

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

YRC WORLDWIDE INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation
or organization)

48-0948788
(I.R.S. Employer
Identification No.)

10990 Roe Avenue
Overland Park, Kansas
(Address of Principal Executive Officer)

66211
(Zip Code)

YRC Regional Transportation, Inc. 401(k) Retirement Plan
New Penn Motor Express, Inc. 401(k) Retirement Plan
(Full title of the plans)

Daniel J. Churay
YRC Worldwide Inc.
Senior Vice President, General Counsel and Secretary
10990 Roe Avenue
Overland Park, Kansas 66211
(Name and address of agent for service)

(913) 696-6100
(Telephone number, including area code, of agent for service)

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share(1)	Proposed maximum aggregate offering price(1)	Amount of registration fee(3)
Common Stock, par value \$1.00 per share, to be issued under the YRC Regional Transportation, Inc. 401(k) Retirement Plan	600,000 shares(2),(3)	\$37.64	\$22,584,000.00	\$2,416.48
Common Stock, par value \$1.00 per share, to be issued under the New Penn Motor Express, Inc. 401(k) Retirement Plan	100,000 shares(2),(3)	\$37.64	\$3,764,000	\$402.75
Total	700,000	\$37.64	\$26,348,000	\$2,819.23

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act of 1933 and based upon the average of the high and low sales prices of a share of Common Stock as reported by the NASDAQ Stock Market on December 21, 2006.
- (2) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein. Also includes an indeterminate number of shares of Common Stock issuable as a result of the anti-dilution provisions of the plan.

(3) In accordance with Rule 457, the registration fees associated with an aggregate amount of 700,000 shares of YRC Worldwide Inc. common stock previously registered under the Roadway LLC 401(k) Stock Savings Plan, on Registration Statement No. 333-111499 filed with the Securities and Exchange Commission (the "Commission") on December 23, 2003, are being carried forward from such Registration Statement. In connection with Registration Statement No. 333-111499, registration fees of \$1,876.15, were previously paid with respect to the 700,000 shares being registered hereunder, and pursuant to Interpretation 89 under Section G of the Manual of Publicly Available Telephone Interpretations of the Division of Corporation Finance of the Commission (July 1997) and Instruction E to the General Instructions to Form S-8, the registrant has carried forward such registration fees. As a result of the carry forward, the total registration fee of \$2,819.23 has been reduced by \$1,876.15, and the registration fee paid with this filing (\$943.08) reflects the reduction for the fee carry forward.

Concurrently with its filing of this registration statement, the registrant is filing a post-effective amendment to Registration Statement No. 333-111499 to deregister 700,000 shares of the 1,000,000 shares of Common Stock registered under the Roadway LLC 401(k) Stock Savings Plan.

PART I

ITEM 1. PLAN INFORMATION.*

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act") and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

YRC Worldwide Inc., a Delaware corporation ("YRC", the "Company" or "Registrant"), incorporates by reference in this Registration Statement the following:

- (i) the Company's Annual Report on Form 10-K, for the fiscal year ended December 31, 2005;
- (ii) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2006;
- (iii) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2006;
- (iv) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2006;
- (v) the Company's Current Reports on Form 8-K filed on January 3, 2006, January 26, 2006, March 10, 2006, March 2, 2006, May 17, 2006, May 22, 2006, July 25, 2006, October 31, 2006 and December 19, 2006;
- (vi) the description of the Company's common stock, \$1.00 par value per share, contained in the Company's Registration Statement on Form 10 filed pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and any amendments; and
- (vii) all documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of the filing hereof and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

Description of YRC Worldwide Inc. Common Stock

The Company's certificate of incorporation authorizes the issuance of up to 120,000,000 common shares, par value \$1.00 per share. As of December 21, 2006, there were 60,860,037 common shares issued, which included 57,181,085 outstanding shares and 3,678,952 treasury shares. Holders of the Company's common shares are entitled to one vote per share with respect to each matter presented to the Company's stockholders on which the holders of common shares are entitled to vote. Subject to the preferences applicable to any outstanding preferred stock, the holders of common shares are entitled to receive ratably any dividends declared by the Company's board of directors out of funds legally available for that purpose. In the event of liquidation, holders of common shares will be entitled to receive any assets remaining after the payment of the Company's debts and the expenses of the liquidation, subject to such preferences applicable to any outstanding preferred stock. The holders of the Company's common shares have no pre-emptive, subscription or conversion rights. All issued and outstanding shares of common stock are validly issued, fully paid and nonassessable.

Delaware Anti-Takeover Law

The Company is a Delaware corporation subject to Section 203 of the Delaware General Corporation Law. Under Section 203, certain “business combinations” between a Delaware corporation and an “interested stockholder” are prohibited for a three-year period following the date that such stockholder became an interested stockholder, unless:

- the business combination or the transaction which resulted in the stockholder becoming an interested stockholder was approved by the board of directors of the corporation before such stockholder became an interested stockholder;
- upon consummation of the transaction that resulted in such stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (a) by directors who are also officers and (b) by employee stock plans in which the employees do not have a confidential right to tender stock held by the plan in a tender or exchange offer; or
- the business combination is approved by the board of directors of the corporation and authorized at a meeting by two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

The three-year prohibition also does not apply to some business combinations proposed by an interested stockholder following the announcement or notification of an extraordinary transaction involving the corporation and a person who had not been an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of the corporation’s directors.

Under the Delaware General Corporation Law, the term “business combination” is defined generally to include mergers or consolidations between a Delaware corporation and an interested stockholder, transactions with an interested stockholder involving the assets or stock of the corporation or its majority-owned subsidiaries, and transactions that increase an interested stockholder’s percentage ownership of stock. The term “interested stockholder” is defined generally as those stockholders who become beneficial owners of 15% or more of a Delaware corporation’s voting stock, together with the affiliates or associates of that stockholder.

Anti-Takeover Effects of the Company’s Certificate of Incorporation and Bylaws

In addition, the Company’s certificate of incorporation provides that certain “business combinations” require an affirmative vote of holders of at least 80% of the voting power of the then outstanding capital stock entitled to vote generally in the election of directors.

The Company’s certificate of incorporation also contains restrictions on such business combinations by requiring the approval of a majority of continuing directors, as well as by requiring that certain fair price provisions be satisfied. Continuing directors are directors (a) serving as directors prior to June 1, 1983, (b) serving as directors before the substantial stockholder acquired 10% of the then outstanding voting shares or (c) designated as continuing directors by a majority of the then continuing directors prior to the directors’ election. Fair price provisions in the Company’s certificate of incorporation mandate that the amount of cash and the fair market value of other consideration to be received per share by holders of common stock not fall below certain ratios.

The term “business combination” is defined in the Company’s certificate of incorporation generally to include any merger or consolidation of the Company or any subsidiary with or into any substantial stockholder or any other corporation, whether or not itself a substantial stockholder which, after such merger or consolidation, would be an affiliate of a substantial stockholder, transactions with a substantial stockholder involving assets or stock of the Company or any majority-owned subsidiary with an aggregate fair market value of \$5,000,000 or more, and transactions that increase a substantial stockholder’s percentage ownership of the Company’s capital stock. A “substantial stockholder” is defined generally as any person who is or becomes the beneficial owner of not less than 10% of the voting shares, together with any affiliate of such stockholder. An “affiliate” has the meaning set forth in the rules under the Securities Exchange Act of 1934, as amended.

The Company’s certificate of incorporation also provides that stockholders may act only at an annual or special meeting of stockholders and not by written consent. The Company’s bylaws provide that special meetings of the stockholders can be called only by the Chairman of the Board, the Chief Executive Officer or a majority of the Company’s board of directors. These provisions could have the effect of delaying until the next annual stockholders meeting stockholder actions that are favored by the holders of a majority of the outstanding voting securities. These provisions may also discourage another person or entity from making an offer to stockholders for the common stock.

This is because the person or entity making the offer, even if it acquired a majority of the Company's outstanding voting securities, would be unable to call a special meeting of the stockholders and would be unable to obtain unanimous written consent of the stockholders. As a result, any meeting as to matters they endorse, including the election of new directors or the appraisal of a merger, would have to wait for the next duly called stockholders meeting.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The legality of the securities offered hereby has been passed upon by Daniel J. Churay, Senior Vice President, General Counsel and Secretary of the Company, 10990 Roe Avenue, Overland Park, Kansas 66211. As of December 21, 2006, Mr. Churay beneficially owned approximately 219 shares of Common Stock and also has rights to receive shares under 19,126 restricted share units, 50% of which vest three years from the date of grant and 50% of which vest six years from the date of grant, with the earliest vesting date in April 2006 (355 shares vested in April 2006).

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Certificate of Incorporation and Bylaws of the Company together provide that Yellow's directors shall not be personally liable to Yellow or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for (i) any breach of the director's duty of loyalty to Yellow or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law (the "DGCL"), or (iv) any transaction from which the director derived an improper personal benefit. The Certificate of Incorporation and Bylaws of Yellow also provide that if the DGCL is amended to permit further elimination of limitation of the personal liability of the directors, then the liability of Yellow's directors shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Yellow maintains directors' and officers' liability insurance against any actual or alleged error misstatement, misleading statement, act, omission, neglect or breach of duty by any director or officer, excluding certain matters including fraudulent, dishonest or criminal acts or self-dealing.

DGCL Section 102(b)(7) provides that Yellow may indemnify a present or former director if such director conducted himself or herself in good faith and reasonably believed, in the case of conduct in his or her official capacity, that his or her conduct was in Yellow's best interests.

DGCL Section 145 provides that Yellow may indemnify its directors and officers, as well as other employees and individuals (each an "Indemnified Party", and collectively, "Indemnified Parties"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative, other than in connection with actions by or in the right of Yellow (a "derivative action"), if an Indemnified Party acted in good faith and in a manner such Indemnified Party reasonably believed to be in or not opposed to Yellow's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that Yellow may only indemnify an Indemnified Party for expenses (including attorneys' fees) incurred in connection with the defense or settlement of such derivative action. Additionally, in the context of a derivative action, DGCL Section 145 requires a court approval before there can be any indemnification where an Indemnified Party has been found liable to Yellow. The statute provides that it is not exclusive of other indemnification arrangements that may be granted pursuant to a corporation's charter, bylaws, disinterested director vote, stockholder vote, agreement or otherwise.

In the Agreement and Plan of Merger among Yellow Corporation, Yankee LLC, a wholly owned subsidiary of Yellow ("Sub"), and Roadway Corporation ("Roadway"), dated as of July 8, 2003, pursuant to which Roadway merged with and into Sub, with Sub as the surviving company (the "Roadway Merger"), Yellow has agreed to indemnify the former officers and directors of Roadway from liabilities arising out of actions or omissions in their capacity as such prior to the effective time of the Roadway Merger, and advance reasonable litigation expenses incurred in connection with such actions or omissions, to the full extent permitted under Roadway's certificate of incorporation and bylaws. Further, for a period of six years after the effective time of the Roadway Merger, Yellow will provide Roadway's officers and directors with an insurance and indemnification policy that provides coverage for acts or omissions through the effective time of the Roadway Merger; provided that the maximum aggregate amount of premiums that Yellow will be required to pay to provide and maintain this coverage does not exceed \$3,944,400 per year.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

<u>Exhibit No.</u>	<u>Description</u>
4.1	— Certificate of Incorporation of Yellow Corporation (incorporated by reference to Exhibit 3.1 to Annual Report on Form 10-K for the year ended December 31, 2002, Reg. No. 000-12255).
4.2	— Certificate of Amendment to the Certificate of Incorporation of Yellow Corporation changing the name of the Company to Yellow Roadway Corporation (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-8, filed December 23, 2003, SEC File No. 333-111499).
4.3	— Certificate of Ownership and Merger, merging YRC Worldwide Inc. into Yellow Roadway Corporation, effecting a name change to YRC Worldwide Inc. (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K, filed on January 3, 2006, Reg. No. 000-12255).
4.4	— Bylaws of the Company (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K, filed on December 19, 2006, Reg. No. 000-12255).
4.5	— Indenture (including form of note) dated August 8, 2003 among Yellow Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Corporation's 5.0% Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.5 to Yellow Corporation's Registration Statement on Form S-4, filed on August 19, 2003, Reg. No. 333-108081).
4.6	— Supplemental Indenture, dated as of December 11, 2003, among Roadway LLC, as successor obligor, YRC Worldwide, Inc., as a Guarantor, and SunTrust Bank, as Trustee, supplementing the Indenture, dated as of November 30, 2001 for the Roadway Corporation 8 1/4% Senior Notes due December 1, 2008 (incorporated by reference to Exhibit 4.8 to the Annual Report on Form 10-K for the year ended December 31, 2003, Reg. No. 000-1225).
4.7	— Indenture (including form of note) dated November 25, 2003 among Yellow Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Corporation's 3.375% Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.7 to Yellow Roadway Corporation's Registration Statement on Form S-8, filed on December 23, 2003, Reg. No. 333-111499).
4.8*	— Supplemental Indenture, dated as of June 27, 2005, among Yellow Roadway Corporation as New Guarantor, USF Corporation, the Existing Guarantor Subsidiaries under the indenture and J.P. Morgan Trust Company, National Association as Trustee, supplementing the Indenture, dated as of May 5, 1999 (as supplemented and in effect as of the date of the Supplemental Indenture), for the USF Corporation (formerly USFreightways Corporation) 6 1/2% Guaranteed Notes due May 1, 2009 and USF Corporation (formerly USFreightways Corporation) 8 1/2% Guaranteed Notes due April 15, 2010.
4.9	— Indenture (including form of note) dated November 30, 2001 among Roadway Corporation (predecessor in interest to Roadway LLC), certain subsidiary guarantors and SunTrust Bank, as trustee, relating to Roadway's 8 1/4% Senior Notes due December 1, 2008 (incorporated by reference to Exhibit 4.9 to Yellow Roadway Corporation's Registration Statement on Form S-8, filed on December 23, 2003, Reg. No. 333-111499).
4.10	— Indenture (including form of note) dated December 31, 2004, among Yellow Roadway Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Roadway Corporation's 5.0% Net Share Settled Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.7 to Amendment No. 1 to Registration Statement on Form S-4/A, filed on November 30, 2004, Reg. No. 333-119990).

- 4.11 — Indenture (including form of note) dated December 31, 2004, among Yellow Roadway Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Roadway Corporation's 3.375% Net Share Settled Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.8 to Amendment No. 1 to Registration Statement on Form S-4/A, filed on November 30, 2004, Reg. No. 333-119990).
- 4.12 — Indenture, dated as of May 5, 1999, among USFreightways Corporation (now known as USF Corporation), the Guarantors named therein and NBD Bank, as trustee (incorporated by reference to Exhibit 4.11 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-126006).
- 4.13 — Form of 6 1/2% Guaranteed Note due May 1, 2009 issued by USFreightways Corporation (now known as USF Corporation) (incorporated by reference to Exhibit 4.12 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-26006).
- 4.14 — Form of 8 1/2% Guaranteed Note due April 15, 2010 issued by USFreightways Corporation (now known as USF Corporation) (incorporated by reference to Exhibit 4.13 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-26006).
- 4.15 — Indenture relating to the Senior Floating Rate Notes due 2008, dated as of May 24, 2005, among Yellow Roadway Corporation, certain subsidiary guarantors and SunTrust Bank, as Trustee (including form of note) (incorporated by reference to Exhibit 4.1 to Current Report on Form 8-K, filed on May 26, 2005, Reg. No. 000-12255).
- 4.16 — Registration Rights Agreement relating to the Senior Floating Rate Notes due 2008, dated as of May 24, 2005, among Yellow Roadway Corporation, certain subsidiary guarantors and Credit Suisse First Boston LLC, as representative of the initial purchasers (incorporated by reference to Exhibit 4.2 to Current Report on Form 8-K, filed on May 26, 2005).
- 4.17* — YRC Regional Transportation, Inc. 401(k) Retirement Plan (As Amended and Restated Effective January 1, 2006), as amended by Amendment No. 1, dated December 20, 2006.
- 4.18* — New Penn Motor Express, Inc. 401(k) Retirement Plan, as supplemented by Adoption Agreement for Boston Financial Data Services Standardized 401(K) Profit Sharing Plan and Trust, dated July 16, 2004, and as amended by EGTRRA Amendment effective 2002, dated December 26, 2002; EGTRRA Amendment effective 2003, dated December 26, 2002; Amendment No. 1 to the New Penn Motor Express, Inc. 401(k) Retirement Plan, dated December 3, 2003; Mandatory Distribution Amendment, dated March 28, 2005; and Amendment, dated December 22, 2006.
- 5.1* — Opinion of Daniel J. Churay, Senior Vice President, General Counsel and Secretary of YRC Worldwide Inc., regarding the legality of the securities to be offered hereby.
- 23.1* — Consent of Independent Registered Public Accounting Firm.
- 23.2* — Consent of Daniel J. Churay (included in Exhibit 5.1)
- 24.1* — Powers of Attorney (included on the signature pages hereto).

* Filed herewith.

ITEM 9. UNDERTAKINGS.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any

increase or decrease in volume of securities offered (if the total dollar volume of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

Provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Overland Park, State of Kansas, on December 27th 2006.

YRC Worldwide Inc.

By: /S/ DONALD G. BARGER, JR.
Donald G. Barger, Jr.
Senior Vice President and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Donald G. Barger, Jr., Daniel J. Churay, and Paul F. Liljegren or any of them, severally, as his/her attorney-in-fact and agent, with full power of substitution and resubstitution, for him/her and in his/her name, place, and stead, in any and all capacities, to sign any and all post-effective amendments to this registration statement, and to file the same with all exhibits hereto, and all other documents in connection herewith, with the Commission, granting unto said attorney-in-fact and agent, and either of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he/she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on the 27th day of December, 2006.

Signature	Title
<u>/S/ WILLIAM D. ZOLLARS</u> William D. Zollars	Chairman of the Board of Directors, President and Chief Executive Officer (principal executive officer)
<u>/S/ DONALD G. BARGER, JR.</u> Donald G. Barger, Jr.	Senior Vice President and Chief Financial Officer (principal financial officer)
<u>/S/ PAUL F. LILJEGREN</u> Paul F. Liljegren	Vice President, Controller and Chief Accounting Officer (principal accounting officer)
<u>/S/ CASSANDRA C. CARR</u> Cassandra C. Carr	Director
<u>/S/ HOWARD M. DEAN</u> Howard M. Dean	Director
<u>/S/ DENNIS E. FOSTER</u> Dennis E. Foster	Director
<u>/S/ JOHN F. FIEDLER</u> John F. Fiedler	Director
<u>/S/ JOHN C. MCKELVEY</u> John C. McKelvey	Director
<u>/S/ PHILLIP J. MEEK</u> Phillip J. Meek	Director
<u>/S/ WILLIAM L. TRUBECK</u> William L. Trubeck	Director
<u>/S/ CARL W. VOGT</u> Carl W. Vogt	Director

EXHIBIT INDEX

Exhibit No.	Description
4.1	— Certificate of Incorporation of Yellow Corporation (incorporated by reference to Exhibit 3.1 to Annual Report on Form 10-K for the year ended December 31, 2002, Reg. No. 000-12255).
4.2	— Certificate of Amendment to the Certificate of Incorporation of Yellow Corporation changing the name of the Company to Yellow Roadway Corporation (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-8, filed December 23, 2003, SEC File No. 333-111499).
4.3	— Certificate of Ownership and Merger, merging YRC Worldwide Inc. into Yellow Roadway Corporation, effecting a name change to YRC Worldwide Inc. (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K, filed on January 3, 2006, Reg. No. 000-12255).
4.4	— Bylaws of the Company (incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K, filed on December 19, 2006, Reg. No. 000-12255).
4.5	— Indenture (including form of note) dated August 8, 2003 among Yellow Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Corporation's 5.0% Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.5 to Yellow Corporation's Registration Statement on Form S-4, filed on August 19, 2003, Reg. No. 333-108081).
4.6	— Supplemental Indenture, dated as of December 11, 2003, among Roadway LLC, as successor obligor, YRC Worldwide, Inc., as a Guarantor, and SunTrust Bank, as Trustee, supplementing the Indenture, dated as of November 30, 2001 for the Roadway Corporation 8 1/4% Senior Notes due December 1, 2008 (incorporated by reference to Exhibit 4.8 to the Annual Report on Form 10-K for the year ended December 31, 2003, Reg. No. 000-1225).
4.7	— Indenture (including form of note) dated November 25, 2003 among Yellow Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Corporation's 3.375% Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.7 to Yellow Roadway Corporation's Registration Statement on Form S-8, filed on December 23, 2003, Reg. No. 333-111499).
4.8*	— Supplemental Indenture, dated as of June 27, 2005, among Yellow Roadway Corporation as New Guarantor, USF Corporation, the Existing Guarantor Subsidiaries under the indenture and J.P. Morgan Trust Company, National Association as Trustee, supplementing the Indenture, dated as of May 5, 1999 (as supplemented and in effect as of the date of the Supplemental Indenture), for the USF Corporation (formerly USFreightways Corporation) 6 1/2% Guaranteed Notes due May 1, 2009 and USF Corporation (formerly USFreightways Corporation) 8 1/2% Guaranteed Notes due April 15, 2010.
4.9	— Indenture (including form of note) dated November 30, 2001 among Roadway Corporation (predecessor in interest to Roadway LLC), certain subsidiary guarantors and SunTrust Bank, as trustee, relating to Roadway's 8 1/4% Senior Notes due December 1, 2008 (incorporated by reference to Exhibit 4.9 to Yellow Roadway Corporation's Registration Statement on Form S-8, filed on December 23, 2003, Reg. No. 333-111499).
4.10	— Indenture (including form of note) dated December 31, 2004, among Yellow Roadway Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Roadway Corporation's 5.0% Net Share Settled Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.7 to Amendment No. 1 to Registration Statement on Form S-4/A, filed on November 30, 2004, Reg. No. 333-119990).

- 4.11 — Indenture (including form of note) dated December 31, 2004, among Yellow Roadway Corporation, certain subsidiary guarantors and Deutsche Bank Trust Company Americas, as trustee, relating to Yellow Roadway Corporation's 3.375% Net Share Settled Contingent Convertible Senior Notes due 2023 (incorporated by reference to Exhibit 4.8 to Amendment No. 1 to Registration Statement on Form S-4/A, filed on November 30, 2004, Reg. No. 333-119990).
- 4.12 — Indenture, dated as of May 5, 1999, among USFreightways Corporation (now known as USF Corporation), the Guarantors named therein and NBD Bank, as trustee (incorporated by reference to Exhibit 4.11 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-126006).
- 4.13 — Form of 6 1/2% Guaranteed Note due May 1, 2009 issued by USFreightways Corporation (now known as USF Corporation) (incorporated by reference to Exhibit 4.12 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-26006).
- 4.14 — Form of 8 1/2% Guaranteed Note due April 15, 2010 issued by USFreightways Corporation (now known as USF Corporation) (incorporated by reference to Exhibit 4.13 to Registration Statement on Form S-4, filed on June 21, 2005, Reg. No. 333-26006).
- 4.15 — Indenture relating to the Senior Floating Rate Notes due 2008, dated as of May 24, 2005, among Yellow Roadway Corporation, certain subsidiary guarantors and SunTrust Bank, as Trustee (including form of note) (incorporated by reference to Exhibit 4.1 to Current Report on Form 8-K, filed on May 26, 2005, Reg. No. 000-12255).
- 4.16 — Registration Rights Agreement relating to the Senior Floating Rate Notes due 2008, dated as of May 24, 2005, among Yellow Roadway Corporation, certain subsidiary guarantors and Credit Suisse First Boston LLC, as representative of the initial purchasers (incorporated by reference to Exhibit 4.2 to Current Report on Form 8-K, filed on May 26, 2005).
- 4.17* — YRC Regional Transportation, Inc. 401(k) Retirement Plan, as amended by Amendment No. 1, dated December 20, 2006.
- 4.18* — New Penn Motor Express, Inc. 401(k) Retirement Plan, as supplemented by Adoption Agreement for Boston Financial Data Services Standardized 401(K) Profit Sharing Plan and Trust, dated July 16, 2004, and as amended by EGTRRA Amendment effective 2002, dated December 26, 2002; EGTRRA Amendment effective 2003, dated December 26, 2002; Amendment No. 1 to the New Penn Motor Express, Inc. 401(k) Retirement Plan, dated December 3, 2003; Mandatory Distribution Amendment, dated March 28, 2005; and Amendment, dated December 22, 2006.
- 5.1* — Opinion of Daniel J. Churay, Senior Vice President, General Counsel and Secretary of YRC Worldwide Inc., regarding the legality of the securities to be offered hereby.
- 23.1* — Consent of Independent Registered Public Accounting Firm.
- 23.2* — Consent of Daniel J. Churay (included in Exhibit 5.1)
- 24.1* — Powers of Attorney (included on the signature pages hereto).

* Filed herewith.

USF CORPORATION
SUPPLEMENTAL INDENTURE

This SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is dated as of June 27, 2005, by Yellow Roadway Corporation, a Delaware corporation (the "**New Guarantor**"), and the parent company of USF Corporation, a Delaware corporation (the "**Company**"), the Guarantors (the "**Existing Guarantor Subsidiaries**") under the indenture referred to below and J.P. Morgan Trust Company, National Association (as the successor-in-interest to NBD Bank and Bank One, Michigan), as trustee under the indenture referred to below (the "**Trustee**").

WITNESSETH:

WHEREAS, the Company and the Existing Guarantor Subsidiaries have heretofore executed and delivered to the Trustee an indenture (as supplemented and in effect as of the date hereof, the "**Indenture**"), dated as of May 5, 1999, providing for the issuance from time to time of the Company's debentures, notes or other evidence of indebtedness (herein called the "**Securities**"), to be issued in one or more series as provided in the Indenture;

WHEREAS, a wholly owned subsidiary of the New Guarantor has merged with and into the Company (the "**Merger**") pursuant to the Agreement and Plan of Merger by and among New Guarantor, Yankee II LLC and the Company dated as of February 29, 2005, and as amended as of May 1, 2005, with the Company being the surviving entity of the Merger, and as a result of the Merger, the New Guarantor has become the parent company of the Company;

WHEREAS, as the parent company of the Company, the New Guarantor has determined that it and the Company will benefit materially from the New Guarantor becoming a Guarantor;

WHEREAS, Section 1403 of the Indenture provides, in part, that a Person that was not a Guarantor on the date of the Indenture may become a Guarantor by executing and delivering to the Trustee a supplemental indenture pursuant to which such Person shall become a Guarantor; and

WHEREAS, pursuant to Section 901(10) of the Indenture, the Trustee, the Company and Existing Guarantor Subsidiaries are authorized to execute and deliver this Supplemental Indenture;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Company, the Existing Guarantor Subsidiaries and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Securities as follows:

1. Definitions.

(a) Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(b) For all purposes of this Supplemental Indenture, except as otherwise herein expressly provided or unless the context otherwise requires: (i) the terms and

expressions used herein shall have the same meanings as corresponding terms and expressions used in the Indenture; and (ii) the words “*herein*,” “*hereof*” and “*hereby*” and other words of similar import used in this Supplemental Indenture refer to the Supplemental Indenture as a whole and not to any particular section hereof.

2. **Agreement to Guarantee.** The New Guarantor hereby agrees, jointly and severally with all other Existing Guarantor Subsidiaries, to guarantee the Company’s obligations under the Securities on the terms subject to the conditions set forth in Section 1401 of the Indenture and to be bound by all other provisions of the Indenture applicable to a Guarantor. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

3. **Governing Law.** This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

4. **Trustee Makes No Representation.** The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

5. **Counterparts.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. **Effects of Headings.** The section headings herein are for convenience only and shall not affect the construction thereof.

[Remainder of Page Intentionally Left Blank: Signatures in Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and delivered as of the date first above written.

