

- (c) No Plan amendment shall eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his Account balance under a particular optional form of benefit if 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, 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 Participant) except with respect to the timing of payments after commencement.

3.11.5 Sponsor Authority to Amend. The Employer expressly delegates authority to the Volume Submitter Practitioner (Plan Sponsor), pursuant to Revenue Procedure 2005-16, to amend the Plan that was previously adopted, so that changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service (including model, sample or other required good faith amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved plans may be applied to the Employer who has adopted the Plan. The Volume Submitter Practitioner will no longer have the authority to amend the Plan on behalf of the adopting Employer as of the date the Internal Revenue Service requires the Employer to file Form 5300 as an individually designed plan as a result of an Employer amendment to the Plan to incorporate a type of plan not allowable in the Volume Submitter program (e.g., the addition of an ESOP) or as a result of amendments described in section 24.02 of Revenue Procedure 2005-16. If the Employer is required to obtain a determination letter in order to have reliance (for example, because the Employer has modified the specimen plan), the Volume Submitter Practitioner's authority to amend the Plan on behalf of the adopting Employer is conditioned on the Plan being covered by a favorable determination letter. If the adopting Employer terminates its relationship with the document provider its plan will no longer be considered a volume submitter sponsored by the Plan Sponsor.

3.11.6 Voluntary Termination. The Employer may elect to terminate the Plan or termination may occur based on certain business transactions. Upon termination, the Plan must provide for the immediate one hundred percent (100%) vesting of the nonforfeitable interest in all of an affected Participant's account balance. Notwithstanding the effective date of the termination, the Trust will continue until the entire Distributable Benefit of each Participant has been distributed.

- (a) Voluntary Termination. The Employer may terminate the Plan at any time by delivering to the Trustee an instrument in writing that designates such termination. Following termination of the Plan, the Trust will continue until the entire interest of each Participant has been distributed.

- (b) Involuntary Termination. The Plan shall terminate if (a) the Employer is dissolved or adjudicated bankrupt or insolvent in appropriate proceedings, or if a general assignment is made by the Employer for the benefit of creditors, or (b) the Employer loses its identity by consolidation or merger into one or more corporations or organizations, unless within ninety (90) days after such consolidation or merger, such corporations or organizations elect to continue the Plan.

- (c) Partial Termination. The Plan shall be subject to the rules under section 411(d)(3) of the Code, where it has been determined that a partial termination has occurred by reason of: (1) a plan amendment that adversely affect the rights of the Employees, or (2) by the Employer's severance of a group of

Employees who were previously covered under the Plan. Such determination shall depend on the facts and circumstances. Notwithstanding, if the Employer's turnover rate is at least twenty percent (20%) due to severance of employment, there is a presumption that a partial termination of the Plan has occurred. If a partial termination occurs, all Participants who had a severance from employment on account of the Partial Termination during the period shall become immediately 100% vested in their account.

- (d) Liquidation of all Unallocated Accounts. Following the termination of the Plan, the Employer will allocate any unallocated amounts due to excess annual additions or forfeitures that are held in a suspension account subject to limitation in section 415(c) of the Code. Notwithstanding any unallocated amounts remaining that exceed the limitations imposed under section 415(c) of the Code to the extent set forth in rules prescribed by the Commissioner shall revert to the Employer.
- (e) Limitation on Establishing a Successor Plan in the Case of a Cash or Deferred Arrangement. The Employer who elects to terminate a Plan that is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan and thereafter liquidates the Trust may not establish a new plan any time during the period beginning on the effective date of the Plan's termination and ending twelve (12) months after all assets have been distributed from the Plan, and further, a distribution may not be made under Article V if the Employer establishes or maintains an alternative defined contribution plan. For purposes of the preceding sentence, the term "Employer" is applied as of the date of plan termination, and a plan is an alternative defined contribution plan only if it is a defined contribution plan that exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the 24-month period beginning 12 months before the date of plan termination, fewer than 2% of the employees who were eligible under the defined contribution plan that includes the cash or deferred arrangement as of the date of plan termination are eligible under the other defined contribution plan, the other plan is not an alternative defined contribution plan. In addition, a defined contribution plan is not treated as an alternative defined contribution plan if it is an employee stock ownership plan as defined in Code sections 4975(e)(7) or 409(a), a simplified employee pension as defined in Code section 408(k), a SIMPLE IRA plan as defined in section 408(p), a plan or contract that satisfies the requirements of Code section 403(b), or a plan that is described in Code sections 457(b) or (f).

