

COLEMAN CONSULTING CORPORATION

REGIONAL PROTOTYPE

MONEY PURCHASE/PROFIT SHARING/TARGET BENEFIT PLAN

AND TRUST AGREEMENT

Basic Plan Document #02

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ARTICLE I - NATURE OF THE PLAN

1.1 Statement of Purpose

This Plan has been prepared for the purpose of providing a retirement plan for the exclusive benefit of Eligible Employees of any Participating Employer. Any Employer may adopt this Plan and Trust, provided that such Employer and the Trustee designated by such Employer executes an Adoption Agreement and agrees to conform to and abide by all of the terms and provisions of this Plan and Trust.

1.2 Intention to Conform to Statute

The Plan and Trust are intended to qualify as a plan and trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 as those sections may be amended from time to time.

1.3 Effective Date

The Effective Date of this Plan shall be the date set forth in Section I.A.4. of the Adoption Agreement. The Restatement Effective Date, if any, shall be the date set forth in Section I.A.5. of the Adoption Agreement.



ARTICLE II - DEFINITIONS

- 2.1 " Account " or " Accrued Benefit "
- shall mean the entire interest of a Participant in the Trust Fund including forfeitures, appreciation, depreciation and, if applicable, the cash surrender value of any Policies maintained by the Plan on his life. A Participant's Account shall include his Employer Contribution Account and his Participant Contribution Account.
- 2.2 " Administrator "
- shall mean the Plan Administrator as defined in Article II, Section 2.56 hereof.
- 2.3 " Adoption Agreement "
- shall mean the agreement entered into by the Employer and the Trustee adopting this Plan and Trust and setting forth certain provisions of this Plan as specified therein.
- 2.4 " Affiliated Employer "
- shall mean:
- (a) in the event the Plan provides benefits on behalf of an Owner-Employee (within the meaning of Section 401(c) of the Code): The Employer and any unincorporated entity or partnership under common control with the Employer within the meaning of Section 401(d)(1)(B) of the Code and as further described in Article XVIII, Section 18.7; and
  - (b) in all other events: the Employer and any corporation, partnership or other unincorporated entity which forms a controlled group of corporations, a group of trades or businesses under common control, or an affiliated service group with the Employer, within the meaning of Sections 414(b), 414(c) and 414(m) of the Code and, where applicable, Sections 415(h) and 414(o) of the Code.
- 2.5 " Age "
- shall mean actual age attained by a person as of his most recent birthday.
- 2.6 " Aggregation Group "
- shall mean each plan of the Affiliated Employer, whether or not terminated, in which a Key Employee is a participant and each other plan of the Affiliated Employer which enables any plan in which a Key Employee is a participant to meet the requirements of Sections 401(a)(4) or 410 of the Code. The Employer may treat any other Affiliated Employer as being part of the Aggregation Group if such group would continue to meet the requirements of Sections 401(a)(4) and 410 (permissive Aggregation Group) with such plan being taken into account.

2.7 " Alternate Payee "

shall mean any spouse, former spouse, child or other dependent of a Participant who is recognized as having a right to receive all or any portion of the benefits payable hereunder with respect to such Participant in accordance with Articles XII and XVIII hereof.

2.8 " Anniversary Date "

shall mean the last day of the Plan Year unless otherwise specified in Section II.B.5 of the Adoption Agreement.

2.9 " Annual Addition "

shall mean for each Participant, in any Limitation Year, an amount determined in accordance with Article VI of this Plan.

2.10 " Annuity Starting Date "

shall mean the first day of the first period for which an amount is payable as an annuity, or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

2.11 " Beneficiary "

shall mean any individual, individuals, estate or trust designated by a Participant, Plan Administrator or pursuant to Section 206(d)(3)(J) of ERISA and in the case of a "designated beneficiary" an individual who is designated as the beneficiary under the Plan pursuant to Section 401(a)(9) and the proposed regulations thereunder to receive benefits on behalf of a Participant.

2.12 " Board of Directors "

shall mean

- (a) in the case of a corporation: the Board of Directors (or sole director) of the Employer, or of a Participating Employer, as the case may be; and
- (b) in the case of a partnership or sole proprietorship: the general partners or the sole proprietor, as the case may be.

2.13 " Break-in-Service "

Unless Elapsed Time is selected in Section II.B.4.e. of the Adoption Agreement, shall mean an applicable Computation Period in which an Employee fails to complete an aggregate of five hundred (500) Hours of Service with any Affiliated Employer. If Elapsed Time is selected, Break-in-Service is a Period of Severance of at least twelve (12) consecutive months.

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ARTICLE II - Definitions

2.14 " Code " or " IRC "

shall mean the Internal Revenue Code of 1986 as amended from time to time.

2.15 " Collective Bargaining Agreement "

shall mean an agreement between the Employer and employee representatives if retirement benefits were the subject of good faith bargaining. Employee representatives do not include any organization more than half of whose members are employees who are owners, officers and executives of the Employer.

2.16 " Committee "

shall mean the committee members appointed pursuant to Article XV, Section 15.10 hereof and specified in Section I.B.8. of the Adoption Agreement.

2.17 " Computation Period "

shall mean:

(a) with respect to eligibility:

(i) the initial twelve (12) consecutive months beginning on the Employee's Employment Commencement Date; and

(ii) subsequent Plan Years beginning with the Plan Year which begins in the period specified in (i) above regardless of whether the Employee is entitled to be credited with 1,000 hours of service or,

(iii) successive anniversaries of the Employee's Employment Commencement Date if specified in Section II.B.3. of the Adoption Agreement; and

(b) with respect to vesting, Breaks-in-Service and accruals: the Plan Year unless otherwise specified in Section II.B.2. of the Adoption Agreement.

(c) Notwithstanding the above, if a short Plan Year is elected in accordance with Section 1.A.7.b. of the Adoption Agreement, "Computation Period" with respect to vesting shall be the twelve month period beginning on the first day of the short Plan Year and subsequent Plan Years beginning with the Plan Year which begins during the initial twelve month period.

2.18 " Compensation "

shall mean:

Unless otherwise elected by the Employer under the Adoption Agreement, Compensation is defined as wages within the meaning of section 3401(a) of the Code and all other payments of compensation to the employee by the employer (in the course of the

employer's trade or business) or which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(d) and 6052 of the Code, determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed. As elected by the Employer in the Adoption Agreement, compensation shall mean:

- (a) in the case of an Employee: the total non-deferred remuneration paid to an Employee during the period specified in Section II.A.2.b. of the Adoption Agreement as reported on his W-2 (if Section II.A.2.a.(i) of the Adoption Agreement is selected) for such period including all compensation within the meaning of Code Section 415(c)(3) unless otherwise specified in Section II.A.1.b of the Adoption Agreement which does not exceed the limitations in Article XI, Section 11.4, subsection (c) hereof as adjusted pursuant to Code Section 415(d) (which limitation shall be applicable to all employees for Plan Years beginning after December 31, 1988), but excluding contributions on behalf of the Employee to this or any other employee benefit plan (except for elective contributions to this or any other employee benefit plan pursuant to a Salary Reduction Agreement and which is not includable in the Employee's income pursuant to Code Section 125, 402(a)(8), 402(h) or 403(b)) unless otherwise elected in Section II.A.1. of the Adoption Agreement;
- (b) Compensation shall mean total 415 Compensation actually paid to an Employee during the period specified in Section II.A.2.b. of the Adoption Agreement (if Section II.A.2(ii) of the Adoption Agreement is selected); and
- (c) in the case of a Self-Employed Person: earned income as defined in Section 401(c)(2) of the Code in the trade or business for which the Plan is established for which personal services of the individual are a material income-producing factor, but excluding contributions to this or any other retirement and/or fringe benefit plan to the extent deductible under Code Section 404 (except for elective contributions to this or any other employee benefit plan). For taxable years beginning after December 31, 1989, net earnings shall be determined by reducing such earnings by the deduction permitted under Code Section 164(f). Compensation taken into account under the Plan for the first Plan Year beginning on or after January 1, 1989, shall not exceed \$200,000 as determined in Section 11.4(c) of the Plan. Net earnings will be determined without regard to items not included in gross income and the deductions allocatable to such items.
- (d) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision in the plan to the contrary, for plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1994, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set for in this provisions.

If compensation for any determination period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

2.19 " Covered Compensation "

shall mean, for a Plan Year, the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the Participant attains (or will attain) Social Security Retirement Age. No increase in Covered Compensation shall decrease a Participant's Accrued Benefit under the Plan. In determining a Participant's Covered Compensation for a Plan Year, the taxable wage base in effect for the current Plan Year and any subsequent Plan Year will be assumed to be the same as the taxable wage base in effect as of the beginning of the Plan Year for which the determination is being made. A Participant's Covered Compensation for a Plan Year before the 35-year period ending with the last day of the calendar year in which the Participant attains Social Security Retirement Age is the taxable wage base in effect as of the beginning of the Plan Year. A Participant's Covered Compensation for a Plan Year after such 35-year period is the Participant's Covered Compensation for the Plan Year during which the Participant attained Social Security Retirement Age.

2.20 " Defined Benefit Fraction "

shall mean for each Participant, for any Limitation Year, a fraction so determined in accordance with Article VI of this Plan.

2.21 " Defined Contribution Fraction "

shall mean for each Participant, for any Limitation Year, a fraction so determined in accordance with Article VI of this Plan.

2.22 " Determination Date "

shall mean, for any Plan Year, the date determined in accordance with Article XI of this Plan.

2.23 " Determination Year "

shall mean the applicable Plan Year.

2.24 " Early Retirement Date "

shall mean the date specified in Section II.C.2. of the Adoption Agreement.

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ARTICLE II - Definitions

- 2.25 " Effective Date "  
shall have the meaning set forth in Section I.A.4. of the Adoption Agreement.
- 2.26 " Eligible Employee "  
shall mean an Employee who has satisfied the requirements set forth in Sections III.A.1., III.A.2. and III.A.3. of the Adoption Agreement.
- 2.27 " Employee "  
shall mean either:  
(a) a person who performs services for an Affiliated Employer in the employer-employee relation;  
(b) a person who is a Leased Employee with respect to an Affiliated Employer within the meaning of Code Sections 414(n) and 414(o) and this Article II; or  
(c) a person who is a self-employed individual (within the meaning of Section 401(c)(1) of the Code) with respect to an Affiliated Employer.
- 2.28 " Employer "  
shall mean the corporation, partnership, association or sole proprietorship set forth in Section I.B.1. of the Adoption Agreement.
- 2.29 " Employer Contribution "  
shall mean the Employer Contribution as elected in Section III.B.1 of the Adoption Agreement.
- 2.30 " Employer Contribution Account "  
shall mean that portion of a Participant's Account attributable to Participating Employer contributions and the earnings and accretions attributable to such contributions.
- 2.31 " Employment Commencement Date "  
shall mean the date on which an Employee first performs an Hour of Service on behalf of an Affiliated Employer or, if applicable, the date on which an Employee first performs an Hour of Service after his most recent Break-In-Service that has resulted in cancellation of his previous Years of Service.
- 2.32 " Entry Date "  
shall mean each date set forth in Section III.A.4. of the Adoption Agreement which shall be the date on which the Employee commences participation.

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ARTICLE II - Definitions

2.33 " ERISA "

shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406) as it presently exists or as it may hereafter be amended from time to time.

2.34 " Family Member "

shall mean family member as defined in Section 414(q)(6) of the Code.

2.35 " 415 Compensation "

shall mean the Participant's earned income, wages, salaries, and fees for professional services actually rendered in the course of employment with an employer maintaining the Plan (including, but not limited to, commissions paid to salesmen, compensation for service on the basis of a percentage of profits, commissions or insurance premiums, tips and bonuses), which for any Limitation Year are actually paid or includable in gross income in a Limitation Year but excluding:

- (a) contributions made by the Employer to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed;
- (b) contributions made to a "simplified employee pension" (within the meaning of Section 408 of the Code) to the extent such contributions are deductible by the Employee;
- (c) amounts realized from exercise of a non-qualified stock option;
- (d) amounts realized when restricted stock or property held by the Employee either becomes freely transferable or is no longer subject to risk of forfeiture;
- (e) any distributions from a plan of deferred compensation;
- (f) amounts realized from the sale or exchange of stock acquired under a qualified stock option;
- (g) contributions made by the Employer towards the purchase of an annuity (whether or not under a salary reduction agreement) pursuant to Section 403(b) of the Code (whether or not excludable from gross income); or
- (h) any other amounts which received special tax benefits.

2.36 " Highly Compensated Employee "

shall mean

- (a) An Employee who performs services for an Affiliated Employer during the applicable Determination Year and who during the Look-Back Year either
  - (i) Received Compensation from an Affiliated Employer in excess of \$75,000. (as adjusted pursuant to Code Section 415(d));

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- (ii) Received Compensation from an Affiliated Employer in excess of \$50,000 (as adjusted pursuant to Code Section 415(d)) and such Employee was among the top-paid group who received the highest Compensation from an Affiliated Employer, or
  - (iii) The Employee was an officer of an Affiliated Employer and either received Compensation in excess of fifty percent (50%) of the current limitation imposed by Code Section 415(b)(1)(A), or in the event no officers of any Affiliated Employer received Compensation in excess of the foregoing limit, the most highly compensated officer, or
- (b) Employees who are five percent (5%) owners (within the meaning of Code Section 416(i)) of an Affiliated Employer at any time during the Look-Back Year or the Determination Year or Employees described in Section 2.36(a) who are one of the 100 Employees who received the most compensation from the Employer during the Determination Year, or
- (c) A highly compensated former Employee who:
- (i) separated from the service (or who was deemed to have separated) of all Affiliated Employers prior to the Determination Year;
  - (ii) performed no services for an Affiliated Employer during the Determination Year, and was a Highly Compensated Employee (who was actively employed) during either his year of separation from service, or any Determination Year ending on or after his fifty-fifth (55th) birthday.
- (d) Any other Employee deemed to be highly compensated under Code Section 414(q) and the Treasury Regulation thereunder.
- (e) If an Employee is a family member (spouse, lineal ascendants and descendants and their spouses of the Employee or former Employee) of a Key Employee as defined in Section 11.3(c)(iii) or of a highly compensated Employee who is one of the ten (10) most highly compensated Employee ranked on the basis of compensation paid by the Employer during the determination Year or Look-Back Year, then the family member and such Key Employee shall be aggregated and compensation and plan contributions and benefits shall be aggregated for the purpose of determining if an Employee is a Highly Compensated Employee.

2.37 " Hour of Service "

shall mean:

- (a) Each hour for which an Employee (including those persons treated as employees pursuant to Code Section 414(n)) is paid or entitled to be paid currently or as a back pay award irrespective of mitigation of damages, by any Affiliated Employer (including any other entity required to be aggregated pursuant to Code Section 414(o) and regulations thereunder) for the performance of duties provided, however, that all hours shall be credited in the Computation Period in which the work was performed or to which the back pay award relates; and

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- (b) Each hour for which an Employee is paid or is entitled to payment due to vacation, holiday, illness, incapacity, disability, lay off, jury duty, military duty, maternity or paternity leave or leave of absence, but not periods for which payments are made or due:
  - (i) Under a plan maintained solely for the purpose of compliance with Worker's Compensation, Unemployment Compensation, disability insurance laws; or
  - (ii) Solely as reimbursement for medical expenses incurred by the Employee provided, however, that no more than five hundred one (501) Hours of Service be credited to an Employee during a single continuous period during which the Employee performs no duties, except in the case where the Employee is on leave of absence due to illness, injury or disability;
- (c) Each hour for which an Employee is absent from work because of:
  - (i) pregnancy,
  - (ii) the birth of a child of the Employee,
  - (iii) the placement of a child with the Employee in connection with the adoption of the child by the Employee, or
  - (iv) the need for care of the child during the period immediately following the birth or placement for adoption, but solely for the purpose of determining whether a Break-In-Service has occurred for participation and vesting.
- (d)(i) The Employee shall be credited with the number of hours which otherwise would have been credited but for such absence under subsection (c), unless said number of hours cannot be determined, in which case eight (8) hours per working day shall be credited.
  - (ii) Total hours credited pursuant to subsections (c) and (d) shall not exceed five hundred one (501) hours.
  - (iii) Hours pursuant to subsection (c) and (d) shall be credited in the Computation Period in which the absence pursuant to subsections (c) and (d) begins if such hours would prevent an Employee from incurring a Break-In-Service, or in any other case in the following Computation Period.
  - (iv) No credit shall be given pursuant to subsections (c) and (d) unless the Employee furnishes the Plan Administrator with information, as it may reasonably be required, to establish the length of and reasons for the absence, or the Plan Administrator has access to such relevant information.
- (e) Hours of Service shall be determined in accordance with Department of Labor Regulations, Sections 2530.200 b-2 and b-3 which are incorporated herein by reference;
- (f) Hours of Service may be credited at the rate of forty-five (45) hours for each week, ninety-five (95) hours for each semi-monthly pay period or one hundred ninety (190)

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ARTICLE II - Definitions

hours for each monthly pay period in which an Employee is credited with one (1) Hour of Service, if so elected by the Employer in Section II.B.4. of the Adoption Agreement.