YELLOW ROADWAY CORPORATION

By: /s/ TODD M. HACKER
Name: Todd M. Hacker
Title: Vice President and Treasurer

USF CORPORATION

By: /s/ TODD M. HACKER
Name: Todd M. Hacker
Title: Senior Vice President & Treasurer

GLEN MOORE TRANSPORT, INC.
USF BESTWAY INC.
USF BESTWAY LEASING INC.
USF DISTRIBUTION SERVICES INC.
USF DUGAN INC.
USF HOLLAND INC.
USF LOGISTICS SERVICES INC.
USF REDDAWAY INC.
USF SALES CORPORATION
IMUA HANDLING CORPORATION

By: /s/ BRENDA LANDRY
Name: Brenda Landry
Title: Vice President and Assistant Secretary

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION
(as the successor-in-interest to NBD Bank),
as Trustee

By: /s/ JANICE OTT ROTUNNO
Name: Janice Ott Rotunno
Title: Vice President

YRC REGIONAL TRANSPORTATION, INC. 401(K) RETIREMENT PLAN

(As Amended and Restated Effective January 1, 2006)

(As Amended by Amendment No. 1, dated December 20, 2006)

YRC REGIONAL TRANSPORTATION, INC. 401(K) RETIREMENT PLAN
(As Amended and Restated Effective January 1, 2006)
as amended by Amendment No. 1, dated December 20, 2006.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS	2
1.1 ACCOUNT(S)	2
1.2 ACCOUNT BALANCE(S)	2
1.3 ACP TEST	2
1.4 ACTUAL CONTRIBUTION PERCENTAGE	2
1.5 ACTUAL DEFERRAL PERCENTAGE	2
1.6 ADMINISTRATIVE COMMITTEE	2
1.7 ADP TEST	2
1.8 AFFILIATE	3
1.9 AFTER-TAX CONTRIBUTION	3
1.10 AFTER-TAX CONTRIBUTION ACCOUNT	3
1.11 APPROVED ABSENCE	3
1.12 BENEFICIARY	3
1.13 BOARD	3
1.14 BREAK IN SERVICE	34
1.15 BUSINESS DAY	4
1.16 CATCH UP CONTRIBUTION	4
1.17 CODE	4
1.18 COMPANY	4
1.19 COMPANY CONTRIBUTION ACCOUNT	4
1.20 COMPANY CONTRIBUTION	4
1.21 COMPANY STOCK	4
1.22 COMPANY STOCK FUND	4
1.23 COMPENSATION	4
1.24 DATE OF EMPLOYMENT OR REEMPLOYMENT	5
1.25 DIRECT ROLLOVER	5

1.26	DISABILITY	5
1.27	DISQUALIFYING BREAK IN SERVICE	5
1.28	DISTRIBUTE	5
1.29	EFFECTIVE DATE	5
1.30	ELIGIBLE EMPLOYEE	5
1.31	ELIGIBLE RETIREMENT PLAN	5
1.32	ELIGIBLE ROLLOVER DISTRIBUTION	5
1.33	EMPLOYEE	6
1.34	EMPLOYER	6
1.35	ENTRY DATE	6
1.36	ERISA	6
1.37	EXCESS AGGREGATE CONTRIBUTIONS	6
1.38	EXCESS CONTRIBUTIONS	6
1.39	EXCESS DEFERRALS	6
1.40	HIGHLY COMPENSATED EMPLOYEE	6
1.41	HOUR OF SERVICE	7
1.42	INVESTMENT FUND	7
1.43	INVESTMENT MANAGER	7
1.44	LIMITATION YEAR	7
1.45	LEASED EMPLOYEE	7
1.46	MATCHING CONTRIBUTION	7
1.47	MATCHING CONTRIBUTION ACCOUNT	7
1.48	NAMED FIDUCIARY	8
1.49	NONHIGHLY COMPENSATED EMPLOYEE	8
1.50	NORMAL RETIREMENT AGE	8
1.51	PARTICIPANT	8
1.52	PARTICIPATING EMPLOYER	8
1.53	PLAN	8

1.54	PLAN YEAR	8
1.55	PRIOR PLAN	8
1.56	QUALIFYING PERIOD OF SERVICE	8
1.57	QDRO	8
1.58	ROLLOVER ACCOUNT	8
1.59	ROLLOVER CONTRIBUTION	8
1.60	SALARY REDUCTION CONTRIBUTION	8
1.61	SALARY REDUCTION CONTRIBUTION ACCOUNT	8
1.62	SPECIAL COMPANY CONTRIBUTIONS	9
1.63	SPOUSE	9
1.64	TRUST AGREEMENT and TRUST	9
1.65	TRUST FUND	9
1.66	TRUSTEE	9
1.67	VALUATION DATE	9
1.68	VESTED INTEREST	9
1.69	CONSTRUCTION	9
ARTICLE 2 ELIGIBILITY AND PARTICIPATION		9
2.1	ELIGIBILITY	9
2.2	TERMINATION AND REEMPLOYMENT	10
ARTICLE 3 CONTRIBUTIONS		10
3.1	COMPANY CONTRIBUTIONS	10
3.2	SALARY REDUCTION CONTRIBUTIONS	10
3.3	ADP TEST	12
3.4	AFTER-TAX CONTRIBUTIONS	13
3.5	MATCHING CONTRIBUTIONS	13
3.6	ACP TEST	14
3.7	SPECIAL COMPANY CONTRIBUTIONS; RECHARACTERIZATION OF COMPANY CONTRIBUTIONS	15

3.8	ROLLOVER CONTRIBUTIONS	16
3.9	TRANSFERS OF ASSETS TO THE PLAN	16
3.10	CATCH UP CONTRIBUTIONS	17
3.11	COMPLIANCE MEASURES	17
3.12	PAYMENT TO TRUSTEE	17
ARTICLE 4	ALLOCATIONS, ACCOUNTING, AND ADJUSTMENTS	17
4.1	COMPOSITION OF TRUST FUND	17
4.2	ALLOCATION OF EARNINGS TO ACCOUNTS	17
4.3	ELIGIBILITY FOR ALLOCATION OF COMPANY CONTRIBUTIONS AND MATCHING CONTRIBUTIONS	18
4.4	MAXIMUM ANNUAL ADDITIONS	18
ARTICLE 5	VESTING	19
5.1	PARTICIPANT ACCOUNTS	19
5.2	AMENDMENT TO VESTING SCHEDULE	19
ARTICLE 6	TIME AND METHOD OF PAYMENT	20
6.1	NORMAL FORM OF PAYMENT FOR EMPLOYEES	20
6.2	TIME OF PAYMENT	21
6.3	MINIMUM DISTRIBUTION RULES FOR CALENDAR YEARS AFTER 2002	22
6.4	ADMINISTRATIVE POWERS RELATING TO PAYMENTS	25
6.5	LOST PARTICIPANT OR BENEFICIARY	26
6.6	NO DUPLICATION OF BENEFITS	26
ARTICLE 7	LOANS; WITHDRAWALS	26
7.1	AVAILABILITY OF LOANS	26
7.2	IN-SERVICE HARDSHIP WITHDRAWALS	28
7.3	OTHER IN-SERVICE WITHDRAWALS	29
ARTICLE 8	MANAGEMENT OF FUNDS	30
8.1	TRUSTEE AND TRUST AGREEMENT	30
8.2	ASSETS OF THE TRUST FUND	30

8.3	TRUST CONTRIBUTIONS	30
8.4	DIRECTED INVESTMENT ACCOUNTS	30
8.5	VOTING AND TENDER RIGHTS - COMPANY STOCK	32
ARTICLE 9 ADMINISTRATION OF PLAN		32
9.1	NAMED FIDUCIARIES	32
9.2	RESPONSIBILITIES AND POWERS OF ADMINISTRATIVE COMMITTEE	32
9.3	INDIVIDUAL AND SHARED RESPONSIBILITIES OF NAMED FIDUCIARIES	33
9.4	EMPLOYMENT OF ADVISERS	34
9.5	FIDUCIARY IN MORE THAN ONE CAPACITY	34
9.6	INDEMNITY AGREEMENT	34
9.7	COSTS	34
9.8	APPLICATION AND FORMS FOR BENEFITS	34
ARTICLE 10 CLAIMS PROCEDURES		34
10.1	CLAIMS REVIEW	34
10.2	APPEALS PROCEDURE	35
ARTICLE 11 AMENDMENT AND TERMINATION		36
11.1	TERMINATION	36
11.2	RIGHT TO AMEND, MODIFY, CHANGE OR REVISE PLAN	36
11.3	MERGER AND CONSOLIDATION OF PLAN; TRANSFER OF PLAN ASSETS	37
ARTICLE 12 TOP-HEAVY PROVISIONS		37
12.1	DEFINITIONS	37
12.2	MISCELLANEOUS	39
12.3	MINIMUM ALLOCATION REQUIREMENTS	40
ARTICLE 13 PARTICIPATING EMPLOYERS		40
13.1	ADOPTION BY OTHER EMPLOYERS	40
13.2	REQUIREMENTS OF PARTICIPATING EMPLOYERS	40
13.3	DESIGNATION OF AGENT	40
13.4	EMPLOYEE TRANSFERS	41

13.5	PARTICIPATING EMPLOYERS CONTRIBUTION	41
13.6	AMENDMENT	41
13.7	DISCONTINUANCE OF PARTICIPATION	41
13.8	ADMINISTRATIVE COMMITTEE'S AUTHORITY	41
ARTICLE 14	MISCELLANEOUS	41
14.1	NO CONTRACT OF EMPLOYMENT	41
14.2	RESTRICTIONS UPON ASSIGNMENTS AND CREDITORS' CLAIMS	41
14.3	RESTRICTION OF CLAIMS AGAINST TRUST	42
14.4	BENEFITS PAYABLE BY TRUST	42
14.5	PLAN MERGER, CONSOLIDATION OR TRANSFER OF ASSETS	42
14.6	APPLICABLE LAW	42
14.7	DATA	42
14.8	MILITARY SERVICE	43
14.9	PLAN VOLUNTARY	43
14.10	RESERVATION OF RIGHT TO SUSPEND OR DISCONTINUE CONTRIBUTIONS	43
14.11	SEVERABILITY	43
14.12	CONSTRUCTION OF PLAN DOCUMENT	43
14.13	PLAN IN EFFECT AT TERMINATION OF EMPLOYMENT CONTROLS	43

YRC REGIONAL TRANSPORTATION, INC. 401(K) RETIREMENT PLAN

As Amended and Restated Effective January 1, 2006

INTRODUCTION

The YRC Regional Transportation, Inc. 401(k) Retirement Plan, as Amended and Restated Effective January 1, 2006 (the "Plan") constitutes a continuation of the First Amended and Restated USF Employees' 401K Retirement Plan, (formerly known as the TNT Freightways Corporation Employees' Salary Deferral Thrift Plan (the "Prior Plan")) and was originally adopted on January 1, 1993.

The Plan was amended and restated, effective January 1, 1997, to comply with the changes promulgated under the Uruguay Round Agreements Act of 1994, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998, and subsequent regulations related to the foregoing. The Plan was amended several times after the January 1, 1997 restatement to make certain design and technical changes.

The Plan was again amended and restated, effective January 1, 2006, to (i) reflect the acquisition of USF Corporation by YRC Worldwide Inc. ("YRC") (formerly Yellow Roadway Corporation) on May 24, 2005; (ii) to designate YRC as the Plan Sponsor and the "Company" under Section 1.17 and the YRC Benefits Administrative Committee as Plan Administrator, (iii) to comply with final Treasury Regulations issued under Code Sections 401(k) and 401(m) which are effective January 1, 2006; (iv) to make certain technical and design changes; and (v) to change the name of the Plan to the "YRC Regional Transportation, Inc. 401(k) Retirement Plan." Unless otherwise stated in the Plan, the provisions of this amendment and restatement are effective January 1, 2006, except that the designation of YRC as the Plan Sponsor and "Company" under Section 1.17 and the designation of the YRC Benefits Administrative Committee as the Plan Administrator under Sections 1.3 and 9.1 shall be effective May 24, 2005.

This amendment and restatement of the Plan effective January 1, 2006, shall not in any way affect the rights of the Employees who participated in accordance with the provisions of the Prior Plan. All matters relating to eligibility for benefits and the amount of benefits, if any, payable to such Employees (or their Beneficiaries), based upon events occurring prior to the Effective Date shall, except as otherwise expressly provided herein, be determined in accordance with the applicable provisions of the Prior Plan (or the plans of the Participating Employers or other entities that have merged into the Plan), to the extent that there are any inconsistencies between the Plan and the Prior Plan (or the plans of the Participating Employers or other entities that have merged into the Plan).

ARTICLE 1
DEFINITIONS

Whenever used herein with the initial letter capitalized, words and phrases shall have the meanings stated below unless a different meaning is plainly required by the context.

- 1.1 ACCOUNT(S)** means the Salary Reduction Contribution Account, After-Tax Contribution Account, the Company Contribution Account, the Matching Contribution Account and the Rollover Account, any or all of which may be maintained for the benefit of each Participant.
- 1.2 ACCOUNT BALANCE(S)** means, for each Participant, the total balance standing to the Participant's Account(s) on the date of reference determined in accordance with valuation procedures described in Sections 4.2 and 8.4.
- 1.3 ACP TEST** means the test set forth in Section 3.6(a).
- 1.4 ACTUAL CONTRIBUTION PERCENTAGE** means, with respect to a group of Eligible Employees for a Plan Year, the average of the ratios (calculated separately for each Eligible Employees in the group) of the aggregate amount of After-Tax Contributions and Matching Contributions made by and on behalf of each Eligible Employee in the group during the Plan Year to the Compensation received by each Eligible Employee in the group during the Plan Year. The Actual Contribution Percentage for a Highly Compensated Employee who is eligible to make after-tax contributions, and to have employer matching contributions made on his behalf, under this Plan and one or more other qualified defined contribution plans of an Employer or an Affiliate shall be determined as if all those contributions were made under a single qualified defined contribution plan (to the extent permitted by, and in accordance with the requirements of, Treasury Regulations under Code Sections 401(k), 401(a)(4) and 410(b)). If this Plan and the other qualified defined contribution plan(s) have different plan years, the Actual Contribution Percentage for a Highly Compensated Employee shall be computed taking into account only the after-tax and employer matching contributions made by and on behalf of, and the compensation received by, the Highly Compensated Employee during the plan year of the plan being tested. The after-tax and employer matching contributions made by and on behalf of a Highly Compensated Employee may be aggregated for this purpose even though the plans under which they are made use inconsistent ACP Test methods.
- 1.5 ACTUAL DEFERRAL PERCENTAGE** means, with respect to a group of Eligible Employees for a Plan Year, the average of the ratios (calculated separately for each Eligible Employee in the group) of the amount of Salary Reduction Contributions made on behalf of each Eligible Employee in the group during the Plan Year to the Compensation received by each Eligible Employee in the group during the Plan Year. The Actual Deferral Percentage for any Highly Compensated Employee who is eligible to make "elective deferrals" (within the meaning of Code Section 402(g)) under two or more cash or deferred arrangements of an Employer or an Affiliate shall be determined as if all those elective deferrals were made under a single arrangement (to the extent permitted by, and in accordance with the requirements of Treasury Regulations under Code Sections 401(k), 401(a)(4) and 410(b)). If this Plan and the other cash or deferred arrangement(s) have different plan years, the Actual Deferral Percentage for a Highly Compensated Employee shall be computed taking into account only the elective deferrals made on behalf of, and compensation received by, the Highly Compensated Employee during the plan year of the plan being tested. The elective deferrals of a Highly Compensated Employee may be aggregated for this purpose even though the cash or deferred arrangements under which they are made use inconsistent ADP Test methods.
- 1.6 ADMINISTRATIVE COMMITTEE** means the Benefits Administrative Committee appointed under Section 9.1.
- 1.7 ADP TEST** means the test set forth in Section 3.3(a). **AFFILIATE** means any corporation or other business entity that (a) is included in a controlled group of corporations within which an Employer also is included, as provided in Code Section 414(b)

(as modified, for purposes of Section 4.4 of the Plan, by Code Section 415(h)); (b) is a trade or business under common control with an Employer, as provided in Code Section 414(c) (as modified, for purposes of Section 4.4 of the Plan, by Code Section 415(h)); (c) constitutes a member of an affiliated service group within which an Employer also is included, as provided in Code Section 414(m); or (d) is required to be aggregated with an Employer pursuant to regulations issued under Code Section 414(o).

1.9 AFTER-TAX CONTRIBUTION means an after-tax contribution made pursuant to Section 3.4.

1.10 AFTER-TAX CONTRIBUTION ACCOUNT means the separate Account that shall be maintained by the Administrative Committee for each Participant to reflect all After-Tax Contributions made by the Participant and any earnings or losses on those After-Tax Contributions.

1.11 APPROVED ABSENCE means an absence from work approved by an Employer under uniform rules and conditions for all Employees.

1.12 BENEFICIARY means as follows:

- (a) The Spouse of a Participant or if: (i) the Participant has no Spouse at his death; or (ii) his Spouse has consented in writing to the designation of another Beneficiary, which consent specifically identifies the Beneficiary with respect to which consent is given and is witnessed by a Plan representative or a notary public, the person(s) designated by the Participant in the latest written notice to the Administrative Committee. The Participant shall have the right to change his Beneficiary designation from time to time in the manner described above.
- (b) Notwithstanding paragraph (a) above, upon the dissolution of the marriage of a Participant, the Administrative Committee shall treat the Participant's former Spouse as having predeceased the Participant with respect to any designation of the former Spouse as the Participant's Beneficiary under paragraph (a) above unless (i) after the dissolution of the marriage, the Participant files with the Administrative Committee another written instrument executed by the Participant explicitly designating the former Spouse as the Participant's Beneficiary, or (ii) a QDRO explicitly requires the Participant to maintain the former Spouse as his Beneficiary. In any case in which the Participant's former Spouse is treated as having predeceased the Participant, no heir or other beneficiary of the former Spouse shall receive any benefits from the Plan as a Beneficiary except as otherwise provided in the Participant's written Beneficiary designation.
- (c) In the event that no Beneficiary designation is effective upon a Participant's death, his Accounts shall be paid to his estate.

1.13 BOARD means the Board of Directors of the Company or the Compensation Committee of the Board of Directors of the Company.

1.14 BREAK IN SERVICE means the following:

- (a) A "Break in Service" means a Plan Year during which an Employee is credited with less than 501 Hours of Service. Notwithstanding the preceding sentence, an Employee shall not incur a Break in Service in the first Plan Year during which he is credited with less than 501 Hours of Service because of an absence from work due to the (i) pregnancy of the Employee; (ii) birth of a child of the Employee; (iii) placement of a child for adoption with the Employee; or (iv) care by the Employee of a child immediately following the birth or placement for adoption of the child.
- (b) An Employee who is on an unpaid leave of absence pursuant to the terms of the federal Family and Medical Leave Act ("FMLA") shall be credited with Hours of Service solely for the purpose of determining whether a Break in Service has occurred, provided the Employee timely returns to active employment with an Employer or Affiliate after the expiration of the FMLA leave.

- (c) To avoid incurring a Break in Service, an Employee may be required to demonstrate to the Administrative Committee that the absence was due to one of the causes described in (a) or (b) above and the number of days for which there was an absence.
- 1.15 **BUSINESS DAY** means any day other than a Saturday, a Sunday or a day on which the NASDAQ Stock Market and the Trustee are authorized to close under the laws of the State of New York (or are in fact closed), and shall mean normal business hours based on Eastern Time.
- 1.16 **CATCH UP CONTRIBUTION** means a contribution made by a Participant pursuant to Section 3.10 that is an “elective deferral” under Code Section 402(g)(3).
- 1.17 **CODE** means the Internal Revenue Code of 1986, as amended from time to time.
- 1.18 **COMPANY** means YRC Worldwide Inc.
- 1.19 **COMPANY CONTRIBUTION ACCOUNT** means the separate Account that shall be maintained by the Administrative Committee for each Participant to reflect all Company Contributions made on behalf of the Participant and any earnings or losses on those Company Contributions.
- 1.20 **COMPANY CONTRIBUTION** means the amount an Employer may pay to the Trust on behalf of a Participant for a Plan Year, as set forth in Section 3.1.
- 1.21 **COMPANY STOCK** means YRC Worldwide Inc. common stock.
- 1.22 **COMPANY STOCK FUND** means an Investment Fund invested entirely in Company Stock.
- 1.23 **COMPENSATION** means the following:
- (a) “Compensation” means a Participant’s total cash compensation from the Employers during a Plan Year, as reported on the Participant’s Treasury Form W-2, plus cash compensation not currently includable in the Participant’s gross income by reason of the application of Code Sections 125, 129, 401(k) and 132(f)(4). The term “Compensation” shall exclude, however, (i) any amounts contributed by the Employers to any insurance, pension or deferred profit sharing plan, (ii) any compensation received pursuant to any qualified or nonqualified stock option or stock bonus plan or any stock appreciation plan, (iii) any remuneration paid or provided in other than cash, (iv) any remuneration paid for other than personal services (e.g., moving expenses or automobile allowances), (v) severance pay, and (vi) any compensation paid during a period when an individual is not an active Participant in the Plan.
- (b) Notwithstanding paragraph (a) above, the term “Compensation” shall include compensation paid to an individual while he is an active participant in a registered retirement plan for employees in Canada maintained by an Employer or an Affiliate during the Plan Year in which the individual becomes a Participant as a result of a transfer of employment to an Employer, but only to the extent the Canadian compensation is the type of compensation described in paragraph (a) above. Compensation paid in Canadian currency to an individual during the Plan Year in which the individual transfers employment and becomes a Participant as a result of a transfer of employment to an Employer shall be converted to United States dollars by applying the United States-Canada currency exchange rate in effect as of the last Business Day of the Plan Year in which the transfer occurs.

(c) Notwithstanding paragraphs (a) and (b) above, the term "Compensation" excludes any compensation in excess of the applicable dollar limit under Code Section 401(a)(17) for any Plan Year.

1.24 DATE OF EMPLOYMENT OR REEMPLOYMENT means the first day on which an Employee performs an Hour of Service.

1.25 DIRECT ROLLOVER means a payment by the Plan to an Eligible Retirement Plan specified by a Distributee.

1.26 DISABILITY means, with respect to a Participant, that the Participant is eligible for, and receiving disability benefits under, his Employer's long-term disability plan or the federal Social Security Act.

1.27 DISQUALIFYING BREAK IN SERVICE means five or more consecutive Breaks in Service.

1.28 DISTRIBUTE means an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a QDRO are Distributees with regard to the interest of the spouse or former spouse.

1.29 EFFECTIVE DATE means January 1, 2006, provided that when an earlier effective date is given any provision under this Plan, that provision shall be treated as an amendment to the Plan as it existed prior to this restatement.

1.30 ELIGIBLE EMPLOYEE means an Employee who is eligible to make Salary Reduction Contributions or After-Tax Contributions under the Plan pursuant to Section 3.2 or 3.4.

1.31 ELIGIBLE RETIREMENT PLAN means any of the following that accepts a Distributee's Eligible Rollover Distribution: (a) an individual retirement account described in Code Section 408(a), (b) an individual retirement annuity described in Code Section 408(b), (c) an annuity plan described in Code Section 403(a), (d) a qualified trust described in Code Section 401(a), (e) an annuity contract described in Code Section 403(b), and (f) an eligible plan under Code Section 457(b) maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

1.32 ELIGIBLE ROLLOVER DISTRIBUTION means the following:

- (a) 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: (1) 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; (2) any distribution to the extent such distribution is required under Code Section 401(a)(9); (3) 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); or (4) any hardship distribution hereunder.
- (b) A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because such portion consists of after-tax employee contributions not includible in gross income, but such portion may be transferred only to an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution includible in gross income and the portion of such distribution not so includible.

- 1.33 EMPLOYEE** means a common law employee of an Employer. The term “Employee” does not include the following individuals:
- (a) An employee included in a unit of employees covered by a collective bargaining agreement with an Employer where retirement benefits were the subject of good faith bargaining between employee representatives and the Employer, except to the extent the benefits provided by the Plan are specifically included under the collective bargaining agreement; provided, however, that if an employee who is excluded from the definition of “Employee” pursuant to this paragraph (a) transfers to an eligible class of Employees, he may participate in the Plan on the Entry Date following the transfer if he otherwise meets the service requirements of Section 2.1 on such date as measured from his Date of Employment;
 - (b) An employee who is a nonresident alien deriving no earned income from an Employer which constitutes income from sources in the United States;
 - (c) A Leased Employee; provided, however, that if a Leased Employee becomes eligible to participate by otherwise becoming an Employee, service during the period in which the individual was a Leased Employee shall be considered when determining such Employee’s Qualifying Period of Service;
 - (d) An individual who is classified by an Employer or Affiliate as an independent contractor, regardless of whether such individual later is determined to be an “Employee” by a court of law or other regulatory agency; or
 - (e) An Employee who is eligible to participate in the New Penn Motor Express, Inc. 401(k) Retirement Plan, the New Penn Motor Express, Inc. Profit Sharing Plan, the Yellow Roadway Corporation Retirement Savings Plan or any other qualified defined contribution plan maintained by an Employer or an Affiliate.
- 1.34 EMPLOYER** means YRC Regional Transportation, Inc. (formerly, USF Corporation, and before that, TNT Freightways Corporation), a Delaware corporation, and any Affiliate that is a Participating Employer.
- 1.35 ENTRY DATE** means the first day of the calendar month coincident with or next following the date on which an Employee fulfills the eligibility requirements of Section 2.1.
- 1.36 ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.37 EXCESS AGGREGATE CONTRIBUTIONS** means, with respect to a Plan Year, the amount of excess aggregate contributions (within the meaning of Code Section 401(m)(6)(B)) under the Plan.
- 1.38 EXCESS CONTRIBUTIONS** means, with respect to a Plan Year, the amount of excess contributions (within the meaning of Code Section 401(k)(8)(B)) under the Plan.
- 1.39 EXCESS DEFERRALS** means, with respect to a calendar year, the excess of (a) an Eligible Employee’s aggregate elective deferrals (within the meaning of Code Section 402(g)) under this Plan and any other plan or arrangement in the calendar year, over (b) the Code Section 402(g) dollar limit in effect for the calendar year.
- 1.40 HIGHLY COMPENSATED EMPLOYEE** means a highly compensated employee, within the meaning of Code Section 414(q), of an Employer or an Affiliate.

- 1.41 HOUR OF SERVICE** means the following:
- (a) Each hour for which an Employee is paid or entitled to payment for the performance of duties for an Employer or an Affiliate. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and
 - (b) Each hour for which an Employee is paid or entitled to payment by an Employer or an Affiliate on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or Approved Absence. No more than 501 Hours of Service shall be credited under this paragraph (b) for any single continuous period (whether or not such period occurs in a single computation period). Hours of Service under this paragraph (b) shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, which are incorporated herein by this reference; and
 - (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer or an Affiliate. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the computation period or periods to which the award, agreement, or payment pertains rather than the computation period in which the award, agreement, or payment is made; and
 - (d) In the event that records are not kept that accurately reflect the number of hours worked, an Employee shall be credited with 45 Hours of Service for each week in which he would be credited with at least one Hour of Service.
- 1.42 INVESTMENT FUND** means an investment fund established under Section 8.4.
- 1.43 INVESTMENT MANAGER** means any person, firm, or corporation who is a registered investment advisor under the Investment Advisors Act of 1940, a bank, or an insurance company, and (a) who has the power to manage, acquire, or dispose of Plan assets, and (b) who acknowledges in writing his fiduciary responsibility to the Plan.
- 1.44 LIMITATION YEAR** means the Plan Year.
- 1.45 LEASED EMPLOYEE** means any individual (other than a common law employee of an Employer) who, pursuant to an agreement between an Employer and another person, performs services (a) for the Employer (or for the Employer and any related person determined in accordance with Code Section 414(n)(6)), (b) on a substantially full-time basis for a period of at least one year, and (c) under the primary direction and control of the Employer.
- 1.46 MATCHING CONTRIBUTION** means the matching contribution made to the Matching Contribution Account of a Participant by his Employer, as provided in Section 3.5.
- 1.47 MATCHING CONTRIBUTION ACCOUNT** means the separate Account maintained by the Administrative Committee for each Participant to reflect all Matching Contributions made on behalf of the Participant and any earnings or losses on those Matching Contributions.