3.11.7 Withdrawal by Employer. The Employer may withdraw from participation under the Plan without terminating the Trust upon making a transfer of the Trust assets to another Plan, which shall be deemed to constitute an amendment in its entirety of the Trust.

3.11.8 Powers Pending Final Distribution. Until final distribution of the assets of the Trust, the Plan Administrator and Trustee shall continue to have all the powers provided under this Plan as are necessary for the orderly administration, liquidation, and distribution of the assets of the Trust.

ARTICLE 12

PORTABILITY

3.12.1 Continuance by Successor. In the event of the dissolution, consolidation, or merger of the Employer, or the sale by the Employer of its assets, the resulting successor person or persons, firm, or corporations may continue this Plan by (a) adopting the Plan by appropriate resolution; (b) appointing a new Trustee as though the Trustee (including all members of a group of individuals acting as Trustee) had resigned; and (c) executing a proper agreement with the new Trustee. In such event, each Participant in this Plan shall have an interest in the Plan after the dissolution, consolidation, merger, or sale of assets at least equal to the interest that he had in the Plan immediately before the dissolution, consolidation, merger, or sale of assets. Any Participants who do not accept a position with such successor within a reasonable time shall be deemed terminated. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger, or sale of assets, such successor does not adopt this Plan, as provided herein, the Plan shall automatically be terminated and deemed an involuntary termination.

3.12.2 Merger with Other Plan. In the event of the merger or consolidation with, or transfer of assets or liabilities to, any other deferred compensation plan and trust, each Participant shall have an interest in such other plan that is equal to or greater than the interest that he had in this Plan immediately before such merger, consolidation, or transfer, and if such other Plan thereafter terminates, each Participant shall be entitled to an Account balance that is equal to or greater than the Account balance to which he would have been entitled immediately before such merger, consolidation, or transfer if this Plan had then terminated, as adjusted for any investment gains or losses since such merger, consolidation, or transfer.

3.12.3 Transfers from Other Plans.

- (a) The Employer may cause all or any of the assets held in connection with any other plan or trust that the Employer maintains for the benefit of its Employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts to be directly transferred to the Trustee, whether such direct transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust within the meaning of Code section 414(l) or for any other allowable purpose.

Any such assets so transferred to the Trustee shall be accompanied by written instructions from the Employer, or the trustee, custodian, or individual holding such assets, setting forth the name of each Employee for whose benefit such assets have been transferred and showing separately the respective contributions by the Employer and by the Employee and the current value of the assets attributable thereto. Upon receipt by the Trustee of such assets, the Trustee shall place such assets in appropriate Accounts for each Employee.

If the transferor plan maintained a vesting schedule that differs from the one specified in Section 2.4.1 such transferred Account balances shall vest according to the schedule that provides the greatest vesting percentage.

- (b) If the Plan is a transferee of assets that are subject to the survivor annuity requirements of Code sections 401(a)(11) and 417, such transferred assets shall remain subject to such requirements, and this Plan shall provide such annuity distribution options as the transferor plan. Unless this Plan is also subject to such survivor annuity requirements, the annuity distribution option shall only apply to those assets that were transferred and any earnings thereon.

Any such transferred assets and associated earnings shall be distributed to the Participant only if: (1) he terminates employment with the Employer, attains Normal Retirement Age, becomes Disabled, or dies, (2) the Plan should subsequently terminate, or (3) the Employer spins off the business unit to which the Participant is a member. To implement the restrictions on distributions this Subsection imposes, the Plan must maintain separate accounting between the benefits attributable to the transferred account balances and all other Account balances of each Participant with Account balances attributable to such

transfers.