- (g) Notwithstanding the above, if an Employer has selected use of the elapsed time method of credited service in Section II.B.4.e. of the Adoption Agreement, Hour of Service shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties with the Employer.

2.38 " Insurer "

shall mean any legal reserve insurance company from which any policies may be acquired in accordance with the terms of the Plan.

2.39 " Investment Fund "

shall mean that portion of the Trust Fund consisting of all monies not applied under Policies.

2.40 " Key Employee "

shall mean, for any Plan Year, a Participant or Beneficiary so determined in accordance with Article XI of this Plan.

2.41 " Leased Employee "

shall mean any person (not otherwise an employee of an Affiliated Employer) who pursuant to an agreement between the Affiliated Employer (as recipient) and any other person (as "leasing organization") has performed services for an Affiliated Employer or other "related person" (within the meaning of Code Section 414(n)(6)) on a substantially full time basis for at least one year of a type historically performed by employees in the business field of the Affiliated Employer, except if all of the following conditions are satisfied:

- (a) Such employee is covered by a money purchase pension plan providing:

- (i) a non-integrated employer contribution of not less than ten percent (10%) of Compensation (as defined in Code Section 415(c)(3) and without regard to any salary reduction agreement);
- (ii) immediate participation; and;
- (iii) immediate nonforfeitability of employer contributions;

- (b) Leased Employees do not constitute more than twenty percent (20%) of the non-highly compensated work force of the Affiliated Employer.

Contribution or benefits provided 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.

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ARTICLE II - Definitions

2.42 " Limitation Year "

shall mean the consecutive twelve (12) month period selected in Section II.B.1. of the Adoption Agreement unless otherwise elected by resolution of the Board of Directors of the Employer. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

2.43 " Look-Back Year "

shall mean the twelve (12) month period immediately preceding the applicable Determination Year.

2.44 " Named Fiduciary "

shall mean the Employer, the Trustees and the Plan Administrator, provided, however, that the above named (or any member of a group constituting any of the above named) shall only be considered fiduciaries to the extent of each of their powers, duties and responsibilities as set forth under the terms of this Plan.

2.45 " Net Profits "

shall mean the sum of the net earnings of a Participating Employer (or an "Affiliated Group" as defined in Section 1504 of the Code), as the case may be, at the close of its taxable year as determined for Federal Income Tax purposes determined in accordance with generally accepted accounting principles.

2.46 " Non-Key Employee "

shall have the meaning so ascribed in Article XI of this Plan.

2.47 " Normal Retirement Age "

shall mean the earlier of

(a) a Participant's Normal Retirement Date;

(b) the later of:

(i) the date on which the Participant attains Age sixty-five (65); or

(ii) the fifth (5th) anniversary of his Entry Date; or

(c) any mandatory retirement age enforced by the Employer.

2.48 " Normal Retirement Date "

shall mean the date specified in Section II.C.1. of the Adoption Agreement. If the

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ARTICLE II - Definitions

Employer enforces a mandatory retirement age, the Normal Retirement date shall be the lesser of that mandatory age or the age specified in the Adoption Agreement.

2.49 " Owner-Employee "

shall mean an individual who is a sole proprietor or who is a partner owning more than ten percent (10%) of either the capital or profits of the partnership.

2.50 " Paired Plan "

shall mean a combination of two or more defined contribution standardized form plans so designed that if any single plan, or combination of plans, is adopted by an employer, each plan by itself, or the plans together, will meet the anti-discrimination rules set forth in Section 401(a)(4) of the Code, the contribution and benefit limitations set forth in Section 415 of the Code, and the Top-Heavy provisions set forth in Section 416 of the Code. Only one of the Paired Plans that an Employer adopts may provide for disparity in contributions (integration) that is permitted under Section 401(l) of the Code.

2.51 " Participant "

shall mean any person who is or was an Eligible Employee and who has been admitted to participation in accordance with the terms of the Plan.

2.52 " Participant Contribution Account "

shall mean that portion of a Participant's Account as is attributable to after-tax Employee contributions, rollover contributions or transfer contributions, if any, as provided under the terms of the Plan, and all earnings and accretions attributable to such Employee contributions.

2.53 " Participating Employer "

shall mean the Employer and any Affiliated Employer who, with the consent of the Employer, formally adopts the Plan by completing Section I.B.2. of the Adoption Agreement.

2.54 " Period of Severance "

shall mean a continuous period of time during which the Employee is not employed by the Employer beginning when the Employee retires, quits or is discharged, or if earlier, the 12 month anniversary of the date on which the Employee was otherwise first absent from service, provided that in the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break-in-Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons shall have the same meaning as in Section 2.37(c) of the Plan.

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ARTICLE II - Definitions

2.55 " Plan " or " Plan and Trust "

shall mean the Plan as herein set forth, as it may be amended from time to time which shall be known by the name set forth in Section I.A.1. of the Adoption Agreement.

2.56 " Plan Administrator "

shall mean any individual, individuals, corporate entity, or other organization or combination of any of the above designated in Section I.B.7. of the Adoption Agreement, or in the absence of such designation, the Employer.

2.57 " Plan Year "

shall mean the twelve (12) consecutive month period set forth in Section I.A.7. of the Adoption Agreement.

2.58 " Qualified Domestic Relations Order "

shall mean any judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law:

- (a) which relates to the provision of child support, alimony payments or marital property rights;
- (b) which creates or recognizes the existence of an Alternate Payee's right to receive all or any portion of the benefits payable with respect to a Participant; and
- (c) which otherwise satisfies the requirements of Section 414(p) of the Code and the regulations thereunder.

2.59 " Qualified Joint and Survivor Annuity "

shall mean, in the case of a married Participant, the amount of an immediate annuity for the life of the Participant with a fifty percent (50%) survivor's annuity for the life of the Spouse which is payable during the joint lives of the Participant and the Spouse that can be purchased with the Participant's vested Account, and in the case of an unmarried Participant, the amount of annuity for life that can be purchased with the Participant's vested Account.

2.60 " Qualified Pre-Retirement Survivor Annuity "

shall mean a survivor annuity for the life of Participant's surviving Spouse which can be purchased with fifty percent (50%) of the Participant's Account and which the surviving Spouse may elect to have distributed within a reasonable period after the Participant's death as of the date of his death.

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ARTICLE II - Definitions

2.61 " Required Beginning Date "

shall mean:

- (a) In the case of those Participants who attain age seventy and one-half (70 1/2) after December 31, 1988: The April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 1/2).
- (b) In the case of those Participants who attain age seventy and one-half (70 1/2) prior to January 1, 1988 who are not five percent (5%) owners (within the meaning of Code Section 416(i)): The April 1 following the later of:
  - (i) the calendar year in which the Participant attains age seventy and one-half (70 1/2); or
  - (ii) the calendar year in which the Participant retires.
- (c) In the case of those Participants who attain age seventy and one-half (70 1/2) after December 31, 1987 but prior to January 1, 1989 who are not five percent (5%) owners (within the meaning of Code Section 416(i)): April 1, 1990.
- (d) In the case of those Participants who attain age seventy and one-half (70 1/2) prior to January 1, 1988 and were five percent (5%) owners during any Plan Year beginning after December 31, 1979: The April 1 following the later of:
  - (i) the calendar year in which the Participant attains age seventy and one-half (70 1/2); or
  - (ii) the earlier of:
    - (A) the calendar year in which the Participant retires; or
    - (B) the calendar year containing the last day of the Plan Year in which the Participant becomes a five percent (5%) owner.
- (e) A participant is treated as a five-percent (5%) owner for purposes of this section if such participant is a five-percent (5%) owner as defined in section 416(i) of the Code (determined in accordance with section 416 but without regard to whether the plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 66 1/2 or any subsequent Plan Year.
- (f) Once distributions have begun to a five-percent (5%) owner under this section, they must continue to be distributed, even if the participant ceases to be a five-percent (5%) owner in a subsequent year.

2.62 " Restatement Effective Date "

shall have the meaning ascribed in Section I.A.5. of the Adoption Agreement.

2.63 " Self Employed Person "

shall mean an individual who has earned income (within the meaning of Code Section 401(c)(2)) from the trade or business for which the Plan is established, or would have such income if such trade or business had net profits.

2.64 " Separate Investment Fund "

shall mean if selected by the Employer in Section III.D.1. of the Adoption Agreement, the various separate funds offered for investment. In addition, if elected by the Employer in Section III.D.2. and D.3. of the Adoption Agreement, the Participant may choose to direct the investments in his Account as a self-directed account.

2.65 " Social Security Retirement Age "

shall mean age 65 if the Participant attains age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 if the Participant attains age 62 after December 31, 1999, but before January 1, 2017 (i.e., born after December 31, 1987, but before January 1, 1955), and age 67 if the Participant attains age 62 after December 31, 2016 (i.e., born after December 31, 1954).

2.66 " Spouse "

shall mean the Spouse or the Surviving Spouse of the Participant, provided that a former Spouse will be deemed the Spouse and the current Spouse will not be deemed the Spouse to the extent provided under a Qualified Domestic Relations Order.

2.67 " Super Top Heavy Plan "

shall mean, for any Plan Year, a Plan so determined in accordance with Article XI hereof.

2.68 " Top Heavy Plan "

shall mean, for any Plan Year, a Plan so determined in accordance with Article XI hereof.

2.69 " Total Disability "

shall mean a medically determinable physical or mental impairment which is expected to result in death or to be of a long continued duration and which prevents the Participant from engaging in his normal and customary duties.

2.70 " Trustees "

shall mean the individual, individuals, corporate entity or other group designated pursuant to Section I.B.6. of the Adoption Agreement.

2.71 " Trust Fund "

shall mean assets or property held by the Trustees (or any nominee thereof) under the terms of the Plan and Trust.

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ARTICLE II - Definitions

2.72 " Valuation Date "

shall mean the close of business on:

- (a) the last day of the Plan Year, and
- (b) any other date selected pursuant to Section III.C.4 of the Adoption Agreement.

When payments are made based on account balances, the Plan Administrator may perform an additional valuation as of any date when such payments may be affected by significant changes in asset values. No such additional valuations will result in discrimination as prohibited by Section 401(a)(4) of the Code.

2.73 " Year(s) of Service "

shall mean the number of applicable Computation Periods in which an Employee accrues one thousand (1,000) Hours of Service according to the terms of the Plan with respect to vesting and eligibility, that have not been excluded pursuant to the terms of the Plan. For purposes of eligibility, an Employer who has not selected Section II.B.3. of the Adoption Agreement will credit an Employee who accrues one thousand (1,000) Hours of Service during both the initial twelve month Computation Period and the Plan Year beginning in the initial twelve month Computation Period, with two (2) Years of Service.

Notwithstanding the above, where an Employer has elected use of the elapsed time method of credited service, for purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the non-forfeitable interest in the Participant's Account balance derived from Employer contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break-in-Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.



ARTICLE III - ELIGIBILITY AND PARTICIPATION

3.1 Eligible Employee Status

An Employee shall be an Eligible Employee on the date on which he satisfies the requirements set forth in Sections III.A.1., III.A.2. and III.A.3. of the Adoption Agreement.

3.2 Commencement of Participation

An Eligible Employee shall enter the Plan, subject to any administrative requirements set forth herein, on the Entry Date specified in Section III.A.4. of the Adoption Agreement relating to his completion of the service requirement set forth in Section III.A.3. of the Adoption Agreement. Notwithstanding the foregoing, all Employees on the date specified in Section III.A.5. of the Adoption Agreement shall commence their participation hereunder on the date specified therein.

3.3 Administrative Requirements

The Plan Administrator may require the Employee to supply information and to complete such forms as reasonably required and, in its sole discretion, may delay an Employee's entrance into the Plan until his compliance with this requirement.

3.4 Re-Employment of Participant

If a Participant experiences an interruption in his employment with all Affiliated Employers and is subsequently re-employed he shall be eligible to enter or re-enter the Plan immediately upon re-employment.

3.5 Change in Employment Status

An Employee otherwise eligible who was previously not eligible to enter the Plan because he was not an Eligible Employee shall enter participation immediately upon becoming an Eligible Employee.

3.6 Inactive Participants

If a Participant subsequently becomes ineligible under Section 3.1 hereunder, but is still employed by an Affiliated Employer he shall become an inactive Participant and shall no longer be eligible to receive Employer contributions to the extent provided in Article IV hereof.

ARTICLE IV - EMPLOYER CONTRIBUTIONS

4.1 Determination of Amount of Employer Contributions

Each Participating Employer shall contribute to the Trust Fund on account of its Employees for each Plan Year in the manner set forth in Section III.B. of the Adoption Agreement. No contribution shall be accepted by the Trust under this Section 4.1 unless it is deductible under Section 404 of the Code.

4.2 Payment of Contributions

Each Participating Employer shall make full payment of its contribution to the Trustees no later than the due date of its federal income tax return (including extensions thereof) for the fiscal year with respect to which such contribution is made.

4.3 Duty of the Trustees

The Trustees shall have no duty to enforce payment of any contribution of any Participating Employer.

4.4 Contingent Nature of Contributions

Contributions made to the Trust Fund are expressly contingent upon their deductibility for federal income tax purposes and the maintenance of the qualified status of the Plan to the extent that loss of said qualified status would deprive a Participating Employer of the deduction taken for said contribution.

4.5 Refund of Company Contributions

In the event of:

- (a) initial disqualification of the Plan;
- (b) disallowance of a deduction, or
- (c) mistake of fact, that portion of the contribution which is disallowed or contributed by mistake of fact may be returned to the Participating Employer which made said contribution to the extent permitted under Section 403(c) of ERISA and Section 401(a)(2) of the Code.

Return of contributions pursuant to (b), or (c) of this Section 4.5 shall be made within one (1) year of the date of disallowance of deduction or date of payment of the mistaken portion of the contribution, as the case may be. If the Commissioner of Internal Revenue determines that that the Plan is not initially qualified under the Code, any contribution made incident to that initial qualification by the Employer must be returned within one year of the date of denial of initial qualification but only if the application for qualification is made by the time prescribed for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of Treasury may prescribe.

ARTICLE V - EMPLOYEE CONTRIBUTIONS

5.1 Employee Contributions Generally

(a) Non-Forfeitability

All Employee contributions and earnings thereon shall be fully vested at all times.

(b) Accounting

All Employee contributions shall be allocated to a Participant's Participant Contribution Account.

5.2 Rollover Contributions

(a) Permissibility

Rollover contributions may be accepted if such option is selected pursuant to Section III.B.2.2 of the Adoption Agreement only upon such terms and conditions as may be provided under administrative regulations set forth by the Plan Administrator, provided, however, that no funds shall be accepted as a rollover contribution if acceptance of said funds adversely affects the qualified status of the Plan or Trust Fund under the Code.

(b) Evidence of Source of Rollover Funds

The Plan Administrator, at its sole discretion, may require the Participant to provide such evidence as it deems necessary to determine that the rollover funds originate from a source which may be rolled over to the Plan without adversely affecting its qualified status.

(c) Types of Rollovers Accepted

Subject to the requirements of this Section, rollover contributions from the following types of plans may be accepted:

(i) those received by a Participant directly from a plan which is qualified under Section 401(a) of the Code;

(ii) those received by a Participant from an Individual Retirement Account which consists only of rollover contributions as provided in Section 408(d)(3) of the Code;

(iii) those received by a Participant from an employee annuity described in Section 403(b) of the Code;

(iv) a transfer of funds directly from the trustee of a plan which is qualified under Section 401(a) of the Code; provided, however, that such direct transfers shall be accepted only if so specified in Section III.B.2.b. of the Adoption Agreement.

(d) Withdrawal

a Participant may withdraw his rollover contributions (including earnings and appreciation) in the same manner provided for the withdrawal of voluntary after-tax contributions.

(e) Direct Rollover of Eligible Distributions. General Rule.

The subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(f) Direct Rollover of Eligible Distributions. Definitions.

- (i) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (ii) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (iii) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (iv) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

5.3 Deductible Employee Contributions

The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate account which will be nonforfeitable at all times. The account will share in the gains and losses of the Trust in the same manner as described in Section 7.2 of the Plan. No part of the deductible voluntary contribution account will be used to purchase life insurance. Subject to Section 12.5 and Section 12.6 (if applicable), the Participant may withdraw any part of the deductible voluntary contribution account by making a written application to the Plan Administrator.

ARTICLE VI - ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

The Plan Administrator will separately credit contributions, distributions and forfeitures to the respective bookkeeping account of each separate type of Contribution.

For purposes of this Article, "Compensation" shall mean "415 Compensation".

6.1 Determination of Participants Eligible to Share in Allocation of Employer Contributions

The Plan Administrator shall determine, as of the last day of each Plan Year, each Participant (or former Participant) who is eligible to receive an allocation of Employer Contributions in accordance with the Adoption Agreement.

6.2 Allocation of Employer Contributions

(a) Allocation in General

Subject to the Annual Addition limitations and the One Point Four/One Point Two Five limitations as more particularly set forth in this Article VI, Employer Contributions and forfeitures, if applicable, from each Participating Employer shall be allocated to the Account of each Participant (or former Participant) who is eligible to receive an allocation in the manner set forth in the Adoption Agreement.

(b) Integrated Allocation

If an Employer has elected an integrated formula, Employer Contributions for the Plan Year will be allocated to Participants' Accounts as follows:

STEP ONE: Contributions and forfeitures, if applicable, will be allocated to each Participant's Account in the ratio that each Participant's total Compensation bears to all Participants' total Compensation, but not in excess of three percent (3%) of each Participant's Compensation.

STEP TWO: After the allocation in Step One any remaining portion will be allocated to each Participant's Account in the ratio that each Participant's Compensation for the Plan Year in excess of the integration level bears to the Excess Compensation of all Participants, but not in excess of three percent (3%).

STEP THREE: After the allocation in Step Two any remaining portion will be allocated to each Participant's Account in the ratio that the sum of each Participant's total Compensation and compensation in excess of the integration level bears to the sum of all Participants' total Compensation and Compensation in excess of the integration level, but not in excess of the profit-sharing maximum excess allowance percentage selected in the Adoption Agreement less three percent (3%).

STEP FOUR: Any remaining portion will be allocated to each Participant's Account in the ratio that each Participant's total Compensation for the Plan Year bears to all Participants' total Compensation for that year. If in any year the Plan is not a Top-Heavy Plan, STEP ONE and STEP TWO above shall be disregarded and

allocations shall be made in accordance with STEP THREE and STEP FOUR above without regard to the three percent (3%) reduction of STEP THREE.

6.3 Allocation of Forfeitures

Forfeitures shall be allocated in the manner set forth in the Adoption Agreement, provided that such forfeitures shall be allocated among the Employees of the Participating Employer who employed the Participant. Notwithstanding the above, if the Employer has selected an integrated Profit Sharing or a Money Purchase Plan which uses a formula based on a percentage of pay but allocated on an integrated basis (Section III.B.1.c of the Adoption Agreement) formula, forfeitures will be allocated in accordance with Article VI, Section 6.2 related to Employer Contributions.

6.4 Transfer of Participants

In the event of the transfer of a Participant between Participating Employers, the non-matching contribution of each Participating Employer shall be allocated to his Employer Contribution Account to the extent he received Compensation from the Participating Employer during the Plan Year.

6.5 Annual Additions Limitations

In no event shall an allocation be made to a Participant's Account in any defined contribution plan (as defined in Section 414(i) of the Code) for any Limitation Year which shall cause his Annual Addition to exceed the lesser of:

- (a) twenty-five percent (25%) of the Participant's 415 Compensation (excluding amounts contributed for medical benefits within the meaning of Section 401(h) or 419A(f)(2) of the Code that are treated as Annual Additions); or
- (b) the greater of:
  - (i) thirty thousand dollars (\$30,000); or
  - (ii) one fourth (1/4) of the current maximum dollar limitation for defined benefit plans.

For purposes of this Plan, the Annual Addition on behalf of a Participant in any Limitation Year is equal to the sum of:

- (a) All Employer Contributions allocated to his Account under this Plan or any other defined contribution plan (as defined under Section 414(i) of the Code) maintained by an Affiliated Employer; and
- (b) The Participant's contributions to all qualified plans (within the meaning of Section 401(a) of the Code) except that Employee Contributions made on account of Limitation Years beginning on or before January 1, 1987 shall be determined in accordance with the law in effect prior to such date; and

- (c) the forfeitures allocated to his Account; and
- (d) contributions allocated to any individual medical account within the meaning of Code Section 415(1)(2) after March 31, 1984 by an Affiliated Employer; and
- (e) contributions allocated to any separate account of a Key Employee welfare benefit fund (within the meaning of Code Section 419(e)) after December 31, 1985 under a Plan maintained by an Affiliated Employer.

6.6 One Point Four/One Point Two Five Limitations

In no event shall an allocation be made to the Account of a Participant for any Limitation Year which shall cause the sum of the Participant's Defined Benefit Fraction and the Participant's Defined Contribution Fraction to exceed one (1).

(a) A Participant's Defined Benefit Fraction is a Fraction:

- (1) The numerator of which is the Participant's projected annual benefit (i.e., the annual retirement benefit adjusted to an actuarially equivalent straight life annuity if expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the plan assuming:
  - (i) the Participant will continue employment until Normal Retirement Age (or current age, if later), and
  - (ii) the Participant's 415 Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years provided under all defined benefit plans (as defined in Section 414(j) of the Code) (whether or not terminated) maintained by an Affiliated Employer.
- (2) Except as modified by Subsection 3 hereof, the denominator of which is the lesser of:
  - (i) the projected annual benefit (as defined in (a) above) of the Participant if such plan provided the maximum benefit permitted under Section 415(b) of the Code multiplied by one and four-tenths (1.4); and
  - (ii) the maximum dollar limitation which may be considered under Code Section 415(b)(1)(A) (as adjusted by Code Section 415(d)(1)) multiplied by one and one-quarter (1.25).
- (3) In the event an Employee was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in a defined benefit plan maintained by an Affiliated Employer which plan was in existence on May 6, 1986 and satisfied individually and when aggregated with all other such plans the requirements of Code Section 415 for all Limitation Years beginning before



January 1, 1987, the denominator of the Participant's Defined Benefit Fraction shall not be less than one hundred twenty five percent (125%) of the Participant's Accrued Benefit under all such defined benefit plans as of the last Limitation Year beginning before January 1, 1987, disregarding any amendments to such plan after May 5, 1986. In addition, the numerator shall be reduced in accordance with Tefra Section 235(g)(3) and Defra 713(a).

(b) A Participant's Defined Contribution Fraction is a Fraction:

- (1) Except as modified by Subsection (3) hereof, the numerator of which is the sum of the Annual Additions (as defined under Section 415(c)(2) of the Code) made to:
  - (i) the Participant's Account under all defined contribution plans (as defined in Section 414(i) of the Code) (whether or not terminated) maintained by the affiliated Employer for the current and all prior Limitation Years;
  - (ii) employee contributions to defined benefit pension plans (within the meaning of Code Section 414(j));
  - (iii) contributions to welfare benefit funds (within the meaning of Code Section 419(e)); and
  - (iv) contributions to individual medical accounts (within the meaning of Code Section 415(1)(2)); maintained by all Affiliated Employers.
- (2) The denominator of which is the lesser of:
  - (i) the sum of the maximum amount of Annual Additions that could have been made on behalf of the Participant in accordance with Section 415(c) of the Code for each year of his employment with an Affiliated Employer or any predecessor entity for which service is recognized pursuant to Section II.B.6.c. of the Adoption Agreement multiplied by one and four-tenths (1.4); and
  - (ii) the maximum amount of Annual Additions that could have been made to the Participant's Account pursuant to Code Section 415(c)(1)(A) (as adjusted by Code Section 415(d)(1)) multiplied by one and one quarter (1.25).
- (3) In the event an Employee was a Participant in a defined contribution plan (within the meaning of Code Section 414(i)) maintained by an Affiliated Employer (which plan was in existence on May 6, 1986) on the end of the first day of the Limitation Year beginning after December 31, 1986, the numerator of the Defined Contribution Fraction shall be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of the Plan. The excess of the sum of the fraction (calculated as of the end of the last Limitation Year beginning before January 1, 1987 and computed in accordance with Code Section 415(a) in effect for Limitation Years beginning after December 31, 1986 but disregarding any plan amendments made after May 6, 1986 but using the Section 415 limitations applicable to the first Limitation Year beginning on or

after January 1, 1987) over 1.0 times the denominator of the Defined Contribution Fraction shall reduce the numerator of the Defined Contribution Fraction so that the Defined Contribution Fraction equals one (1.0). The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Employee contribution as Annual Addition. In addition, the numerator shall be reduced in accordance with Tefra Section 235(g)(3) and Defra Section 713(a).

6.7 Adjustments to One Point Four/One Point Two Five Limitations for Top Heavy Plans

(a) Reduced One Point Four/One Point Two Five Limitations

If, during any Limitation Year in which the Plan is a Top Heavy Plan, a Participant participates in both a defined contribution plan (as defined in Section 414(i) of the Code) and a defined benefit plan (as defined in Section 414(j) of the Code) maintained by an Affiliated Employer, the denominator of the Participant's Defined Contribution Fraction and Defined Benefit Fraction shall be calculated by substituting "1.0" for "1.25" in each place it appears in Section 6.6 above.

(b) Exceptions to Applicability

This Section 6.7 shall not apply for any Plan Year if:

- (i) the Top Heavy ratio determined under Section 11.2, Subsections (a) and (b) does not exceed ninety percent (90%) for the Plan Year in reference; and
- (ii) the minimum contribution allocated to the Account of each Non-Key Employee who is otherwise eligible to receive a contribution was one percent (1%) greater than the required minimum contribution allocated under Section 11.4, Subsection (b).

6.8 Limitation on Allocations

(a) Employee Participating Only in This Plan

- (1) If the Participant does not participate in, and has never participated in, another qualified plan maintained by an Affiliated Employer or a welfare benefit fund, as defined in Section 419(e) of the Code maintained by the Employer, or an individual medical account, as defined in Section 415(1)(2) of the Code, maintained by the Affiliated Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Addition for the Limitation Year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the Annual Addition for the Limitation Year will equal the maximum permissible amount.

- (2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
  - (3) As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.
  - (4) If pursuant to subsection (a)(3) or as a result of the allocation of forfeitures, there is an excess amount, the excess will be disposed of as follows:
    - (i) Any nondeductible voluntary employee contributions, to the extent they would reduce the excess amount, will be returned to the Participant;
    - (ii) If after the application of paragraph (4)(i) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's Account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
    - (iii) If after the application of paragraph (4)(i) an excess amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;
  - (5) If a suspense account is in existence at any time during the Limitation Year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to participants' accounts before any employer or Employee Contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to participants or former participants.
- (b) Employee Participating in this Plan and another Regional Prototype Defined Contribution Plan
- (1) This Section applies if, in addition to this Plan, the Participant is covered under another Regional Prototype defined contribution plan, welfare benefit fund, as defined in section 419(e) of the Code or an individual medical account, as defined in section 415(1)(2) of the Code, maintained by the Affiliated Employer, which provides an Annual Addition during any Limitation Year. The Annual Addition which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the

Annual Addition credited to a Participant's account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Addition with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Affiliated Employer are less than the maximum permissible amount and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Addition for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Addition under all such plans and funds for the Limitation Year will equal the maximum permissible amount. If the Annual Addition with respect to the Participant under such other defined contribution plan and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

- (2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Subsection (a)(2).
- (3) As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.
- (4) If, pursuant to Subsection (b)(3) or as a result of the allocation of forfeitures, a Participant's Annual Addition under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the Annual Additions last allocated, except that Annual Addition attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (5) If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of:
  - (a) the total excess amount allocated as of such date, times:
  - (b) the ratio of
    - (i) the Annual Addition allocated to the Participant for the Limitation Year as of such date under this Plan to
    - (ii) the total Annual Addition allocated to the Participant for the Limitation Year as of such date under this and all the other Regional prototype defined contribution plans.
- (6) Any excess amount attributed to this Plan will be disposed of in the manner described in Subsection (a)(4).

(c) Employee participating in this Plan and another non-Regional Prototype Defined Contribution Plan.

If the Participant is covered under another qualified defined contribution plan maintained by the Affiliated Employer which is not a Regional Prototype plan, Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with Subsections (b)(1) through (b)(6) as though the other plan were a Regional Prototype plan unless the Employer provides other limitations in the Adoption Agreement.

For purpose of this Section 6.8, the term excess amount shall mean the excess of a Participant's Annual Addition for the Limitation Year over the Annual Addition limitations of Section 6.5 of the Plan.

6.9 Manner of Reduction when Employer Maintains a Defined Benefit Plan

Contributions under this Plan shall be reduced to the extent possible to satisfy the limitations set forth in Section 6.6 hereof before reductions are made in any defined benefit plan (within the meaning of Section 414(j) of the Code) maintained by any Affiliated Employer unless otherwise specified in Section III.C.5 of the Adoption Agreement.

6.10 Short Limitation Year

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

6.11 Regional Prototype Plan

A Regional Prototype Plan is a Plan the form of which is the subject of a favorable notification letter from the Internal Revenue Service.

6.12 Highest Average Compensation

Highest Average Compensation means the average of a Participant's compensation for the three (3) consecutive Years of Service with the Employer which produce the highest average. A Year of Service with the Employer is the twelve (12) consecutive month period defined in Section 2.73 of the Plan.

ARTICLE VII - ALLOCATION OF INVESTMENT RESULTS

7.1 Valuation of the Trust Fund

The Trust Fund shall be valued at the close of business on the last day of Plan Year, and on the valuation period specified in Section III.C.4 of the Adoption Agreement except in the case where Separate Investment Funds are permitted pursuant to Section III.D.1 of the Adoption Agreement in which case the Trust Fund and each Separate Investment Fund shall be valued on the last day of the Plan Year, and on the date specified in the Adoption Agreement, to be known as the Valuation Date. Valuation shall be at fair market value.

7.2 Crediting of Investment Results - Trust Fund

Investment results shall be credited in the following manner:

First: The Plan Administrator shall determine which Accounts (or portions of Accounts) are eligible to share in the Plan's earnings and appreciation. Any Separate Investment Funds or Accounts that have been segregated pursuant to Article XIII hereof shall not share in the earnings and appreciation of the Trust Fund.

Second: The value of each Account which is to share in the earnings and appreciation of the Trust Fund shall be determined as of the most recent prior Valuation Date, excluding the value of any policies.

Third: The value of each Account which is to share in the earnings and appreciation of the Trust Fund shall be adjusted for:

(a) the amount of premiums paid, and dividends received on account of any policies maintained on behalf of the Participant; and

(b) any withdrawals or distributions made from or additions made to the Account since the most recent previous Valuation Date.

Fourth: The adjusted values of all Accounts which are to share in the earnings and appreciation of the Trust Fund shall be aggregated.

Fifth: The fair market value of the Trust Fund shall be computed as of the applicable Valuation Date. For this purpose, the cash value of any policies, Separate Investment Funds, and segregated accounts shall not be considered.

Sixth: The earnings and appreciation of the Trust Fund shall be determined first by subtracting the value of all items that do not constitute earnings of the Trust Fund (such as advance contributions, withdrawals and transfers) from the fair market value as computed above. Then the difference from the adjusted fair market value of the Trust Fund assets and the aggregate value of the Participant Accounts as determined in the fourth paragraph of this Section 7.2 shall be determined. Said amount shall constitute the earnings and appreciation of the Trust Fund. For this purpose the Plan Administrator may ratably allocate earnings to accounts which contain funds deposited or withdrawn since the last Valuation Date.

Seventh: The earnings and appreciation as determined above shall be credited (or debited) to the Accounts which are to share in the earnings and appreciation of the Trust Fund in the ratio that each Account or portion thereof bears to the aggregate value of such Accounts as determined in the fourth paragraph of this Section 7.2.

Eighth: The cash value of any policies held by the Trust Fund and the value of any segregated accounts or Separate Investment Funds shall be reallocated to those Participants' Accounts.