- 1.48 NAMED FIDUCIARY** means the Administrative Committee or the Trustee, but only with respect to the specific responsibilities of either for Plan and Trust Fund administration, all as described in Article 9. For this purpose, the term “Named Fiduciary” shall have the same meaning as that term is assigned under ERISA Section 402(a)(2).
- 1.49 NONHIGHLY COMPENSATED EMPLOYEE** means an Employee who is not a Highly Compensated Employee.
- 1.50 NORMAL RETIREMENT AGE** means age 65.
- 1.51 PARTICIPANT** means an Employee who fulfills the eligibility requirements as provided in Article 2 and who continues to qualify for participation, and any former Employee who continues to have an Account under the Plan.
- 1.52 PARTICIPATING EMPLOYER** means any Affiliate that adopts this Plan pursuant to Article 13 with the consent of the Company.
- 1.53 PLAN** means this YRC Regional Transportation, Inc. 401(k) Retirement Plan, as amended from time to time.
- 1.54 PLAN YEAR** means the 12-month period beginning on each January 1 and ending on the following December 31.
- 1.55 PRIOR PLAN** means the First Amended and Restated USF Employees’ 401K Retirement Plan, as it existed prior to the Effective Date.
- 1.56 QUALIFYING PERIOD OF SERVICE** means in the case of a permanent, full-time Employee, any 90-day consecutive period of employment with an Employer or any Affiliate. In the case of a temporary or part-time Employee, the term “Qualifying Period of Service” means a consecutive 12-month period in which the Employee completes 1,000 Hours of Service. The consecutive 12-month period to be taken into account shall be the consecutive 12-month period commencing with the Employee’s Date of Employment or Reemployment and each anniversary of that date. Notwithstanding the preceding sentence, with respect to any temporary or part-time Employee hired prior to January 1, 2005, who did not complete 1,000 Hours of Service prior to January 1, 2006, the consecutive 12-month period shall be the calendar year. For this purpose, a “full-time Employee” means an Employee who is regularly scheduled to work at least 40 hours per week, and a “part-time Employee” means an Employee who is not a full-time employee.
- 1.57 QDRO** means a “qualified domestic relations order” (within the meaning of Code Section 414(p)).
- 1.58 ROLLOVER ACCOUNT** means the separate Account which shall be maintained by the Administrative Committee for each Participant or Employee to reflect any Rollover Contribution made by the Participant or Employee and any earnings or losses on the Rollover Contributions.
- 1.59 ROLLOVER CONTRIBUTION** means a rollover contribution made by a Participant or Employee, as set forth in Section 3.8.
- 1.60 SALARY REDUCTION CONTRIBUTION** means a contribution made by an Employer attributable to the reduction in Compensation an Eligible Employee agrees to accept from his Employer each Plan Year as described in Section 3.2.
- 1.61 SALARY REDUCTION CONTRIBUTION ACCOUNT** means the separate Account maintained by the Administrative Committee for each Participant to reflect all Salary Reduction Contributions and Special Company Contributions made on behalf of the Participant and any earnings or losses on those Salary Reduction Contributions and Special Company Contributions.

- 1.62 SPECIAL COMPANY CONTRIBUTIONS** means the contributions made by an Employer as described in Section 3.7.
- 1.63 SPOUSE** means, as determined under the Code or other federal law, the legally married husband or wife of a Participant at the earlier of his date of death or the date benefits commence to the Participant under this Plan. To the extent required by a QDRO, the term "Spouse" shall include the former husband or wife of the Participant.
- 1.64 TRUST AGREEMENT and TRUST** mean, respectively, the agreement between the Company and the Trustee governing the administration of the Trust, as it may be amended from time to time, and the Trust established thereunder.
- 1.65 TRUST FUND** means all cash, securities and other property held by the Trustee pursuant to the terms of the Trust Agreement, together with any earnings or losses from the assets held in the Trust Fund.
- 1.66 TRUSTEE** means the person, persons, entity, or entities appointed by the Company as provided under Section 8.1 to act as Trustee of the Trust.
- 1.67 VALUATION DATE** means each Business Day of the year or any other date(s) the Administrative Committee shall designate.
- 1.68 VESTED INTEREST** means that portion of a Participant's Account which is nonforfeitable and vested.
- 1.69 CONSTRUCTION**
- (a) Unless the context otherwise indicates, the masculine wherever used in this Plan document shall include the feminine and neuter, the singular shall include the plural and, unless otherwise indicated, references to sections shall be to sections of the Plan.
 - (b) Wherever the word "person" appears in the Plan, it shall refer to both natural and legal persons.
 - (c) A number of the provisions of the Plan are designed to contain provisions required or contemplated by certain federal laws and/or the regulations issued under these laws. All these provisions are intended to have the meaning required or contemplated by the provisions of the law or regulations and shall be construed in accordance with valid regulations and valid published governmental rulings and interpretations of the provisions. In applying these provisions of the Plan, each Plan fiduciary may rely (and shall be protected in relying) on any determination or ruling made by any agency of the United States government that has authority to issue regulations, rulings or determinations with respect to the federal law thus involved.

ARTICLE 2
ELIGIBILITY AND PARTICIPATION

2.1 ELIGIBILITY

Each Employee or former Employee who was a Participant in the Prior Plan on December 31, 2005, shall continue to participate in the Plan on the Effective Date, provided that he is still an Employee or has an Account Balance on the Effective Date. Each other Employee shall be eligible to become a Participant in the Plan on the first Entry Date on or after the Effective Date coincident with or next follows the date on which the Employee completes a Qualifying Period of Service, provided that he is an Employee on that Entry Date.

2.2 TERMINATION AND REEMPLOYMENT

- (a) **Termination and Reemployment of Participant.** A Participant who terminates employment with the Employers and is subsequently reemployed as an Employee shall be eligible to become an active Participant again effective as soon as administratively feasible after his Date of Reemployment.
- (b) **Termination and Reemployment Prior to Disqualifying Break in Service.** An Employee who terminates employment before becoming a Participant and who is reemployed before incurring a Disqualifying Break in Service shall be eligible to become a Participant on the first Entry Date coincident with or next following his satisfaction of the eligibility requirements of Section 2.1, based on his original Date of Employment.
- (c) **Termination and Reemployment After Disqualifying Break.** An Employee who terminates employment before becoming a Participant and who is reemployed after incurring a Disqualifying Break in Service shall be eligible to become a Participant on the first Entry date coincident with or next following his satisfaction of the eligibility requirements of Section 2.1, based on his Date of Reemployment.

ARTICLE 3 CONTRIBUTIONS

3.1 COMPANY CONTRIBUTIONS

An Employer may contribute to the Trust Fund for each Plan Year, as Company Contributions, such amount as the Board shall determine in its sole discretion, which Company Contributions shall be allocated among the Company Contribution Accounts in accordance with Section 4.3. An Employer may make a Company Contribution in cash, Company Stock, property or any combination thereof.

3.2 SALARY REDUCTION CONTRIBUTIONS

- (a) **Salary Reduction Agreement.**
 - (1) Each Eligible Employee shall have the option to enter into a written (or by any other means approved by the Company) salary reduction agreement with his Employer effective on the first Entry Date on which the Eligible Employee is otherwise eligible to participate in the Plan, which agreement shall be applicable to all Compensation received thereafter. The salary reduction agreement shall provide that the Eligible Employee agrees to accept a reduction in his Compensation from his Employer equal to (i) an integral percentage of from 1% to 89% of his Compensation, *provided, however*, that (1) in no event shall the sum of the Eligible Employee's Salary Reduction Contributions, After-Tax Contributions and Catch-Up Contributions exceed 89% of his Compensation for any payroll period, and (2) amounts deferred under the Eligible Employee's salary reduction agreement shall be subject to the other limitations of this Section 3.2 and the limitations of Sections 3.3 and 4.4.
 - (2) Elections under this Section 3.2 shall apply to annual bonus payments by an Employer to an Eligible Employee, including bonus payments under the Employer's Pay for Performance Plan, *unless* the Eligible Employee makes a separate election hereunder with respect to annual bonus payments. Notwithstanding the limitations in subparagraph (1) above, this separate election may be from 0% to 89% of a Participant's annual bonus payment (after applicable payroll taxes) in 1% increments. The separate election shall be made in October or November, and shall apply to any annual bonus paid during the next year (generally in the following February or March).

- (b) **Change in Amount of Salary Reduction Contributions.** Each Eligible Employee may change the amount of his Salary Reduction Contributions by means of an appropriate authorization or notice to his Employer, on a form or in the manner prescribed by the Administrative Committee. The Administrative Committee may establish additional rules regarding the timing and frequency of a change in the amount of Salary Reduction Contributions, provided the rules are applied uniformly to all Eligible Employees.
- (c) **Discontinuance of Salary Reduction Contributions.** Each Eligible Employee may elect to discontinue his Salary Reduction Contributions by means of an appropriate authorization or notice to his Employer, on a form or in the manner prescribed by the Administrative Committee. The change shall be effective as soon as practicable after the receipt of the authorization or notice by the Administrative Committee. The Eligible Employee may elect to resume his Salary Reduction Contributions at any time by filing another authorization or notice with his Employer in the manner prescribed by the Administrative Committee.
- (d) **Late Enrollment.** An Employee who does not elect to participate in the Plan on the first Entry Date on which he becomes an Eligible Employee may subsequently elect to participate by filing the appropriate authorization form with his Employer in the manner prescribed by the Administrative Committee.
- (e) **Salary Reduction Contribution Account.** The Administrative Committee shall establish and maintain a Salary Reduction Contribution Account in the name of each Eligible Employee who elects to enter into a salary reduction agreement with an Employer to make Salary Reduction Contributions under the Plan.
- (f) **Excess Deferrals.**
 - (1) Except to the extent permitted under Section 3.10, the maximum amount of Salary Reduction Contributions that can be made on behalf of each Participant in any calendar year under this Plan and any other plan or arrangement shall not exceed the annual dollar limit of Code Section 402(g). If a Participant makes Excess Deferrals under this Plan and any other plan or arrangement, the Participant must notify the Administrative Committee in writing by March 1 of the following year of the amount, if any, of the Excess Deferrals to be refunded from this Plan. The Participant shall be deemed to have notified the Administrative Committee by March 1 of any Excess Deferrals under this Plan and any other plan or arrangement maintained by an Employer or an Affiliate. The amount of Excess Deferrals to be refunded shall be paid to the Participant in a single payment not later than April 15 following the close of the calendar year in for which they were made and shall include any income or loss allocated to the refunded Excess Deferrals, as determined in subparagraph (2) below (i) during the calendar year for which the Excess Deferrals were made, and (ii) for the period between the end of that year and the date of the refund payment (the “gap period”). Although Excess Deferrals made with respect to a calendar year may be refunded, they shall be considered as Salary Reduction Contributions for the Plan Year in which they were originally made and shall be included in the Participant’s Actual Deferral Percentage for that year. Notwithstanding the foregoing, Salary Reduction Contributions shall not include any Excess Deferrals properly distributed as excess annual additions in accordance with Section 4.4.
 - (2) The income or loss allocated to Excess Deferrals for the (i) the calendar year for which the Excess Deferrals were made, and (ii) the gap period (as defined in subparagraph (1) above, shall be determined in accordance with this subparagraph (2).

- (i) The income or loss allocable to Excess Deferrals for the calendar year for which they were made shall be determined by multiplying the income or loss for the calendar year allocable to the Participant's Salary Reduction Contributions for the year by a fraction, the numerator of which is the amount of Excess Deferrals, and the denominator of which is the closing balance (as of the end of the calendar year) of the Participant's Salary Reduction Contribution Account reduced by gains (or increased by losses) allocable to that Account during the calendar year.
- (ii) The income or loss allocable to Excess Deferrals for the gap period may be calculated by multiplying the income or loss allocable to the Excess Deferrals for the period between the end of the calendar year and the last day of the month preceding the refund date of the Excess Deferrals by a fraction determined under the method specified in subparagraph (i) above. Alternatively, the allocable income or loss for the gap period may be deemed to equal 10% of the income or loss allocable to the Excess Deferrals for the calendar year for which they were made, multiplied by the number of calendar months that have elapsed since the end of that calendar year through the refund date. For this purpose, a refund payment occurring on or before the 15th day of the month will be treated as having been made on the last day of the preceding month. A refund payment occurring after the 15th day of the month will be treated as having been made on the first day of the next month.

3.3 ADP TEST

(a) ADP Test.

- (1) The Plan shall satisfy the ADP Test each Plan Year. The ADP Test shall be satisfied for a Plan Year if (i) the Actual Deferral Percentage for the Plan Year for the group of Eligible Employees who are Highly Compensated Employees is not more than $1\frac{1}{4}$ times the Actual Deferral Percentage for the Plan Year for the group of Eligible Employees who are Nonhighly Compensated Employees; or (ii) the Actual Deferral Percentage for the Plan Year for the group of Eligible Employees who are Highly Compensated Employees is not more than two percentage points greater than, and not more than two times, the Actual Deferral Percentage for the Plan Year for the group of Eligible Employees who are Nonhighly Compensated Employees.
- (2) If this Plan is aggregated with one or more other plans in order for this Plan or the other plan or plans to satisfy the requirements of Code Section 401(a)(4) or 410(b), then the ADP Test shall be applied by determining the Actual Deferral Percentages of Eligible Employees as if the aggregated plans were a single plan. This Plan and the other plan(s) may be aggregated under this Section 3.3 only to the extent permitted under Code Sections 401(k), 401(a)(4) and 410(b).
- (3) In lieu of applying the ADP Test to all Eligible Employees as described in subparagraph (1) above, the Administrative Committee may elect to apply the ADP Test by disregarding Eligible Employees who are Nonhighly Compensated Employees and have not completed the minimum age and service conditions described in Code Section 410(a) as of the end of the applicable Plan Year, as provided in Code Section 401(k)(3)(F).
- (4) If portions of the Plan or groups of Eligible Employees are required to be disaggregated for purposes of performing the ADP Test, the ADP Test shall be applied by determining the Actual Deferral Percentages of the Eligible Employees as if the disaggregated Eligible Employees or disaggregated portions of the Plan were separate plans.

(b) **Correction of ADP Test Failure.**

- (1) In the event that the ADP Test is not satisfied for any Plan Year (after taking into account any Special Company Contributions made pursuant to Section 3.7), the Excess Contributions, along with the earnings of the Trust Fund allocable to the Excess Contributions (as allocated pursuant to the procedure set forth in Section 3.2(f)(2), but with respect to the Plan Year), shall be distributed, in accordance with the leveling method described in subparagraph (2) below to the Highly Compensated Employees who made the Excess Contributions within two and one-half months after the Plan Year in which the Excess Contributions were made, or, if the Administrative Committee shall so direct, before the last day of the Plan Year after the Plan Year in which the Excess Contributions were made.
- (2) Excess Contributions shall be distributed as follows. The Administrative Committee shall calculate the aggregate dollar amount of Excess Contributions for all Highly Compensated Employees. The Salary Reduction Contributions of the Highly Compensated Employees with the highest dollar amount of Salary Reduction Contributions then shall be distributed in an amount necessary to reduce the dollar amount of those Highly Compensated Employees' Salary Reduction Contributions to an amount equal to the dollar amount of the Salary Reduction Contributions of the Highly Compensated Employees with the next highest dollar amount of Salary Reduction Contributions or, if less, to reduce the dollar amount of Excess Contributions to zero. If this reduction is not sufficient to reduce the dollar amount of Excess Contributions to zero, the procedure set forth in the preceding sentence shall again be followed until all Excess Contributions have been distributed.

3.4 AFTER-TAX CONTRIBUTIONS

- (a) **After-Tax Contributions.** Subject to the limitations of Section 4.4, an Eligible Employee may elect, at the time and in the manner prescribed by the Administrative Committee, to make After-Tax Contributions to the Trust Fund of not less than 1%, nor more than 15%, of his Compensations for each payroll period in 1% increments; *provided, however*, that in no event shall the sum of the Eligible Employee's Salary Reduction Contributions, After-Tax Contributions and Catch-Up Contributions exceed 89% of his Compensation for any payroll period.
- (b) **After-Tax Contribution Account.** The Administrative Committee shall establish and maintain an After-Tax Contribution Account in the name of each Eligible Employee who makes After-Tax Contributions under the Plan.

3.5 MATCHING CONTRIBUTIONS

- (a) **Matching Contributions.**
 - (1) Each Plan Year, an Employer may contribute to the Plan, on behalf of each of the Employer's Eligible Employee's who authorizes Salary Reduction Contributions during the Plan Year, a Matching Contribution in an amount determined in the sole and exclusive discretion of the Board, subject to the requirements of Section 4.3. An Employer may make Matching Contributions in cash, Company Stock, property or any combination thereof.

- (2) If a Participant is entitled to an allocation of Matching Contributions in a Plan Year, the Matching Contributions shall be made on the Participant's behalf by his Employer based upon the Participant's Salary Reduction Contributions made during the Plan Year while employed by his Employer.
- (3) No Employer shall make any Matching Contribution with respect to an Eligible Employee's After-Tax Contributions or Catch-Up Contributions.
- (b) **Matching Contribution Account.** The Administrative Committee shall establish and maintain a Matching Contribution Account in the name of each Participant on whose behalf Matching Contributions are made.
- (c) **Forfeiture of Matching Contributions.** Notwithstanding anything in this Plan to the contrary, any Matching Contribution associated with an Excess Deferral refunded under Section 3.2(f) or an Excess Contribution refunded under Section 3.3 shall be forfeited within two and one-half months after the end of the Plan Year in which the Excess Deferral or the Excess Contribution was made and shall be used to reduce future Company Contributions, Matching Contributions or Special Company Contributions, to restore Account Balances forfeited under Section 6.5, or to pay administrative expenses of the Plan.

3.6 ACP TEST

- (a) **ACP Test.**
 - (1) The Plan shall satisfy the ACP Test each Plan Year. The ACP Test shall be satisfied for a Plan Year if (i) the Actual Contribution Percentage for the Plan Year for the group of Eligible Employees who are Highly Compensated Employees is not more than 1-1/4 times the Actual Contribution Percentage for the Plan Year for the group of Eligible Employees who are Nonhighly Compensated Employees; or (ii) the Actual Contribution Percentage for the Plan Year for the group of Eligible Employees who are Highly Compensated Employees is not more than two percentage points greater than, and not more than two times, the Actual Contribution Percentage for the Plan Year for the group of Eligible Employees who are Nonhighly Compensated Employees.
 - (2) If this Plan is aggregated with one or more other plans in order for this Plan or the other plan or plans to satisfy the requirements of Code Section 401(a)(4) or 410(b), then the ACP Test shall be applied by determining the Actual Contribution Percentages of Eligible Employees as if the aggregated plans were a single plan. This Plan and the other plan(s) may be aggregated under this Section 3.6 only to the extent permitted under Code Sections 401(k), 401(a)(4) and 410(b).
 - (3) In lieu of applying the ACP Test to all Eligible Employees as described in subparagraph (1) above, the Administrative Committee may elect to apply the ACP Test by disregarding Eligible Employees who are Nonhighly Compensated Employees and have not completed the minimum age and service conditions described in Code Section 410(a) as of the end of the applicable Plan Year, as provided in Code Section 401(m)(5)(C).
 - (4) If portions of the Plan or groups of Eligible Employees are required to be disaggregated for purposes of performing the ACP Test, the ACP Test shall be applied by determining the Actual Contribution Percentages of the Eligible Employees as if the disaggregated Eligible Employees or disaggregated portions of the Plan were separate plans.

(b) **Correction of ACP Test Failure.**

- (1) In the event that the ACP Test is not satisfied for any Plan Year (after taking into account any Special Company Contributions made pursuant to Section 3.7), the Excess Aggregate Contributions, along with the earnings of the Trust Fund allocable to such amount (as allocated pursuant to the procedure set forth in Section 3.2(f)(2), but with respect to the Plan Year), shall be distributed, in accordance with the leveling method described in subparagraph (2) below, to the Highly Compensated Employees who made the Excess Aggregate Contributions within two and one-half months after the Plan Year in which the Excess Aggregate Contributions were made, or instead, if the Administrative Committee shall so direct, before the last day of the Plan Year after the Plan Year in which the Excess Aggregate Contributions were made.
- (2) Excess Aggregate Contributions shall be distributed as follows. The Administrative Committee shall calculate the dollar amount of the Excess Aggregate Contributions for all Highly Compensated Employees for the Plan Year. The After-Tax Contributions and/or Matching Contributions of the Highly Compensated Employees with the highest dollar amount of After-Tax Contributions and/or Matching Contributions then shall be distributed in an amount necessary to reduce the dollar amount of the Highly Compensated Employees' After-Tax Contributions and/or Matching Contributions to an amount equal to the dollar amount of the After-Tax Contributions and/or Matching Contributions of the Highly Compensated Employees with the next highest dollar amount of After-Tax Contributions and/or Matching Contributions or, if less, to reduce the dollar amount of the Excess Aggregate Contributions to zero. If this reduction is not sufficient to reduce the dollar amount of the Excess Aggregate Contributions to zero, the procedure set forth in the preceding sentence shall again be followed until all the Excess Aggregate Contributions have been distributed.

3.7 SPECIAL COMPANY CONTRIBUTIONS; RECHARACTERIZATION OF COMPANY CONTRIBUTIONS

(a) **Special Company Contributions.**

- (1) In order to satisfy the ADP Test or ACP Test, an Employer may, in its discretion and by action of the Board, make Special Company Contributions in the form of (i) qualified non-elective contributions ("QNECs") (within the meaning of Code Section 401(m)(5)) to the Plan on behalf of some or all Eligible Employees who are Nonhighly Compensated Employees, or (ii) to the extent permitted by Treasury Regulations, recharacterize Company Contributions as Salary Reduction Contributions or Matching Contributions, whichever is applicable.
- (2) If an Employer makes QNECs to the Plan or Company Contributions are recharacterized pursuant to subparagraph (1) above, on behalf of any Eligible Employee to satisfy the ADP Test or ACP Test, then the QNECs shall be deemed, for all Plan purposes (except as provided in Section 7.2) to be Salary Reduction Contributions, and shall be allocated to the Salary Reduction Contribution Accounts of the applicable Eligible Employees; provided, however, that Matching Contributions shall not be based upon these contributions.

(b) **Limitation on Targeted QNECs.**

- (1) Notwithstanding paragraph (a) above, QNECs made on behalf of an Eligible Employee shall not be taken into account for ADP Test purposes for a Plan Year to the extent that the amount of the QNECs exceed the product of

(i) the Eligible Employee's Compensation for the Plan Year, and (ii) the greater of 5% or two times the Plan's "representative contribution rate" (as defined below) for the Plan Year. Any QNEC taken into account for the ADP Test under Treasury Regulations Section 1.401(k)-2(a)(6) (including the determination of the representative contribution rate for purposes of Treasury Regulations Section 1.401(k)-2(a)(6)(iv)(B)) shall not be taken into account for purposes of the ACP Test (including the determination of the representative contribution rate).

- (2) For purposes of this paragraph (b), (1) the Plan's "representative contribution rate" for a Plan Year is the lowest applicable contribution rate (as defined below) of any Eligible Employee who is a Nonhighly Compensated Employee among a group of such Eligible Employees that consists of half of all such Eligible Employees for the Plan Year (or, if greater, the lowest applicable contribution rate of any Eligible Employee who is a Nonhighly Compensated Employee in the group of all such Eligible Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and (2) the "applicable contribution rate" for an Eligible Employee is the amount of QNECs made on behalf of the Eligible Employee taken into account under the ADP Test for the Plan Year, divided by the Eligible Employee's Compensation for the Plan Year.

3.8 ROLLOVER CONTRIBUTIONS

- (a) **Rollover Contributions.** Any Employee, regardless of whether he has become a Participant, may, subject to obtaining the prior approval of the Administrative Committee, at any time transfer (or cause to be transferred) to the Trust Fund up to the entire amount of cash received in an eligible rollover distribution (within the meaning of Code Section 402) from an eligible retirement plan (within the meaning of Code Section 402), provided however, that (1) in the event of a rollover of amount(s) received by, and made payable to, the Employee and not of amount(s) transferred in a direct rollover, the amount(s) attributable to the distribution must be received by the Trustee within 60 days after the Employee's receipt of the distribution, and (2) the Plan shall not accept any part of an eligible rollover distribution attributable to after-tax contributions.
- (b) **Procedure.** An Employee shall furnish the Administrative Committee with a written statement that a contribution to the Trust Fund is a Rollover Contribution, together with such other statements and information as may be required by the Administrative Committee in order to establish that the contribution does not contain amounts from sources other than provided in paragraph (a) above and that the Rollover Contribution otherwise meets the requirements of law. Acceptance by the Trustee of any amount under these provisions shall not be construed as a determination of the Employee's tax consequences by the Administrative Committee.
- (c) **Rollover Contribution Account.** The Administrative Committee shall establish and maintain a Rollover Account in the name of each Employee who elects to roll over amounts into the Trust Fund pursuant to the provisions of this Section 3.8.

3.9 TRANSFERS OF ASSETS TO THE PLAN

If another plan that is qualified under Code Section 401(a) is merged into this Plan, or assets from the qualified plan of an Affiliate are transferred to this Plan, then, for purposes of this Plan and absent direction by the Administrative Committee to the contrary, any amounts attributable to salary reduction contributions (not considered as taxable income) thereunder shall be combined with amounts hereunder attributable to Salary Reduction Contributions; any amounts attributable to employer matching contributions (or contributions made by an employer in relation to the employee's salary reduction contributions or after-tax contributions) thereunder shall be combined with amounts hereunder attributable to Matching Contributions; any amounts attributable to employer profit sharing contributions or non-elective contributions thereunder shall be combined

with amounts hereunder attributable to Company Contributions; and any amounts attributable to employee contributions (or contributions considered as taxable income) thereunder shall be accounted for separately under this Plan as After-Tax Contributions. All such transferred amounts shall be vested hereunder to at least the extent provided in such other qualified plan. Notwithstanding anything herein to the contrary, absent the consent of the Administrative Committee, assets from a plan subject to the joint and survivor annuity requirements of Code Section 401(a)(11) shall not be entitled to be transferred to this Plan.

3.10 CATCH UP CONTRIBUTIONS

All Employees who are eligible to make Salary Reduction Contributions under the Plan for a Plan Year and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of Code Section 414(v). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b) or 416, as applicable, by reason of the making of such Catch-Up Contributions. Catch-Up Contributions shall not be eligible for Matching Contributions.

3.11 COMPLIANCE MEASURES

An Employer may refuse to give effect to any salary reduction agreement entered into, or any After-Tax Contribution election made, by an Eligible Employee at any time if the Administrative Committee determines that such refusal is necessary to ensure that, with respect to a Plan Year (a) the amount of the Participant's Salary Reduction Contributions do not exceed the Code Section 402(g) limit on elective deferrals, (b) the annual additions to the Participant's Account do not exceed the limitations of Section 4.4, or (c) to ensure the Plan's satisfaction of the ADP Test or ACP Test.

3.12 PAYMENT TO TRUSTEE

- (a) **Employee Contributions.** An Employer shall contribute to the Trust Fund, as soon as practicable after the end of each payroll period, but not later than the time period that may be mandated by law or by regulation, an amount equal to the aggregate Salary Reduction Contributions and After-Tax Contributions made by and on behalf of all of its Eligible Employees for the payroll period.
- (b) **Employer Contributions.** Company Contributions, Matching Contributions and Special Company Contributions hereunder shall be made to the Trustee no later than the time prescribed by law for filing the respective Employer's Federal income tax return for the Plan Year to which they relate, including any extensions thereof.

ARTICLE 4

ALLOCATIONS, ACCOUNTING, AND ADJUSTMENTS

4.1 COMPOSITION OF TRUST FUND

All amounts contributed to the Plan, as increased or decreased by income, expenditure, appreciation, and depreciation, shall constitute a single fund known as the Trust Fund. Separate Accounts shall be maintained for each Participant as required by Article 3 or any other provision of the Plan.

4.2 ALLOCATION OF EARNINGS TO ACCOUNTS

Earnings of the Trust Fund shall be allocated to the Accounts of all Participants as of each Valuation Date by credit or deduction therefrom, as the case may be, of a portion of the increase or decrease in the value of the respective investment funds of the Trust Fund since the preceding Valuation Date attributable to interest, dividends, changes in market value,

expenses, and gains and losses realized from the sale of assets, provided, however, that a Participant's Accounts shall not share in the allocations hereunder to the extent that the Participant has directed the investment of his Accounts pursuant to Section 8.4. Allocations hereunder shall be made in the proportion that each of the opening Account Balances (the Account Balance as of the previous Valuation Date adjusted by subtracting withdrawals and distributions, and by adding one-half (1/2) of all periodic current contributions and Rollover Contributions deposited in the Trust Fund since the last Valuation Date) invested in such investment fund bears to the total of all the opening Account Balances, as adjusted, invested in the investment fund. Unless otherwise specified above, as of each Valuation Date, after the allocation of earnings but prior to the allocation of Company Contributions and Matching Contributions, the Salary Reduction Contributions, After-Tax Contributions and Rollover Contributions, if any, shall be allocated to the Accounts of the Participants on whose behalf such contributions are made.

4.3 ELIGIBILITY FOR ALLOCATION OF COMPANY CONTRIBUTIONS AND MATCHING CONTRIBUTIONS

(a) **Allocation of Company Contributions.**

As of the last day of each calendar quarter in a Plan Year after the allocation of earnings, Rollover Contributions, Salary Reduction Contributions and After-Tax Contributions, Company Contributions, if any, made by an Employer for such quarter shall be allocated to the Company Contribution Account of each Eligible Participant (as defined below) (whether or not the Eligible Participant made Salary Reduction Contributions or After-Tax Contributions during the calendar quarter), in the same proportion that the Eligible Participant's Compensation for the quarter bears to the total Compensation for the quarter of all Eligible Participants. For purposes of this Section 4.3, an "Eligible Participant" is an Employee who (1) has completed at least 1,000 Hours of Service during any consecutive 12-month period, and (2) is an active Employee as of the last Business Day of the calendar quarter in question.