(c) At the direction of the sponsoring Employer, the Trustee shall accept the transfer of account balances from another plan for Employees of the sponsoring Employer due to the spin-off of the business unit that previously employed such Employees.

(d) In the event a Plan transfers assets that include a deemed IRA, the Plan must establish a deemed IRA with the Plan to accept such a transfer.

3.12.4 Rollovers by Participants or Employees to this Plan. In general, the Plan will accept a Direct Rollover of an Eligible Rollover Distribution from any other plan or trust maintained by any other employer for the benefit of its employees that is a qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions, an annuity contract described in Code section 403(b), excluding after-tax employee contributions and an eligible plan under Code section 457(b) maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Plan will not accept a Direct Rollover from another Roth Elective Deferral account under an applicable retirement plan as described in Code section 402A(e)(1). However, the Employer reserves the right to permit or deny a rollover, in whole or in part, based on the characteristics of the underlying assets. Such contributions will be maintained in a Rollover Account and will be non-forfeitable at all times. A deemed Individual Retirement Account that is described in Code section 7701(a)(37) may be transferred to this Plan only if the Employer establishes a deemed IRA in this Plan. In general, the Plan will accept a Participant Rollover of an Eligible Rollover Distribution from any other plan or trust maintained by any other employer for the benefit of its employees that is a qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions, an annuity contract described in Code section 403(b), excluding after-tax employee contributions and an eligible plan under Code section 457(b) maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. However, the Employer reserves the right to permit or deny a rollover, in whole or in part, based on the characteristics of the underlying assets. Such contributions will be maintained in a Rollover Account and will be non-forfeitable at all times. A deemed Individual Retirement Account that is described in Code section 7701(a)(37) may be transferred to this Plan only if the Employer establishes a deemed IRA in this Plan. The Plan will accept a rollover contribution for the benefit of an Employee who is not in an excluded class. A rollover contribution may include in-kind assets, except Participant loans.

3.12.5 Transfer to Other Plans. The Trustee, upon written direction by the Employer, shall transfer some or all of the assets held under the Trust to another plan or trust of the Employer or any other employer meeting the requirements of the Code relating to qualified plans and trusts, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose.

At the direction of the Employer, the Trustee shall spin-off a portion of the Plan assets to a plan sponsored by the buyer of a portion of the assets of the Employer. The amount of the spin-off shall be the portion of the assets representing the Account balances of Participants who are terminated on account of the sale. In order to be a part of the spin-off, a Participant must become employed by the buyer within one year of the date of sale.

In addition, on receipt by the Plan Administrator of a request in writing, the Participant may request that any Eligible Rollover Distribution from the Trust to which he is entitled shall be transferred to an individual retirement account, an individual retirement annuity, or any other plan or trust that is maintained by some other employer for the benefit of its employees and satisfies the applicable Code requirements relating to qualified plans and trusts. Upon receipt of any such written request, the Plan Administrator shall cause the Trustee to transfer the assets so directed and, as appropriate, shall direct the Insurer to transfer to the new trustee any applicable insurance policies issued on the Participant.

Transfer to Nonqualified Foreign Trust If the interest of a Participant or Beneficiary under the Plan is transferred into a nonqualified foreign trust or the assets and liabilities are transferred into a plan described in Section 1165 of the Puerto Rico Code shall be a taxable distribution. For this purpose a "Nonqualified Foreign Trust" is a trust: (i) created or organized outside of the United States or (ii) attached to a plan created or organized outside of the United States and is not subject to the Internal Revenue Code. Except,

the Plan Administrator of a pension, profit sharing or stock bonus plan and trust created or organized in Puerto Rico may elect under Section 1022(i)(2)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), to be treated as a qualified trust under Code section 501(a). For purposes of ERISA 1022(i): (i) the plan must cover participants who are all "bona fide" residents of Puerto Rico; or (ii) the plan must covers participants who perform labor or services primarily within Puerto Rico, regardless of his place of residence; and (iii) the plan is exempt from income tax under the laws of Puerto Rico.