7.3 Crediting of Investment Results - Segregated Accounts/Separate Investment Funds

To the extent a segregated account or Separate Investment Fund (including a self-directed account) has been separately invested by the Trustees, all accretions and earnings attributable to said account since the most recent prior Valuation Date shall be credited (or debited) to said account less all identifiable separate expenses incurred in the operation of said account or fund. In the event two or more Participants' accounts are jointly invested by the Trustees in a segregated account or Separate Investment Fund, the earnings and appreciation shall be allocated between said accounts in a manner consistent with allocation of the earnings of the entire Trust Fund as set forth in this Article VII.

ARTICLE VIII - BENEFITS PAYABLE UPON RETIREMENT

8.1 Normal and Late Retirement Benefit

A Participant who retires on or after his Normal Retirement Date shall be entitled to receive one hundred percent (100%) of his Account as of the Valuation Date coincident with or immediately preceding payment.

8.2 Early Retirement Benefit

In the event an Early Retirement Date has been selected in Section II.C.2 of the Adoption Agreement, a Participant who retires on his Early Retirement Date shall be entitled to receive one hundred percent (100%) of his Account as of the Valuation Date coincident with or immediately preceding payment.

8.3 Disability Benefit

A Participant who has suffered a Total Disability shall be entitled to receive one hundred percent (100%) of his Account as of the last day of the month coincident with or immediately preceding payment.

8.4 Determination of Total Disability

The Plan Administrator shall have the sole authority to determine a Participant's eligibility for a Total Disability and, in its discretion, may require submission of appropriate medical evidence by the Participant as may be necessary to make said determination.

8.5 Eligibility for Post Normal Retirement Age Benefit

A Participant who remains in the employ of a Participating Employer after reaching his Normal Retirement Date shall continue to receive an allocation of Employer Contributions to his Account, provided he continues to satisfy the requirements therefore as applicable to all other Participants.

8.6 Employer's Consent

It is the intention of each Participating Employer to require its Employees to retire at the earliest age permitted under applicable state and federal age discrimination laws unless consent of the Board of Directors of the Participating Employer is granted in writing. Nothing contained in this Plan shall be construed as granting an Employee the right to remain in the employ of any Participating Employer beyond such time as required by applicable law.



ARTICLE IX - BENEFITS PAYABLE UPON DEATH

9.1 Pre-Retirement Death Benefit

Upon the death of a Participant before the Annuity Starting Date, his Spouse (or his Beneficiary) shall be entitled to receive one hundred percent (100%) of his Account as of the Valuation Date immediately preceding payment, including any of the proceeds of any policies which are received by the Trustee on account of the death of said Participant, unless the Participant has previously made an election to receive benefits as a life annuity or any portion of the Participant's Account is attributable to transfer contributions within the meaning of Section 401(a)(11)(B)(iii)(III) of the Code, in which case, the provisions of Sections 9.5 and 9.6 shall apply, in which case, the remaining fifty percent (50%) of his Account shall be paid to his Beneficiary.

9.2 Post-Retirement Death Benefit

Upon the death of a former Participant after the Annuity Starting Date, there shall be no death benefit payable to his Beneficiary except for the balance of payments yet to be made in accordance with a previously selected method of payment by the Participant prior to his death. In the event the Participant has not selected a method of distribution, the benefit payable to his Beneficiary shall be determined as if the benefit were a pre-retirement death benefit as provided in Section 9.1 hereof.

9.3 Death Benefits of Terminated Vested or Terminated Participants

There shall be no death benefit payable on account of the death of a terminated Participant who has no vested interest in his Account. The Plan Administrator, however, shall cause a Participant's termination benefit (determined in accordance with Article X hereof) to be payable to his Beneficiary as soon as practicable after his death.

9.4 Beneficiary Designations

Subject to the provisions hereof, each Participant shall have the right to designate one or more direct and/or contingent Beneficiaries. Said designation shall not be effective unless it is made on a form provided by the Plan Administrator, duly executed by the Participant and received by the Plan Administrator. A Participant may change his Beneficiary from time to time by executing an amended beneficiary designation form.

9.5 Automatic Spousal Designation

Unless the Plan provides for acceptance of transfer contributions within the meaning of Section 401(a)(11)(B)(iii)(III) of the Code or permits payment of benefits as a life annuity (which shall be signified by an affirmative election pursuant to Section III.F.3, 4 or 5 of the Adoption Agreement) and the Participant does not elect payment of his benefits in the form of a life annuity, the Plan shall pay the

Participant's entire Account upon his death to his surviving spouse regardless of any contrary designation of Beneficiaries made by the Participant, provided, however, that the Participant may designate another Beneficiary if such designation complies with the requirements of Section 417(a)(2)(A) of the Code and Article XII, Sections 12.5 and 12.6 hereof.

9.6 Qualified Pre-Retirement Survivor Annuity

In the event the Plan provides for acceptance of certain transferred contributions (within the meaning of Section 401(a) (11)(B)(iii)(III) of the Code) which shall be signified by an affirmative election pursuant to either Section III.F.3, 4 or 5 of the Adoption Agreement or permits payment of benefits as a life annuity, death benefits which become payable shall be paid as follows: In the case of a transfer contribution, the funds so transferred, including any appreciation, depreciation interest, accretions or declarations or in the case of election of a life annuity payment, the Participant's entire Account, shall be paid the Participant's surviving spouse in the form of a Qualified Pre-Retirement Survivor's Annuity as more particularly set forth in Section 12.5 hereof, regardless of any contrary designation of Beneficiaries made by the Participant, provided, however, that the Participant may designate a Beneficiary other than his spouse or another form of payment if such designation complies with the requirements of Section 417(a)(2)(A) of the Code and Article XII Section 12.5 hereof.

9.7 Failure of Beneficiary Designation

In the event that a Participant fails to deliver a properly executed beneficiary designation form to the Plan Administrator or in the event that all the designated Beneficiaries predecease the Participant, the Plan Administrator shall direct the Board of Trustees to pay any benefit due in accordance with this Article according to the following priorities:

- (a) Surviving spouse;
- (b) Lineal descendants, per stirpes;
- (c) Surviving parents;
- (d) Participant's estate.

Each priority class shall share equally among other members of the class but to the exclusion of the members of the subsequent classes.

ARTICLE X - BENEFITS PAYABLE UPON TERMINATION

10.1 Employer Contributions

A Participant who voluntarily or involuntarily terminates his employment with all Affiliated Employers for any reason other than his Normal or Early Retirement, or by reason of death or disability in accordance with the terms of the Plan, shall be entitled to receive the respective percentages of his Employer Contribution Account as of the Valuation Date coincident with or immediately preceding the date upon which said benefits become payable, (further adjusted for contributions and withdrawals through the date of payment) in accordance with the respective schedules selected in Section III.E. of the Adoption Agreement.

10.2 Determination of Years of Service for Vesting Purposes

For vesting purposes, the term Years of Service shall include all periods of employment with an Affiliated Employer except for the periods specifically excluded in Section III.E.3 of the Adoption Agreement but shall include such predecessor service specified in Section II.B.6. of the Adoption Agreement.

10.3 Forfeiture of Non-Vested Benefits

After a Participant terminates service and receives a distribution of his vested Account balance, he shall forfeit the non-vested portion of his Account balance. Where a Participant who is zero percent vested in his Account balance terminates service, a distribution of his vested Account balance will be deemed and he shall forfeit the non-vested portions of his Account balance. Said forfeited amount shall be reallocated in the manner set forth in Article IV hereof. Notwithstanding the foregoing, a non-vested Participant who incurs less than five (5) consecutive one-year Breaks-in-Service and who subsequently returns to the employ of an Affiliated Employer shall be recredited with any amount forfeited in accordance with Article XII, Section 12.7.

10.4 Accelerated Vesting for Top Heavy Plans

In the event a Plan is a Top Heavy Plan during a Plan Year, a Participants' non-forfeitable interest shall be no less favorable than the Top Heavy vesting schedule selected in Section III.E.2 of the Adoption Agreement.

10.5 Employee Contributions

A Participant shall have a one hundred percent (100%) vested interest, at all times, in his Participant Contribution Account. This Section 10.5 shall not be construed as permitting or requiring Employee Contributions. No forfeiture will be deemed to occur solely as a result of an Employee's withdrawal of Employee Contributions.

10.6 Statutory Vesting Requirement

Notwithstanding any other provision contained in this Article X, a Participant shall be

entitled to a one hundred percent (100%) interest in his Employer Contribution Account upon the attainment of his Normal Retirement Age.

10.7 Amendment of Vesting Schedule

- (a) Except as may be specifically permitted under law, no amendment of the vesting schedule shall cause a Participant to be deprived of any current portion of his Account.
- (b) If the vesting schedule of this Plan is directly or indirectly amended by any subsequent amendment, the Plan Administrator must give each Participant who has completed five (5) Years of Service (or three (3) Years of Service for Participants who have completed one (1) or more Hours of Service in a Plan Year beginning after December 31, 1988) an option to have his vested percentage determined without regard to said amendment. Said election shall be in writing and shall be irrevocable. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:
  - (i) 60 days after the amendment is adopted;
  - (ii) 60 days after the amendment becomes effective; or
  - (iii) 60 days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.
- (c) In the event that a Participant fails to execute an election as outlined in this Section 10.7(b), it shall be assumed that each Participant who would have been entitled to make such an election but failed to do so shall be deemed to have elected to receive benefits determined in accordance with the vesting schedule which produces the largest non-forfeitable interest on behalf of the Participant at the time it is actually applied.
- (d) The change from a Top Heavy to a Non-Top Heavy vesting schedule shall be considered an amendment within the meaning of this Section 10.7.

10.8 Reinstatement of Benefit

If a benefit is forfeited because the Participant or Beneficiary cannot be found, such benefit will be reinstated if a claim is made by the Participant or Beneficiary.

ARTICLE XI - TOP HEAVY PROVISIONS

11.1 Generally

Notwithstanding anything contained in the Adoption Agreement or herein to the contrary, if the Plan is a Top Heavy Plan as determined pursuant to Section 416 of the Code for any Plan Year beginning after December 31, 1983, the provisions of Section 11.4 hereof shall automatically become effective and shall supercede any contrary provision of the Plan.

11.2 Determination of Top Heavy Status

For purposes of this Article XI:

- (a) The Plan is a Top Heavy Plan if, as of the Determination Date, the aggregate of the Accounts and individual calculated present values of Accrued Benefits of all Key Employees under the Plan and any other plans in the Aggregation Group exceeds sixty percent (60%) of the aggregate of the Accounts and individually calculated present values of Accrued Benefits of all Employees under the Plan and any other plans in the Aggregation Group, as determined in accordance with the provisions of Section 416(g) of the Code.
- (b) The Plan is a Super Top Heavy Plan if, as of the Determination Date, the Plan would meet the test specified in Section 11.2, Subsection (a) above for being a Top Heavy Plan if ninety percent (90%) were substituted for sixty percent (60%) in each place it appears.
- (c) For purposes of the calculations in (a) and (b) above, the following account balances and accrued benefits must be taken into account:
  - (i) If an Affiliated Employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the Affiliated Employer has not maintained any defined benefit plan which during the five-year period ending on the Determination Date(s) has or has had accrued benefits, the account balances of all Key Employees or for all Employees as of the Determination Date(s) (including any part of any account balance distributed in the five-year period ending on the Determination Date(s)), both computed in accordance with section 416 of the Code and the Regulations thereunder, must be respectively 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 Section 416 of the Code and the Regulations thereunder.
  - (ii) If the Affiliated Employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the Affiliated Employer maintains or has maintained one or more defined benefit plans which during the five-year period ending on the Determination Date(s) has or has had any accrued benefits, the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (i) above, and the present value of accrued benefits under the aggregated defined benefit plan or

plans for all Key Employees or for all Employees as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the Regulations thereunder must be respectively increased for any distribution of an accrued benefit made in the five-year period ending on the Determination Date.

(iii) For purposes of (i) and (ii) 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 12-month period ending on the Determination Date, except as provided in Section 416 of the Code 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

(1) who is not a Key Employee but who was a Key Employee in a prior year, or

(2) who has not been credited with at least one Hour of Service with any Affiliated Employer maintaining the Plan at any time during the five year period ending on the Determination Date will be disregarded.

The calculation under (a) and (b), and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Code and the Regulations thereunder. Deductible Employee Contributions will not be taken into account for purposes of the calculations in (a) and (b) above. 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.

#### 11.3 Top Heavy Rules and Definitions

(a) The determination of whether the Plan is a Top Heavy Plan shall be made after aggregating all other plans of all Affiliated Employers which may be aggregated at the discretion of the Plan Administrator pursuant to Section 416(g)(2)(A)(ii) of the Code if such permissive Aggregation Group thereby eliminates the top heavy status of any plan within such permissive Aggregation Group.

(b) For purposes of determining whether the Plan is a Top Heavy Plan for a particular Plan Year, the Determination Date is the last day of the preceding Plan Year (or, in the case of the first Plan Year of a Plan, the last day of the first Plan Year).

(c) For purposes of determining whether the Plan is a Top Heavy Plan, Key Employee shall mean any Employee or Former Employee (including a Beneficiary of such Employee) who at any time during the Plan Year or any of the four (4) preceding Plan Years is:

(i) An officer of the Employer or any Affiliated Employer with 415 Compensation in excess of one-half (1/2) times the dollar limit on Annual Additions to a qualified defined benefit plan as announced by the Secretary of the Treasury pursuant to Section 415(b)(1)(A) of the Code. In no event shall more than fifty (50) Employees or, if less, the greater of three (3) or ten percent (10%) of all Employees be treated as Key Employees under this Subsection;

- (ii) One of the ten (10) Employees with 415 Compensation in excess of the dollar limit on Annual Additions to a qualified defined contribution plan as announced by the Secretary of the Treasury pursuant to Section 415(c)(1)(A) and owning the largest interest of the Employer or any Affiliated Employer, provided, however, that if two (2) Employees have the same interest in the Employer, the Employee having the greater 415 Compensation from the Employer shall be treated as having a larger interest;
  - (iii) An Employee owning more than five percent (5%) of the outstanding stock of the Employer or any Affiliated Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or any Affiliated Employer;
  - (iv) A person with 415 Compensation from the Employer or any Affiliated Employer of more than one hundred fifty thousand dollars (\$150,000) and owning one percent (1%) or more of the outstanding stock of the Employer or any Affiliated Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or any Affiliated Employer; or
  - (v) For purposes of (i) and (iv), 415 Compensation shall include amounts contributed by the Affiliated Employer pursuant to a salary reduction agreement which are excludable from Employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code.
- (d) For purposes of determining percentage ownership of the Employer and any Affiliated Employer, the constructive ownership rules of Section 416(i)(1)(B) and (C) and Section 318 of the Code shall be applicable and the rules of Sections 414(b), (c) and (m) shall not be applicable.
  - (e) For purposes of determining whether the Plan is a Top Heavy Plan, Non-Key Employee shall mean any Employee (including a Beneficiary of such Employee) who is not a Key Employee.
  - (f) For purposes of determining whether the Plan is a Top Heavy Plan, the accrued benefit and the account of any individual who has not received any compensation from any Employer maintaining the Plan (other than benefits under the Plan) during the five (5) year period ending on the Determination Date shall not be taken into account.
  - (g) Present values of accrued benefits of any defined benefit plan maintained by any Affiliated Employer shall be calculated in accordance with the election specified in Section III.C.6 of the Adoption Agreement.

11.4 Top Heavy Requirements

(a) Minimum Vesting Requirements

A Participant will have a fully-vested interest in Employer Contributions according to the Top Heavy vesting schedule set forth in Section III.E.2 of the Adoption Agreement and such interest shall not be decreased in the event the Plan's status as Top-Heavy changes for any Plan Year.