(b) **Compliance with Code Section 410(b).** If the Plan would fail to meet the coverage requirements of Code Section 410(b)(1) for a Plan Year due to the ineligibility of one or more Participants whose employment with an Employer has terminated before the end of a calendar quarter in the Plan Year, then the Administrative Committee shall determine, in accordance with uniform and nondiscriminatory procedures, the minimum number of members of the group of terminated Participants to share in Company Contributions in order to meet the coverage tests under Code Section 410(b) for the Plan Year.

(c) **Retirees, etc.** Notwithstanding paragraph (a) above, a Participant who during the Plan Year, has (1) terminated employment with the Employers on or after attaining Normal Retirement Age, (2) died, or (3) become Disabled, shall also be eligible to share in his Employer's Company Contributions, if any, for the Plan Year.

(d) **Allocation of Matching Contributions.** Following the allocation of Company Contributions, if any, Matching Contributions, if any, and if not previously allocated, then shall be allocated as provided in Section 3.5.

4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Limitation on Annual Additions.** Except as otherwise provided under Section 3.10 of the Plan and Code Section 414(v), the sum of the Company Contributions, Salary Reduction Contributions, After-Tax Contributions, Matching Contributions, Special Company Contributions and forfeitures allocated to a Participant's Accounts for any Limitation Year shall not exceed the lesser of: (1) \$40,000, as adjusted for cost-of-living increases under Section 415(d) of the Code, or (2) 100% of the Participant's compensation (within the meaning of Code Section 415(c)(3)) for the Limitation

Year. The foregoing compensation limit shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or 419A(f)(2)) which would otherwise be treated as an annual addition.

- (b) **Correction of Excess Annual Additions.** In the event that the additions to a Participant's Accounts in a Limitation Year would be in excess of the maximum annual limits under this Section 4.4 (1) as a result of a reasonable error in estimating a Participant's Compensation; (2) as a result of a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)), or (3) under other facts and circumstances to which Treasury Regulation Section 1.415-6 shall be applicable, the After-Tax Contributions, and then, if necessary, the Salary Reduction Contributions made by or with respect to the Participant shall be distributed to him to the extent that the distribution would reduce the amount in excess of the limits of this Section 4.4, and amounts otherwise in excess of the limits of this Section 4.4 remaining after such distribution shall be allocated to a suspense account in an amount necessary to bring the annual additions within the maximum annual limits, and shall be allocated pursuant to Treasury Regulation Section 1.415-6(b)(6)(iii) in future Limitation Years. The foregoing notwithstanding, the Administrative Committee may comply with either Treasury Regulation Section 1.415-6(b)(6)(i) or Treasury Regulation Section 1.415-6(b)(6)(ii), in lieu of the Treasury Regulation Section 1.415-6(b)(6)(iii).
- (c) **Special Rules.** For purposes of this Section 4.4, this Plan and any other qualified defined contribution plan maintained by an Employer or an Affiliate shall be considered as a single defined contribution plan if a Participant is a participant in both plans. Amounts allocated in Limitation Years beginning after March 31, 1984 to a Participant's individual medical benefit account, as defined in Code Section 415(l)(1), which is part of a defined benefit plan maintained by an Employer or an Affiliate shall be treated as annual additions to a defined contribution plan. Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a Participant who is a key employee, as defined in Code Section 419A(d), under a welfare benefit fund, as defined in Code Section 419(e), maintained by an Employer or an Affiliate, shall be treated as annual additions to a defined contribution plan. Notwithstanding the foregoing, the compensation limit described in paragraph (a) above shall not apply to any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which otherwise is treated as an annual addition under Code Section 415(l)(1). If a reduction is necessary under paragraph (b) above, then the reduction shall first be made to the annual additions under this Plan.

ARTICLE 5

VESTING

5.1 PARTICIPANT ACCOUNTS

A Participant shall at all times be 100% vested in his Accounts.

5.2 AMENDMENT TO VESTING SCHEDULE

No amendment to the vesting provisions of the Plan shall deprive a Participant of his Vested Interest in his Account Balance prior to the date of amendment. Further, if the vesting schedule of the Plan is amended, or if the Plan is amended in any way that directly or indirectly affects the computation of a Participant's Vested Interest in his Company Contribution Account or Matching Contribution Account, or if the Plan is deemed amended by an automatic change to or from the top-heavy vesting schedule, each Participant with at least three years of vesting service may elect, within a reasonable period after the adoption of the amendment or change, to have his Vested Interest in his Company Contribution Account or Matching Contribution Account computed under the Plan without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted and shall end on the latest of 60 days after: (1) the amendment is adopted; (2) the amendment becomes effective; or (3) the Participant is issued written notice of the amendment by the Company.

ARTICLE 6
TIME AND METHOD OF PAYMENT

6.1 NORMAL FORM OF PAYMENT FOR EMPLOYEES

- (a) **Form of Payment.** The Vested Interest of a Participant's Account Balance shall be paid to the Participant or, in the event of his death, to his Beneficiary in cash in one single sum distribution.
- (b) **Consent to Distribution.**
- (1) If a Participant's Vested Interest in his aggregate Account Balances (determined as of the Valuation Date coincident with or next following his termination of employment with the Employers and the Affiliates) exceeds \$5,000 and payment is to be made prior to the Participant attaining age 65, the Participant must consent in writing to the distribution before payment of any portion of the distribution commences.
 - (2) Notwithstanding anything in this Article 6 to the contrary, if a Participant's Vested Interest in his aggregate Account Balances (determined as of the Valuation Date coincident with or next following his termination of employment with the Employers and the Affiliates) is \$5,000 or less, payment shall be made as soon as practicable after the Participant's termination of employment with the Employers and Affiliates in one single sum cash payment. For purposes of this subparagraph (2), if the Vested Interest of the Participant's Account Balance (determined as of the Valuation Date coincident with or next following his termination of employment) is zero, the Participant shall be deemed to have received a distribution of his aggregate Vested Interest under this paragraph (b).
 - (3) For purposes of subparagraphs (b)(1) and (2) above, the value of a Participant's Vested Interest in his Account Balance shall be determined without regard to that portion of the Account Balance that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).
 - (4) In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of this Section 6.1(b), if the Participant does not elect to have the distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with paragraph (d) below or (a) above, respectively, then the Administrative Committee shall pay the distribution in cash in a direct rollover to an individual retirement plan designated by the Administrative Committee.
- (c) **30-Day Notice.** If a distribution is one to which Code Sections 401(a)(11) and 417 do not apply, the distribution may be made or commence less than 30 days after the notice required under Treasury Regulation Section 1.411(a)-11(c) is given provided that: (1) the Administrative Committee clearly informs the Participant 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.
- (d) **Eligible Rollover Distribution.** Notwithstanding any provision of the Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Administrative Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (e) **Grandfather Payment Form.** The provisions of this Section 6.1 shall be effective with respect to distributions occurring on or after January 1, 2003. The foregoing notwithstanding, any Participant who was receiving distributions under the Plan prior to January 1, 2003 pursuant to the terms of Article 6 of the Plan as in effect prior to January 1, 2003, may continue to receive such distributions in accordance with the terms of Article 6 of the Plan as in effect prior to January 1, 2003.

6.2 TIME OF PAYMENT

- (a) **Time of Payment.** Subject to the provisions of Sections 6.1 and 6.3, payment of a Participant's Vested Interest in his Account Balances shall be made at the later of 60 days after the close of the Plan Year in which the Participant (1) attains (or would have attained) Normal Retirement Age, or (2) terminates employment with the Employers and Affiliates, unless the Participant or, in the event of his death, his Beneficiary, requests payment at an earlier date, but subsequent to the Participant's termination of employment with the Employers and Affiliates. In that event, payment shall be made as soon as practicable after the date payment is requested, and based upon the Participant's Account Balances as of the Valuation Date coincident with the date the payment is processed. For this purpose, a Participant will not be treated as having terminated employment with the Employers and Affiliates if he has a change in employment status from Employee to Leased Employee.
- (b) **Required Beginning Date.**
- (1) Notwithstanding any other provision of the Plan, payment in all cases shall be made or shall commence by the April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 ¹/₂; or (ii) the calendar year in which the Participant retires; provided, however, if a Participant is a 5% owner of an Employer (as defined in Code Section 416) at any time during the Plan Year ending with or within the calendar year in which such Participant attains age 70 ¹/₂, payment shall be made or shall commence by April 1 of the calendar year immediately following the calendar year in which the Participant attains the age of 70 ¹/₂, even if he has not yet retired. A Participant who is not 5% owner of an Employer and who commenced receiving payments from the Plan after attaining age 70 ¹/₂ under the rules as in effect under this Plan prior to January 1, 1997, may elect to stop receiving such payments until April 1 of the year following the year in which he retires.
 - (2) The provisions in subparagraph (1) above shall not apply to a Participant who (i) has made a written election to receive his benefits under the Plan at a later date in accordance with Section 242(b) of the Tax Equity and Fiscal Responsibility Act of 1982, or (ii) has attained age 70 ¹/₂ before January 1, 1988 and who was not a 5% owner of an Employer at any time during the Plan Year ending with or within the calendar year in which such individual attained age 66 ¹/₂ or any subsequent Plan Year.

MINIMUM DISTRIBUTION RULES FOR CALENDAR YEARS AFTER 2002.**(a) General Rules.**

- (1) The provisions of this Section 6.3 shall apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) The requirements of this Section 6.3 shall take precedence over any inconsistent provisions of the Plan.
- (3) All distributions required under this Section 6.3 shall be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).
- (4) Notwithstanding the other provisions of this Section 6.3, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act ("TEFRA") and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution.

- (1) The Participant's entire interest shall be distributed, or shall begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or shall begin to be distributed, no later than as follows:
 - (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in Section 6.3(b)(2)(v), distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ¹/₂, if later.
 - (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in Section 6.3(b)(2)(v), distributions to the Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant, but before distributions to the surviving spouse begin, this Section 6.3(b)(2), other than Section 6.3(b)(2)(i), shall apply as if the surviving spouse were the Participant.
 - (v) A Participant or Beneficiary may elect on an individual basis whether the five-year rule or the life expectancy rule in this Section 6.3(b)(2) or Section 6.3(d)(2) above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under this

Section 6.3(b)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this Section 6.3(b)(2)(v), distributions shall be made in accordance with Section 6.3(b)(2)(i), (ii), (iii) or (iv), as applicable, or Section 6.3(d)(2).

For purposes of this Section 6.3(b)(2) and Section 6.3(d), unless Section 6.3(b)(2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 6.3(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.3(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 6.3(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (3) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions shall be made in accordance with Sections 6.3(c) and (d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

(c) **Required Minimum Distributions During Participant's Lifetime.**

- (1) During the Participant's lifetime, the minimum amount that shall be distributed for each Distribution Calendar Year is the lesser of:
 - (i) the quotient obtained by dividing the Participant's Account Balances by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 - (ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balances by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (2) Required minimum distributions shall be determined under this Section 6.3(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(d) **Required Minimum Distributions After Participant's Death.**

- (1) **Death on or after Distribution Begins.**
 - (i) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balances by the longer of

the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

- (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (B) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (C) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death Prior to Distribution.**

- (i) Except as provided in the Section 6.3(b)(2)(v), if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balances by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in 6.3(d)(1).
- (ii) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iii) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.3(b)(2)(i), this Section 6.3(d)(2) shall apply as if the surviving spouse were the Participant.

(e) **Definitions.**

- (1) **“Designated Beneficiary.”** The individual who is designated as the Beneficiary under Section 8.06 hereof and is the “designated beneficiary” under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (2) **“Distribution Calendar Year.”** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant’s Required Beginning Date. For distributions beginning after the Participant’s death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 6.3(b)(2) hereof. The required minimum distribution for the Participant’s first Distribution Calendar Year will be made on or before the Participant’s Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant’s Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (3) **“Life Expectancy.”** Life Expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (4) **“Participant’s Account Balance.”** The Account Balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (the “valuation calendar year”) increased by the amount of any Contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (5) **“Required Beginning Date.”** The required beginning date set forth in Section 6.2(b).

6.4 ADMINISTRATIVE POWERS RELATING TO PAYMENTS

If a Participant or Beneficiary is under a legal disability or, by reason of illness or mental or physical disability, is unable, in the opinion of the Administrative Committee, to attend properly to his personal financial matters, the Trustee may make payments in such of the following ways as the Administrative Committee shall direct: (a) to the Participant or Beneficiary; (b) to the legal representative of the Participant or Beneficiary for the benefit of the Participant or Beneficiary; or (c) to a relative by blood or marriage, or a friend, for the benefit of the Participant or Beneficiary. Any payment made pursuant to this Section 6.5 shall be in complete discharge of the obligation for such payment under the Plan.

6.5 LOST PARTICIPANT OR BENEFICIARY

If a Participant or Beneficiary to whom a distribution under the Plan is payable cannot be located, and the Administrative Committee has made reasonable efforts to find the Participant or Beneficiary, including the sending of notification by certified or registered mail to his last known address, the Participant's Accounts shall be forfeited three years after the date the distribution first becomes payable and held in a suspense account. If the Participant or Beneficiary is located after the forfeiture of the Participant's Accounts, the Accounts shall be restored (without earnings). Forfeitures arising under this Section 6.5 in any Plan Year shall be applied as of the end of that Plan Year in the manner described in Section 3.5(c). The funds for the restoration of any Participant's forfeited Accounts shall come, first, from previous forfeitures available for reallocation under Section 3.5(c), and then, if the available forfeitures are insufficient to fully restore the value of the Participant's Accounts, the Employer shall pay to the Trustee as an additional contribution to the Plan, the sums as are necessary to restore the value of the Participant's Accounts.

6.6 NO DUPLICATION OF BENEFITS

There shall be no duplication of any benefit payable under this Plan to any Participant or Beneficiary and of any benefit under a defined contribution plan maintained or contributed to by any Employer or Affiliate (or any predecessor of the Employer or Affiliate) to the same person, the amount of which is based, in whole or in part on the same period of employment of an Employee with, or on compensation from, any Employer or Affiliate (or any predecessor of the Employer or Affiliate) or both, the amount of which is based, in whole or in part on the same period of employment of the Employee with, or on the same compensation from, any Employer or Affiliate (or any predecessor of either the Employer or the Affiliate) or both. The Administrative Committee shall make an appropriate adjustment to any benefit otherwise payable under the Plan to prevent any duplication unless the other benefit is appropriately adjusted or is clearly intended to supplement the benefits under this Plan. No benefit shall be paid to any Participant, Beneficiary or other person under more than one Section of this Plan for the same period of time.

ARTICLE 7 LOANS; WITHDRAWALS

7.1 AVAILABILITY OF LOANS

- (a) **Generally.** Upon application by a Participant who is an Employee or any other party-in-interest, as defined in ERISA Section 3(14), the Trustee may lend the Participant an amount from his Salary Reduction Contribution Account, After-Tax Contribution Account and/or Rollover Account that satisfies the terms and conditions of this Section 7.1.
- (b) **Loan request.** Each request for a loan under this Section 7.1 shall be made at the time and in the manner prescribed by the Administrative Committee, supported by the evidence and with the reasonable loan processing fee as the Administrative Committee may require. Any outstanding balance of a prior loan must be repaid in full before a new loan may be approved. A loan shall be processed and disbursed as soon as practicable after the Administrative Committee receives a request for the loan. A Participant shall be charged a reasonable fee for a loan.
- (c) **Loan documentation and procedures.** Each loan shall be evidenced by a note in a form furnished by the Administrative Committee and must be secured by a pledge of the Participant's Accounts, and the Participant shall authorize repayment by regular payroll deductions and consent to the distribution of his Accounts in the event of a default (provided that distribution at the time is otherwise allowed by the Plan). A Participant must obtain the consent of his Spouse, if any, to obtain a loan from his Accounts.
- (d) **Interest rate.** Each loan shall bear interest at a rate of 1% plus the prime rate of interest published by The Wall Street Journal for the 15th day of the month immediately preceding the month in which the loan is disbursed (or if that day is not a Business Day, the next succeeding Business Day) or any other prime rate of interest as the Administrative Committee may establish, and shall be amortized in substantially level payments, made not less frequently than quarterly, over the life of the loan. Notwithstanding the preceding, the interest rate on any loan made to a Participant on

military leave subject to the Soldiers and Sailors Civil Relief Act Amendments of 1942 shall not exceed the maximum rate of interest set forth in that Act.

- (e) **Maximum amount of loan principal.** The principal amount of each loan shall not be less than \$1,000 and shall not exceed the least of:
(i) \$50,000, reduced by the highest outstanding balances of loans, during the one-year period ending on the day before the date on which the loan is made, from the Participant's Accounts under the Plan and any other "qualified employer plan" (within the meaning of Code Section 72(p)(4)) maintained by the Employers and the Affiliates, (ii) 50% of the Participant's vested Account Balances, or (iii) the sum of the amounts in the Participant's Salary Reduction Contribution Account, Rollover Account and After-Tax Contribution Account.
- (f) **Loan term.** Each loan shall be for a term not less than one year and not more than five years. Full prepayment shall be permitted at any time; partial prepayments are not permitted.
- (g) **Loan as investment of Participant Accounts.** Each note evidencing a loan to a Participant shall be considered an investment of the Participant's Accounts. Accordingly, principal and interest payments on the note shall be credited to the Participant's Accounts on his behalf in accordance with the provisions of paragraph (h) below. The distribution of a Participant's canceled note to the Participant (or to the Participant's Beneficiary in the event of the Participant's death) shall be considered as a payment for purposes of the Plan.
- (h) **Funding of loan and loan payments.** Funds for a loan shall be withdrawn from a Participant's Accounts in the following order: his Rollover Account, his After-Tax Contribution Account and his Salary Reduction Contribution Account. Within each of those Accounts, funds for a loan shall be withdrawn *pro rata* from the investment funds in which the Account is invested. Loan repayments shall be allocated on a *pro rata* basis to the Accounts from which the loan was withdrawn, and invested in accordance with the Participant's current investment election for future Contributions on file with the Administrative Committee at the time of repayment.
- (i) **Loan default.** If a Participant fails to make any required loan repayment, files for bankruptcy or terminates employment with an Employer or an Affiliate for any reason and does not remain a "party in interest" within the meaning of ERISA Section 3(14), his loan shall be considered to be in default. Once a Participant's loan is in default, he shall pay the entire amount of his outstanding loan balance within 90 days of the default event. If the Participant does not repay his loan within the 90-day cure period, the outstanding balance of the loan shall be treated as a distribution subject to applicable taxes and penalties.
- (j) **Continuation of defaulted loan.** If a Participant remains employed by an Employer or an Affiliate after the date of default of his loan, his defaulted loan shall be treated as an outstanding loan, interest will continue to accrue and his outstanding loan balance (including the accrued interest) shall count against any future loan request. The Participant may repay his defaulted loan in one balloon payment, and the payment will increase the tax basis in his Accounts.
- (k) **Military leave and suspension of loan repayments.** A Participant may elect to suspend loan repayments for any period during which he is on a leave of absence because he is performing service in the uniformed services (as defined in 38 U.S.C. Chapter 43), whether or not the service is "qualified military service" (as defined in Code Section 414(u)). The Participant's loan will continue to accrue interest during the suspension period, and loan payments shall resume when the Participant's military service ends and he returns to work with an Employer or an Affiliate. When the Participant resumes making loan payments, he may either (1) extend his loan term until five years from the original date of the loan plus the period of his military leave, provided that the frequency and amount of his loan repayments shall not be less than the frequency and amount of his pre-military leave loan repayments, or (2) make one lump-sum payment equal to the missed loan repayments plus accrued interest and resume making regularly scheduled loan repayments.

- (l) **Merged plan loans.** Notwithstanding paragraphs (a) through (k) above, if a Participant was a participant in a plan that merged, in whole or in part, into the Plan and had an outstanding loan transferred from that plan to this Plan, the loan shall be treated as a loan under this Plan and shall be subject to the terms of this Section 7.1 to the extent required by the Administrative Committee in its discretion.

7.2 IN-SERVICE HARDSHIP WITHDRAWALS

A Participant may elect in writing (or in such other form as may be permitted from time to time by the Administrative Committee) to withdraw any amount from his Salary Reduction Contribution Account (excluding amounts attributable to QNECs) at any time while he is employed by an Employer or Affiliate, subject to the conditions of this Section 7.2.

- (a) **Conditions for Hardship Withdrawal.** The distribution of a Participant's Salary Reduction Contribution Account shall not commence prior to his death, Disability, attainment of age 59 1/2, or termination of employment, except upon his demonstration of financial hardship. A distribution based upon financial hardship may be made only if (1) the Participant has an immediate and heavy financial need, (2) the distribution does not exceed the amount required to satisfy the immediate and heavy financial need, and (3) the immediate and heavy financial need cannot be satisfied from other resources reasonably available to the Participant. The determination of the existence of an immediate and heavy financial need and the amount required to be distributed to meet the need created by the hardship shall be made by the Administrative Committee in accordance with uniform and nondiscriminatory standards applicable to all Participants.
- (b) **Immediate and Heavy Financial Need.** A Participant shall be deemed to have an immediate and heavy financial need if the distribution is on account of:
- (1) Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
 - (2) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
 - (3) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or the Participant's Spouse, children, or dependents (as defined in Code Section 152, and, for Plan Years beginning on and after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B));
 - (4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;
 - (5) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on and after January 1, 2005, without regard to Code Section 152(d)(1)(B));
 - (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

- (7) Any other emergency that the Administrative Committee, pursuant to a uniform and nondiscriminatory policy and in accordance with guidelines issued by the Internal Revenue Service, deems a bona fide financial emergency.
- (c) **Distribution Necessary to Satisfy Financial Need.** A distribution shall be deemed necessary to satisfy an immediate and heavy financial need if:
- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);
 - (2) The Participant has obtained all distributions (including distributions of his After-Tax Contribution Account and/or his Rollover Account under this Plan), other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employers and the Affiliates; and
 - (3) The Participant does not make elective deferrals or employee contributions under this Plan or any other plan maintained by the Employers and affiliates for a six-month period following the date of receipt of the hardship distribution.
- (d) **Request for Hardship Withdrawal.** A Participant must request a hardship withdrawal in the manner and at the time prescribed by the Administrative Committee and must obtain the consent of his Spouse, if any, prior to making a hardship withdrawal. The Administrative Committee shall specify any supporting data required and shall follow a uniform, nondiscriminatory policy in determining the eligibility for, and timing of, hardship withdrawals. A Participant shall be entitled to a hardship withdrawal pursuant to this Section 7.2 from that portion of his Salary Reduction Contribution Account attributable to his Salary Reduction Contributions but not from that portion attributable to QNECs made on his behalf or earnings credited on those Salary Reduction Contributions and QNECs. Funds for a hardship withdrawal shall be withdrawn *pro rata* from the investment funds in which the Participant's Salary Reduction Account is invested. A hardship withdrawal shall be paid as soon as administratively practicable after the Administrative Committee receives the Participants' application for the hardship withdrawal. In no event will a hardship withdrawal be approved if approval would have adverse tax consequences for the Plan.

7.3 OTHER IN-SERVICE WITHDRAWALS

- (a) **After-Tax Contributions and Rollover Contributions.** Upon application to the Administrative Committee and pursuant to such other procedures established by the Administrative Committee, a Participant may at any time withdraw from his After-Tax Contribution Account and/or his Rollover Account.
- (b) **Age 59^{1/2}.** By delivery of a request to the Administrative Committee, in such form or manner as prescribed by the Administrative Committee, a Participant who still is an Employee (or an employee of an Affiliate) may at any time after he has attained age 59 ¹/₂ elect to withdraw all or any portion of his Salary Reduction Contribution Account, After-Tax Contribution Account or Rollover Account.
- (c) **Spousal Consent.** A Participant must obtain the consent of his Spouse, if any, prior to obtaining an in-service withdrawal under this Section 7.3 of any portion of his (1) After-Tax Contribution Account attributable to After-Tax Contributions credited to that Account after July 17, 2006, (2) Rollover Account attributable to Rollover Contributions credited to that Account after July 17, 2006, and (3) Salary Reduction Contribution Account attributable to Salary Reduction Contributions and Special Company Contributions credited to that Account after July 17, 2006.

- (d) **Liquidation of Investment Funds.** Funds for an in-service withdrawal under this Section 7.3 shall be withdrawn *pro rata* from the investment funds in which the Participant's After-Tax Contribution Account, Rollover Account or Salary Reduction Account, as applicable, is invested.
- (e) **Plan Termination.** Notwithstanding the foregoing sections of this Article 7, in the event of the termination of the Plan without the establishment or maintenance by any Employer or Affiliate of an alternate defined contribution plan (within the meaning of Treasury Regulation Section 1.401(k)-1(d)), the distribution of all of a Participant's Accounts shall be permitted. If an alternate defined contribution plan is established or maintained by an Employer or Affiliate, then upon termination of the Plan, if a Participant is an Employee or an employee of an Affiliate, the Participant's Salary Reduction Contribution Account shall be transferred automatically to the alternate defined contribution plan, which plan shall contain the same distribution restrictions on those Accounts that are contained in this Plan.
- (f) **Plan Participation Unaffected by Withdrawal.** Withdrawal of all or part of a Participant's Account Balances pursuant to this Section 7.3 shall not affect the Participant's right to continue participation under the Plan.

ARTICLE 8

MANAGEMENT OF FUNDS

8.1 TRUSTEE AND TRUST AGREEMENT

A Trustee shall be appointed by the Company to administer the Trust Fund. The Trustee shall serve at the pleasure of the Company and shall have the rights, powers, and duties set forth in the Trust Agreement, under which Trust Agreement the Trustee shall receive contributions from each Company. All assets of the Trust Fund shall be held, invested, and reinvested by the Trustee, subject to the terms of the Trust Agreement.

8.2 ASSETS OF THE TRUST FUND

All contributions under this Plan shall be paid to the Trustee and, except as provided in Section 8.3, all assets of the Trust Fund, including income from investments and from all other sources, shall be retained for the exclusive benefit of Participants and their Beneficiaries, and shall be used to pay benefits to such persons or to pay reasonable expenses of administration of the Plan and the Trust to the extent not paid by the Company or the Employers.

8.3 TRUST CONTRIBUTIONS

All contributions to the Plan will be paid into the Trust, and all benefits payable under the Plan will be paid from the Trust. No part of the corpus or income of the Trust shall revert to an Employer or an Affiliate or be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries. All Company Contributions, Matching Contributions and Special Company Contributions to the Plan are expressly conditioned upon the deductibility under Code Section 404; to the extent that a deduction for a contribution is disallowed, the contribution shall be returned to the Employer that made the contribution within one year after the disallowance of the deduction. A contribution to the Plan made by a mistake of fact shall be returned to the Employer that made the contribution within one year after payment of such contribution.

8.4 DIRECTED INVESTMENT ACCOUNTS

- (a) **Establishment of Investment Funds.** The Administrative Committee may establish separate Investment Funds, including the Company Stock Fund, in which the assets of the Trust will be invested.

- (b) **Participant Investment Elections.**
- (1) Upon the establishment of the Investment Funds, the Trustee shall, in accordance with the Trust Agreement, permit the Participants to direct the Trustee as to the investment of all or a portion of their Account Balances. A Participant may, subject to a procedure established and applied in a uniform and nondiscriminatory manner, direct the Trustee to invest his existing Account Balances and future contributions made by him or on his behalf in one or more Investment Funds, except that a Participant may not direct that future contributions made by him or on his behalf be invested in, or any portion of his existing Account Balances invested in another Investment Fund be transferred to, the Company Stock Fund. A Participant may at any time transfer all or any portion of his Account Balances invested in the Company Stock Fund to any other Investment Fund.
 - (2) To the extent that a Participant's Accounts are so directed, and as permitted by law, the Trustee and the Administrative Committee shall be relieved of their fiduciary responsibilities under ERISA Section 404.
 - (3) That portion of the Accounts of any Participant so directed will thereupon be considered a "Directed Investment Account," which shall not share in Trust Fund earnings nor be taken into consideration for purposes of Section 4.2. The Directed Investment Account shall be charged or credited as appropriate with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in market value during each Plan year attributable to such Directed Investment Account. The charge or credit, as applicable, shall be made in accordance with, and under, the procedures of the applicable Investment Fund or, if there are no such procedures, in the proportion that the opening balance of each Directed Investment Account (the balance as of the previous Valuation Date adjusted by subtracting withdrawals, and distributions, and by adding one-half of all contributions deposited in the Directed Investment Account since the last Valuation Date) invested in each Investment Fund bears to the opening balances of all such Directed Investment Accounts, as adjusted, invested in such fund.
- (c) **Directed Investment Account.** A separate Directed Investment Account shall be established for each Participant who has directed an investment. Transfers between a Participant's regular account, if any, and his Directed Investment Account shall be charged and credited as the case may be to each account.
- (d) **Owner of Trust Fund.** All investments, including that of any common stock, shall be held in the name of the Trustee or one or more of its nominees as provided in the Trust Agreement.
- (e) **Investment Elections.** Each Participant shall file an investment election with, and in the manner and at the time prescribed by, the Administrative Committee when he becomes a Participant in the Plan. A Participant may change his Investment Fund elections regarding his existing Account Balances and future contributions made by him or on his behalf pursuant to procedures established by the Administrative Committee. A Participant also may transfer existing Account Balances among the Investment Funds pursuant to such procedures. All investments and changes must be made in multiples of one percent (1%). Elections shall become effective as soon as practicable after receipt by the Administrative Committee, subject to such limitations and restrictions as the Administrative Committee may, from time to time, establish.
- (f) **Default Investments.** If no election form has been executed by the Participant for his Directed Investment Account, all his Account Balances shall be invested by the Trustee in the default Investment Fund(s) designated by the Administrative Committee.