For distributions made after December 31, 2006, the Plan may permit pursuant to Code section 402(c)((11), a direct trustee-to-trustee transfer, to an individual retirement account or annuity (IRA) established on behalf of an individual who is a Designated Beneficiary of the Participant and who is not the surviving spouse of the Participant. The transfer of a distribution to the nonspouse Beneficiary will not be included in the Beneficiary's income in the year in which the transfer occurs. When made these transfers shall be treated as an inherited IRA, pursuant to Code section 408(d)(3)(C).

In the case of distributions made after December 31, 2006, the Plan will permit a non-spouse Beneficiary to request a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Code section 402(c)(11). When made these transfers shall be treated as an Eligible Rollover Distribution.

3.12.6 Transfer to Roth IRA. The Plan will allow a direct trustee-to-trustee transfer or within 60 days, a Participant, a Participant's spouse or Distributee to roll over an Eligible Rollover Distribution as a Qualified Rollover Contribution to a Roth IRA described in Code section 408A.

(a) For the purpose of this Section, a "Qualified Rollover Contribution" is a rollover contribution:

(1) to a Roth IRA from another Roth IRA; or

(2) from an Eligible Retirement Plan as defined by Code section 402(c)(8)(B).

(b) Limitations. If the Eligible Rollover Distribution consists of assets from a designated Roth Account(s) or non-Roth Account(s), then the distribution attributable to the non-Roth Account shall not exceed the dollar limit for a Qualified Rollover Contribution in Code section 408A(3) based on the taxpayer's adjusted gross income.

In addition, for taxable years beginning before January 1, 2010, an individual can not make a Qualified Rollover Contribution from an Eligible Retirement Plan other than a Roth IRA if for the year the Eligible Rollover Distribution is made, his modified adjusted gross income exceeds \$100,000 or he or she is married and files a separate return.

(c) The Plan may permit a direct rollover election by a Participant, Beneficiary and/or Distributee as defined under the Plan.

(d) After-Tax Amounts. The Plan may allow a direct trustee-to-trustee transfer, or Participant rollover of after-tax amounts if the amount is an Eligible Rollover Distribution.

(1) The Plan may:

(i) permit after-tax amounts to be rolled to another qualified plan (a defined contribution or defined benefit plan), or to an annuity contract described in Code section 403(b); or

(ii) accept after-tax amounts from another qualified plan or Code section 403(b) plan into the Plan.

(2) Separate Accounts. Where after-tax amounts described herein are accepted into the Plan, the Plan shall provide separate accounting for the amounts so transferred and earnings thereon including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible.

(e) Distributions to an Inherited Individual Retirement Plan of Nonspouse Beneficiary.

- (1) For distributions made after December 31, 2006, the Plan may permit pursuant to Code section 402(c)((11), a direct trustee-to-trustee transfer, to an individual retirement account or annuity (IRA) established on behalf of an individual who is a designated Beneficiary of the Participant and who is not the surviving spouse of the Participant. The transfer of a distribution to the nonspouse Beneficiary will not be included in the Beneficiary's income in the year in which the transfer occurs. When made these transfers shall be treated as an inherited IRA, pursuant to Code section 408(d)(3)(C).
 - (2) For distributions made after December 31, 2007, the Plan will permit a nonspouse Beneficiary to request a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Code section 402(c)(11). When made these transfers shall be treated as an Eligible Rollover Distribution.
- (f) Effective Date. The Direct Rollover and Plan Distribution requirements of this Section 3.12.6 shall be effective for distributions made after December 31, 2006.

3.12.7 Transfer to Nonqualified Foreign Trust. The Plan shall provide that the interest of a Participant or Beneficiary in a qualified plan under Code section 401(a) transferred into a nonqualified foreign trust or the assets and liabilities from a qualified plan transferred into a plan described in Section 1165 of the Puerto Rico Code shall be a taxable distribution.