(b) Minimum Contribution Requirements

The minimum Employer Contribution which shall be made on behalf of any Participant who is a Non-Key Employee and shall be made on behalf of all Participants if so elected in Section III.C.8 of the Adoption Agreement for any Plan Year in which the Plan is a Top Heavy Plan shall not be less than three percent (3%) of such Participant's 415 Compensation, regardless of whether the Participant was credited with one thousand (1000) Hours of Service. The minimum contribution requirements set forth hereinabove shall be reduced in the following circumstances:

- (i) The percentage minimum contribution required hereunder shall in no event exceed the percentage contribution made for the Key Employee for whom such percentage is the highest for the Plan Year after taking into account contributions or benefits under other qualified plans in this Plan's Aggregation Group as provided pursuant to Section 416(c)(2)(B)(ii) of the Code; and
- (ii) In the event a Non-Key Employee also participates in a defined benefit plan maintained by an Affiliated Employer, a minimum contribution of five percent (5%) of his 415 Compensation shall be contributed on his behalf unless:
  - (1) this Plan is ever frozen in which case such defined benefit plan shall provide required minimum accruals under Code Section 416; or
  - (2) if the Plan Administrator makes an affirmative election to provide an alternate method in which case either:
    - (A) in accordance with Section III.C.8 of the Adoption Agreement contributions hereunder shall be comparable (within the meaning of Rev. Rul. 81-202) to the required minimum accruals in the defined benefit plan; or
    - (B) the minimum benefit provided under such defined benefit plan shall be offset by contributions hereunder, in accordance with actuarial assumptions specified in such defined benefit plan.
- (iii) For each Plan Year in which the Paired Plans are Top-Heavy, the Employer will provide a minimum contribution equal to three percent (3%) of Compensation for each Non-Key Employee who is entitled to a minimum contribution under one of the following Paired Plan combinations: Plan 02-002 and Plan 02-004, if so elected in Section III.C.8 of the Adoption Agreement.



(c) Maximum Compensation Limitation

The Compensation of each Participant under the Plan for such Plan Year shall not exceed the first two hundred thousand dollars (\$200,000) of such Participant's Compensation, provided, however, that such dollar limitation shall be adjusted to take into account any adjustments made by the Secretary of the Treasury pursuant to Section 415(d) of the Code. The rules of Section 414(q)(6) of the Code shall apply except that for purposes of determining Compensation treated as Compensation of a Participant, only Compensation paid to the Spouse and lineal descendants of the Participant (who have not attained age 19 before the close of the year) shall be considered. This limitation does not apply for purposes of applying Section 415(e) in Section 6.6 of the Plan under One Point Four/One Point Two Five Limitations.

When the maximum compensation under Code Section 401(a)(17) applies and the compensation of any Participant is aggregated with other Participant(s) (per Code Section 414(q)), the aggregate limit shall be allocated among the participating family members based on the selection in the Adoption Agreement. This allocated aggregate limit will be used for allocating contributions and/or forfeitures.

(d) Adjustments to Maximum Benefit Limitations

The maximum contribution allocatable to the Account of a Participant shall be adjusted in accordance with Article VI, Section 6.8 hereof.

ARTICLE XII - FORM AND MANNER OF BENEFIT DISTRIBUTIONS

12.1 Standard Form of Distribution

Where the Plan does not provide benefits in the form of a life annuity, the Participant does not elect payment in the form of a life annuity and no portion of the Participant's Account balance is attributable to transfer contributions within the meaning of Section 401(a)(11)(B)(iii) (II) of the Code, the standard form of distribution shall be a single lump sum payment of a Participant's entire vested interest in the Trust Fund. If the Participant dies before distribution, the Participant's Account balance will be paid to the Participant's Spouse but if there is no Spouse or the Spouse cannot be located or the Spouse has consented in a manner consistent with Section 12.5 or 12.6, then to the Participant's designated Beneficiary. In all other instances, the standard form of distribution shall be in the form of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity.

12.2 Optional Forms of Benefit Payments

(a) Generally

Subject to the requirements of Section 12.5 and Section 12.6 hereof, a Participant or Beneficiary shall be permitted to receive benefits in an alternate form as selected in Section III.F of the Adoption Agreement, subject to any regulations set forth by the Plan Administrator.

(b) Options Permitted

Subject to the requirements of Section 12.5 and 12.6, the following options shall be permitted if so designated in the Adoption Agreement:

- (i) periodic payments of substantially equal amounts for a period which does not exceed the Participant's and/or the designated Beneficiary's life expectancy;
- (ii) a lump sum payment which may include policies in lieu of cash;
- (iii) a Qualified Joint and Survivor Annuity;
- (iv) a monthly annuity for the Participant's life;
- (v) a monthly annuity for the Participant's life, with a fixed number of guaranteed payments;
- (vi) a monthly annuity for the Participant's life with a survivorship pension to the Participant's Beneficiary;
- (vii) a combination of currently available forms of payment.

(c) Options Not Permitted

The following payment options shall not be permitted by the Plan Administrator:

- (i) an option which permits a Participant or Beneficiary to receive only interest earned on the value of his Account ("interest only" option);
- (ii) for calendar years beginning before January 1, 1989, where the Participant's Spouse is not designated as beneficiary or contingent annuitant, any option under which more than fifty percent (50%) of the actuarial value (determined as of the date benefits commence) is paid to a person other than the Participant.

12.3 Statutory Restriction on Lump Sum Payments

Where an Account is immediately distributable, no lump sum payment in excess of (or which at the time of any prior distribution exceeded) three thousand five hundred dollars (\$3,500.00), including Participant contributions, shall be made to a Participant without his consent, and if the Plan provides for payment of annuities or the Account includes transfer contributions under Section 401(a)(ii)(B) (iii)(II), the consent of his Spouse. Consent of the Participant and Spouse shall be made in accordance with Section 12.6. In addition, the Plan Administrator must notify the Participant and Spouse of the right to defer payment until the Account balance is no longer immediately distributable. Notwithstanding the above, consent shall not be required to the extent a distribution is necessary to satisfy Section 401(a)(9) or Section 415 of the Code. In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider), the Participant's Account balance, may without the Participant's consent, be distributed to the Participant or transferred to another defined contribution plan (other than an employee stock ownership plan as defined in Section 4975(e)(7) of the Code) within the same controlled group.

An Account balance is immediately distributable if any part of the Account balance could be distributed before the Participant attains or would have attained the later of Normal Retirement Age or age 62.

The requirements of consent to distributions made before the first day of the first Plan Year beginning after December 31, 1988, do not apply to the portion of the Participant's vested Account balance attributable to accumulated deductible Employee Contributions.

12.4 Commencement of Benefit Payments

(a) Upon the Participant's Death

- (i) Generally - Death Benefits - Benefit payments pursuant to Article IX hereof shall commence as soon as practicable after the Participant's death but may be deferred upon the request of a beneficiary.
- (ii) Generally - Retirement and Termination Benefits - The Plan Administrator, may accelerate the payment of any other form of retirement or termination benefit in

the event of a Participant's death.

(iii) Minimum Required Distributions

(A) Death before Commencement of Benefits - In the event a Participant dies on or after the first day of the Plan Year beginning after December 31, 1984, but before commencement of benefits hereunder, his entire beneficial interest in the Plan must be distributed by the December 31st coincident with or next following the fifth (5th) anniversary of the date of his death, except:

(1) Spousal Beneficiary - if the Participant's designated Beneficiary is the Participant's surviving Spouse, any remaining portion of such interest shall be distributed to the surviving Spouse-

(a) beginning no later than the later of:

- 1) December 31 coincident with or next following the date on which the Participant would have attained age seventy and one-half (70-1/2), or
- 2) December 31 of the calendar year immediately following the calendar year in which the Employee died; and

(b) payable over the life of such surviving Spouse or a period not extending beyond the life expectancy of such surviving Spouse. If such surviving Spouse dies prior to receiving a distribution pursuant to this Subsection 12.4(a)(iii)(A) such surviving Spouse shall be treated as if he or she were the Participant for purposes of distributing the Participant's remaining interest under the Plan.

(2) Non-Spousal Beneficiary - if the Participant's designated Beneficiary is not the Participant's surviving spouse, any remaining portion of such interest shall be distributed:

(a) beginning no later than the December 31 coincident with or next following the one (1) year anniversary of the Participant's death; and

(b) payable over the life of such designated Beneficiary or over a period not extending beyond the life expectancy of such Beneficiary.

(B) Death after Commencement of Benefits - In the event a Participant dies after the commencement of benefits has begun and before his entire interest has been distributed to him, the remaining portion of such interest shall be distributed as least as rapidly as under the method of distribution being used as of the date of death.

For purposes of this Section 12.4, distribution of a Participant's interest is

considered to begin on the Participant's required beginning date (or, if applicable, the date distribution is required to begin to the surviving Spouse pursuant to Section 12.4(a)(iii)(A)(1)). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

For purpose of this Section the life expectancy, (or Joint and Last Survivor Expectancy) shall be calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if the life expectancy is being recalculated such succeeding calendar year.

(b) Retirement, Disability and Termination Benefits

- (i) Earliest Commencement Date - Except in the case of a Hardship Withdrawal as may be provided in this Article XII, payment of retirement, disability or termination benefits shall not commence prior to a Participant's termination of employment with all Affiliated Employers, or retirement.
- (ii) Latest Commencement Date - Subject to the provisions of Subsections (b)(iv) and (b)(v) hereof, payment of benefits may not commence later than the sixtieth (60th) day after the latest of the close of the Plan Year in which:
  - (A) the date the Participant reaches his Normal Retirement Date or attains Age sixty-five (65), whichever shall first occur;
  - (B) the fifth (5th) anniversary of the date in which the Participant commenced participation in the Plan; or
  - (C) the date the Participant terminates employment with all Affiliated Employers; or the Participant and/or his Spouse fail to consent to a distribution of a benefit requiring such consent unless the Participant elects otherwise. Notwithstanding the foregoing, the failure of a Participant and Spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 12.3 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.
- (iii) Early Retirement Commencement Date - Notwithstanding any other provision in this Section 12.4 to the contrary, a Participant who has met the service requirement in order to entitle him to satisfy the provisions for an Early Retirement Benefit, if any has been selected pursuant to Section III.C.2 of the Adoption Agreement, shall be entitled to commencement of his benefits not later than the date upon which he satisfies the age requirement for such Early Retirement despite the fact that he may have terminated his employment prior to attainment of such age requirement.

- (iv) Minimum Required Distributions - Except as provided in subsections (C) and (D) hereof, the entire interest of a participant who commences participation after the Plan Year beginning after December 31, 1984 shall be distributed to him either:
- (A) by a time not later than the Required Beginning Date; or
  - (B) commencing not later than the Required Beginning Date and continuing over a period not extending beyond the life expectancy of such Participant or the joint life expectancies of such Participant and his designated Beneficiary as of the date his benefits commence, consisting of an amount not less than the quotient obtained by dividing the value of the Participant's Account by the applicable life expectancy; provided that the second payment shall be made within the same calendar year as payments commence, and succeeding payments be made before December 31 of each succeeding year.
  - (C) For calendar years beginning after December 31, 1988 similar distributions shall not be less than the quotient obtained by dividing the value of the Participant's Account by the lesser of:
    - (1) the Participant's life expectancy; or
    - (2) the life expectancy of the Participant and his Spouse, where such life expectancies are determined by use of the expected return multiples set forth in Tables V and VI of Treasury Regulation 1.72-9 which shall be recalculated annually.
  - (D) Notwithstanding the above, any Participant (including a five percent (5%) owner within the meaning of Section 416(i) of the Code) who made a written deferral election under Section 242(b) of the Tax Equity and Fiscal Responsibility Act of 1982 shall be entitled to receive his distribution in accordance with the method of distribution specified in such election provided that the method of distribution complies with the requirements of Code Section 401(a)(9) in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (E) The additional requirements of Section 401(a)(9) of the Code and the Regulations thereunder including the minimum distribution incidental benefit requirement of Section 401(a)(9) - 2 of the Proposed Treasury Regulations are incorporated into the Plan by reference and will govern distribution of benefits hereunder. The provisions reflecting Section 401(a)(9) of the Code override any distribution options in the Plan inconsistent with Section 401(a)(9).
- (v) Plan Administrator's Discretion - Subject to the requirements set forth in this Section 12.4, the time at which benefit payments are to commence shall be determined by the Plan Administrator, to be applied on a uniform basis. The Plan Administrator shall be entitled to accelerate payments if it determines that such acceleration is necessary to comply with Section 401(a)(9) of the Code, the

Regulations thereunder and Section 12.6 hereof. The Plan Administrator, at its discretion, may issue administrative regulations from time to time to govern the application of this Section 12.4.

12.5 Qualified Pre-Retirement Survivor Annuity

- (a) Notwithstanding the provisions of Sections 12.1 and 12.2 hereof, in the event a Participant (who has elected to receive benefits in the form of a life annuity) dies before the Annuity Starting Date, his benefit shall be paid in the form of a Qualified Pre-retirement Survivor Annuity unless he elects out of that form of benefit and his Spouse has consented thereto;
- (b) Any entire vested portion of a Participant's Account (whether vested before or at death) attributable to Employer and Employee contributions, rollover contributions, proceeds of life insurance contracts or transfer contributions within the meaning of Code Section 401(a)(11)(B)(iii)(III) shall be paid as specified in Subsection (a) above;
- (c) The portion of a Participant's account otherwise subject to (a) and (b) above shall be reduced by any amounts used to repay the Participant's loans to which spousal consent was obtained;
- (d) A waiver of the Qualified Pre-retirement Survivor Annuity form of benefit (in favor of an alternate form or beneficiary) must be made in writing on forms provided by the Plan Administrator after the Participant receives notice under Section 12.5(f), must be signed by the Participant and his Spouse and must be witnessed by a notary public or Plan representative. The waiver must designate the specific beneficiary or class of beneficiaries and the form of benefit payment which may not be changed without spousal consent unless the Spouse expressly permits later changes without further consent. The Spouse's consent must acknowledge the effect of the election and shall be valid only with respect to such Spouse. Where it is established that there is no Spouse or that the Spouse cannot be located, a waiver of the benefit will be deemed a revocation of a prior waiver may be made by a Participant without consent of the Spouse at any time prior to the commencement of benefits. The number of revocations is unlimited.
- (e) The election period with regard to elections and spousal consent shall commence on the first day of the Plan Year in which the Participant attains age thirty-five (35) and shall end on the date of the Participant's death. If a Participant separates from the service of an Employer prior to the first day of the Plan Year in which he attains age thirty-five (35), with respect to benefits accrued prior to separation, the election period shall begin on the date of separation and the notice required under Section 12.5(f) below shall begin not earlier than one year before separation nor later than one year after separation. Pre-age 35 waiver: A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified 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 35. Such

election shall not be valid unless the Participant receives a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms as are comparable to the explanation required under Section 12.5(f). Qualified Pre-retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this Article.

- (f) The Plan Administrator shall provide each Participant with the following written information by mail or personal delivery before the latest of: the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year in which the Participant attains age thirty-five (35); a reasonable period after a Participant enters the Plan (but not earlier than one year before nor later than one year after the Participant enters the Plan); or a reasonable time after the survivor benefit provisions of this Section become applicable to the Participant (but not earlier than one year before nor later than one year after the provisions of this Section become applicable). Notwithstanding the above, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35 and should such Participant return to service, the period during which the information must be provided shall be redetermined. Such notice shall contain:
- (i) a non-technical description of a Qualified Pre-retirement Survivor Annuity;
  - (ii) the Participant's right to make and the effect of an election to waive the Qualified Pre-retirement Survivor Annuity form of benefit;
  - (iii) the rights of a Participant's Spouse; and
  - (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Pre-retirement Survivor Annuity.

#### 12.6 Qualified Joint and Survivor Annuities

- (a) Notwithstanding the provisions of Sections 12.1 and 12.2 hereof, in the event a Participant elects payment of benefits in the form of a life annuity, said benefit shall be paid as a Qualified Joint and Survivor Annuity, unless an optional form is elected within the ninety (90) day period ending on the Annuity Starting Date. The Participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the Plan.
- (b) Any portion of Participant's account attributable to transfer contributions within the meaning of Code Section 401(a)(11)(B)(iii)(III) shall be paid as specified in Subsection (a) above.
- (c) A waiver of a Qualified Joint and Survivor Annuity (in favor of an alternate form or beneficiary) must be made in writing on forms provided by the Plan Administrator after the Participant receives notice under Section 12.6(d), and must be signed by the



Participant and his Spouse and must be witnessed by a notary public or plan representative. The waiver must designate the specific beneficiary or class of beneficiaries and the form of benefit payment which may not be changed without Spousal consent unless the Spouse expressly permits later changes without further consent. The Spouse's consent must acknowledge the effect of the election and shall be valid only with respect to such Spouse. Where it is established that there is no Spouse or that the Spouse cannot be located, a waiver of the benefit will be deemed a revocation of a prior waiver may be made by a Participant without consent of the Spouse at any time prior to the commencement of benefits. The number of revocations is

unlimited.