8.5 VOTING AND TENDER RIGHTS - COMPANY STOCK

- (a) **Participant Directed Voting of Company Stock.** As long as Company Stock is a class of securities which is required to be registered under Section 12 of the Securities Exchange Act of 1934, or a class of securities which would be required to be so registered except for the exemption from registration provided in paragraph (g)(2)(H) of Section 12 of the Securities Exchange Act, each Participant shall be entitled to direct the Trustee as to the manner in which Company Stock allocated to his Accounts is to be voted.
- (b) **Trustee Voting of Company Stock.** The Trustee shall vote those shares of Company Stock allocated to Participants' Accounts in accordance with the timely and proper directions received from the Participants. If the Trustee does not receive timely and proper directions from any Participant regarding the voting of any shares of Company Stock held in the Trust Fund (including unallocated shares), the Trustee shall vote those shares in the same proportion, for and against propositions submitted to the vote of the shareholders, as the Trustee votes shares for which it receives timely and proper directions.
- (c) **Tender Offers for Company Stock.** Each Participant shall be entitled to direct the Trustee whether to tender the shares of Company Stock allocated to the Participant's Accounts in response to a tender offer. After the Participants have had an opportunity to cast votes on the tender offer as provided in this Section and the votes are counted, the Trustee shall tender only those shares of Company Stock held in the Trust Fund on the matter for which the Trustee receives timely and proper tender instructions. The Trustee shall not tender any Company Stock as to which it does not receive timely and proper directions (including unallocated shares).
- (d) **Confidentiality of Participant Voting.** Notwithstanding anything contained in the Plan to the contrary, any voting or tender direction given by a Participant pursuant to this Section 8.5 shall not be disclosed to the Employers and shall be held confidential by the Trustee.
- (e) **Rules and Regulations.** This Section 8.5 shall be implemented by the rules and regulations as may be adopted by the Trustee and the Administrative Committee from time to time. Not in limitation of the foregoing, the rules and regulations may set time limits for Participants to cast votes or give tender instructions on any matter.

ARTICLE 9 **ADMINISTRATION OF PLAN**

9.1 NAMED FIDUCIARIES

The following persons shall be Named Fiduciaries under the Plan and shall be the only Named Fiduciaries under the Plan.

- (a) **Trustee.** Subject to the direction of the Administrative Committee and/or Participants, as described in this Article 9, the Trustee shall have exclusive authority and discretion to manage and control the assets of the Trust Fund, as provided in the Trust Agreement, and shall have no responsibilities other than those provided in the Trust Agreement.
- (b) **Administrative Committee.** The Administrative Committee shall be the "Administrator" (within the meaning of ERISA Section 3(16)(A)), of the Plan. The Administrative Committee shall consist of at least three persons appointed by the Board of Directors.

RESPONSIBILITIES AND POWERS OF ADMINISTRATIVE COMMITTEE

- (a) **Administrative Committee Powers.** The Administrative Committee shall have the discretionary responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, including, without limiting the generality of the foregoing, (i) all functions assigned to the Administrative Committee under the terms of the Plan; (ii) determination of benefit eligibility and amount and certification of the eligibility and amount to the Trustee; (iii) determination of any questions arising in connection with the interpretation, application or administration of the Plan (including any questions of fact relating to age, service, compensation or eligibility of Employees); (iv) hiring of persons to provide necessary services to the Plan, including a record keeper; (v) issuance of directions to the Trustee to pay any fees, taxes, charges or other costs incidental to the operation and management by the Administrative Committee of the Plan; (vi) issuance of directions to the Trustee as to benefits to be paid to Participants; (vii) issuance of directions to the Trustee concerning the allocation, payment and distribution of assets of the Trust, including interest thereon; (viii) maintenance of all records of the Plan other than those required to be maintained by the Trustee or any record keeper; (ix) issuance of directions to the Trustee as to the investment of the Plan assets, including the purchase and sale of Employer Stock; (x) selection of Investment Funds; (xi) appointment of investment managers; and (xii) issuance of directions to the Trustee as to any other matter.
- (b) **Discretionary Power To Construe and Interpret Plan.** The Administrative Committee shall have the sole, absolute and exclusive right, power, and discretionary authority to construe and interpret the provisions of the Plan, and all parts of the Plan, and then administer the Plan for the best interests of the Participants and the Beneficiaries. It may construe any ambiguity, or supply any omission, or reconcile any inconsistencies in the manner and to the extent as it deems proper. The Administrative Committee shall have further discretionary authority to determine all questions with respect to the individual rights of the Employees under the Plan, including, but not by way of limitation, all issues with respect to any Employee's or Beneficiary's eligibility for benefits and Employee's earnings, compensation, service and retirement, as may be reflected by the records of the Employer, and any other information on which these decisions shall be based. It is the intent of this Plan that any Court reviewing an action of the Administrative Committee shall apply the arbitrary and capricious standard of review.
- (c) **Reliance on Experts.** The Administrative Committee shall be entitled to rely upon all certificates and reports made by any duly appointed accountant, and upon all opinions given by any duly appointed legal counsel.
- (d) **Administrative Committee Decisions.** The Administrative Committee's decisions and actions shall be conclusive and binding upon any and all persons and parties.
- (e) **Administrative Committee Actions.** The Administrative Committee may provide by resolution that any two of its members may act for the Administrative Committee in all matters clearly prescribed by the terms of the Plan or by the terms of any administrative rules or interpretation of the Administrative Committee, and otherwise the vote or consent of a majority of the members of the Administrative Committee shall be required.
- (f) **Compensation of Administrative Committee Members.** Members of the Administrative Committee shall serve without compensation for their services in the administration of the Plan unless compensation for those services is fixed by the Board of Directors in its appointment of the Administrative Committee or thereafter.
- (g) **Administrative Committee Rules and Regulations.** The Administrative Committee shall enact the rules and regulations as it may deem proper and necessary to facilitate the administration of the Plan.

9.3 INDIVIDUAL AND SHARED RESPONSIBILITIES OF NAMED FIDUCIARIES

This Article 9 is intended to allocate to each Named Fiduciary the individual responsibility for the prudent execution of the functions assigned to him, and none of the responsibilities or any other responsibility shall be shared by two or more of the Named Fiduciaries unless the sharing shall be provided by a specific provision of the Plan or the Trust Agreement. Whenever one Named Fiduciary is required by the Plan or the Trust Agreement to follow the directions of another Named Fiduciary, the two Named Fiduciaries shall not be deemed to have been assigned a shared responsibility, but the responsibility of the Named Fiduciary giving the directions shall be deemed his sole responsibility, and the responsibility of the Named Fiduciary receiving those directions shall be to follow them insofar as the instructions are on their face proper under applicable law.

9.4 EMPLOYMENT OF ADVISERS

A Named Fiduciary may employ one or more persons to render advice concerning any responsibility the Named Fiduciary has under the Plan or Trust Agreement.

9.5 FIDUCIARY IN MORE THAN ONE CAPACITY

Any person serving as a fiduciary may serve in more than one fiduciary capacity.

9.6 INDEMNITY AGREEMENT

Any person who is serving or who has served as a member of the Administrative Committee and who, by reason of that service, is entitled to indemnification pursuant to Article V of the Bylaws of the Company, shall be indemnified by the Company to the extent set forth in Article V of the Bylaws of the Company; *provided*, further, any person who is or was an employee or agent of the Company while so serving as a member of the Administrative Committee shall be indemnified by the Company under the circumstances and to the full extent set forth in Article V of the Bylaws of the Company. The foregoing right of indemnification shall be in addition to any other rights to which the members of the Administrative Committee may be entitled as a matter of law.

9.7 COSTS

The assets of the Trust Fund shall be used to pay all expenses, costs and fees of the Administrative Committee, the Plan and the Trust Fund to the extent those expenses, costs and fees are not paid by the Employers or the Participants (or their Beneficiaries).

9.8 APPLICATION AND FORMS FOR BENEFITS

The Administrative Committee may require a Participant or Beneficiary to complete and file with the Administrative Committee an application for benefits and all other forms approved by the Administrative Committee, and to furnish all pertinent information requested by the Administrative Committee. The Administrative Committee may rely upon all information so furnished it, including the Participant's current mailing address.

**ARTICLE 10
CLAIMS PROCEDURES**

10.1 CLAIMS REVIEW

(a) **Initial Claim Denial.** If the claim of any person (a "Claimant") to all or any part of any payment or benefit under this Plan shall be denied, the Administrative Committee shall provide to the Claimant, within a reasonable period of time

(but not later than 90 days) after receipt of the claim, a written notice setting forth:

- (1) the specific reason or reasons for the denial;
 - (2) the specific references to the pertinent Plan provisions on which the denial is based;
 - (3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why the material or information is necessary; and
 - (4) a description of the Plan's review procedures and the time limits applicable to those procedures, including a statement of the Claimant's right to bring a civil action under ERISA Section 502(a) following an adverse decision on review by the Administrative Committee.
- (b) **Extension of 90-Day Period.** If the Administrative Committee determines that special circumstances require an extension of time beyond the initial 90-day period, the Administrative Committee shall provide to the Claimant, within the initial 90-day period, a written notice of the extension stating the special circumstances requiring the extension and the date by which the Administrative Committee expects to make its determination (which date will not be later than 90 days after the end of the initial 90-day period).

10.2 APPEALS PROCEDURE

- (a) **Request for Review of Denial.** Within 60 days after receipt of a notice of denial of his claim for benefits, a Claimant may request, upon written application to the Administrative Committee, a review by the Administrative Committee of its decision denying the Claimant's claim. The Administrative Committee shall provide the Claimant the opportunity to submit written comments, documents, records and other information relating to his claim for benefits, and shall provide the Claimant, upon request and free of charge, reasonable access to and copies of pertinent documents. The Administrative Committee shall make a full and fair review, and shall make its decision on review by taking into account all comments, documents, records and other information submitted by the Claimant, regardless of whether the comments, documents, records and other information were considered by the Administrative Committee when it initially denied the Claimant's claim for benefits.
- (b) **Extension of 60-Day Period.** The Administrative Committee shall issue its decision on review of a Claimant's denied claim for benefits within a reasonable period of time, but not later than 60 days after the Plan receives the Claimant's request for a review. If the Administrative Committee determines that special circumstances require an extension of time for processing a Claimant's review request beyond the initial 60-day period, the Administrative Committee shall provide the Claimant, within the initial 60-day period, a written notice of the extension stating the special circumstances requiring the extension and the date by which the Administrative Committee expects to make its decision on review (which date will not be later than 60 days after the end of the initial 60-day period). If the Administrative Committee grants an extension due to the Claimant's failure to submit information necessary to decide the Claimant's claim, the period for making the decision on review shall be tolled from the date on which the Administrative Committee sends the notice of extension to the Claimant until the date on which the Claimant responds to the request for additional information.
- (c) **Review Decision.** The Administrative Committee shall notify a claimant of its decision on review in writing, and if the decision is adverse, the notice shall set forth:
- (1) the specific reasons for the decision;

- (2) the specific references to the pertinent Plan provisions on which the decision on review is based;
- (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to his claim for benefits; and
- (4) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

ARTICLE 11
AMENDMENT AND TERMINATION

11.1 TERMINATION

- (a) **Board Action.** It is the expectation of the Company that it shall continue this Plan and the payment of contributions hereunder indefinitely, but the continuation of the Plan is not assumed as a contractual obligation of the Company, and the Company reserves the right to terminate the Plan at any time and each Participating Employer in adopting this Plan, consents to any termination of the Plan. The Company, by resolution of the Board, may terminate the Plan with respect to any or all Participating Employers. Any Participating Employer, by a resolution of its Board of Directors, may terminate its participation in the Plan. If participation in the Plan is terminated by fewer than all Participating Employers, the Plan shall continue in effect for Participants employed by the remaining Participating Employers.
- (b) **Effective Date.** A Plan termination shall become effective as of the date of the Board terminating the Plan action or any subsequent date determined by the Board.
- (c) **Distribution of Trust Fund.** Upon complete termination of the Plan, all contributions to the Trust shall cease. The Administrative Committee shall notify each affected Participant of the termination of the Plan. Each affected Participant shall be entitled to receive the entire amount of his Account Balances and the Administrative Committee shall direct the Trustee to make payment to each such Participant of such amount in cash or in assets of the Trust Fund, as the Administrative Committee shall determine.

11.2 RIGHT TO AMEND, MODIFY, CHANGE OR REVISE PLAN

- (a) **Right to Amend.** The Company, by appropriate action of its Board, may at any time and from time to time amend, modify, change, or revise this Plan in whole or in part, provided however, that no amendment to the Plan shall:
 - (1) Have the effect of vesting in the Company or Employers any interest in or control of any funds, securities, or other property subject to the terms of the Trust;
 - (2) Authorize or permit at any time any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the benefit of Participants and their Beneficiaries, except as provided in Sections 3.5(c) and 8.3;
 - (3) Have any retroactive effect as to deprive any Participant or Beneficiary of any benefit already accrued, save only that no amendment made in conformance with the provisions of the Code or any other statute relating to employees' trusts, or of any official regulation or rulings issued pursuant thereto, shall be considered prejudicial to the rights of any Participant or Beneficiary; and

(4) Decrease an Account Balance.

- (b) **Participating Employer Consent.** Each Participating Employer, in adopting this Plan, consents to any amendment, modification, change, or revision under paragraph (a) above.

11.3 MERGER AND CONSOLIDATION OF PLAN; TRANSFER OF PLAN ASSETS

In the case of any merger or consolidation with or transfer of assets and liabilities to any other plan, provisions shall be made so that each Participant on the date thereof (if the Plan then terminated) would receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately prior to the merger, consolidation, or transfer (if the Plan had terminated).

ARTICLE 12 TOP-HEAVY PROVISIONS

12.1 DEFINITIONS

- (a) **COMPENSATION** means compensation as defined under Code Section 415(c)(3).
- (b) **DETERMINATION DATE** means, with respect to any Plan Year, the last calendar day of the immediately preceding Plan Year or, in the case of the first Plan Year, the last calendar day of the first Plan Year.
- (c) **KEY EMPLOYEE** means any employee or former employee (including any deceased employee) of an Employer who at any time during the Plan Year that includes the Determination Date was an officer of the Employer having annual Compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5% owner of an Employer, or a 1% owner of an Employer having annual Compensation of more than \$150,000. The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
- (d) **NON-KEY EMPLOYEE** means any Employee who is not a Key Employee.
- (e) **PERMISSIVE AGGREGATION GROUP** means the Required Aggregation Group plus any other plan or plans of an Employer or an Affiliate which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code Section 401(a)(4) or 410.
- (f) **REQUIRED AGGREGATION GROUP** means the group of:
- (1) Each qualified plan of an Employer or an Affiliate in which at least one Key Employee participates; and
 - (2) Any other qualified plan of an Employer or an Affiliate which enables a plan in paragraph (1) above to meet the requirements of Code Section 401(a)(4) or Section 410.

(g) **TOP-HEAVY**

The Plan shall be deemed to be Top-heavy for any Plan Year if, as of the Determination Date for such Plan Year, any of the following conditions exists:

- (1) If the Top-Heavy Ratio for the Plan exceeds 60%, and the Plan is not part of a Required Aggregation Group or a Permissive Aggregation Group;
- (2) If the Plan is part of a Required Aggregation Group (but is not part of a Permissive Aggregation Group), and the Top-Heavy Ratio for the Required Aggregation Group exceeds 60%; or
- (3) If the Plan is part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Permissive Aggregation Group, exceeds 60%.

(h) **TOP-HEAVY RATIO**

- (1) If an Employer or an Affiliate maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer or Affiliate has not maintained any defined benefit plan which, during the five-year period ending on the Determination Date, has or has had any accrued benefits, the Top-Heavy Ratio for the Plan or for the Required Aggregation Group or the Permissive Aggregation Group, as appropriate, shall be a fraction, the numerator of which is the sum of the Account Balances of all Key Employees under the aggregated defined contribution plans as of the Determination Date (including any part of any Account Balance distributed in the five-year period ending on the Determination Date) and the denominator of which is the sum of all Account Balances (including any part of any Account Balance distributed in the five-year period ending on the Determination Date) of all Participants as of the Determination Date, both computed in accordance with Code Section 416. The numerator and denominator of the Top-Heavy Ratio shall be adjusted to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code Section 416.
- (2) If an Employer or an Affiliate maintains or has maintained one or more defined contribution plans (including any simplified employee pension plan), and the Employer or Affiliate maintains or has maintained one or more defined benefit plans which, during the five-year period ending on the Determination Date, has or has had any accrued benefits, the Top-heavy Ratio for the Required Aggregation Group or the Permissive Aggregation Group, as appropriate, shall be a fraction, the numerator of which is the sum of the Account Balances of all Key Employees under the aggregated defined contribution plans and the present value of the accrued benefits of all Key Employees under the aggregated defined benefit plans as of the Determination Date, and the denominator of which is the sum of the Account Balances of all Participants under the aggregated defined contribution plans and the present value of the accrued benefits of all Participants under the aggregated defined benefit plans as of the Determination Date, determined in accordance with Code Section 416. The numerator and denominator of the Top-Heavy Ratio shall be adjusted for any distribution of an Account Balance or accrued benefit made in the five-year period ending on the Determination Date and any contribution due but unpaid as of the Determination Date.
- (3) For purposes of subparagraphs (1) and (2) above, the value of the Account Balances and the present value of the accrued benefits shall be determined as of the most recent Valuation Date occurring within the 12-month period ending on the Determination Date, except as provided in Code Section 416 for the first and second Plan Years of a defined benefit plan. The accrued benefits of Non-Key Employees shall be determined under the method used

for accrual purposes for all plans of the Employers and Affiliates or, if there is no such method, then as if such benefits accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual rate of Code Section 411(b)(1)(C). The Account Balances and the accrued benefits of a Participant who is a Non-Key Employee but who was a Key Employee in a prior Plan Year or who has not performed any services for an Employer at any time during the five-year period ending on the Determination Date shall be disregarded. The calculation of the Top-Heavy Ratio and the extent to which distributions, rollovers, and direct transfers are taken into account shall be made in accordance with Code Section 416. When aggregating plans, the value of the Account Balances and the present value of the accrued benefits shall be calculated with reference to the Determination Dates that fall within the same calendar year.

- (4) For purposes of determining the present values of accrued benefits and the amounts of Account Balances of Employees as of the Determination Date, the following provisions shall apply effective for Plan Years beginning after December 31, 2001:
- (i) The present values of accrued benefits and the amounts of Account Balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or Disability, this provision shall be applied by substituting “five-year period” for “one-year period.”
 - (ii) The accrued benefits and accounts of any individual who has not performed services for the Company during the one-year period ending on the Determination Date shall not be taken into account.
- (i) **VALUATION DATE** means the same valuation date used for computing plan costs for minimum funding, regardless of whether an actuarial valuation is performed that year.

12.2 MISCELLANEOUS

- (a) Unrelated rollover contributions or transfers from plans other than a plan sponsored by an Employer or an Affiliate shall not be considered a part of the Participant’s Account Balance for purposes of determining whether or not the Plan is Top-Heavy.
- (b) Related rollover contributions or transfers from other plans sponsored by an Employer or an Affiliate shall be considered a part of the Participant’s Account Balance for purposes of determining whether or not the Plan is Top-Heavy.
- (c) Matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Matching contributions used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the ACP Test and other requirements of Code Section 401(m).

12.3 MINIMUM ALLOCATION REQUIREMENTS

- (a) Employer contributions allocated on behalf of any Participant who is a Non-Key Employee shall not be less than the lesser of 3% of the Participant's Compensation, or the largest percentage of contributions allocated on behalf of any Key Employee of an Employer for that Plan Year, without, in either event, taking into consideration any contributions or benefits under Social Security or any similar legislation. The preceding provisions shall not apply to any Participant who was not employed by an Employer on the last day of the Plan Year.
- (b) The minimum allocation in paragraph (a) above shall be made even though, under other Plan provisions, the Participant otherwise would not be entitled to receive an allocation, or would have received a lesser allocation for the Plan Year because the Participant failed to complete at least 1,000 Hours of Service, the Participant's Compensation was less than any stated amount, or the Participant failed to make mandatory contributions to the Plan. The minimum allocation required under paragraph (a) above shall not apply to a Participant covered under another defined contribution plan of an Employer or Affiliate if such Participant receives the minimum allocation under such other plan.
- (c) The minimum allocation required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Section 411(a)(3)(B) or 411(a)(3)(D).
- (d) If an Employer or Affiliate maintains a defined benefit plan that also covers a Non-Key Employee who is a Participant in this Plan, the defined benefit plan shall be designated to satisfy the minimum allocation or benefit requirements of Code Section 416 for the Non-Key Employee. To that extent, the minimum allocation in paragraph (a) above shall not be made.

ARTICLE 13 PARTICIPATING EMPLOYERS

13.1 ADOPTION BY OTHER EMPLOYERS

Notwithstanding anything herein to the contrary, with the consent of the Company, any Affiliate may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

13.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

- (a) Same Trustee. Each such Participating Employer shall be required to use the same Trustee as provided in this Plan, unless the Administrative Committee otherwise consents to an alternative trustee.
- (b) Allocation of Trust Fund Expenses. Any expenses of the Trust Fund which are to be paid by the Company or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Participating Employer bears to the total standing to the credit of all Participants or, if the Company so elects, on a per capita basis based on the number of Participants at each Participating Employer.

13.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee and Administrative Committee for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Company as its agent.

13.4 EMPLOYEE TRANSFERS

It is anticipated that an Employee may be transferred between Participating Employers, and in the event of any such transfer, the Employee involved shall carry with him his accumulated service and eligibility. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

13.5 PARTICIPATING EMPLOYERS CONTRIBUTION

All contributions made by a Participating Employer, as provided for under this Plan, shall be determined separately on the basis of its total Compensation paid, and shall be paid to the Trustee.

13.6 AMENDMENT

Amendment of this Plan by the Company at any time when there shall be a Participating Employer hereunder shall only be by the written action of the Company and each and every Participating Employer hereby consents to any such Amendment.

13.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Administrative Committee. The Administrative Committee may, in its discretion, thereafter direct the Trustee to transfer, deliver, and assign contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee as shall have been designated by such Participating Employer, in the event that it has established a separate pension plan for its Employees. If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer.

13.8 ADMINISTRATIVE COMMITTEE'S AUTHORITY

The Administrative Committee shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purposes of this Article.

ARTICLE 14
MISCELLANEOUS

14.1 NO CONTRACT OF EMPLOYMENT

Nothing contained in this Plan shall give any Participant or Employee the right to be retained in the service of an Employer or interfere with the right of an Employer to discharge any Participant or Employee at any time regardless of the effect of the discharge upon the individual as a Participant of the Plan.

14.2 RESTRICTIONS UPON ASSIGNMENTS AND CREDITORS' CLAIMS

(a) No Assignment of Benefits. None of the benefits under the Plan are subject to the claims of creditors of Participants or their Beneficiaries nor are they subject to attachment, garnishment or any other legal process. Neither a Participant nor his Beneficiary may assign, sell, borrow on or otherwise encumber his beneficial interest in the Plan Fund, nor shall the interest be liable for or subject to the deeds, contracts, liabilities, engagements or torts of any Participant or Beneficiary. Notwithstanding the above, nothing in the Plan shall preclude compliance with a QDRO. Furthermore, a judgment, order, decree or settlement in accordance with Code Section 401(a)(13)(C) shall be recognized.

- (b) Qualified Domestic Relations Orders. Paragraph (a) above shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order unless such order is determined to be a QDRO. Notwithstanding anything in the Plan to the contrary, a payment from a Participant's Account may be made to an alternate payee (as defined in Code Section 414(p)(8)) prior to the date the Participant reaches his earliest retirement age (as defined in Code Section 414(p)(4)(B)) if such payments are made pursuant to a QDRO. An Account Balance subject to a QDRO shall be reduced by the amount of any payment made pursuant to the order.

14.3 RESTRICTION OF CLAIMS AGAINST TRUST

The Trust shall be a separate entity aside and apart from the Employers and their assets. The Trust and the corpus and income thereof shall in no event and in no manner whatsoever be subject to the rights or claims of any creditor of the Company, any Affiliate or any Employer. Neither the establishment of the Trust, the modification thereof, the creation of any fund or account, nor the payment of any benefits shall be construed as giving any Participant or any other person whomsoever any legal or equitable rights against the Company or any Employer or the Trustee unless the same shall be specifically provided for in this Plan or the Trust Agreement.

14.4 BENEFITS PAYABLE BY TRUST

All benefits payable under the Plan shall be paid or provided for solely from the Trust, and neither the Company, any Affiliate nor any Employer assumes any liability or responsibility therefor.

14.5 PLAN MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

- (a) Successor plan. In the event of a merger or consolidation of the Company or any Employer or the transfer of all or substantially all of its assets to any other corporation, provision may be made by the successor corporation at its election subject, in the case of an Employer, to the consent of the Company, to continue to participate in this Plan. The successor shall, upon its election to continue this Plan and, if applicable, with the consent of the Company, be substituted in place of the Employer by an instrument duly authorizing the substitution and duly executed by the successor. Upon notice of the substitution accompanied by (i) a certified copy of the resolutions of the board of directors of the successor authorizing the substitution, and (ii) a certified copy of the resolutions of the Board consenting to the substitution, if applicable, delivered to the Administrative Committee, the Trustee, and all other Employers, they shall be authorized to recognize the successor in the place of the Employer.
- (b) Benefit under successor plan. In the case of any merger, consolidation, or transfer of assets or liabilities to any other plan, the other plan shall provide that each Participant would, if that other plan terminated immediately after the merger, consolidation or transfer, receive a benefit which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated.

14.6 APPLICABLE LAW

The Plan shall be construed and administered in accordance with ERISA, and any judicial review thereunder shall be governed by the "arbitrary and capricious" standard of review, as enunciated by case law. To the extent not preempted by ERISA, the laws of the State of Kansas shall govern.

14.7 DATA

It shall be a condition precedent to the payment of all benefits under the Plan that each Participant and surviving spouse or Beneficiary must furnish to the Administrative Committee such documents, evidence, or information as the Administrative Committee considers necessary or desirable for the purpose of administering the Plan, or to protect a Company or the Trustee.

14.8 MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

14.9 PLAN VOLUNTARY

Although the Company intends that this Plan shall be continued, it is entirely voluntary on the part of the Employers and continuance of the Plan and any payments under the Plan are not a contractual obligation of any Employer. The Company reserves the right at any time, without the consent of any other Employer or of the Participants, Beneficiaries or any other person, (a) to terminate the Plan, in whole or in part or as to any or all of the Employers or as to any designated group of Employees, Participants and their Beneficiaries, or (b) to amend or modify the Plan, in whole or in part. No termination or amendment shall decrease the amount of Matching Contributions to be made by an Employer on account of any period preceding the termination. The Plan may be amended only by the Company.

14.10 RESERVATION OF RIGHT TO SUSPEND OR DISCONTINUE CONTRIBUTIONS

The Employers reserve the right in their sole and uncontrolled discretion to modify or suspend (in whole or in part) at any time and for any period, or to discontinue at any time their contributions under this Plan.

14.11 SEVERABILITY

If any provisions of this Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of the document, which shall be fully severable, and the document shall be construed and enforced as if the illegal or invalid provision had never been inserted in the Plan.

14.12 CONSTRUCTION OF PLAN DOCUMENT

Titles of Articles and Sections in this Plan are inserted for convenience only and in the event of any conflict, the text of this instrument, rather than the titles, shall control.

14.13 PLAN IN EFFECT AT TERMINATION OF EMPLOYMENT CONTROLS

Unless expressly indicated otherwise, any amendment to this Plan shall not apply to any Employee who terminated employment prior to the effective date of the amendment.