For the purpose of this Section, a "Nonqualified Foreign Trust" is a trust:

- (a) created or organized outside of the United States or
- (b) attached to a plan created or organized outside of the United States and is not subject to the Internal Revenue Code.
- (c) Exception. The Plan Administrator of a pension, profit sharing or stock bonus plan and trust created or organized in Puerto Rico may elect under Section 1022(i)(2)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), to be treated as a qualified trust under Code section 501(a).
- (d) For purposes of ERISA 1022(i):
 - (1) the plan must cover participants who are all "bona fide" residents of Puerto Rico; or
 - (2) the plan must covers participants who perform labor or services primarily within Puerto Rico, regardless of his place of residence; and
 - (3) the plan is exempt from income tax under the laws of Puerto Rico. Upon such an election, the plan shall be treated as a qualified trust under Code section 401(a).
- (d) The Plan Administrator of a pension, profit sharing or stock bonus plan and trust created or organized in the United States under Code section 401(a), may elect to treat bona fide Puerto Rico residents who are employees participating under a ERISA Section 1022(i)(2)(A) plan as excludable employees for purpose of Code section 410(b).
- (e) Transitional Relief.
 - (1) The provisions of this Section do not apply to transfers from a qualified plan made to a nonqualified foreign trust or a plan under Section 1022(i)(2)(A) of ERISA that would satisfy the requirements of Code section 414(l) for transfers made prior to January 1, 2011.
 - (2) For transfers made prior to January 1, 2011, the portion of each distribution from a section 1022(i) transferee plan will be treated as income from sources within Puerto Rico.
 - (3) The provisions of this Section do not apply to transfers from a qualified plan to certain foreign plans that occurred before October 1, 2008, if the plan would be considered a qualified funded plan under

Code section 404A(f)(1), were the employer to elect to have section 404A apply to the plan.

- (f) Effective Date. The taxable distribution provisions of this Section 3.12.7 shall apply to the Plan and are effective for Plan Years beginning on or after January 1, 2009. Except as provided as transitional relief, the provisions of this Section generally apply to transfers to Puerto Rican plans on or after January 1, 2011.

ARTICLE 13

MISCELLANEOUS

3.13.1 No Reversion to Employer.

- (a) Except as specifically provided in the Plan, no part of the corpus or income of the Trust shall revert to the Employer or be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- (b) Reversion Upon Termination. Notwithstanding Paragraph (a), any other Plan provision or section 1.401(a)-2 of the Treasury Regulations, upon termination of the Plan, amounts contributed to the Plan that exceed the limitations imposed under section 415(c) of the Code, to the extent set forth in rules prescribed by the Commissioner shall revert to the Employer.

3.13.2 Employer Actions. Any action by the Employer pursuant to the provisions of the Plan shall be evidenced by appropriate resolution or by written instrument executed by any person authorized by the Employer to take such action.

3.13.3 Execution of Receipts and Releases. Any payment to any person eligible to receive benefits under this Plan, in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. The Plan Administrator may require such person, as a condition precedent to such payment, to execute a receipt and release therefore in such form as it shall determine.

3.13.4 Rights of Participants Limited. Neither the creation of this Plan and the Trust nor anything contained in this Plan shall be construed as giving any Participant, Beneficiary, or Employee any equity or other interest in the assets, business, or affairs of the Employer, or the right to complain about any action taken by or about any policy adopted or pursued by the Employer, or as giving any Employee the right to be retained in the service of the Employer; and all Employees shall remain subject to discharge to the same extent as if the Plan had never been executed. Prior to the time that distributions are made in conformity with the provisions of the Plan, neither the Participants nor their spouses, Beneficiaries, heirs-at-law, or legal representatives shall receive or be entitled to receive cash or any other thing of current exchangeable value from either the Employer or the Trustee as a result of the Plan or the Trust.

3.13.5 Persons Dealing with Trustee Protected. No person dealing with the Trustee shall be required or entitled to see to the application of any money paid or property delivered to the Trustee, or determine whether the Trustee is acting pursuant to the authorities granted to the Trustee hereunder or to authorizations or directions herein required. The certificate of the Trustee that the Trustee is acting in accordance with the Plan shall protect any person relying thereon.