- (d) The Plan Administrator shall provide each Participant with the following written information by mail or personal delivery no less than thirty (30) days and no more than the ninety (90) day period provided in Subsection (a) hereof:
  - (i) a non-technical description of a Qualified Joint and Survivor Annuity;
  - (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity;
  - (iii) the rights of a Participant's Spouse; and
  - (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.
- (e) If a distribution is one to which sections 401 (a)(11) and 417 of the Internal Revenue Code do not apply, such distribution may commence less than 30 days after the notice required under section 1.411(a)-11(c) of the Income Tax Regulations is given , provided that:
  - (1) the plan administrator clearly informs that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
  - (2) the participant, after receiving the notice, affirmatively elects a distribution.

12.7 Payments Prior to Break-In-Service

(a) Forfeitures

Immediately as of the last day of each Plan Year-

If the Employer elects to provide that after a distribution or deemed distribution, forfeitures shall be reallocated immediately as of the last day of each Plan Year pursuant to Section III.I.2. of the Adoption Agreement and in accordance with Article VI hereof, the following provision shall apply:

In the event a Participant receives a payment of the entire vested portion of his

Employer Contribution Account, the non-vested portion will be treated as a forfeiture. For purposes of this Section, if the value of a Participant's vested Employer Contribution Account is zero, he shall be deemed to have received a distribution of such vested Employer Contribution Account.

If the Participant elects to have distributed in accordance with the requirements of Section 12.3 less than the entire vested portion of his Employer Contribution Account, the part of the non-vested portion that will be treated as a forfeiture to be reallocated is the total non-vested portion multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator is the total value of the vested Employer Contribution Account.

As of the Plan Year Following a Number of Years of Consecutive One-Year Breaks-in-Service

If the Employer elects to provide that after a distribution or deemed distribution, forfeitures shall be reallocated as of the last day of each Plan Year following a number of years of consecutive one-year Breaks-in-Service pursuant to Section III.I.3. of the Adoption Agreement, the following provision shall apply:

In the event a Participant receives a payment of all or part of his Employer Contribution Account at a time when he is less than one hundred percent (100%) vested in said Employer Contribution Account, the amount in excess of his vested percentage shall be allocated to a separate account until the Participant incurs the Breaks-in-Service selected in the Adoption Agreement at which time said forfeited amount shall be reallocated in accordance with Article VI hereof.

The separate account will be established for the Participant's interest in the Plan as of the time of the distribution, and at any relevant time the Participant's nonforfeitable portion of the separate account will be equal to an amount ("X") determined by the formula:

$$X = P ( AB + ( R \times D ) ) - ( R \times D )$$

For purposes of applying the formula: P is the nonforfeitable percentage at the relevant time, AB is the Account balance at the relevant time, D is the amount of the distribution, and R is the ratio of the Account balance at the relevant time to the Account balance after distribution.

(b) Return to Employment

In the event a Participant who receives a distribution as provided in Subsection (a) above returns to the employ of an Affiliated Employer prior to incurring five (5) consecutive one-year Breaks-In-Service, said Participant shall be entitled to have his Employer Contribution Account restored to the amount prior to his distribution, less the amount of the distribution.

(c) Determination of Vested Amount After Prior Distribution

In the event any Participant who has received a distribution at any time prior to

five (5) consecutive one-year Breaks-In-Service shall subsequently incur five (5) consecutive one-year Breaks-In-Service, the amount distributed from his Employer Contribution Account shall not be less than the difference between:

(i) the product of:

(A) his current vested percentage, and

(B) the sum of the amount of the Participant's Employer Contribution Account and the amount of the prior distribution;

and

(ii) the amount of the previous distribution.

#### 12.8 Payments Pursuant to Qualified Domestic Relations Orders

Upon receipt of any court order relating to the benefit payable to a Participant hereunder, the Plan Administrator shall:

- a) notify the Participant and the Alternate Payee(s) of the receipt of such order and the Plan's procedures for determining the qualified status of such order; and
- b) segregate in a separate account in the Plan or in an escrow account the amount payable to the Alternate Payee(s) pursuant to such order. Within eighteen (18) months of receipt of such order, the Plan Administrator shall determine whether the order is a Qualified Domestic Relations Order, pursuant to written administrative procedures adopted in accordance with Sections 414(p)(6) and (7) of the Code. If such order is a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amount plus interest to the Alternate Payee(s) entitled thereto in the manner required by such Qualified Domestic Relations Order.

#### 12.9 Hardship Withdrawal

(a) If the Employer so selects in the Adoption Agreement, and the Plan Administrator, in its sole discretion exercised in a non-discriminatory manner, may permit a Participant to withdraw a portion of his Employer Account for the purpose of enabling the Participant to meet an unusual hardship or financial emergency such as, but not limited to:

(i) accident or illness,

(ii) purchase or preservation of a house, and/or

(iii) educational expenses.

Such hardship distributions are subject to the spousal consent requirements of Section 401(a)(11) and 417 of the Code and may not exceed the amount of an immediate and heavy financial need.

(b) Withdrawals shall be limited to the vested portion of his Employer Contribution Amount.

ARTICLE XIII - TRUST PROVISIONS

13.1 Establishment of Trust

(a) Appointment of Trustees

The Trustees shall consist of one (1) or more individuals, partnerships, corporations or combination thereof as chosen by the Employer in Section I.B.6. of the Adoption Agreement. The Employer may change the number of said group at any time. The Trustees shall be Named Fiduciaries for the purpose of managing the Trust Fund for purposes of Section 402(a)(1) of ERISA.

(b) Acceptance of Trust

Each Trustee hereby accepts the Trust created hereunder and agrees to perform the duties on his part to be performed pursuant to this Plan and Trust.

(c) Corpus of the Trust Fund

The Trustees shall receive any contributions paid to them in cash or in other property presently acceptable to them. All contributions so received together with any earnings, profits, increments, additions thereto and appreciation thereon, less any disbursements authorized herein shall constitute and be called the Trust Fund.

(d) Control of Trust Fund

The Trustees shall take control and manage the Trust Fund and shall hold, invest, and reinvest the same together with the income thereof. All contributions received by the Trustees in accordance with the terms of the Plan and the earnings and accretions thereto, without distinction between income and principal, shall constitute and shall be held and administered as a single fund and the Trustees shall not be required to segregate or invest separately any share of any Participant's account except as otherwise required by the Plan but may do so in accordance with this Section.

(e) Title to Trust Assets

The Trustees shall have title to the assets of the Trust Fund. The Company shall have no right, title, interest or claim to said Trust Fund except as permitted under the terms of Article IV, Sections 4.4 and 4.5 hereof.

(f) Segregated Accounts, Separate Investment Funds and Annuities

The Trust Fund shall be deemed to also include such segregated accounts, Separate Investment Funds or annuity contracts or policies which may be purchased by the Trustees for the purpose of providing benefits to a Participant, Beneficiary or group thereof, notwithstanding the fact that such segregated account may not share in the earnings, profits, increments or appreciation of the balance of the Trust Fund.

13.2 Rights, Duties and Obligations of the Trustees

a) Manner of Acting

The Trustees, except when there is a single Trustee, shall exercise any discretion or authority granted hereunder through a majority of its members in office at the time. Such exercise may be by a vote at a meeting or in writing without a meeting.

(b) Non-Disqualification of Interested Parties

A Participant, Beneficiary, or person who is otherwise interested in the Trust Fund shall not be disqualified from voting or acting upon any matter relating to this Trust Agreement. The power of the Trustees or any member thereof to act hereunder shall not be restricted, and no transaction or decision involving this Trust Fund shall be deemed invalidated in any way by reason of any personal or beneficial interest in the Trust Fund that any Trustee may have with respect to such transaction or decision, including any sale or exchange of trust property to or with any Trustee in another capacity, including another corporation, partnership or other business in which they, or any of them, may have a personal interest as stockholder, officer, director, partner or otherwise, regardless of any conflict of interest, provided, however, that nothing herein contained shall permit the Trustees or any Trustee to engage in any activity which would constitute a "prohibited transaction" within the meaning of Part 4 of Title I of ERISA or Section 4975 of the Code.

(c) Standard of Care

The Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man 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, and shall diversify the investments of the Trust Fund so as to minimize the risk of large losses unless, under the circumstances, it is clearly not prudent to do so.

(d) Compensation and Expenses

The Trustees shall not be compensated for their services as such unless otherwise agreed by said Trustees and the Employer in writing. Said compensation, if any, may be paid by the Employer and to the extent not paid by the Employer shall be payable as an expense from the Trust Fund. All expenses reasonably incurred by the Trustees in connection with the performance of their duties and in respect of the assets or operations of the Trust Fund including, but not limited to, taxes of any nature, fees, salaries, compensation, counsel and accounting fees may be paid by the Employer. To the extent not paid by the Employer, said expenses shall be paid from the Trust Fund as expenses thereof.

(e) Liability of the Board of Trustees

(i) Reliance on other Fiduciaries - The Trustees shall not be answerable nor incur any liability for any action taken pursuant to any written direction or request from the Plan Administrator or the Employer. Evidence of action with regard to

the Plan shall be by resolution of the Board of Directors certified by the Secretary or Assistant Secretary of the Employer, or resolution of a majority of the members of the group constituting the Plan Administrator as the case may be. The Trustees shall be fully protected in acting upon any resolution, certificate, or paper believed by it to be genuine and to be signed or presented by the proper person or persons and the Trustees shall be under no duty to make investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements contained therein.

- (ii) Reliance on Delegates - Either the Employer or the Plan Administrator may duly authorize a delegate to make determinations or perform actions, either specifically or generally, in this regard. Upon the appointment of a delegate by either the Employer or the Plan Administrator, the Trustees shall be fully protected in assuming that said delegate is duly authorized in acting, unless otherwise informed by the Employer or Plan Administrator.
- (iii) Liability of Successor - No successor Trustee shall be held liable or accountable in any manner for the acts of its predecessor or predecessors.
- (iv) Responsibility for Adequacy of Trust Fund - No Trustee shall be responsible for the adequacy of the Trust Fund to meet and discharge any payments or liabilities under the Plan or for any loss, damage or depreciation of the Trust Fund in connection with its exercise of discretion hereunder, except when due to its own breach of trust committed in bad faith or intentionally or with reckless indifference to the interest of Participants and Beneficiaries or in violation of the fiduciary standards as set forth in Part 4 of Title I of ERISA or Section 4975 of the Code.

(f) Indemnification of the Trustees

Each Trustee shall be indemnified by the Employer for all costs, expenses, including attorneys' fees, claims or liability actually and necessarily incurred in connection with any claims or litigation by reason of the Trustees having followed written instructions of the Employer or the Plan Administrator. No such indemnification shall apply where litigation is occasioned by the fault of the Trustees, or is in connection with a violation of ERISA, and any subsequent statutes of similar purpose. Any such indemnification shall apply only after full recovery has been made under any insurance contract protecting the Trustees with respect to each litigation and in no event exceed the difference between the costs, expenses and liability determined by such litigation and the amounts payable by such insurance, had this provision not been in effect.

(g) Resignation or Removal of Trustees

- (i) The Trustees and each Trustee shall serve until death, resignation or removal by the Employer.
- (ii) Any Trustee may resign upon written notice to the Employer or be removed by delivery of a certified copy of a resolution of the Board of Directors to that effect.

- (iii) Said removal or resignation shall be effective sixty (60) days from the date of delivery of such written notice or resolution unless a different time is specified by the Employer.
- (iv) The Employer may remove any Trustee and fill vacancies however arising at its pleasure except there shall be at least one Trustee at all times. Appointment of successor Trustees shall take effect upon delivery to the Trustees (and the removed members thereof) of an instrument so appointing the successor(s) and an instrument of acceptance executed by such successor(s).
- (v) Any successor Trustee shall become vested with all funds, powers, rights, duties, obligations, privileges and immunities as the Trustees have hereunder as if it had been originally appointed.
- (vi) In the event there are no remaining Trustees for whatever reason and the Employer fails to appoint successor Trustees within thirty (30) days after the effective date of the resignation or removal or death or incapacity of all of the Trustees, any court of competent jurisdiction of the state under whose law the Plan is to be construed may, while such failure continues, appoint successor Trustees upon application therefore by any Participant or Beneficiary hereunder, or by any removed Trustees.

13.3 Investment of the Trust Fund

(a) Authority of Trustees

The Trustees shall have full authority and responsibility for investment of the Trust Fund, subject to the limitations set forth herein.

(b) Investment Powers of the Trustees

The Trustees in investing the Trust Fund shall not be restricted to securities commonly known as legal investments for trust funds, regardless of any statutes or rules of law limiting the investments of trustees or trust funds. The Trustees shall have the same power to invest funds as any individual of full legal competence has with regard to his own funds, including the right to deal with the Employer, provided, however, that nothing herein shall permit any Trustee to engage in any activity which would constitute a "prohibited transaction" within the meaning of Part 4 of Title I of ERISA or Section 4975 of the Code.

Without limiting the generality of the foregoing, the Trustees at such times, places and prices and under such terms, conditions and circumstances (including public and private sales and transactions) as in its discretion they deem advisable may, subject to the restrictions referred to above, but shall not be required:

- (i) To buy, sell, sell short, purchase on margin, exchange, pledge, encumber, and otherwise acquire, dispose of, trade and deal in secured and unsecured bonds and notes (whether unmatured, due, past due, or defaulted), common and preferred, voting and nonvoting stock (regardless of dividend or earnings record), warrants, options, puts, calls, straddles, spreads, voting trust certificates, equipment trust and receivers certificates, fractional oil and gas and mineral interests,

timber rights, and all other forms of private and governmental securities (both foreign and domestic) including securities of the Employer. The Trustees are specifically empowered to invest in securities of the Employer, or any Affiliated Employer to the extent of ten (10%) percent of the Trust Fund, unless a different percentage is specified by resolution of the Board of Directors, provided, however, that the Trust Fund shall not hold any employer security which is not a qualifying employer security as provided in Section 407(a)(5) of ERISA;

- (ii) To buy, sell, exchange, mortgage, encumber, hold, manage, repair, control, lease or license for any term (even though such term extends beyond the duration of the Plan or Trust Agreement, or commences in the future) and otherwise acquire, dispose of, trade and deal in all forms of tangible and intangible real and personal property, wherever located, including, without limitation, real estate, including real property and related personal property leased to the Employer or any Affiliated Employer, but only to the extent permitted under Section 407(a) of ERISA, leaseholds, machinery and equipment, senior and junior mortgages and liens, accounts receivable, conditional sales contracts, rental purchase agreements and other forms of agreement evidencing indebtedness (whether fixed or contingent), patents, copyrights, trademarks, trade secrets, and other industrial and intellectual property, bills of exchange, notes, trade acceptances, commodities and futures;
- (iii) To make investments which entail risk or with the principal aim of obtaining capital appreciation rather than security of investment and current income;
- (iv) To borrow, raise or lend monies and guarantee payment of any obligation for the purposes of the Trust Fund, in such amounts and upon such terms and conditions as the Trustees in their absolute discretion may deem advisable and for any such monies so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging or mortgaging all or any part of the Trust Fund;
- (v) To buy, sell, exchange, mortgage, encumber, hold, manage, acquire, dispose of or otherwise trade or deal in all types of business ventures in all lines of endeavor, including, without limitation, exploration for and extraction of oil, gas and other minerals and natural resources, manufacturing, wholesale and retail trade, exporting and importing, brokerage, factoring, transportation, communication and hotels;
- (vi) To cause any investment in the Trust Fund to be registered in, or transferred into, its name as Trustees or in the name of its nominee or nominees or to retain them unregistered or in form permitting transfer by delivery, but the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund, and the Trustees shall cause the indicia of ownership to be maintained within the jurisdiction of the district courts of the United States;
- (vii) To retain in cash or in banks and keep unproductive of income or appreciation such part or all of the Trust Fund as it may deem advisable;
- (viii) To amortize any premium paid or discount received;



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- (ix) To vote (or refrain from voting) stock and securities, either in person or by proxy, and otherwise consent to, or request, participate in, protest, and oppose any action by the issuer;
- (x) To give general or special proxies and powers of attorney with or without power of substitution or revocation;
- (xi) To participate in, consent to, protest, oppose and take any other action in connection with and receive and retain any securities resulting from any reorganization, recapitalization, financial readjustment, consolidation, merger, spin-off, split-offs, foreclosure, bankruptcy, assignment, liquidation, dissolution, sale, lease, encumbrance or other disposition of assets of any issuer, the securities of which are held or acquired by the Trustees;
- (xii) To deposit securities in voting trusts with protective creditors, stockholders or other committees or with any trustee or depository designated thereby;
- (xiii) To exercise, sell or permit to lapse any subscription or conversion privileges;
- (xiv) To abandon property which it deems inadvisable to retain;
- (xv) To determine what is principal and what is income and whether and what part of any cost, charge, tax, expense or liability should be charged against principal or income;
- (xvi) To concentrate investments where prudent to do so;
- (xvii) To make joint investments with other trusts, persons, firms or corporations, buy, sell, exchange, mortgage, encumber, hold, manage, acquire, dispose of or otherwise trade or deal in undivided and fractional interests in real and personal property and enter into joint operation, exploration, development and other agreements with co-owners of undivided or fractional interests in such property and with owners of interests in property adjacent to or in the vicinity of property owned by the Trust Fund;
- (xviii) To invest in one (1) or more common trust funds. Notwithstanding any provisions of this Plan and Trust, the Trustee may cause any part or all of the monies of this Trust to be commingled with the monies to be invested as part of any one or any combination of the Funds created by any common trust fund, and monies and assets of this Trust invested in said Funds at any time shall be subject to all of the provisions of said Declaration of Trust as it is from time to time amended;
- (xix) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust Fund, commence or defend suits or legal or administrative proceedings, and represent the Trust Fund in all suits and legal and administrative proceedings;
- (xx) To enter into contracts in such form as the Trustees shall determine with one (1) or more persons, firms, associations, or corporations, providing for rendering to the Trustees of advice and counsel relating to and in connection with investments;

- (xxi) To apply for and procure from insurance companies selected by the Trustees such Contracts as the Trustees shall deem proper for carrying out the purposes of the Plan; to exercise at any time or from time to time whatever rights and privileges may be granted under such Policies; to collect, receive and settle from the proceeds of all such Policies as and when entitled to do so under the provisions thereof; to make policies loans provided that such loans and repayments thereof are in proportion for all Participants and deal with such Policies in any manner that may be necessary or desirable to carry out and effectuate the terms and provisions of the Plan, provided, however, that any Policies shall be purchased in amounts specified by the Plan Administrator but in no event to cause the death benefit to exceed the incidental benefit limitations set forth herein;
- (xxii) To renew or extend or participate in the renewal or extension of any mortgage upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any mortgage or to any other modification or change in the terms of any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure, to bind in property on foreclosure, to take a deed in lieu of foreclosure with or without paying a consideration therefore, and in connection therewith, to release the obligation on the bond secured by such mortgage; and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee;
- (xxiii) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments and do all other acts, although not specifically mentioned herein, that may be necessary or appropriate to carry out the powers herein granted for the purpose of this Trust.