AMENDMENT NO. 1
[Dated December 20, 2006]
YRC REGIONAL TRANSPORTATION, INC. 401(K) RETIREMENT PLAN
(As Amended and Restated Effective January 1, 2006)

WHEREAS, YRC Worldwide Inc. (the "Corporation") maintains the YRC Regional Transportation, Inc. 401(k) Plan (the "Plan") for the benefit of the employees of YRC Regional Transportation, Inc. and its participating affiliates (the "Employer");

WHEREAS, Section 11.2 of the Plan provides that the Corporation, through action of its Board of Directors or the Compensation Committee of its Board of Directors, may amend the Plan at any time;

WHEREAS, Section 3.2(a) of the Plan generally provides that an eligible employee of the Employer may participate in the Plan by electing to defer a specified percentage of compensation under the Plan; and

WHEREAS, the Corporation desires to amend the Plan to provide an automatic enrollment feature for any employee of the Employer that becomes eligible to participate in the Plan on or after January 1, 2007, and does not affirmatively elect to opt out of participation in the Plan.

NOW THEREFORE BE IT RESOLVED, that, effective January 1, 2007, the Plan shall be amended as follows:

1. Add the following new Section 1.49, and renumber all remaining Sections in Article 1 accordingly.
1.49 NEWLY HIRED EMPLOYEE shall mean an individual (a) who is not employed by any Employer and becomes an Employee pursuant to Section 1.33, or (b) whose participation in the Plan is determined in accordance with Section 2.2.
2. Add the following new Section 2.3:
2.3 ELECTION TO BECOME A PARTICIPANT Upon satisfaction of the eligibility requirements of this Article 2, an Eligible Employee may elect, at the time and in the manner prescribed by the Administrative Committee, to become a Participant by authorizing payroll deductions for Salary Reduction Contributions or After-Tax Contributions or both in accordance with Article 3. A Participant's election shall be effective with the next administratively practical pay period (which shall not be earlier than his Entry Date) after the Eligible Employee's election has been received, approved and processed by the Administrative Committee.
3. Add the following new Section 3.2(a)(2), and redesignate Section 3.2(a)(2) as Section 3.2(a)(3):
(2) Notwithstanding paragraph (1) above, if any Newly Hired Employee (i) first satisfies the eligibility requirements of Section 2.1 on or after January 1, 2007, and (ii) fails to make an affirmative election to make Salary Reduction Contributions to the Trust of 0% or another specified percentage of Compensation per payroll period within one month of the later of (x) becoming an Eligible Employee, or (y) receiving from the Administrative Committee written notice of eligibility to participate in the Plan and the terms of this Section 3.2(a)(2), he or she shall be deemed to have made an election to make a Salary Reduction Contribution to the Trust of 3% of his Compensation per payroll period.
4. Redesignate the cross-references in the Plan, as necessary, to conform with foregoing amendments.

NEW PENN MOTOR EXPRESS, INC. 401(K) RETIREMENT PLAN

as supplemented by Adoption Agreement for
Boston Financial Data Services Standardized 401(K) Profit Sharing Plan and Trust, dated July 16, 2004,
and as amended by EGTRRA Amendment effective 2002, dated December 26, 2002;
EGTRRA Amendment effective 2003, dated December 26, 2002;
Amendment No. 1 to the New Penn Motor Express, Inc. 401(k) Retirement Plan, dated December 3, 2003;
Mandatory Distribution Amendment, dated March 28, 2005; and
and Amendment, dated December 22, 2006.

**BOSTON FINANCIAL DATA SERVICES
DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST**

TABLE OF CONTENTS

ARTICLE I
DEFINITIONSARTICLE II
ADMINISTRATION

2.1	POWERS AND RESPONSIBILITIES OF THE EMPLOYER	12
2.2	DESIGNATION OF ADMINISTRATIVE AUTHORITY	13
2.3	ALLOCATION AND DELEGATION OF RESPONSIBILITIES	13
2.4	POWERS AND DUTIES OF THE ADMINISTRATOR	13
2.5	RECORDS AND REPORTS	14
2.6	APPOINTMENT OF ADVISERS	14
2.7	INFORMATION FROM EMPLOYER	14
2.8	PAYMENT OF EXPENSES	14
2.9	MAJORITY ACTIONS	14
2.10	CLAIMS PROCEDURE	15
2.11	CLAIMS REVIEW PROCEDURE	15

ARTICLE III
ELIGIBILITY

3.1	CONDITIONS OF ELIGIBILITY	15
3.2	EFFECTIVE DATE OF PARTICIPATION	15
3.3	DETERMINATION OF ELIGIBILITY	16
3.4	TERMINATION OF ELIGIBILITY	16
3.5	REHIRED EMPLOYEES AND BREAKS IN SERVICE	16
3.6	ELECTION NOT TO PARTICIPATE	17
3.7	CONTROL OF ENTITIES BY OWNER-EMPLOYEE	17

ARTICLE IV
CONTRIBUTION AND ALLOCATION

4.1	FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION	17
4.2	TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION	17
4.3	ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS	17
4.4	MAXIMUM ANNUAL ADDITIONS	22
4.5	ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS	25
4.6	ROLLOVERS	26
4.7	PLAN TO PLAN TRANSFERS FROM QUALIFIED PLANS	27
4.8	VOLUNTARY EMPLOYEE CONTRIBUTIONS	27
4.9	QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS	28
4.10	DIRECTED INVESTMENT ACCOUNT	28
4.11	INTEGRATION IN MORE THAN ONE PLAN	30
4.12	QUALIFIED MILITARY SERVICE	30

ARTICLE V
VALUATIONS

5.1	VALUATION OF THE TRUST FUND	30
5.2	METHOD OF VALUATION	30

ARTICLE VI
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1	DETERMINATION OF BENEFITS UPON RETIREMENT	30
6.2	DETERMINATION OF BENEFITS UPON DEATH	30
6.3	DETERMINATION OF BENEFITS IN EVENT OF DISABILITY	31
6.4	DETERMINATION OF BENEFITS UPON TERMINATION	32
6.5	DISTRIBUTION OF BENEFITS	33
6.6	DISTRIBUTION OF BENEFITS UPON DEATH	37
6.7	TIME OF DISTRIBUTION	40
6.8	DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY	40
6.9	LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN	40
6.10	IN-SERVICE DISTRIBUTION	40
6.11	ADVANCE DISTRIBUTION FOR HARDSHIP	41
6.12	SPECIAL RULE FOR CERTAIN PROFIT SHARING PLANS	41
6.13	QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION	42
6.14	DIRECT ROLLOVERS	42
6.15	TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN	42
6.16	ELECTIVE TRANSFERS OF BENEFITS TO OTHER PLANS	43

ARTICLE VII
TRUSTEE AND CUSTODIAN

7.1	BASIC RESPONSIBILITIES OF THE TRUSTEE	43
7.2	INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE	44
7.3	INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE	46
7.4	POWERS AND DUTIES OF CUSTODIAN	47
7.5	LIFE INSURANCE	48
7.6	LOANS TO PARTICIPANTS	48
7.7	MAJORITY ACTIONS	49
7.8	TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES	49
7.9	ANNUAL REPORT OF THE TRUSTEE	50
7.10	AUDIT	50
7.11	RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE	50
7.12	TRANSFER OF INTEREST	51
7.13	TRUSTEE INDEMNIFICATION	51
7.14	EMPLOYER SECURITIES AND REAL PROPERTY	51

ARTICLE VIII
AMENDMENT, TERMINATION AND MERGERS

8.1	AMENDMENT	51
-----	-----------	----

8.2	TERMINATION	52
8.3	MERGER, CONSOLIDATION OR TRANSFER OF ASSETS	52
ARTICLE IX TOP HEAVY PROVISIONS		
9.1	TOP HEAVY PLAN REQUIREMENTS	52
9.2	DETERMINATION OF TOP HEAVY STATUS	53
ARTICLE X MISCELLANEOUS		
10.1	EMPLOYER ADOPTIONS	54
10.2	PARTICIPANT'S RIGHTS	54
10.3	ALIENATION	54
10.4	CONSTRUCTION OF PLAN	55
10.5	GENDER AND NUMBER	55
10.6	LEGAL ACTION	55
10.7	PROHIBITION AGAINST DIVERSION OF FUNDS	55
10.8	EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE	55
10.9	INSURER'S PROTECTIVE CLAUSE	55
10.10	RECEIPT AND RELEASE FOR PAYMENTS	56
10.11	ACTION BY THE EMPLOYER	56
10.12	NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY	56
10.13	HEADINGS	56
10.14	APPROVAL BY INTERNAL REVENUE SERVICE	56
10.15	UNIFORMITY	56
10.16	PAYMENT OF BENEFITS	56
ARTICLE XI PARTICIPATING EMPLOYERS		
11.1	ELECTION TO BECOME A PARTICIPATING EMPLOYER	57
11.2	REQUIREMENTS OF PARTICIPATING EMPLOYERS	57
11.3	DESIGNATION OF AGENT	57
11.4	EMPLOYEE TRANSFERS	57
11.5	PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES	57
11.6	AMENDMENT	57
11.7	DISCONTINUANCE OF PARTICIPATION	57
11.8	ADMINISTRATOR'S AUTHORITY	58
11.9	PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE	58
ARTICLE XII CASH OR DEFERRED PROVISIONS		
12.1	FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION	58
12.2	PARTICIPANT'S SALARY REDUCTION ELECTION	59
12.3	ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS	61

12.4	ACTUAL DEFERRAL PERCENTAGE TESTS	62
12.5	ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TESTS	64
12.6	ACTUAL CONTRIBUTION PERCENTAGE TESTS	66
12.7	ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS	68
12.8	SAFE HARBOR PROVISIONS	71
12.9	ADVANCE DISTRIBUTION FOR HARDSHIP	72

ARTICLE XIII
SIMPLE 401(K) PROVISIONS

13.1	SIMPLE 401(k) PROVISIONS	73
13.2	DEFINITIONS	74
13.3	CONTRIBUTIONS	74
13.4	ELECTION AND NOTICE REQUIREMENTS	74
13.5	VESTING REQUIREMENTS	75
13.6	TOP-HEAVY RULES	75
13.7	NONDISCRIMINATION TESTS	75

**ARTICLE I
DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 “ACP” means the “Actual Contribution Percentage” determined pursuant to Section 12.6(e).

1.2 “Act” means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.3 “ADP” means the “Actual Deferral Percentage” determined pursuant to Section 12.4(e).

1.4 “Administrator” means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.5 “Adoption Agreement” means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan and Trust as specified by the Employer.

1.6 “Affiliated Employer” means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.7 “Anniversary Date” means the last day of the Plan Year.

1.8 “Annuity Starting Date” means, with respect to any Participant, the first day of the first period for which an amount is paid 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 entitles the Participant to such benefit.

1.9 “Beneficiary” means the person (or entity) to whom all or a portion of a deceased Participant’s interest in the Plan is payable, subject to the restrictions of Sections 6.2 and 6.6.

1.10 “Code” means the Internal Revenue Code of 1986, as amended.

1.11 “Compensation” with respect to any Participant means one of the following as elected in the Adoption Agreement:

(a) Information required to be reported under Code Sections 6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(b) Code Section 3401(a) Wages. Compensation means an Employee’s wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(c) 415 Safe-Harbor Compensation. Compensation means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation 1.62-2(c))), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includible in the Employee’s gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee’s gross income, or any distributions from a plan of deferred compensation;

- (2) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (4) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

However, Compensation for any Self-Employed Individual shall be equal to Earned Income. Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. Except as otherwise provided in this Plan, the determination period shall be the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the determination period shall be the Plan Year.

Notwithstanding the above, if elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

- (a) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), and for Plan Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4);
- (b) Compensation deferred under an eligible deferred compensation plan within the meaning of Code Section 457(b); and
- (c) Employee contributions (under governmental plans) described in Code Section 414(h)(2) that are picked up by the employing unit and thus are treated as Employer contributions.

For Plan Years beginning on or after January 1, 1989, and before January 1, 1994, the annual Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under Code Section 415(d), except that the dollar increase in effect on January 1 of any calendar year is effective for Plan Years beginning in such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990.

For Plan Years beginning on or after January 1, 1994, Compensation in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the \$150,000 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 twelve (12).

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

Notwithstanding the foregoing, except as otherwise elected in a non-standardized Adoption Agreement, the family member aggregation rules of Code Sections 401(a)(17) and 414 (q)(6) as in effect prior to the enactment of the Small Business Job Protection Act of 1996 shall not apply to this Plan effective with respect to Plan Years beginning after December 31, 1996.

If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a determination period shall only include Compensation while the Employee is an Eligible Employee.

If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment. Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.12 “Contract” or “Policy” means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.13 “Designated Investment Alternative” means a specific investment identified by name by the Employer (or such other Fiduciary who has been given the authority to select investment options) as an available investment under the Plan to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.14 “Directed Investment Option” means a Designated Investment Alternative and any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested pursuant to the investment direction of a Participant.

1.15 “Early Retirement Date” means the date specified in the Adoption Agreement on which a Participant or Former Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Former Participant who separates from service after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan (other than any accelerated vesting and allocations of Employer Contributions) as though the requirements for Early Retirement Age had been satisfied.

1.16 “Earned Income” means the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions made by the Employer to a qualified plan to the extent deductible under Code Section 404. In addition, net earnings shall be determined with regard to the deduction allowed to the taxpayer by Code Section 164(f), for taxable years beginning after December 31, 1989.

1.17 “Elective Deferrals” means the Employer’s contributions to the Plan that are made pursuant to a Participant’s deferral election pursuant to Section 12.2, excluding any such amounts distributed as “excess annual additions” pursuant to Section 4.5. Elective Deferrals shall be subject to the requirements of Sections 12.2(b) and 12.2(c) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of Regulation 1.401(k)-1(b)(2), the provisions of which are specifically incorporated herein by reference.

1.18 “Eligible Employee” means any Eligible Employee as elected in the Adoption Agreement and as provided herein. With respect to a non-standardized Adoption Agreement, an individual shall not be an “Eligible Employee” if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not “Eligible Employees” and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. Furthermore, with respect to a non-standardized Adoption Agreement, Employees of an Affiliated Employer will not be treated as “Eligible Employees” prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

Except as otherwise provided in this paragraph, if the Employer does not elect in the Adoption Agreement to include Employees who became Employees as the result of a “Code Section 4101(b)(6)(C) transaction,” then such Employees will only be “Eligible Employees” after the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A “Code Section 410(b)(6)(C) transaction” is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code Section 410(b)(6)(C). However, regardless of any election made in the Adoption Agreement, if a separate entity becomes an Affiliate Employer as the result of a “Code Section 410(b)(6)(C) transaction,” then Employees of such separate entity will not be treated as “Eligible Employees” prior to the date the entity adopts the Plan as a Participating Employer or, with respect to a standardized Adoption Agreement, if earlier, the expiration of the transition period set forth above.

If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and “employee representatives” under which retirement benefits were the subject of good faith bargaining and if two percent (2%) or less of the Employees covered pursuant to that agreement are professionals as defined in Regulation 1.410(b)-9, shall not be eligible to participate in this Plan. For this purpose, the term “employee representatives” does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer.

If, in the Adoption Agreement, the Employer elects to exclude non-resident aliens, then Employees who are non-resident aliens (within the meaning of Code Section 7701(b)(1)(B)) who received no earned income (within the meaning of

Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861 (a)(3)) shall not be eligible to participate in this Plan.

1.19 “Employee” means any person who is employed by the Employer. The term “Employee” shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code Section 414(n) or (o).

1.20 “Employer” means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term “Employer” shall include any Participating Employer (as defined in Section 11.1) which shall adopt this Plan.

1.21 “Excess Aggregate Contributions” means, with respect to any Plan Year, the excess of:

(a) The aggregate “Contribution Percentage Amounts” (as defined in Section 12.6) actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ACP, over

(b) The maximum “Contribution Percentage Amounts” permitted by the ACP test in Section 12.6 (determined by reducing contributions made on behalf of Highly Compensated Participants in order of their “Contribution Percentages” beginning with the highest of such percentages).

Such determination shall be made after first taking into account corrections of any Excess Deferrals pursuant to Section 12.2 and then taking into account adjustments of any Excess Contributions pursuant to Section 12.5.

1.22 “Excess Compensation” means, with respect to a Plan that is integrated with Social Security (permitted disparity), a Participant’s Compensation which is in excess of the integration level elected in the Adoption Agreement.

However, if Compensation is based on less than a twelve (12) month determination period, Excess Compensation shall be determined by reducing the integration level by a fraction, the numerator of which is the number of full months in the short period and the denominator of which is twelve (12).

1.23 “Excess Contributions” means, with respect to any Plan Year, the excess of:

(a) The aggregate amount of Employer contributions actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ADP, over

(b) The maximum amount of such contributions permitted by the ADP test in Section 12.4 (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual deferral ratios, beginning with the highest of such ratios).

In determining the amount of Excess Contributions to be distributed and/or recharacterized with respect to an affected Highly Compensated Participant as determined herein, such amount shall be reduced by any Excess Deferrals previously distributed to such affected Highly Compensated Participant for the Participant’s taxable year ending with or within such Plan Year.

1.24 “Excess Deferrals” means, with respect to any taxable year of a Participant, those elective deferrals (within the meaning of Code Section 402(g)) that are includible in the Participant’s gross income under Code Section 402(g) to the extent such Participant’s elective deferrals for the taxable year exceed the dollar limitation under such Code Section. Excess Deferrals shall be treated as an “Annual Addition” pursuant to Section 4.4 when contributed to the Plan unless distributed to the affected Participant not later than the first April 15th following the close of the Participant’s taxable year in which the Excess Deferral was made. Additionally, for purposes of Sections 4.3(f) and 9.2, Excess Deferrals shall continue to be treated as Employer contributions even if distributed pursuant to Section 12.2(e). However, Excess Deferrals of Non-Highly Compensated Participants are not taken into account for purposes of Section 12.4.

1.25 “Fiduciary” means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.26 “Fiscal Year” means the Employer’s accounting year.

1.27 “Forfeiture” means, with respect to a Former Participant who has severed employment, that portion of the Participant’s Account that is not Vested. Unless otherwise elected in the Adoption Agreement, Forfeitures occur pursuant to (a) below.

(a) A Forfeiture will occur on the earlier of:

- (1) The last day of the Plan Year in which a Former Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, or
- (2) The distribution of the entire Vested portion of the Participant’s Account of a Former Participant who has severed employment with the Employer. For purposes of this provision, if the Former Participant has a Vested benefit of zero, then such Former Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs.

(b) If elected in the Adoption Agreement, a Forfeiture will occur as of the last day of the Plan Year in which the Former Participant incurs five (5) 1-Year Breaks in Service.

Regardless of the preceding provisions, if a Former Participant is eligible to share in the allocation of Employer contributions or Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Former Participant is not eligible to share in the allocation of Employer contributions or Forfeitures. Furthermore, the term “Forfeiture” shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.28 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.29 “414(s) Compensation” means any definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.30 “415 Compensation” means, with respect to any Participant, such Participant’s (a) Wages, tips and other compensation on Form W-2, (b) Section 3401 (a) wages or (c) 415 safe-harbor compensation as elected in the Adoption Agreement for purposes of Compensation. 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, with respect to Limitation Years beginning after December 31, 1997, 415 Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Section 125, 457, and, for Limitation Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4). For Limitation Years beginning prior to January 1, 1998, 415 Compensation shall exclude such amounts.

Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.31 “Highly Compensated Employee” means, effective for Plan Years beginning after December 31, 1996, an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a “five percent (5%) owner” as defined in Section 1.37(c) at any time during the “determination year” or the “look-back year”; or

(b) for the “look-back year” had 415 Compensation from the Employer in excess of \$80,000 and, if elected in the Adoption Agreement, was in the Top-Paid Group for the “look-back year.” The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The “determination year” means the Plan Year for which testing is being performed and the “look-back year” means the immediately preceding twelve (12) month period. However, if the calendar year data election is made in the Adoption Agreement, for purposes of (b) above, the “look-back year” shall be the calendar year beginning within the twelve (12) month period immediately preceding the “determination year.” Notwithstanding the preceding sentence, if the calendar year data election is effective with respect to a Plan Year beginning in 1997, then for such Plan Year the “look-back year” shall be the calendar year ending with or within the Plan Year for which testing is being performed, and the “determination year” shall be the period of time, if any, which extends beyond the “look-back year” and ends on the last day of the Plan Year for which testing is being performed.

A highly compensated former employee is based on the rules applicable to determining highly compensated employee status as in effect for that "determination year," in accordance with Regulation 1.414(q)-IT, A-4 and IRS Notice 97-45 (or any superseding guidance).

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

For purposes of this Section, for Plan Years beginning prior to January 1, 1998, the determination of 415 Compensation shall be made by including amounts that would otherwise be excluded from a Participant's gross income by reason of the application of Code Sections 125, 402(e)(3), 402(h)(1)(B) and, for Plan Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4), and, in the case of Employer contributions made pursuant to a salary reduction agreement, Code Section 403(b).

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Additionally, all Affiliated Employers shall be taken into account as a single employer and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans.

1.32 "Highly Compensated Participant" means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.

1.33 "Hour of Service" means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2 which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code Section 414(n) or 414(o) and the Regulations thereunder. Furthermore, the provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

Hours of Service will be determined on the basis of the method elected in the Adoption Agreement.

1.34 "Insurer" means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

1.35 "Investment Manager" means a Fiduciary as described in Act Section 3(38).

1.36 "Joint and Survivor Annuity" means an annuity for the life of a Participant with a survivor annuity for the life of the Participant's spouse which is not less than fifty percent (50%), nor more than one-hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's spouse which can be purchased with the Participant's Vested interest in the Plan reduced by any outstanding loan balances pursuant to Section 7.6.

1.37 “Key Employee” means an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or former Employee (as well as each of such Employee’s or former Employee’s Beneficiaries) is considered a Key Employee if, the individual at any time during the Plan Year that contains the “Determination Date” (as defined in Section 9.2(c)) or any of the preceding four (4) Plan Years, has been included in one of the following categories:

(a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual 415 Compensation greater than fifty percent (50%) of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year;

(b) one of the ten Employees having annual 415 Compensation from the Employer for a Plan Year greater than the dollar limitation in effect under Code Section 415(c)(1)(A) for the calendar year in which such Plan Year ends and owning (or considered as owning within the meaning of Code Section 318) both more than one-half percent (1/2%) interest and the largest interests in the Employer;

(c) a “five percent (5%) owner” of the Employer. “Five percent (5%) owner” means any person who owns (or is considered as owning within the meaning of Code Section 318) more than five percent (5%) of the value of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer; and

(d) a “one percent (1%) owner” of the Employer having annual 415 Compensation from the Employer of more than \$150,000. “One percent (1%) owner” means any person who owns (or is considered as owning within the meaning of Code Section 318) more than one percent (1%) of the value of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than \$150,000, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account. Furthermore, for purposes of this Section, for Plan Years beginning prior to January 1, 1998, the determination of 415 Compensation shall be made by including amounts that would otherwise be excluded from a Participant’s gross income by reason of the application of Code Sections 125, 402(e)(3), 402(h)(1)(B) and, for Plan Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4), and, in the case of Employer contributions made pursuant to a salary reduction agreement, Code Section 403(b).

1.38 “Late Retirement Date” means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant’s actual retirement after having reached the Normal Retirement Date.

1.39 “Leased Employee” means, effective with respect to Plan Years beginning on or after January 1, 1997, any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity (“leasing organization”), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions 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. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but for Plan Years beginning prior to January 1, 1998, including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee’s gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), or for Plan Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer’s nonhighly compensated workforce.

1.40 “Limitation Year” means the determination period used to determine Compensation. However, the Employer may elect a different Limitation Year in the Adoption Agreement or by adopting a written resolution to such effect. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption

Agreement (or written resolution). 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.

1.41 "Net Profit" means, with respect to any Fiscal Year, the Employer's net income or profit for such Fiscal Year determined upon the basis of the Employer's books of account in accordance with generally accepted accounting principles, without any reduction for taxes based upon income, or for contributions made by the Employer to this Plan and any other qualified plan.

1.42 "Non-Elective Contribution" means the Employer's contributions to the Plan other than Elective Deferrals, any Qualified Non-Elective Contributions and any Qualified Matching Contributions. Employer matching contributions which are not Qualified Matching Contributions shall be considered a Non-Elective Contribution for purposes of the Plan.

1.43 "Non-Highly Compensated Participant" means any Participant who is not a Highly Compensated Employee. However, if pursuant to Sections 12.4 or 12.6 the prior year testing method is used to calculate the ADP or the ACP, a Non-Highly Compensated Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.

1.44 "Non-Key Employee" means any Employee or former Employee (and such Employee's or former Employee's Beneficiaries) who is not, and has never been, a Key Employee.

1.45 "Normal Retirement Age" means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date).

1.46 "Normal Retirement Date" means the date elected in the Adoption Agreement.

1.47 "1-Year Break in Service" means, if the Hour of Service Method is elected in the Adoption Agreement, the applicable computation period during which an Employee or former Employee has not completed more than 500 Hours of Service. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the Elapsed Time Method is elected in the Adoption Agreement, a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

1.48 "Owner-Employee" means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than ten percent (10%) of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer.

1.49 "Participant" means any Eligible Employee who has satisfied the requirements of Section 3.2 and has not for any reason become ineligible to participate further in the Plan.

1.50 "Participant Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.51 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.52 “Participant’s Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest under the Plan resulting from (a) the Employer’s contributions in the case of a Profit Sharing Plan or Money Purchase Plan, and (b) the Employer’s Non-Elective Contributions in the case of a 401(k) Profit Sharing Plan. Separate accountings shall be maintained with respect to that portion of a Participant’s Account attributable to Employer matching contributions and to Employer discretionary contributions made pursuant to Section 12.1(a)(3).

1.53 “Participant’s Combined Account” means the total aggregate amount of a Participant’s interest under the Plan resulting from Employer contributions (including Elective Deferrals).

1.54 “Participant’s Elective Deferral Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan resulting from Elective Deferrals. Amounts in the Participant’s Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(c).

1.55 “Participant’s Rollover Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s interest in the Plan resulting from amounts transferred from another qualified plan or “conduit” Individual Retirement Account in accordance with Section 4.6.

1.56 “Participant’s Transfer Account” means the account established and maintained by the Administrator for each Participant with respect to the total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7.

1.57 “Period of Service” means the aggregate of all periods commencing with an Employee’s first day of employment or re-employment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive partial 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.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service Method to the Elapsed Time Method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the Elapsed Time Method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service Method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

1.58 “Period of Severance” means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for “maternity or paternity” reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for “maternity or paternity” reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.59 “Plan” means this instrument (hereinafter referred to as Boston Financial Data Services Defined Contribution Prototype Plan and Trust Basic Plan Document #01) and the Adoption Agreement as adopted by the Employer, including all amendments thereto and any addendum which is specifically permitted pursuant to the terms of the Plan.

1.60 “Plan Year” means the Plan’s accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

1.61 “Pre-Retirement Survivor Annuity” means an immediate annuity for the life of a Participant’s spouse, the payments under which must be equal to the benefit which can be provided with the percentage, as specified in the Adoption Agreement, of the Participant’s Vested interest in the Plan as of the date of death. If no election is made in the Adoption Agreement, the percentage shall be equal to fifty percent (50%). Furthermore, if less than one hundred percent (100%) of the Participant’s Vested interest in the Plan is used to provide the Pre-Retirement Survivor Annuity, a proportionate share of each of the Participant’s accounts shall be used to provide the Pre-Retirement Survivor Annuity.

1.62 “Qualified Matching Contribution” means any Employer matching contributions that are made pursuant to Sections 12.1(a)(2) if elected in the Adoption Agreement, 12.5 and 12.7.

1.63 “Qualified Matching Contribution Account” means the account established hereunder to which Qualified Matching Contributions are allocated. Amounts in the Qualified Matching Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(c).

1.64 “Qualified Non-Elective Contribution” means the Employer’s contributions to the Plan that are made pursuant to Sections 12.1(a)(4) if elected in the Adoption Agreement, 12.5 and 12.7.

1.65 “Qualified Non-Elective Contribution Account” means the account established hereunder to which Qualified Non-Elective Contributions are allocated. Amounts in the Qualified Non-Elective Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(c).

1.66 “Qualified Voluntary Employee Contribution Account” means the account established hereunder to which a Participant’s tax deductible qualified voluntary employee contributions made pursuant to Section 4.9 are allocated.

1.67 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.68 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.69 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant’s Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

1.70 “Self-Employed Individual” means an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.71 “Shareholder-Employee” means a Participant who owns (or is deemed to own pursuant to Code Section 318(a)(1)) more than five percent (5%) of the Employer’s outstanding capital stock during any year in which the Employer elected to be taxed as a Small Business Corporation (S Corporation) under the applicable Code sections relating to Small Business Corporations.