3.13.6 Inalienability. The right of any Participant or his Beneficiary in any distribution hereunder or to any Account shall not be subject to alienation, assignment, or transfer, voluntarily or involuntarily, by operation of law or otherwise, except as may be expressly permitted herein. No Participant shall assign, transfer, or dispose of such right, nor shall any such right be subjected to attachment, execution, garnishment, sequestration, or other legal, equitable, or other process. The preceding shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order or any domestic relations order entered before January 1, 1985.

The preceding provisions shall not apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after August 5, 1997, that offset a Participant's benefits provided under this Plan if:

- (a) the order or requirement to pay arises:

- (1) Under a judgment of conviction for a crime involving this Plan,
 - (2) Under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of Part 4 of Subtitle B of Title I of the Act, or
 - (3) Pursuant to a settlement agreement between the Secretary of Labor and the Participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the Participant, in connection with a violation (or alleged violation) of Part 4 of such Subtitle by a Fiduciary or any other person,
- (b) The judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan, and
- (c) In a case in which the survivor annuity requirements of Code section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a spouse at the time at which the offset is to be made:
- (1) Either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in Code section 417(a)(2)(B)), or an election to waive the right of the spouse to either a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity is in effect in accordance with the requirements of Code section 417(a),
 - (2) Such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the Plan in connection with a violation of part 4 of such subtitle, or
 - (3) In such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a Qualified Joint and Survivor Annuity or under a Qualified Preretirement Survivor Annuity, where such survivor annuity equals the survivor annuity determined under the Plan assuming that:
 - (i) The Participant terminated employment on the date of the offset,
 - (ii) There was no offset,
 - (iii) Benefits commence at the Participant's Normal Retirement Date (or current age if later),
 - (iv) The Qualified Joint and Survivor Annuity survivor percentage is fifty percent (50%) (even if another percentage is selected in the definition of Qualified Joint and Survivor Annuity), and
 - (v) The Qualified Preretirement Survivor Annuity is fifty percent (50%) of such Qualified Joint and Survivor Annuity.

In the event a Participant's benefits are attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of the action, the Plan Administrator shall cause any benefits payable to be paid to the court for distribution by the court as it considers appropriate.

3.13.7 Qualified Domestic Relations Orders. The Plan Administrator shall adhere to the terms of any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant and is made pursuant to a state domestic relations law (including a community property law) and that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

Any such domestic relations order must clearly specify the name and last known mailing address of the Participant and the name and mailing address of each Alternate Payee covered by the order, the amount or percentage of the Participant's benefit to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which such order applies.

Any such domestic relations order shall not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan, to provide increased benefits, or the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

Distributions to an Alternate Payee are permitted on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order, even if the Participant continues to be employed and has not attained the "earliest possible retirement age" pursuant to Code section 414(p).

For this purpose, the "earliest possible retirement age" under the Plan means the earlier of: (a) the date on which the Participant is entitled to a distribution under the Plan, or (b) the later of the date the Participant attains age fifty (50), or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

The payment of benefits to an Alternate Payee before the Participant has severed from employment shall be determined as if the Participant had retired, or otherwise terminated employment, on the date on which such payment is to begin under the Qualified Domestic Relations Order, (but taking into account only the benefits actually accrued), and may be paid in any form in which such benefits may be paid under the Plan to the Participant (other than the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his subsequent spouse).

To the extent provided in the Qualified Domestic Relations Order, the former spouse of a Participant shall be treated as a surviving spouse of such Participant for purposes of Code sections 401(a)(11) and 417 (and any spouse of the Participant shall not be treated as a spouse of the Participant for such purposes) and if married for at least one (1) year to the Participant, the surviving former spouse shall be treated as meeting the requirements of Code section 417(d).

The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of a domestic relations order by the Plan and the Plan's procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order, the Plan Administrator shall determine whether such order is a Qualified Domestic Relations Order and shall notify the Participant and each Alternate Payee of such determination. If the Participant or any affected Alternate Payee disagrees with the determinations of the Plan Administrator, the Plan Administrator shall treat the disagreeing party as a claimant and follow the claims procedure of the Plan. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts that would have been payable to the Alternate Payee during such period if the order had been determined to be a Qualified Domestic Relations Order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto. If within such eighteen (18) month period it is determined that the order is not a Qualified Domestic Relations Order or the issue whether such order is a Qualified Domestic Relations Order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a Qualified Domestic Relations Order that is made after the close of the eighteen (18) month period shall be applied prospectively only.