(c) Segregated Accounts

Upon the request of the Plan Administrator, the Trustees shall establish segregated accounts in which to place, hold and invest the following classes of funds:

- (i) voluntary contributions received from Participants;
- (ii) funds received from a Participant which constitute a rollover contribution within the meaning of IRC Sections 408(d)(3), 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3) or 409(b)(3)(C);
- (iii) funds received directly from the Trustee of another qualified plan on behalf of a Participant as permitted under law;
- (iv) the value of the vested portion of the Accrued Benefit of any terminated Participant;

- (v) the Account Balance of any Participant who so directs the investment of his account pursuant to the terms of the Plan;
- (vi) funds which may become payable to an Alternate Payee(s) pursuant to a Qualified Domestic Relations Order.

Any funds segregated by the Trustees shall not participate in the earnings and appreciation of the Trust Fund, and shall be invested separately by the Trustees. In the event the Plan provides for Participant directed accounts or Separate Investment Funds authorized under Subsection (e) hereof and as in Section III.D.1 of the Adoption Agreement, the Trustees shall invest same separately or, if applicable, in accordance with the Participant's directions. This Subsection shall not be construed as permitting the segregation of assets in any manner not authorized under the terms of the Plan. The Trustees shall be required to segregate amounts that may become payable pursuant to a Qualified Domestic Relations Order during a determination of such order's qualified status in accordance with Section 414(p) of the Code.

(d) Loans to Participants

Loans to Participants may be permitted as investments of the Trust Fund if so provided in Section IV.C of the Adoption Agreement subject to the following limitations:

- (i) Approval - Each loan must be approved by the Trustees and the Plan Administrator upon written application of the Participant. In reviewing any loan application, the Trustees and the Plan Administrator shall utilize a uniform, nondiscriminatory policy and shall not make loans available to Highly Compensated Employees on a more favorable basis than made available to other Employees.
- (ii) Security - The security provided by the Participant must be adequate in the opinion of the Trustees. The security may consist solely of the Participant's vested interest in the Plan and the interest of the Participant's Spouse in his account (in which case the amount of the loan shall not exceed 50% of the Participant's vested interest) and/or may be in the form of other security such as a mortgage or security agreement. In the event the security is given in the form of a mortgage or security agreement, the Trustee may in its discretion, lodge a record of said mortgage or security agreement by filing same or, if applicable, a Uniform Commercial Code financing statement, in the public offices of the state, county or municipality where such notices are customarily filed.
- (iii) Terms and Conditions - Loans shall not be made from the Trust Fund on terms and conditions more favorable to the Participant than could be obtained by the Participant from a recognized financial institution such as a bank or credit union at the time the loan was made. To the extent such Account balance which served as security for a loan is subject to the requirements of Code Section 401(a)(11)(B), loans shall be made only upon consent of the Participant's Spouse to be given under the same manner as provided in Article XII, Section 12.5 hereof. Such consent thereafter shall 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 in accordance with (iii) above, then, notwithstanding any other provision of this 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 100% of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving Spouse, then the Account balance shall be adjusted by first reducing the vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

Consent shall be obtained no earlier than the beginning of the 90-day period that ends on the date on which the loan is to be secured. On renegotiation, extension, renewal or revision of the loan, a new consent shall be required. All loans shall be made in accordance with applicable state usury laws. No distributions shall be made to a Participant, his Spouse or Beneficiary until all loans are repaid in full.

(iv) Limitations on Non-taxable Amount - In no event shall a loan be made to a Participant which exceeds the lesser of:

(A) fifty thousand dollars (\$50,000) (reduced by the excess of the highest outstanding loan balance of the Participant during the twelve (12) month period immediately preceding the date of the loan over the outstanding balance of loans from the Plan on the date the loan was made); or

(B) one-half (1/2) of the nonforfeitable portion of the Participant's Account, but in no event less than ten thousand dollars (\$10,000).

For the purpose of the above limitation, all loans from all plans of the Employer and other members of a group of Employers described in Section 414(b), 414(c), and 414(m) and 414(o) of the Code are aggregated.

Said loan must be amortized in level monthly or quarterly payments and shall not be repayable, by its terms, for a period exceeding five (5) years except if the loan is used to acquire 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 insurance contract purchased under the Plan, will be treated as a loan under this Sub-section.

(v) Restrictions Applicable to Owner-Employees - No loans shall be made to any owner-employee (within the meaning of Section 401(c)(3) of the Code); or to a shareholder employee (within the meaning of Section 1379 of the Code as in effect on the day before enactment of the Subchapter S Revision Act of 1982).

(vi) Default - In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs under the Plan.

(e) Self-directed Funds

If elected pursuant to Section III.D.2 of the Adoption Agreement, a Participant, upon proper advance written notice, may elect to have all or any portion of the amount credited to his Account invested in one or more investment funds. Each such fund shall be invested in either a portfolio of funds selected by the Trustees meeting the objectives inherent in the nature of the fund selected or in a mutual fund meeting such objectives.

(f) Rules relating to Separate Investment Funds

- (1) An election made by a Participant pursuant to this Subsection (f) hereof shall be filed with the Trustees in writing on a form which they prescribe, provided, however, that elections may not be made at times other than permitted pursuant to Section III.D.4 of the Adoption Agreement. Any such election made by a Participant shall remain in effect until another valid election has been made by the Participant.
- (2) In the event that a Participant fails to file an election, such Participant's Account shall be invested in a short term liquid asset investment.
- (3) Whenever, in the sole discretion of the Trustees, transfers between funds pursuant to the provisions of this Section would require the liquidation of assets at a time or in a manner which would not be prudent considering the purposes for which the Plan was established and the interests of all Plan Participants, the Trustees shall have the right to prescribe uniform, nondiscriminatory rules prohibiting or limiting the amount which a Participant may transfer.
- (4) The Trustees shall not be liable for any loss, damage or depreciation of a Participant's Account to the extent such Participant has elected to direct the Trustees to invest any portion of his Participant Account.

13.4 Accounts to be Kept and Rendered by the Trustees

(a) Records to be kept by the Trustees

The Trustees shall keep detailed and accurate records and accounts of all investments, receipts, disbursements and other transactions made with respect to the Trust Fund as well as any additional records that may be required by law or government regulation or as may be agreed upon by the Trustees and the Plan Administrator.

(b) Availability of Records

All books and records maintained by the Trustees shall be available for inspection by any person designated by the Employer or by the Plan Administrator at reasonable times.

(c) Written Reports to be Filed by the Board of Trustees

Not later than seven (7) months after each Valuation Date the Trustees shall file with the Employer a written statement setting forth all investments, receipts and disbursements, and other transactions effected by it since the last Valuation Date and containing an exact description of all securities and property purchased and sold, and the cost or the net proceeds of sale, and showing the securities and property and investments held on such Valuation Date and the cost and value thereof as carried on its books. The written statement shall include the value of any asset which is valued at other than fair market value, if requested by the Plan Administrator. Such written statement, after being filed with the Employer, shall be available for inspection by any Participant or Beneficiary during normal business hours of the Employer until ten (10) months after the Valuation Date.

(d) Conclusiveness of Report

In the absence of filing in writing with the Trustees by the Employer of an exception or objection to any such account within sixty (60) days, the Employer shall be deemed to have approved such account and in such case, except as required by law, the Trustees shall be relieved of all matters and things set forth in such account as though such account had been settled by decree of competent jurisdiction. Except as required by law, no person other than the Employer may require an accounting or may bring any action against the Trust Fund or Trustees to require an accounting.

(e) Written Reports to be Filed Upon Removal of Trustee

In the event of such removal or resignation of the Trustees, the replaced Trustees shall, within sixty (60) days from the effective date of such removal or resignation, file with the Employer and Plan Administrator a written statement and report of its accounts and proceedings covering the period from its last statement and report to the effective date of such removal or resignation in the manner provided in this Section 13.4 (relating to books and records) and said statement and report shall have the same effect as if delivered pursuant to this Section 13.4.

13.5 Exclusive Benefit

No part of the corpus or income of the Trust may be used for other than the exclusive benefit of Participants.

ARTICLE XIV - POLICIES

14.1 Purchase of Policies

The Plan Administrator shall purchase policies on the lives of the Participants specified in Section III.G.2 of the Adoption Agreement in the manner and amounts set forth in Section III.G.1 of the Adoption Agreement.

14.2 Procedure for Purchase

In the event Section III.G.1 of the Adoption Agreement has provided for the purchase of policies, the Trustees, upon direction from the Plan Administrator, shall purchase policies ratably on behalf of all Participants. All policies shall have an issue date specified in Section III.G.3 of the Adoption Agreement. However, no provision of this Article XIV shall be construed as creating a right to an insured death benefit on behalf of any Participant or Beneficiary until and unless a policy on his life has actually been purchased, and a Participant's death benefit shall only include proceeds of policies in force on the date of his death.

14.3 Requirements Concerning the Purchase of Policies

Unless otherwise specified in Section III.G.3. of the Adoption Agreement, all policies purchased hereunder shall conform to the following requirements:

(a) Legal Reserve Carrier

All policies purchased by the Trustee shall be purchased from a legal reserve life insurance company.

(b) Premiums

All premiums shall be paid from the Trust Fund and charged to the Account of the Participant for whose benefit the policy is held. If at any time, the premium on a policy is not paid, the Trustee shall pay premiums by policy loan or shall elect an alternative option permitted under the terms of the policy.

(c) Dividends

All dividends, refunds or proceeds of any nature received under a policy may be applied in such manner permitted by the Insurer. Any dividends or credits earned on insurance contracts will be allocated to the Participant's Account derived from Employer Contributions for whose benefit the contract is held.

(d) Uniformity

The Trustee shall purchase policies to be as nearly uniform in nature as possible with respect to basic options, cash surrender values and other material features.

(e) Ownership

The Trustee shall be the owner and beneficiary of all policies purchased hereunder

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ARTICLE XIV - Policies

and shall be entitled to exercise all incidents of ownership. The policy shall provide that proceeds can be payable to the Trustee who shall be required to pay the proceeds in accordance with the distribution provisions of the Plan.

(f) Disposition of Policies

Subject to the terms of Sections 12.5 and 12.6, all policies purchased shall be surrendered or sold to the Participant who is insured under the policy (for its cash surrender value, if any) as soon as practicable after the Participant ceases employment with all Affiliated Employers or at such time when continued maintenance of such policies would cause a violation of the incidental benefit limitations set forth in this Article XIV or under Treasury Regulation 1.401-1(b)(1)(i), provided, however, that the settlement options provided in said policies do not differ materially from those provided under Article XII of this Plan. The Plan provisions shall control in the event of a conflict between the terms of the policy and the terms of the Plan. Any contract distributed must be nontransferable.

(g) Supplemental Benefits

Agreements for supplemental benefits, including waiver of premium or additional indemnity benefits, may be purchased if available from the Insurer if the additional cost of said benefits is charged to the Participant's Account, and the limitations set forth in Section 14.4 are not violated.

14.4 Incidental Benefit Limitations

The aggregate amount of the premiums paid for ordinary life insurance contracts (contracts that provide for both non-decreasing death benefits and non-increasing premium) maintained on behalf of a Participant plus two (2) times the aggregate amount of premiums paid on term insurance and Universal Life Insurance contracts maintained on behalf of a Participant shall not exceed fifty percent (50%) of the aggregate contributions and forfeitures which have been allocated to the Participant's Employer Contribution Account as of the most recent Anniversary Date. The premiums paid for ordinary life insurance contracts must in any event be less than fifty percent (50%) of the aggregate Employer Contribution allocated to the Participant's Employer Contribution Account.

14.5 Non-Insurable Participants

In the event a Participant who is entitled to insured death benefits is not insurable or not insurable at standard rates, the Trustees may, in their sole discretion, provide benefits under one of the following methods:

- (a) entirely through the Trust Fund (without providing any insured death benefits on behalf of the Participant); or
- (b) through the purchase of annuity contracts; or
- (c) through the purchase of policies in reduced face amounts (based upon the amounts purchasable with the premium that would be required to purchase the necessary face



amount of insurance if the Participant was insurable at standard rates).

14.6 Participant Provided Benefits

If provided in Section III.D.2 of the Adoption Agreement, a Participant shall have the right to direct a portion of his Employer Contribution Account or his Participant Contribution Account to purchase policies, provided, however, that such purchase shall not cause the limitations set forth in Section 14.4 to be violated.

14.7 Protection of Insurer

(a) Insurance Carrier Not a Party

No Insurer from which the Trustees procure a policy shall be deemed to be a party to this Plan.

(b) Reliance Upon Action of Trustees

Any Insurer shall be fully protected in relying upon the written direction or certification of the Trustees or Plan Administrator. The Insurer shall not be responsible to see that the actions of any Trustee or the Plan Administrator are authorized under the terms of the Plan, nor shall it be obliged to see to the distribution or further application of monies paid by the Trustees. The Insurer shall be entitled to rely upon a notice, certification, direction or other communication duly executed by any party acting as a Trustee or the Plan Administrator according to the latest written information received at the Insurer's home office.

ARTICLE XV - ADMINISTRATION OF THE PLAN

15.1 Appointment of Plan Administrator

The Plan Administrator shall consist of one (1) or more persons, partnerships, or corporations or combinations thereof who shall be appointed by the Employer by action of its Board of Directors and who shall be set forth in Section I.B.7. of the Adoption Agreement. The Plan Administrator shall constitute a Named Fiduciary as provided in Section 402(a)(1) of ERISA.

15.2 Manner of Acting

The Plan Administrator, except when it consists of a single corporation, shall exercise its discretion or authority through a majority vote of those members in office at the time. Such exercise may be by vote at a meeting or in writing without a meeting. Any entity who is part of a group who together comprise the Plan Administrator may perform any act necessary including the promulgation of administrative regulations and filing of government reports. No person need inquire into the propriety of any act of the Plan Administrator evidenced by an instrument bearing the signature of any individual (or individual properly acting on behalf of another organization) who is part of the group who together comprise the Plan Administrator.