1.72 “Short Plan Year” means, if specified in the Adoption Agreement, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the Elapsed Time Method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year. The determination of whether an Employee has completed a Year of Service (or Period of Service) for vesting and eligibility purposes shall be made in accordance with Department of Labor regulation 2530.203-2(c). In addition, if this Plan is integrated with Social Security, then the integration level shall be proportionately reduced based on the number of months in the Short Plan Year.

1.73 “Super Top Heavy Plan” means a plan which would be a Top Heavy Plan if sixty percent (60%) is replaced with ninety percent (90%) in Section 9.2(a). However, effective as of the first Plan Year beginning after December 31, 1999, no Plan shall be considered a Super Top Heavy Plan.

1.74 “Taxable Wage Base” means, with respect to any Plan Year, the contribution and benefit base under Section 230 of the Social Security Act at the beginning of such Plan Year.

1.75 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability or retirement.

1.76 “Top Heavy Plan” means a plan described in Section 9.2(a).

1.77 “Top Heavy Plan Year” means a Plan Year commencing after December 31, 1983, during which the Plan is a Top Heavy Plan.

1.78 “Top-Paid Group” shall be determined pursuant to Code Section 414(q) and the Regulations thereunder and generally means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of 415 Compensation received from the Employer during such year. All Affiliated Employers shall be taken into account as a single employer, and Leased Employees shall be treated as Employees if required pursuant to Code Section 414(n) or (o). Employees who are non-resident aliens who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Furthermore, for the purpose of determining the number of active Employees in any year, the following additional Employees may also be excluded, however, such Employees shall still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

- (a) Employees with less than six (6) months of service;
- (b) Employees who normally work less than 17 1/2 hours per week;
- (c) Employees who normally work less than six (6) months during a year; and
- (d) Employees who have not yet attained age twenty-one (21).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representatives and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the Top-Paid Group.

The foregoing exclusions set forth in this Section shall be applied on a uniform and consistent basis for all purposes for which the Code Section 414(q) definition is applicable. Furthermore, in applying such exclusions, the Employer may substitute any lesser service, hours or age.

1.79 “Total and Permanent Disability” means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician chosen by the Administrator. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

1.80 “Trustee” means the person or entity named in the Adoption Agreement, or any successors thereto.

If the sponsor of this prototype is a bank, savings and loan, trust company, credit union or similar institution, a person or entity other than the prototype sponsor (or its affiliates or subsidiaries) may not serve as Trustee without the written consent of the sponsor.

1.81 “Trust Fund” means the assets of the Plan and Trust as the same shall exist from time to time.

1.82 “Valuation Date” means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants’ Accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer, or any stock exchange used by such agent, are open for business.

1.83 “Vested” means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.84 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan resulting from the Participant’s after-tax voluntary Employee contributions made pursuant to Section 4.7.

Amounts recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5 shall remain subject to the limitations of Section 12.2. Therefore, a separate accounting shall be maintained with respect to that portion of the Voluntary Contribution Account attributable to after-tax voluntary Employee contributions made pursuant to Section 4.8.

1.85 “Year of Service” means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a lower number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). The initial computation period beginning after a 1-Year Break in Service shall be measured from the date on which an Employee again performs an Hour of Service. Unless otherwise elected in the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) Years of Service for eligibility purposes upon completing two (2) consecutive Years of Service without an intervening 1-Year Break-in-Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Adoption Agreement. If no election is made in the Adoption Agreement, the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the Elapsed Time Method to the Hour of Service Method, an Employee will receive credit for Years of Service equal to:

- (a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and
- (b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and the Act. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) The Employer shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. If the Trustee has discretionary authority, the Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of this Plan and with the requirements of Title 1 of the Act.

(c) The Employer may appoint, at its option, an Investment Manager, investment adviser, or other agent to provide direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

(d) The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code Section 401(a), and shall comply with the terms of the Act and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle, in compromise fashion, disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust fund;
- (e) to maintain all necessary records for the administration of the Plan;

- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;
- (g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion (if the Trustee has such discretion), in a manner designed to accomplish specific objectives;
- (j) to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect Joint and Survivor Annuities and Pre-Retirement Survivor Annuities if required by the Plan, Code and Regulations thereunder;
- (k) to assist Participants regarding their rights, benefits, or elections available under the Plan;
- (l) to act as the named Fiduciary responsible for communicating with Participants as needed to maintain Plan compliance with Act Section 404(c) (if the Employer intends to comply with Act Section 404(c)) including, but not limited to, the receipt and transmission of Participants' directions as to the investment of their accounts under the Plan and the formation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts; and
- (m) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise the Trustee of such of the foregoing facts as may be pertinent to the Trustee's duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any Named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator or Trustee in carrying out the instructions of Participants as to the directed investment of their accounts (if permitted) and other specialists and their agents, the costs of any bonds required pursuant to Act Section 412, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days after the application is filed, or such period as is required by applicable law or Department of Labor regulation. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

2.11 CLAIMS REVIEW PROCEDURE

Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to the claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes such claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.10. The Administrator shall then conduct a hearing within the next sixty (60) days, at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days written notice to the Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. Either the claimant or the Administrator may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days of receipt of the appeal (unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

If the Administrator, pursuant to the claims review procedure, makes a final written determination denying a Participant's or Beneficiary's benefit claim, then in order to preserve the claim, the Participant or Beneficiary must file an action with respect to the denied claim not later than one hundred eighty (180) days following the date of the Administrator's final determination.

**ARTICLE III
ELIGIBILITY**

3.1 CONDITIONS OF ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility elected in the Adoption Agreement.

3.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. If said Employee is not employed on such date, but is reemployed before a 1-Year Break in Service has occurred, then such Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment.

Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the

Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the Break in Service rules set forth in Section 3.5.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and the Act. Such determination shall be subject to review pursuant to Section 2.11.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Former Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the Elapsed Time Method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

3.5 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed by the Employer before a 1-Year Break in Service occurs, the Former Participant shall become a Participant as of the reemployment date.

(b) If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed after a 1-Year Break in Service has occurred, Years of Service (or Periods of Service if the Elapsed Time Method is being used) shall include Years of Service (or Periods of Service if the Elapsed Time Method is being used) prior to the 1-Year Break in Service subject to the following rules:

(1) In the case of a Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (A) five (5) or (B) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Participant who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Participant would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(c) After a Former Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Former Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer-derived account balance in the Plan attributable to post-break service.

(d) If any Participant becomes a Former Participant due to severance of employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Former Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Former Participant repays the full amount which had been distributed. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. In the event the Former Participant does repay the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore the Participant's Account, provided, however, that if a discretionary contribution is made for such year, such contribution will first be applied to restore any such accounts and the

remainder shall be allocated in accordance with the terms of the Plan. If a non-Vested Former Participant was deemed to have received a distribution and such Former Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

3.6 ELECTION NOT TO PARTICIPATE

An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the beginning of the first Plan Year. For standardized Plans, a Participant or an Eligible Employee may not elect not to participate.

3.7 CONTROL OF ENTITIES BY OWNER-EMPLOYEE

Effective with respect to Plan Years beginning after December 31, 1996, if this Plan provides contributions or benefits for one or more Owner-Employees, the contributions on behalf of any Owner-Employee shall be made only with respect to the Earned Income for such Owner-Employee which is derived from the trade or business with respect to which such Plan is established.

**ARTICLE IV
CONTRIBUTION AND ALLOCATION**

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) For a Money Purchase Plan:

(1) The Employer will make contributions on the following basis. On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount elected in the Adoption Agreement. All contributions by the Employer will be made in cash. In the event a funding waiver is obtained, this Plan shall be deemed to be an individually designed plan.

(2) Notwithstanding the foregoing, with respect to an Employer which is not a tax-exempt entity, the Employer's contribution for any Fiscal Year shall not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code Section 404. However, to the extent necessary to provide the top heavy minimum allocations, the Employer shall make a contribution even if it exceeds the amount that is deductible under Code Section 404.

(b) For a Profit Sharing Plan:

(1) For each Plan Year, the Employer may (or will in the case of a Prevailing Wage contribution) contribute to the Plan such amount as elected by the Employer in the Adoption Agreement.

(2) Additionally, the Employer will contribute to the Plan the amount necessary, if any, to provide the top heavy minimum allocations, even if it exceeds current or accumulated Net Profit or the amount that is deductible under Code Section 404.

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) For a Money Purchase Plan (other than a Money Purchase Plan which is integrated by allocation):

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) However, regardless of the preceding, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the conditions set forth in the Adoption Agreement are satisfied, unless a top heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) Months of Service if the Elapsed Time method is chosen in the Adoption Agreement) during the Plan Year or who is employed on the last day of the Plan Year. Furthermore, with respect to a non-standardized Adoption Agreement, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the Elapsed Time Method is elected).

(2) For an integrated Profit Sharing Plan allocation or a Money Purchase Plan which is integrated by allocation:

(i) Except as provided in Section 4.3 (f) for top heavy purposes and subject to the "Overall Permitted Disparity Limits," the Employer's contribution shall be allocated to each Participant's Account in a dollar amount equal to 5.7% of the sum of each Participant's Compensation plus Excess Compensation. If the Employer does not contribute such amount for all Participants, each Participant will be allocated a share of the contribution in the same proportion that each such Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus the total Excess Compensation of all Participants for that year. However, in the case of any Participant who has exceeded the "Cumulative Permitted Disparity Limit," the allocation set forth in this paragraph shall be based on such Participant's Compensation rather than Compensation plus Excess Compensation.

Regardless of the preceding, 4.3% shall be substituted for 5.7% above if Excess Compensation is based on more than 20% and less than or equal to 80% of the Taxable Wage Base. If Excess Compensation is based on less than 100% and more than 80% of the Taxable Wage Base, then 5.4% shall be substituted for 5.7% above.

(ii) The balance of the Employer's contribution over the amount allocated above, if any, shall be allocated to each Participant's Account in the same proportion that each such Participant's Compensation for the Year bears to the total Compensation of all Participants for such year.

(iii) However, regardless of the preceding, a Participant shall only be eligible to share in the allocations of the Employer's Contribution for the year if the conditions set forth in the Adoption Agreement are satisfied, unless a contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) Months of Service if the Elapsed Time method is chosen in the Adoption Agreement) during the Plan Year or who is employed on the last day of the Plan Year. Furthermore, with respect to a non-standardized Adoption Agreement, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the Elapsed Time Method is elected).

(3) For a Profit Sharing Plan with a non-integrated allocation formula or a Prevailing Wage contribution:

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method elected in the Adoption Agreement.

(ii) However, regardless of the preceding, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the conditions set forth in the Adoption Agreement are satisfied, unless a top heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five

hundred (500) Hours of Service (or three (3) Months of Service if the Elapsed Time method is chosen in the Adoption Agreement) during the Plan Year or who is employed on the last day of the Plan Year. Furthermore, with respect to a non-standardized Adoption Agreement, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the Elapsed Time Method is elected).

(4) "Overall Permitted Disparity Limits":

"Annual Overall Permitted Disparity Limit": Notwithstanding the preceding paragraphs, if in any Plan Year this Plan "benefits" any Participant who "benefits" under another qualified plan or simplified employee pension, as defined in Code Section 408(k), maintained by the Employer that either provides for or imputes permitted disparity (integrates), then such plans will be considered to be one plan and will be considered to comply with the permitted disparity rules if the extent of the permitted disparity of all such plans does not exceed 100%. For purposes of the preceding sentence, the extent of the permitted disparity of a plan is the ratio, expressed as a percentage, which the actual benefits, benefit rate, offset rate, or employer contribution rate, whatever is applicable under the Plan, bears to the limitation under Code Section 401(l) applicable to such Plan. Notwithstanding the foregoing, if the Employer maintains two or more standardized paired plans, only one plan may provide for permitted disparity.

"Cumulative Permitted Disparity Limit": With respect to a Participant who "benefits" or "has benefited" under a defined benefit or target benefit plan of the Employer, effective for Plan Years beginning on or after January 1, 1994, the cumulative permitted disparity limit for the Participant is thirty five (35) total cumulative permitted disparity years. Total cumulative permitted disparity years means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer, while such plan either provides for or imputes permitted disparity. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not "benefited" under a defined benefit or target benefit plan which neither provides for nor imputes permitted disparity for any year beginning on or after January 1, 1994, then such Participant has no cumulative disparity limit.

For purposes of this Section, "benefiting" means benefiting under the Plan for any Plan Year during which a Participant received or is deemed to receive an allocation in accordance with Regulation 1.410(b)-3(a).

(c) Except as otherwise elected in the Adoption Agreement or as provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. If any nonsegregated account of a Participant has been distributed prior to the Valuation Date subsequent to a Participant's termination of employment, no earnings or losses shall be credited to such account.

(d) Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) On or before each Anniversary Date, any amounts which became Forfeitures since the last Anniversary Date may be made available to reinstate previously forfeited account balances of Former Participants, if any, in accordance with Section 3.5(d) or used to satisfy any contribution that may be required pursuant to Section 6.9. The remaining Forfeitures, if any, shall be treated in accordance with the Adoption Agreement. If no election is made in the Adoption Agreement, any remaining Forfeitures will be used to reduce any future Employer contributions under the Plan. However, if the Plan provides for an integrated allocation, then any remaining Forfeitures will be added to the Employer's contributions under the Plan. Regardless of the preceding sentences, in the event the allocation of Forfeitures provided herein shall cause the "Annual Additions" (as defined in Section 4.4) to any Participant's Account to exceed the amount allowable by the Code, an adjustment shall be made in accordance with Section 4.5. Except, however, a Participant shall only be eligible to share in the allocations of Forfeitures for the year if the conditions set forth in the Adoption Agreement are satisfied, unless a top heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) Months of Service if the Elapsed Time method, is chosen in the Adoption Agreement) during the Plan Year or who is employed on the last day of the Plan Year.

(f) Minimum Allocations Required for Top Heavy Plan Years: Notwithstanding the foregoing, for any Top Heavy Plan Year, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Non-Key Employee shall be equal to at least three percent (3%) of such Non-Key Employee's 415 Compensation (reduced by contributions and forfeitures, if any, allocated to each Non-Key Employee in any defined contribution plan included with this Plan in a "required aggregation group" (as defined in Section 9.2(f)). However, if (i) the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Key Employee for such Top Heavy Plan Year is less than three percent (3%) of each Key Employee's 415 Compensation and (ii) this Plan is not required to be included in a "required aggregation group" (as defined in Section 9.2(f)) to enable a defined benefit plan to meet the requirements of Code Section 401(a)(4) or 410, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Non-Key Employee shall be equal to the largest percentage allocated to the Participant's Combined Account of any Key Employee.

However, for each Non-Key Employee who is a Participant in a paired Profit Sharing Plan or 401(k) Profit Sharing Plan and a paired Money Purchase Plan, the minimum three percent (3%) allocation specified above shall be provided in the Money Purchase Plan.

If this is an integrated Plan, then for any Top Heavy Plan Year the Employer's contribution shall be allocated as follows and shall still be required to satisfy the other provisions of this subsection:

- (1) An amount equal to three percent (3%) multiplied by each Participant's Compensation for the Plan Year shall be allocated to each Participant's Account. If the Employer does not contribute such amount for all Participants, the amount shall be allocated to each Participant's Account in the same proportion that such Participant's total Compensation for the Plan Year bears to the total Compensation of all Participants for such year.
- (2) The balance of the Employer's contribution over the amount allocated under subparagraph (1) hereof shall be allocated to each Participant's Account in a dollar amount equal to three percent (3%) multiplied by a Participant's Excess Compensation. If the Employer does not contribute such amount for all Participants, each Participant will be allocated a share of the contribution in the same proportion that such Participant's Excess Compensation bears to the total Excess Compensation of all Participants for that year. For purposes of this paragraph, in the case of any Participant who has exceeded the cumulative permitted disparity limit described in Section 4.3(b)(4), such Participant's total Compensation will be taken into account.
- (3) The balance of the Employer's contribution over the amount allocated under subparagraph (2) hereof shall be allocated to each Participant's Account in a dollar amount equal to 2.7% multiplied by the sum of each Participant's total Compensation plus Excess Compensation. If the Employer does not contribute such amount for all Participants, each Participant will be allocated a share of the contribution in the same proportion that such Participant's total Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for that year. For purposes of this paragraph, in the case of any Participant who has exceeded the cumulative permitted disparity limit described in Section 4.3(b)(4), such Participant's total Compensation rather than Compensation plus Excess Compensation will be taken into account.

Regardless of the preceding, 1.3% shall be substituted for 2.7% above if Excess Compensation is based on more than 20% and less than or equal to 80% of the Taxable Wage Base. If Excess Compensation is based on less than 100% and more than 80% of the Taxable Wage Base, then 2.4% shall be substituted for 2.7% above.

- (4) The balance of the Employer's contributions over the amount allocated above, if any, shall be allocated to each Participant's Account in the same proportion that such Participant's total Compensation for the Plan Year bears to the total Compensation of all Participants for such year.

For each Non-Key Employee who is a Participant in this Plan and another non-paired defined contribution plan maintained by the Employer, the minimum three percent (3%) allocation specified above shall be provided as specified in the Adoption Agreement.

(g) For purposes of the minimum allocations set forth above, the percentage allocated to the Participant's Combined Account of any Key Employee shall be equal to the ratio of the sum of the Employer's contributions and Forfeitures allocated on behalf of such Key Employee divided by the 415 Compensation for such Key Employee.

(h) For any Top Heavy Plan Year, the minimum allocations set forth in this Section shall be allocated to the Participant's Combined Account of all Non-Key Employees who are Participants and who are employed by the

Employer on the last day of the Plan Year, including Non-Key Employees who have (1) failed to complete a Year of Service; or (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, Elective Deferrals to the Plan.

(i) Notwithstanding anything herein to the contrary, in any Plan Year in which the Employer maintains both this Plan and a defined benefit pension plan included in a "required aggregation group" (as defined in Section 9.2(f)) which is top heavy, the Employer will not be required (unless otherwise elected in the Adoption Agreement) to provide a Non-Key Employee with both the full separate minimum defined benefit plan benefit and the full separate defined contribution plan allocations. In such case, the top heavy minimum benefits will be provided as elected in the Adoption Agreement and, if applicable, as follows:

(1) If the 5% defined contribution minimum is elected in the Adoption Agreement:

(i) The requirements of Section 9.1 will apply except that each Non-Key Employee who is a Participant in the Profit Sharing Plan or Money Purchase Plan and who is also a Participant in the Defined Benefit Plan will receive a minimum allocation of five percent (5%) of such Participant's 415 Compensation from the applicable defined contribution plan(s).

(ii) For each Non-Key Employee who is a Participant only in the Defined Benefit Plan the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such Participant's highest five (5) consecutive year average 415 Compensation for each Year of Service while a participant in the plan, in which the Plan is top heavy, not to exceed ten (10).

(iii) For each Non-Key Employee who is a Participant only in this defined contribution plan, the Employer will provide a minimum allocation equal to three percent (3%) of such Participant's 415 Compensation.

(2) If the 2% defined benefit minimum is elected in the Adoption Agreement, then for each Non-Key Employee who is a Participant only in the defined benefit plan, the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such Participant's highest five (5) consecutive year average of 415 Compensation for each Year of Service while a participant in the plan, in which the Plan is top heavy, not to exceed ten (10).

(j) For the purposes of this Section, 415 Compensation will be limited to the same dollar limitations set forth in Section 1.11 adjusted in such manner as permitted under Code Section 415(d).

(k) Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

(l) Notwithstanding anything in this Section to the contrary, the provisions of this subsection apply for any Plan Year if, in the non-standardized Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage failsafe provisions and the Plan fails to satisfy the "ratio percentage test" due to a last day of the Plan Year allocation condition or an Hours of Service (or months of service) allocation condition. A plan satisfies the "ratio percentage test" if, on the last day of the Plan Year, the "benefiting ratio" of the Non-Highly Compensated Employees who are "includible" is at least 70% of the "benefiting ratio" of the Highly Compensated Employees who are "includible." The "benefiting ratio" of the Non-Highly Compensated Employees is the number of "includible" Non-Highly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Employees who are Non-Highly Compensated Employees. The "benefiting ratio" of the Highly Compensated Employees is the number of Highly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Highly Compensated Employees. "Includible" Employees are all Employees other than: (1) those Employees excluded from participating in the plan for the entire Plan Year by reason of the collective bargaining unit exclusion or the nonresident alien exclusion described in the Code or by reason of the age and service requirements of Article III; and (2) any Employee who incurs a separation from service during the Plan Year and fails to complete at least 501 Hours of Service for three (3) months of service if the Elapsed Time Method is being used) during such Plan Year.

For purposes of this subsection, an Employee is "benefiting" under the Plan on a particular date if, under the Plan, the Employee is entitled to an Employer contribution or an allocation of Forfeitures for the Plan Year.

If this subsection applies, then the Administrator will suspend the allocation conditions for the “includible” Non-Highly Compensated Employees who are Participants, beginning first with the “includible” Employees employed by the Employer on the last day of the Plan Year, then the “includible” Employees who have the latest separation from service during the Plan Year, and continuing to suspend the allocation conditions for each “includible” Employee who incurred an earlier separation from service, from the latest to the earliest separation from service date, until the Plan satisfies the “ratio percentage test” for the Plan Year. If two or more “includible” Employees have a separation from service on the same day, then the Administrator will suspend the allocation conditions for all such “includible” Employees, irrespective of whether the Plan can satisfy the “ratio percentage test” by accruing benefits for fewer than all such “includible” Employees. If the Plan for any Plan Year suspends the allocation conditions for an “includible” Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

4.4 MAXIMUM ANNUAL ADDITIONS

(a)(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the Employer, or a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, or an individual medical account (as defined in Code Section 415(1)(2)) maintained by the Employer, or a simplified employee pension (as defined in Code Section 408(k)) maintained by the Employer which provides “Annual Additions,” the amount of “Annual Additions” which may be credited to the Participant’s accounts for any Limitation Year shall not exceed the lesser of the “Maximum Permissible Amount” or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant’s accounts would cause the “Annual Additions” for the Limitation Year to exceed the “Maximum Permissible Amount,” the amount contributed or allocated will be reduced so that the “Annual Additions” for the Limitation Year will equal the “Maximum Permissible Amount,” and any amount in excess of the “Maximum Permissible Amount” which would have been allocated to such Participant may be allocated to other Participants.

(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 such Limitation Year shall be determined on the basis of the Participant’s actual 415 Compensation for such Limitation Year.

(b)(1) This subsection applies if, in addition to this Plan, a Participant is covered under another qualified defined contribution plan maintained by the Employer that is a “Master or Prototype Plan,” a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, an individual medical account (as defined in Code Section 415(1)(2)) maintained by the Employer, or a simplified employee pension (as defined in Code Section 408(k)) maintained by the Employer, which provides “Annual Additions,” during any Limitation Year. The “Annual Additions” which may be credited to a Participant’s accounts under this Plan for any such Limitation Year shall not exceed the “Maximum Permissible Amount” reduced by the “Annual Additions” credited to a Participant’s accounts under the other plans and welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the “Annual Additions” with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the “Maximum Permissible Amount” and the Employer contribution that would otherwise be contributed or allocated to the Participant’s accounts under this Plan would cause the “Annual Additions” for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the “Annual Additions” under all such plans and welfare benefit funds for the Limitation Year will equal the “Maximum Permissible Amount,” and any amount in excess of the “Maximum Permissible Amount” which would have been allocated to such Participant may be allocated to other Participants. If the “Annual Additions” with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions in the aggregate are equal to or greater than the “Maximum Permissible Amount,” no amount will be contributed or allocated to the 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 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 Section 4.4(b)(2) or Section 4.5, a Participant's "Annual Additions" under this Plan and such other plans would result in an "Excess Amount" for a Limitation Year, the "Excess Amount" will be deemed to consist of the "Annual Additions" last allocated, except that "Annual Additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "Annual Additions" to a welfare benefit fund or individual medical account, and then by "Annual Additions" to a plan subject to Code Section 412, 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:

(i) the total "Excess Amount" allocated as of such date, times

(ii) the ratio of (1) the "Annual Additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (2) the total "Annual Additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(6) Any "Excess Amount" attributed to this Plan will be disposed of in the manner described in Section 4.5.

(c) If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a "Master or Prototype Plan," "Annual Additions" which may be credited to the Participant's Combined Account under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the Employer provides other limitations in the Adoption Agreement.

(d) For any Limitation Year beginning prior to the date the Code Section 415(e) limits are repealed with respect to this Plan (as specified in the Adoption Agreement for the GUST transitional rules), if the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, then the sum of the Participant's "Defined Benefit Plan Fraction" and "Defined contribution plan Fraction" may not exceed 1.0. In such event, the rate of accrual in the defined benefit plan will be reduced to the extent necessary so that the sum of the "Defined Contribution Fraction" and "Defined Benefit Fraction" will equal 1.0. However, in the Adoption Agreement the Employer may specify an alternative method under which the plans involved will satisfy the limitations of Code Section 415(e), including increased top heavy minimum benefits so that the combined limitation is 1.25 rather than 1.0.

(e) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an "Annual Addition." In addition, the following are not Employee contributions for the purposes of Section 4.4(f)(1)(b): (1) rollover contributions (as defined in Code Sections 402(c), 403(a)(4), 403(b)(8) and 408(d)(3)); (2) repayments of loans made to a Participant from the Plan; (3) repayments of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayments of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); and (5) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(f) For purposes of this Section, the following terms shall be defined as follows:

(1) "Annual Additions" means the sum credited to a Participant's accounts for any Limitation Year of (a) Employer contributions, (b) Employee contributions (except as provided below), (c) forfeitures, (d) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer, (e) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (f)(9)(ii) shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an "Annual Addition," or (2) any amount otherwise treated as an "Annual Addition" under Code Section 415(1)(1). Notwithstanding the foregoing, for Limitation Years beginning prior to January 1, 1987, only that portion of Employee contributions equal to the lesser of Employee contributions in excess of six percent (6%) of 415 Compensation or one-half of Employee contributions shall be considered an "Annual Addition."

For this purpose, any Excess Amount applied under Section 4.5 in the Limitation Year to reduce Employer contributions shall be considered "Annual Additions" for such Limitation Year.

(2) "Defined Benefit Fraction" means a fraction, the numerator of which is the sum of the Participant's "Projected Annual Benefits" under all the defined benefit plans (whether or not terminated) maintained by the

Employer, and the denominator of which is the lesser of one hundred twenty-five percent (125%) of the dollar limitation determined for the Limitation Year under Code Sections 415(b)(1)(A) as adjusted by Code Section 415(d) or one hundred forty percent (140%) of the "Highest Average Compensation" including any adjustments under Code Section 415(b).

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

Notwithstanding the foregoing, for any Top Heavy Plan Year, one hundred percent (100%) shall be substituted for one hundred twenty-five percent (125%) unless the extra top heavy minimum allocation or benefit is being made pursuant to the Employer's specification in the Adoption Agreement. However, for any Plan Year in which this Plan is a Super Top Heavy Plan, one hundred percent (100%) shall always be substituted for one hundred twenty-five percent (125%).

(3) Defined Contribution Dollar Limitation means \$30,000 as adjusted under Code Section 415(d).

(4) Defined Contribution Fraction means a fraction, the numerator of which is the sum of the "Annual Additions" to the Participant's accounts under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior "Limitation Years," (including the "Annual Additions" attributable to the Participant's nondeductible voluntary employee contributions to any defined benefit plans, whether or not terminated, maintained by the Employer and the "Annual Additions" attributable to all welfare benefit funds (as defined in Code Section 419(e)), individual medical accounts (as defined in Code Section 415(1)(2)), and simplified employee pensions (as defined in Code Section 408(k)) maintained by the Employer), and the denominator of which is the sum of the "Maximum Aggregate Amounts" for the current and all prior Limitation Years in which the Employee had service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any Limitation Year is the lesser of one hundred twenty-five percent (125%) of the dollar limitation determined under Code Section 415(c)(1)(A) as adjusted by Code Section 415(d) or thirty-five percent (35%) of the Participant's 415 Compensation for such year.

If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 5, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the "Defined Benefit Fraction" would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the Code Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

For Limitation Years beginning prior to January 1, 1987, the "Annual Additions" shall not be recomputed to treat all Employee contributions as "Annual Additions."

Notwithstanding the foregoing, for any Top Heavy Plan Year, one hundred percent (100%) shall be substituted for one hundred twenty-five percent (125%) unless the extra top heavy minimum allocation or benefit is being made pursuant to the Employer's specification in the Adoption Agreement. However, for any Plan Year in which this Plan is a Super Top Heavy Plan, one hundred percent (100%) shall always be substituted for one hundred twenty-five percent (125%).

(5) "Employer" means the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, the determination of whether an entity is an Affiliated Employer shall be made by applying Code Section 415(h).

(6) "Excess Amount" means the excess of the Participant's "Annual Additions" for the Limitation Year over the "Maximum Permissible Amount."