3.13.8 Authorization to Withhold Taxes. The Trustee is authorized in accordance with applicable law to withhold from distribution to any payee such sums as may be necessary to cover federal and state taxes that may be due with respect to such distributions.

3.13.9 Missing Persons. If the Trustee mails by registered or certified mail, postage prepaid, to the last known address of a Participant or Beneficiary, a notification that the Participant or Beneficiary is entitled to a distribution and if (a) the notification is returned by the post office because the addressee cannot be located at such address and if neither the Employer, the Plan Administrator nor the Trustee shall have any knowledge of the whereabouts of such Participant or Beneficiary within three (3) years from the date such notification was mailed, or (b) within three (3) years after such notification was mailed to such Participant or Beneficiary, he does not respond thereto by informing the Trustee of his whereabouts, the ultimate disposition of the then undistributed vested Account balance of such Participant (or his Beneficiary) shall be determined in accordance with the then applicable Federal laws, rules, and regulations.

3.13.10 Notices. Any notice or direction to be given in accordance with the Plan shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting in a Fiduciary capacity, notice to such Fiduciary may be given by giving notice to any one or more of such individuals.

3.13.11 Governing Law. The provisions of this Plan and the Trust shall be construed, administered, and enforced in accordance with the provisions of the Act and, to the extent applicable, the laws of the State of Texas. All contributions to the Trust shall be deemed to take place in such state.

3.13.12 Severability of Provisions. In the event that any provision of this Plan and the Trust shall be held to be illegal, invalid, or unenforceable for any reason, said illegality, invalidity, or unenforceability shall not affect the remaining provisions, but shall be fully severable, and the Plan and the Trust shall be construed and enforced as if said illegal, invalid, or unenforceable provisions had never been inserted herein.

3.13.13 Gender and Number. Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender and vice versa.

3.13.14 Binding Effect. The Plan and the Trust, and all actions and decisions hereunder, shall be binding upon the heirs, executors, administrators, successors, and assigns of any and all parties hereto and Participants, present and future, and their Beneficiaries.

3.13.15 Qualification under Internal Revenue Laws. The Employer intends that the Plan and the Trust qualify under the applicable provisions of the Code. Until advised to the contrary, the Trustee may assume that the Plan and the Trust are so qualified and are entitled to tax exemption under the Code.

ARTICLE 14

EXECUTION OF AGREEMENT

3.14.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and no other counterparts need be produced.

This plan must be registered with the Plan Sponsor within 60 days of adoption of this document, and the Document Serial Number assigned by the Mass Submitter shall be affixed to this signature page. The adopting Employer must notify the Mass Submitter through the document provider if the plan is terminated, merged, or of any changes in the name, address, or EIN of the adopting employer at least annually, and within 30 days of any request of the Mass Submitter. If the adopting Employer terminates its relationship with the document provider its plan will no longer be considered a volume submitter sponsored by the Plan Sponsor.

Unregistered use of this document will result in the plan no longer participating in this Volume Submitter Plan, and the document will be considered an individually designed plan, without reliance on the opinion letter of the Mass Submitter, which could result in the disqualification of the plan. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Volume Submitter Plan and will be considered an individually designed plan.

3.14.2 Acceptance by Trustee. The Trustee, by joining in the execution of this Agreement, hereby signifies the Trustee's acceptance thereof.

3.14.3 Execution. To record the adoption of this Plan and Trust, the Employer and each other employer adopting the Plan, if any, has caused this Agreement to be executed by its duly qualified officers, and the Trustee has executed this Agreement, as of the day and year first above written.

Employer:

County of Hidalgo Community Service
Hidalgo
Urban County Program & Hidalgo County
Head Start

Trustee:

Ramon Garcia
Trustee

Jaime Longoria
Trustee

Diana R. Serna
Trustee

Teresa Flores
Trustee

Plan Serial Number: 20160126-0028-B84E