15.3 Disqualification to Act

No individual (or individual acting on behalf of a partnership or corporation) who is part of the group who together comprise the Plan Administrator shall be disqualified from voting or acting on any matter relating to the Plan because he is also a Participant, Beneficiary, Trustee, officer, director or shareholder of any Affiliated Employer.

15.4 Authority and Responsibility of Plan Administrator

The Plan Administrator shall have the following duties and responsibilities:

- (a) To maintain records concerning Participants and Beneficiaries including personal data, records of employment, participation, allocations to Accounts and eligibility therefore;
- (b) To prepare and furnish any forms and information which is required to be distributed to Participants under law and/or the terms of the Plan;
- (c) To prepare and file all forms and other information which is required to be filed with any government agency as required by law, regulations and/or by the terms of this Plan;
- (d) To provide directions to the Trustee concerning purchase of life insurance, funding policies, amounts, method and timing of benefit payments and any other data or instructions that may be reasonably required or requested by the Trustee;
- (e) To promulgate and set forth administrative regulations concerning the operation of

the Plan as specifically required under the terms of the Plan or as may be required by circumstances, provided said regulations are not inconsistent with the terms of the Plan;

(f) To construe and interpret provisions of the Plan and to correct defects and supply omissions as may be required from time to time;

(g) To provide and implement the proper operation of the Plan, provided, however, the Plan Administrator shall not be liable to any party by virtue of acting or refraining from acting in accordance with the advice of said advisors. Compensation for such services, to the extent not paid by a Participating Employer, shall be payable as an expense of the Plan.

15.5 Request for Documentation

The Plan Administrator, before deciding the eligibility for benefits of a Participant or Beneficiary, in its discretion, may require submission of proper documentation of age, death, disability or any other item as it deems necessary for the administration of the Plan.

15.6 Removal or Resignation

The Plan Administrator or any member of the group who together comprise the Plan Administrator may be removed at the pleasure of the Employer by action of its Board of Directors or may resign by written notice to the Employer. Said removal or resignation shall be effective sixty (60) days after delivery of such notice to the other party unless some other date is designated by the Employer. After removal or resignation the Employer may appoint a successor Plan Administrator or member of the group who together constitute the Plan Administrator.

15.7 Failure to Appoint Plan Administrator

If no individual or organization has been appointed to the group, or if there are no remaining members of the group, the Employer shall be deemed to be the Plan Administrator.

15.8 Compensation

The Plan Administrator shall perform his duties without compensation, provided, however, that all expenses reasonably incurred by the Plan Administrator, to the extent not paid by a Participating Employer, shall be payable as an expense of the Plan.

15.9 Allocation of Responsibilities

Members of the group comprising the Plan Administrator may agree among themselves to specifically allocate or delegate specific responsibilities, duties or obligations to one (1) or more members of said group, in which event the other members of the group shall not be liable for any action taken with respect to such allocated responsibilities, duties or obligations to the extent permitted by Section 405(c) of ERISA.

15.10 Delegation to Retirement Committee

If the Employer is designated as the Plan Administrator hereunder it may, at its sole discretion, make a revocable delegation of its responsibilities, duties and obligations to a Retirement Committee by naming a committee of not less than two (2) persons who shall be set forth in Section I.B.8. of the Adoption Agreement. In the event a Retirement Committee is so designated, it shall act on behalf of the Employer as if each member thereof was a member of the group constituting the Plan Administrator and shall have all the rights and authority attendant thereto, except that said Retirement Committee shall act on behalf of the Employer which shall be formally designated as Plan Administrator.

15.11 Bonding

The Plan Administrator shall arrange to be bonded in an amount only to the extent required under applicable law.

15.12 Indemnification

The Employer shall indemnify the Plan Administrator for any expenses and liabilities reasonably incurred in connection with or as a result of performance of its duties, unless it shall be adjudged to be grossly negligent or guilty of willful misconduct. The Employer may provide for indemnification of the Plan Administrator through insurance in addition to, or in lieu of, its obligation to indemnify the Plan Administrator.

ARTICLE XVI - CLAIMS PROCEDURES

16.1 Claim for Benefits

It is anticipated that the Plan Administrator will administer the Plan in such a manner as to provide benefits without requiring Participants to file claims, however, any Participant or Beneficiary who at any time believes he is entitled to payment of a benefit under the Plan may apply for said benefit on a form supplied by the Plan Administrator. The Plan Administrator may within thirty (30) days require the Participant to submit such additional information as the Plan Administrator deems necessary to determine the validity of the Participant's claim.

16.2 Disposition of Claim

Written notice of the disposition of the claim shall be given to the Participant or Beneficiary within ninety (90) days after the claim for benefits (or any additional information requested by the Plan Administrator) is submitted. If the claim is denied, in whole or in part, the Plan Administrator shall furnish the following to the Participant or Beneficiary:

- (a) The specific reasons for the denial with references to the Plan, administrative regulations of the Plan Administrator and/or the law as appropriate;
- (b) A description of any additional material necessary for the Participant or Beneficiary to perfect his claim and why such information is necessary;
- (c) An explanation of the Plan's claim review procedure.

If the Participant or Beneficiary fails to request review of a full or partial denial of benefits within sixty (60) days of his notice thereof, except as required by law, his claim shall be deemed conclusively denied.

16.3 Claims Review Procedure

Any Participant or Beneficiary who desires further review of a claim denied, in whole or in part, shall file a written request for reconsideration with the Plan Administrator within sixty (60) days after receipt of a written denial. The Plan Administrator, in its sole discretion, may convene a hearing on reasonable notice to all parties or may make its decision solely based upon any written evidence submitted by the Participant or Beneficiary. For this purpose, the Plan Administrator may request such additional evidence from the Participant or Beneficiary as it deems necessary. The Plan Administrator shall file written notice of his decision concerning the review with the Participant or Beneficiary within sixty (60) days thereafter. Said decision shall contain the specific reasons for said decision, with appropriate references to the Plan, the law, and/or to administrative regulations set forth by the Plan Administrator.

16.4 Conclusiveness of Determination

Except as required by law, the Participant or Beneficiary shall be conclusively bound by the final decision rendered by the Plan Administrator, unless he notifies the Plan Administrator within ninety (90) days of his intention to commence legal proceedings and actually commences such legal proceedings within one hundred eighty (180) days after such final decision.

ARTICLE XVII - AMENDMENT, TERMINATION AND MERGER

17.1 Employer's Right Reserved

While it is the intention of the Employer to continue the Plan indefinitely and to make recurring and substantial contributions to the Trust Fund, pursuant to the terms of the Plan, the Employer reserves the right to amend, modify or terminate the Plan or to suspend contributions of all Participating Employers at any time, subject to the following limitations:

- (a) The Employer may: (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy Section 415 or Section 416 of the Code because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the Plan to be treated as individually designed. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under section 412(d) of the Code, will no longer participate in this Regional Prototype Plan and will be considered to have an individually designed plan.
- (b) No amendment enlarging the duties or responsibilities of the Trustees shall be made without their consent;
- (c) Except as specially permitted under law, no amendment, merger or termination shall decrease the value of the Account of a Participant or Beneficiary as of the effective date of the amendment, merger or termination;
- (d) No amendment, merger or termination shall deprive a Participant or Beneficiary currently receiving or entitled to receive benefits of any benefits so designated as of the effective date of the amendment;
- (e) No amendment, merger or termination shall provide for diversion of any part of the Trust Fund other than for the exclusive benefit of Participants or Beneficiaries, except as permitted by law;
- (f) No amendment shall deprive a Participant of an accrued benefit or eliminate an optional form of benefit in violation of Section 411(d)(6) of the Code or Section 204(g)(1) of ERISA. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under Section 412(c)(8) of the Code. For purposes of this paragraph, a plan amendment which has the effect of decreasing a Participant's Account Balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore no amendment to the Plan shall have the effect of decreasing a Participant's accrued benefit determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

17.2 Amendments to Cover Additional Employers

The Employer shall have the right, in its discretion, to amend the Plan to render

eligible for participation hereunder the Employees of any other organization (whether a sole proprietorship, partnership or corporation).

17.3 Effect of Terminations

(a) Full Vesting

All Participants affected by a full or partial termination of this Plan or permanent cessation of contributions shall be one hundred percent (100%) vested in their Accounts as of the effective date of such full or partial termination. An amendment shall not be considered a partial termination unless so required under law and/or Regulations in order to enable the Plan to continue to meet the requirements of Section 401(a) of the Code.

(b) Continuation of Trust

In the event this Plan is terminated, the Employer shall instruct the Trustee to liquidate the Trust Fund and to pay over all monies due Participants and Beneficiaries as soon as practicable thereafter in accordance with the provisions of Article XVII hereof Section 17.5 and Article XII hereof;

17.4 Suspension or Discontinuance of Employer Contributions

In the event contributions to the Trust Fund are temporarily suspended by any Participating Employer, the only effect upon the operation of the Plan shall be as follows:

- (a) If contributions are ever permanently suspended by written resolution of the Board of Directors, the Plan shall be deemed to have been terminated as of the effective date of such resolution;
- (b) In the event that a temporary suspension of contributions is made permanent by a resolution of the Board of Directors, subsequent termination of the Plan or action by the Internal Revenue Service, the effective date of said termination shall be the last day of the Plan Year following the last Plan Year in which any Participating Employer failed to make a substantial contribution to the Plan from available Net Earnings;
- (c) In the event that all remaining Participating Employers dissolve for any reason (except by virtue of acquisition of said Participating Employers' assets by another company which assumes all liabilities and obligations hereunder and shall be substituted as the Employer hereunder), such dissolution shall be deemed a permanent discontinuance of contributions and termination hereunder.
- (d) The termination of this Plan by a Participating Employer or the withdrawal of a Participating Employer from this Plan shall not affect the continuance of this Plan and Trust with respect to other Participating Employer.

17.5 Allocation Upon Termination of Trust

In the event of a dissolution of the Trust Fund, it shall be liquidated in the following



manner:

- (a) All expenses of the Trust Fund shall be paid;
- (b) All Forfeiture Suspense Accounts shall be reallocated to the Accounts of the Participants from whose Accounts the forfeitures originated or, at the discretion of the Plan Administrator, allocated in another equitable manner;
- (c) The Trust Fund shall be valued as provided in Article VII hereof and the earnings and appreciation shall be allocated to all remaining Accounts in a manner consistent therewith;
- (d) All remaining unallocated suspense accounts shall be allocated to Participant's Accounts as if they were Employer Contributions;
- (e) Distributions shall be made to Participants based upon the value of their Accounts as determined in this Section 17.5.

17.6 Merger and Consolidation

In the event that this Plan is merged, consolidated with, or transfers its assets and/or liabilities to another plan, each Participant shall be entitled to a benefit (if the surviving plan was then terminated immediately after the merger, consolidation or transfer) which is equal to or greater than the benefit said Participant would be entitled to if this Plan was terminated immediately before said merger, consolidation or transfer.

17.7 Withdrawal of a Participating Employer

A Participating Employer may at any time withdraw from participation in the Plan and Trust upon certification by the Employer, the Plan Administrator and the Trustees that such Participating Employer intends to continue the Plan and Trust as a separate plan and trust for its employees. In such event, the Plan Administrator shall determine the amounts credited or creditable to the Account of each of the Participants or their Beneficiaries in that portion of the Trust Fund allocatable to the employees of such Participating Employer and shall direct the Trustees to deliver any such amounts, in cash or in kind, to the trustee or trustees of such separate plan and trust. A withdrawing Employer that does not adopt another Regional Prototype Plan is considered to have an individually designed plan. Prior to any such delivery, the withdrawing Participating Employer shall certify that such separate plan and trust meets the applicable requirements of Section 401(a) of the Code. The Plan Administrator and the Trustees shall be entitled to rely conclusively upon any certification made by a Participating Employer pursuant to this Section 17.7.

17.8 If the employer's plan fails to attain or retain qualification, such plan will no longer participate in this Regional prototype plan and will be considered an individually designed plan.

17.9 The Regional prototype sponsor may amend any part of the plan. In the case of the mass submitter, the mass submitter shall amend the plan on behalf of the sponsor.

ARTICLE XVIII - MISCELLANEOUS PROVISIONS

18.1 Controlling State Law

To the extent not pre-empted by federal law, this Plan shall be construed and enforced according to the laws of the State set forth in Section IV.G. of the Adoption Agreement.

18.2 Disputes

If a dispute arises as to the proper recipient of any payment or delivery of any Policies, the Trustee in its sole discretion, may withhold such payment or delivery until the dispute is settled by the parties concerned or final adjudication by a court of competent jurisdiction.

18.3 Gender and Number

Except as otherwise clearly indicated by the context, words in the masculine gender shall be deemed to include the feminine gender and vice versa. Words in the singular form shall be deemed to include the plural form and vice versa.

18.4 Headings and Subheadings

The titles, headings and subheadings in this Plan are inserted for administrative convenience only and shall not be considered in the construction of any of the Plan provisions.

18.5 Heirs, Assigns and Representatives

This Plan and its terms shall be binding and conclusive upon the heirs, executors, administrators, successors and assigns of all the parties hereto including each Participant and Beneficiary.

18.6 No Contract of Employment

Neither participation in the Plan, establishment of the Plan or any modification thereof, creation of any account or fund (whether nonforfeitable or forfeitable), nor payment of any benefit shall give any Participant or Employee the right to be retained in the employ of any Participating Employer.

18.7 Treatment of Owner-Employees Under the Plan

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 and the plan established for other trades or businesses must, when looked at as a single plan, satisfy sections 401(a) and (d) of the Code for the employees of this and all other trades or businesses.

If the Plan provides contributions or benefits for one or more Owner-Employees who control one or more other trades or businesses, the employees of the other trades or

businesses must be included in a plan which satisfies sections 401(a) and (d) and which provides contributions and benefits not less favorable than provided for Owner-Employees under this Plan.

If an individual is covered as an Owner-Employee under the plans of two or more trades or businesses which are not controlled and the individual controls a trade or business, then the contributions or benefits of the employees under the plan of the trades or businesses which are controlled must be as favorable as those provided for him under the most favorable plan of the trade or business which is not controlled.

For purposes of the preceding paragraphs, an Owner-Employee, or two or more Owner-Employees, will be considered to control a trade or business if the Owner-Employee, or two or more Owner-Employees together:

- (1) own the entire interest in an unincorporated trade or business, or
- (2) in the case of a partnership, own more than fifty percent (50%) of either the capital interest or the profits interest in the partnership.

For purposes of the preceding sentence, an Owner-Employee, or two or more Owner-Employees shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such Owner-Employee, or such two or more Owner-Employees, are considered to control within the meaning of the preceding sentence.

#### 18.8 Non-Alienation of Benefits

- (a) Except as otherwise provided in Subsections (b) and (c) hereof, none of the payments, benefits or rights of any Participant shall be subject to the claim of any creditor, and shall not be subject to attachment, garnishment, trustee's process, or any other legal process available to any creditor of such Participant.
- (b) No Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he may expect to receive under the terms of this Plan, except that a loan to a Participant from the Trust Fund, to the extent permitted hereunder, shall not be considered an alienation of benefits. The Trustee shall have a lien upon the borrower's Account to the extent of the entire unpaid amount of said loan plus collection costs and interest.
- (c) Distributions to an Alternate Payee(s) pursuant to a Qualified Domestic Relations Order which provides for the creation, assignment or recognition of a right to any benefit payable with respect to a Participant hereunder shall be made in accordance with administrative regulations adopted by the Plan Administrator in accordance with Article XII hereof.

#### 18.9 Notices and Deliveries

All notices hereunder shall be made in writing. Any notices or deliveries to the Trustee, Plan Administrator or any Participating Employer shall be directed to the address set forth in Section I.B. of the Adoption Agreement.

18.10 Payments to Persons under Legal Disability

Any benefit payable to or for the benefit of any person under a legal disability, including, without limitation, minority or incompetency, shall be paid to said person's legal guardian, Beneficiary or to that person, in the judgment of the Plan Administrator, reasonably appears to be providing for the care and custody of such person.

18.11 Severability of Provisions

If any provision or portion of a provision of this Plan is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the balance of the Plan. The Plan shall be construed and enforced as if such provision had not been included, provided, however, this Plan shall be reformed only to the extent necessary so that it complies with applicable law.

18.12 Service of Process

The Employer and each Trustee is designated as a party for service of legal process.

18.13 Title to Trust Assets

No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund other than as provided under the terms of this Plan. All payments of benefits shall be made from the Trust Fund and no claim shall be made upon the Employer or any other person for such payments.