(7) "Highest Average Compensation" means the average Compensation for the three (3) consecutive Years of Service with the Employer while a Participant in the Plan that produces the highest average. A Year

of Service with the Employer is the twelve (12) consecutive month period ending on the last day of the Limitation Year.

(8) “Master or Prototype Plan” means a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(9) “Maximum Permissible Amount” means the maximum Annual Addition that may be contributed or allocated to a Participant’s accounts under the Plan for any “Limitation Year,” which shall not exceed the lesser of:

- (i) the “Defined Contribution Dollar Limitation,” or
- (ii) twenty-five percent (25%) of the Participant’s 415 Compensation for the “Limitation Year.”

The Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code Sections 401(h) or 419A(f)(2)) which is otherwise treated as an “Annual Addition.”

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the “Maximum Permissible Amount” will not exceed the “Defined Contribution Dollar Limitation multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(10) “Projected Annual Benefit” means the annual retirement benefit (adjusted to an actuarially equivalent “straight life annuity” if such benefit is expressed in a form other than a “straight life annuity” or qualified joint and survivor annuity) to which the 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.

For purposes of this subsection, “straight life annuity” means an annuity that is payable in equal installments for the life of the Participant that terminates upon the Participant’s death.

(g) Notwithstanding anything contained in this Section to the contrary, the limitations, adjustments and other requirements prescribed in this Section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

4.5 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS

Allocation of “Annual Additions” (as defined in Section 4.4) to a Participant’s Combined Account for a Limitation Year generally will cease once the limits of Section 4.4 have been reached for such Limitation Year. However, if as a result of the allocation of Forfeitures, a reasonable error in estimating a Participant’s annual 415 Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant under the limits of Section 4.4, or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the “Annual Additions” under this Plan would cause the maximum provided in Section 4.4 to be exceeded, the “Excess Amount” will be disposed of in one of the following manners, as uniformly determined by the Plan Administrator for all Participants similarly situated:

(a) Any after-tax voluntary Employee contributions (plus attributable gains), to the extent they would reduce the Excess Amount, will be distributed to the Participant;

(b) If, after the application of subparagraph (a), an “Excess Amount” still exists, any unmatched Elective Deferrals (and for Limitation Years beginning after December 31, 1995, any gains attributable to such Elective Deferrals), to the extent they would reduce the Excess Amount, will be distributed to the Participant;

(c) To the extent necessary, matched Elective Deferrals and Employer matching contributions will be proportionately reduced from the Participant’s Account. The Elective Deferrals (and for Limitation Years beginning after December 31, 1995, any gains attributable to such Elective Deferrals) will be distributed to the Participant and the

Employer matching contributions (and for Limitation Years beginning after December 31, 1995, any gains attributable to such matching contributions) will be used to reduce the Employer's contributions in the next Limitation Year;

(d) If, after the application of subparagraphs (a), (b) and (c), an "Excess Amount" still exists, and the Participant is covered by the Plan at the end of the 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;

(e) If, after the application of subparagraphs (a), (b) and (c), 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; and

(f) If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, no investment gains and losses shall be allocated to such suspense account. 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 contributions or any Employee contributions may be made to the Plan for that Limitation Year. Except as provided in (a), (b) and (c) above, "Excess Amounts" may not be distributed to Participants or Former Participants.

4.6 ROLLOVERS

(a) If elected in the Adoption Agreement and with the consent of the Administrator, the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be set up in a separate account herein referred to as a "Participant's Rollover Account." Such account shall be fully Vested at all times and shall not be subject to forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to former Employees from any plan of the Employer.

(b) Amounts in a Participant's Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected, in the Adoption Agreement and subsection (c) below. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) At Normal Retirement Date, or such other date when the Participant or Eligible Employee or such Participant's or Eligible Employee's Beneficiary shall be entitled to receive benefits, the Participant's Rollover Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) The Administrator may direct that rollovers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) For purposes of this Section, the term "qualified plan" shall mean any tax qualified plan under Code Section 401(a), or any other plans from which distributions are eligible to be rolled over into this Plan pursuant to the Code. The term "rollover" means: (i) amounts transferred to this Plan in a direct rollover made pursuant to Code Section 401(a)(31) from another "qualified plan"; (ii) distributions received by an Employee from other "qualified plans" which are eligible for tax-free rollover to a "qualified plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; (iii) amounts transferred to this Plan from a conduit individual retirement account provided that the conduit individual retirement account has no assets other than assets which (A) were previously distributed to the Employee by another "qualified plan" (B) were eligible for tax-free rollover to a "qualified plan" and (C) were deposited in such conduit individual retirement account within sixty (60) days of receipt thereof; (iv) amounts distributed to the Employee from a conduit individual retirement account meeting the requirements of clause (iii) above, and transferred by the Employee to this Plan within sixty (60) days of receipt thereof from such conduit individual retirement account; and (v) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(f) Prior to accepting any “rollovers” to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section.

4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) With the consent of the Administrator, amounts may be transferred (within the meaning of Code Section 414(1)) to this Plan from other tax qualified plans under Code Section 401 (a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a “Participant’s Transfer Account.” Furthermore, for Vesting purposes, the Participant’s Transfer Account shall be treated as a separate “Participant’s Account.”

(b) Amounts in a Participant’s Transfer Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and subsection (d) below, provided the restrictions of subsection (c) below and Section 6.15 are satisfied. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) Except as permitted by Regulations (including Regulation 1.411(d)-4), amounts attributable to elective contributions (as defined in Regulation 1.401(k)-l(g)(3)), including amounts treated as elective contributions, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Regulation 1.401(k)-l (d).

(d) At Normal Retirement Date, or such other date when the Participant or the Participant’s Beneficiary shall be entitled to receive benefits, the Participant’s Transfer Account shall be used to provide additional benefits to the Participant or the Participant’s Beneficiary. Any distribution of amounts held in a Participant’s Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder. Furthermore, such amounts shall be considered to be part of a Participant’s benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust fund or, if elected in the Adoption Agreement, directed by the Participant.

(f) Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any “Section 411(d)(6) protected benefit” as described in Section 8.1(e).

4.8 VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) Except as provided in subsection 4.8(b) below, this Plan will not accept after-tax voluntary Employee contributions. If this is an amendment to a Plan that had previously allowed after-tax voluntary Employee contributions, then this Plan will not accept after-tax voluntary Employee contributions for Plan Years beginning after the Plan Year in which this Plan is adopted by the Employer.

(b) For 401(k) Plans, if elected in the Adoption Agreement, each Participant who is eligible to make Elective Deferrals may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee within a reasonable period of time after being received by the Employer.

(c) The balance in each Participant’s Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(d) A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant’s Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a

Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution pursuant to Regulation 1.401(k)-1(d)(2)(iii)(B) from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of twelve (12) months after receipt of the hardship distribution.

(e) At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

(f) To the extent a Participant has previously made mandatory Employee contributions under prior provisions of this Plan, such contributions will be treated as after-tax voluntary Employee contributions.

4.9 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) If this is an amendment to a Plan that previously permitted deductible voluntary Employee contributions, then each Participant who made "Qualified Voluntary Employee Contributions" within the meaning of Code Section 219(e)(2) as it existed prior to the enactment of the Tax Reform Act of 1986, shall have such contributions held in a separate Qualified Voluntary Employee Contribution Account which shall be fully Vested at all times. Such contributions, however, shall not be permitted for taxable years beginning after December 31, 1986.

(b) A Participant may, upon written request delivered to the Administrator, make withdrawals from such Participant's Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.

(c) At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Qualified Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

4.10 DIRECTED INVESTMENT ACCOUNT

(a) If elected in the Adoption Agreement, all Participants may direct the Trustee as to the investment of all or a portion of their individual account balances as set forth in the Adoption Agreement and within limits set by the Employer. Participants may direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) The Administrator will establish a Participant Direction Procedure, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding

the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) If the Employer has elected in the Adoption Agreement that it intends to operate any portion of this Plan as an Act Section 404(c) plan, the Participant Direction Procedures should provide an explanation of the circumstances under which Participants and their Beneficiaries may give investment instructions, including but not limited to, the following:

- (1) the conveyance of instructions by the Participants and their Beneficiaries to invest Participant Directed Accounts in a Directed Investment Option;
- (2) the name, address and phone number of the Fiduciary (and, if applicable, the person or persons designated by the Fiduciary to act on its behalf) responsible for providing information to the Participant or a Beneficiary upon request relating to the Directed Investment Options;
- (3) applicable restrictions on transfers to and from any Designated Investment Alternative;
- (4) any restrictions on the exercise of voting, tender and similar rights related to a Directed Investment Option by the Participants or their Beneficiaries;
- (5) a description of any transaction fees and expenses which affect the balances in Participant Directed Accounts in connection with the purchase or sale of a Directed Investment Option; and
- (6) general procedures for the dissemination of investment and other information relating to the Designated Investment Alternatives as deemed necessary or appropriate, including but not limited to a description of the following:
 - (i) the investment vehicles available under the Plan, including specific information regarding any Designated Investment Alternative;
 - (ii) any designated Investment Managers; and
 - (iii) a description of the additional information that may be obtained upon request from the Fiduciary designated to provide such information.

(g) With respect to those assets in a Participant's Directed Account, the Participant or Beneficiary shall direct the Trustee with regard to any voting, tender and similar rights associated with the ownership of such assets (hereinafter referred to as the "Stock Rights") as follows based on the election made in the Adoption Agreement:

- (1) each Participant or Beneficiary shall direct the Trustee to vote or otherwise exercise such Stock Rights in accordance with the provisions, conditions and terms of any such Stock Rights;
- (2) such directions shall be provided to the Trustee by the Participant or Beneficiary in accordance with the procedure as established by the Administrator and the Trustee shall vote or otherwise exercise such Stock Rights with respect to which it has received directions to do so under this Section; and
- (3) to the extent to which a Participant or Beneficiary does not instruct the Trustee to vote or otherwise exercise such Stock Rights, such Participants or Beneficiaries shall be deemed to have directed the Trustee that such Stock Rights remain nonvoted and unexercised.

(h) Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

4.11 INTEGRATION IN MORE THAN ONE PLAN

If the Employer maintains qualified retirement plans that provide for permitted disparity (integration), the provisions of Section 4.3(b)(4) will apply. Furthermore, if the Employer maintains two or more standardized paired plans, only one plan may provide for permitted disparity.

4.12 QUALIFIED MILITARY SERVICE

Notwithstanding any provisions of this Plan to the contrary, effective as of the later of December 12, 1994, or the Effective Date of the Plan, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

**ARTICLE V
VALUATIONS**

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a Contract or Policy) as of the Valuation Date and may deduct all expenses for which the Trustee has not yet been paid by the Employer or the Trust Fund. The Trustee may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were last traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

**ARTICLE VI
DETERMINATION AND DISTRIBUTION OF BENEFITS**

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without termination of employment with the Employer, or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Former Participant to such Former Participant's Beneficiary.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the Pre-Retirement Survivor Annuity shall be the Participant's surviving spouse. Except, however, the Participant may designate a Beneficiary other than the spouse for the Pre-Retirement Survivor Annuity if:

- (1) the Participant and the Participant's spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the spouse has waived the right to be the Participant's Beneficiary,
- (2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code Section 414(p) which provides otherwise),
- (3) the Participant has no spouse, or
- (4) the spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the IRS) notice of such revocation or change with the Administrator. However, the Participant's spouse must again consent in writing (or in such other form as permitted by the IRS) to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right.

(e) A Participant may, at any time, designate a Beneficiary for death benefits, if any, payable under the Plan that are in excess of the Pre-Retirement Survivor Annuity without the waiver or consent of the Participant's spouse. In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in an addendum to the Adoption Agreement, to:

- (1) The Participant's surviving spouse;
- (2) The Participant's children, including adopted children, per stirpes
- (3) The Participant's surviving parents, in equal shares; or
- (4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's estate.

(f) Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a qualified domestic relations order (within the meaning of Code Section 414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(g) If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(h) In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of the entire Vested interest in the Plan.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability, or retirement, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Trustee, when so directed by the Administrator and agreed to by the Terminated Participant, shall assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee, pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (or, \$3,500 for distributions made prior to the later of the first day of the first Plan Year beginning on or after August 5, 1997, or the date specified in the Adoption Agreement) the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum without regard to the consent of the Participant or the Participant's spouse. A Participant's Vested benefit shall not include Qualified Voluntary Employee Contributions within the meaning of Code Section 72(o)(5)(B) for Plan Years beginning prior to January 1, 1989. Furthermore, the determination of whether the \$5,000 (or, if applicable, \$3,500) threshold has been exceeded is generally based on the value of the Vested benefit as of the Valuation Date preceding the date of the distribution. However, if the "lookback rule" applies, the applicable threshold is deemed to be exceeded if the Vested benefit exceeded the applicable threshold at the time of any prior distribution. The "lookback rule" generally applies to all distributions made prior to March 22, 1999. With respect to distributions made on or after March 22, 1999, the "lookback rule" applies if either (1) the provisions of Section 6.12 do not apply or (2) a Participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution has not yet been made, and if the value of the Participant's benefit, determined at the time of the first distribution under that optional form of benefit exceeded the applicable threshold. However, the Plan does not fail to satisfy the requirements of this paragraph if, prior to the adoption of this Prototype Plan, the "look back rule" was applied to all distributions. Notwithstanding the preceding, the "look back rule" will not apply to any distributions made on or after October 17, 2000.

(b) The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the Elapsed Time Method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date).

(c) For any Top Heavy Plan Year, the minimum top heavy vesting schedule elected by the Employer in the Adoption Agreement will automatically apply to the Plan. The minimum top heavy vesting schedule applies to all benefits within the meaning of Code Section 411(a)(7) except those attributable to Employee contributions, including benefits accrued before the effective date of Code Section 416 and benefits accrued before the Plan became top heavy. Further, no decrease in a Participant's Vested percentage shall occur in the event the Plan's status as top heavy changes for any Plan Year. However, this Section does not apply to the account balances of any Employee who does not have an Hour of Service after the Plan has initially become top heavy and the Vested percentage of such Employee's Participant's Account shall be determined without regard, to this Section 6.4(c).

If in any subsequent Plan Year the Plan ceases to be a Top Heavy Plan, then unless a specific Plan amendment is made to provide otherwise, the Administrator will continue to use the vesting schedule in effect while the Plan was a Top Heavy Plan.

(d) Upon the complete discontinuance of the Employer's contributions to the Plan (if this is a profit sharing plan) or upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) If this is an amended or restated Plan, then notwithstanding the vesting schedule specified in the Adoption Agreement, the vested percentage of a Participant's Account shall not be less than the vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement. The computation of a Participant's non forfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Article, or due to changes in the Plan's status as a Top Heavy Plan. Furthermore, if the Plan's vesting schedule is amended, then the amended schedule will only apply to those Participants who complete an Hour of Service after the effective date of the amendment.

(f) If the Plan's vesting schedule is amended, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to a top heavy vesting schedule, then each Participant with at least three (3) Years of Service (or Periods of Service if the Elapsed Time Method is elected) as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,
- (2) the effective date of the amendment, or
- (3) The date the Participant receives written notice of the amendment from the Employer or Administrator.

(g) In determining Years of Service or Periods of Service for purposes of vesting under the Plan, Years of Service or Periods of Service shall be excluded as elected in the Adoption Agreement.

6.5 DISTRIBUTION OF BENEFITS

(a)(1) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all Plan benefits in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the spouse during the spouse's lifetime at a rate equal to either fifty percent (50%), seventy-five percent (75%) (or, sixty-six and two-thirds percent (66 2/3%) if the Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) annuity), or one hundred percent (100%) of the rate at which such benefits were payable to the Participant. Unless otherwise elected in the Adoption Agreement, a joint and fifty percent (50%) survivor annuity shall be considered the designated qualified Joint and Survivor Annuity and the normal form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect an alternative Joint and Survivor Annuity, which alternative shall be equal in value to the designated, qualified Joint and Survivor Annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the Joint and Survivor Annuity by a married Participant, but without fulfilling the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the Joint and Survivor Annuity must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and be consented to in writing (or in such other form as permitted by the IRS) by the Participant's spouse. If the spouse is legally incompetent to give consent, the spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the spouse expressly permits designations by the Participant without the requirement of further consent by the spouse). Such spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's spouse may be revoked by the Participant in writing (or in such other form as permitted by the IRS) without the consent of the spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a Joint and Survivor Annuity. The number of revocations shall not be limited.

Any new election must comply with the requirements of this paragraph. A former spouse's waiver shall not be binding on a new spouse.

(3) The election period to waive the Joint and Survivor Annuity shall be the ninety (90) day period ending on the Annuity Starting Date.

(4) For purposes of this Section, spouse or surviving spouse means the spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

(5) With regard to the election, except as otherwise provided herein, the Administrator shall provide to the Participant no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date a written (or such other form as permitted by the IRS) explanation of:

- (i) The terms and conditions of the Joint and Survivor Annuity,
- (ii) the Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity,
- (iii) the right of the Participant's spouse to consent to any election to waive the Joint and Survivor Annuity, and
- (iv) the right of the Participant to revoke such election, and the effect of such revocation.

(6) Any distribution provided for in this Section made on or after December 31, 1996, may commence less than thirty (30) days after the notice required by Code Section 417(a)(3) is given provided the following requirements are satisfied:

- (i) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the Joint and Survivor Annuity and to elect (with spousal consent) a form of distribution other than a Joint and Survivor Annuity;
- (ii) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant;
- (iii) the Annuity Starting Date is after the time that the explanation of the Joint and Survivor Annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and
- (iv) distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant.

(b) In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive the benefit in the form of a Joint and Survivor Annuity, or if such Participant is not married, in the form of a life annuity, the Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement:

- (1) One lump-sum payment in cash or in property that is allocated to the accounts of the Participant at the time of the distribution;
- (2) Partial withdrawals;
- (3) Payments over a period certain in monthly, quarterly, semiannual, or annual cash installments. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over

which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary);

(4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(c) Benefits may not be paid without the Participant's and the Participant's spouse's consent if the present value of the Participant's Joint and Survivor Annuity derived from Employer and Employee contributions exceeds, or has ever exceeded, \$5,000 (or \$3,500, for distributions made prior to the later of the first day of the first Plan Year beginning after August 5, 1997, or the date specified in the Adoption Agreement) and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a Qualified Joint and Survivor Annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62.

If the value of the Participant's benefit derived from Employer and Employee contributions does not exceed, and has never exceeded at the time of any prior distribution, \$5,000 (or, if applicable, \$3,500), then the Administrator will distribute such benefit in a lump-sum without such Participant's consent. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant and the Participant's spouse consent in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2). Notwithstanding the preceding, the "lookback rule" (which provides that if the present value at the time of a prior distribution exceeded the applicable dollar threshold, then the present value at any subsequent time is deemed to exceed the threshold) will not apply to any distributions made on or after October 17, 2000.

(d) The following rules will apply with respect to the consent requirements set forth in subsection (c):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan that would satisfy the notice requirements of Code Section 417;

(2) The Participant must be informed of the right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions that are required under Section 6.5(e);

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date;

(4) Written (or such other form as permitted by the IRS) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than ninety (90) days before the Annuity Starting Date; and

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

(e) Notwithstanding any provision in the Plan to the contrary, for Plan Years beginning after December 31, 1996, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder (including Regulation 1.401(a)(9)-2):

(1) A Participant's benefits will be distributed or must begin to be distributed not later than the Participant's "required beginning date." Alternatively, distributions to a Participant must begin no later than the Participant's "required beginning date" and must be made over the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's designated Beneficiary) in accordance with Regulations. However, if the distribution is to be in the form of a joint and survivor annuity or single life annuity, then distributions must begin no later than the "required beginning date" and must be made over the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) in accordance with Regulations.

(2) The “required beginning date” for a Participant who is a “live percent (5%) owner” with respect to the Plan Year ending in the calendar year in which such Participant attains age 70 1/2 means April 1st of the calendar year following the calendar year in which the Participant attains age 70 1/2. Once distributions have begun to a “five percent (5%) owner” under this subsection, they must continue to be distributed, even if the Participant ceases to be a “five percent (5%) owner” in a subsequent year.

(3) The “required beginning date” for a Participant other than a “five percent (5%) owner” means, unless the Employer has elected to continue the pre-SBJPA rules in the Adoption Agreement, April 1st of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

(4) If the election is made to continue the pre-SBJPA rules, then except as provided below, the “required beginning date” is April 1st of the calendar year following the calendar year in which a Participant attains age 70 1/2.

(i) However, the “required beginning date” for a Participant who had attained age 70 1/2 before January 1, 1988, and was not a five percent (5%) owner (within the meaning of Code Section 416) at any time during the Plan Year ending with or within the calendar year in which the Participant attained age 66 1/2 or any subsequent Plan Year, is April 1st of the calendar year following the calendar in which the Participant retires.

(ii) Notwithstanding (i) above, the “required beginning date” for a Participant who was a five percent (5%) owner (within the meaning of Code Section 416) at anytime during the five (5) Plan Year period ending in the calendar year in which the Participant attained age 70 1/2 is April 1st of the calendar year in which the Participant attained age 70 1/2. In the case of a Participant who became a five percent (5%) owner during any Plan Year after the calendar year in which the Participant attained age 70 1/2, the “required beginning date” is April 1st of the calendar year following the calendar year in which such subsequent Plan Year ends.

(5) If this is an amendment or restatement of a plan that contained the pre-SBJPA rules and an election is made to use the post-SBJPA rules, then the transition rules elected in the Adoption Agreement will apply.

(6) Except as otherwise provided herein, “five percent (5%) owner” means, for purposes of this Section, a Participant who is a five percent (5%) owner as defined in Code Section 416 at anytime during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2.

(7) Distributions to a Participant and such Participant’s Beneficiaries will only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Regulations thereunder.

(8) For purposes of this Section, the life expectancy of a Participant and/or a Participant’s spouse (other than in the case of a life annuity) shall or shall not be redetermined annually as elected in the Adoption Agreement and in accordance with Regulations. If the Participant or the Participant’s spouse may elect, pursuant to the Adoption Agreement, to have life expectancies recalculated, then the election, once made shall be irrevocable. If no election is made by the time distributions must commence, then the life expectancy of the Participant and the Participant’s spouse shall not be subject to recalculation. Life expectancy and joint and last survivor life expectancy shall be computed using the return multiples in Tables V and VI of Regulation Section 1.72-9.

(9) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, or if later, the date specified in the Adoption Agreement, the Plan will apply the minimum distribution requirements of Code Section 401 (a)(9) in accordance with the Regulations under section 401 (a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under section 401 (a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

However, if the date specified in the Adoption Agreement is a date in 2001 other than January 1, 2001, then with respect to distributions under the Plan made on or after such date for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Regulations under section 401 (a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a participant for 2001 prior to the specified date are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such participant for 2001 on or after such date. If the total amount of required minimum distributions made to a participant for 2001 prior to the specified date are less than the amount

determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

(f) All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of this Plan.

(g) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have retirement benefits paid in an alternative method acceptable under Code Section 401(a) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(h) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account, and the Participant may increase the Vested percentage in such account, then at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:

$$X \text{ equals } P \text{ (AB plus D) - D}$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, D is the amount of distribution, and the relevant time is the time at which, under the Plan, the Vested percentage in the account cannot increase.

However, the Employer may attach an addendum to the Adoption Agreement to provide that a separate account shall 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 Vested portion of the separate account will be equal to an amount determined as follows: $P \text{ (AB plus (R x D)) - (R x D)}$ where R is the ratio of the account balance at the relevant time to the account balance after distribution and the other terms have the same meaning as in the preceding paragraph. Any amendment to change the formula in accordance with the preceding sentence shall not be considered an amendment which causes this Plan to become an individually designed Plan.

(i) If this is a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of the Participant's interest in the Plan under a particular optional form of benefit, then the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the 90th day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the Act requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) Unless otherwise elected as provided below, a Vested Participant who dies before the Annuity Starting Date and who has a surviving spouse shall have the Pre-Retirement Survivor Annuity paid to the surviving spouse. The Participant's spouse may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death. If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the spouse may elect a later commencement date. Any distribution to the Participant's spouse shall be subject to the rules specified in Section 6.6(h).

(b) Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and shall require the spouse's irrevocable consent in the same manner provided for in Section 6.5(a)(2). Further, the spouse's consent must acknowledge the specific nonspouse Beneficiary. Notwithstanding the foregoing, the nonspouse Beneficiary need not be acknowledged, provided the consent of the spouse acknowledges that the spouse has the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elects to relinquish such right.

(c) The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age 35 and end on the date of the Participant's death. An earlier waiver (with spousal consent) may be made provided a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity is given to the Participant and such waiver becomes invalid at the beginning of the Plan Year in which the Participant turns age 35. In the event a Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

(d) With regard to the election, the Administrator shall provide each Participant within the applicable election period, with respect to such Participant (and consistent with Regulations), a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.5(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:

- (1) 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 preceding the Plan Year in which the Participant attains age 35;
- (2) A reasonable period after the individual becomes a Participant;
- (3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre-Retirement Survivor Annuity with respect to the Participant; or
- (4) A reasonable period ending after Code Section 401 (a)(11) applies to the Participant.

For purposes of applying this subsection, a reasonable period ending after the enumerated events described in (2), (3) and (4) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(e) The Pre-Retirement Survivor Annuity provided for in this Section shall apply only to Participants who are credited with an Hour of Service on or after August 23, 1984. Former Participants who are not credited with an Hour of Service on or after August 23, 1984, shall be provided with rights to the Pre-Retirement Survivor Annuity in accordance with Section 303(e)(2) of the Retirement Equity Act of 1984.

(f) If the value of the Pre-Retirement Survivor Annuity derived from Employer and Employee contributions does not exceed, and has never exceeded at the time of any prior distribution, \$5,000 (or, \$3,500 for distributions made prior to the later of the first day of the first Plan Year beginning after August 5, 1997, or the date specified in the Adoption Agreement) the Administrator shall direct the distribution of such amount to the Participant's spouse as soon as practicable. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the spouse consents in writing (or in such other form as permitted by the IRS). If the value exceeds, or has ever exceeded at the time of any prior distribution, \$5,000 (or, if applicable, \$3,500), an immediate distribution of the entire amount may be made to the surviving spouse, provided such surviving spouse consents in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2). Notwithstanding the preceding, the "lookback rule" (which provides that if the present value at the time of a prior distribution exceeded the applicable dollar threshold, then the present value at any subsequent time is deemed to exceed the threshold) will not apply to any distributions made on or after October 17, 2000.

(g) Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.6(h) and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant in the event there is an election to waive the Pre-Retirement Survivor Annuity, and for any death benefits in excess of the Pre-Retirement Survivor Annuity. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution:

- (1) One lump-sum payment in cash or in property that is allocated to the accounts of the Participant at the time of the distribution.
- (2) Partial withdrawals.
- (3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.
- (4) In the form of an annuity over the life expectancy of the Beneficiary.

(5) If death benefits in excess of the Pre-Retirement Survivor Annuity are to be paid to the surviving spouse, such benefits may be paid pursuant to (1), (2) or (3) above, or used to purchase an annuity so as to increase the payments made pursuant to the Pre-Retirement Survivor Annuity.

(h) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder.

(1) If it is determined, pursuant to Regulations, that the distribution of a Participant's interest has begun and the Participant dies before the entire interest has been distributed, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution elected pursuant to Section 6.5 as of the date of death.

(2) If a Participant dies before receiving any distributions of the interest in the Plan or before distributions are deemed to have begun pursuant to Regulations, then the death benefit shall be distributed to the Participant's Beneficiaries in accordance with the following rules subject to the elections made in the Adoption Agreement and subsections 6.6(h)(3) and 6.6(i) below:

(i) The entire death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year in which the fifth anniversary of the Participant's death occurs;

(ii) The 5-year distribution requirement of (i) above shall not apply to any portion of the deceased Participant's interest which is payable to or for the benefit of a designated Beneficiary. In such event, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such designated Beneficiary) provided such distribution begins not later than December 31st of the calendar year immediately following the calendar year in which the Participant died (or such later date as may be prescribed by Regulations);

(iii) However, in the event the Participant's spouse (determined as of the date of the Participant's death) is the designated Beneficiary, the provisions of (ii) above shall apply except that the requirement that distributions commence within one year of the Participant's death shall not apply. In lieu thereof, distributions must commence on or before the later of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If the surviving spouse dies before distributions to such spouse begin, then the 5-year distribution requirement of this Section shall apply as if the spouse was the Participant.

(3) Notwithstanding subparagraph (2) above, or any elections made in the Adoption Agreement, if a Participant's death benefits are to be paid in the form of a Pre-Retirement Survivor Annuity, then distributions to the Participant's surviving spouse must commence on or before the later of:

(1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 1/2.

(i) For purposes of Section 6.6(h)(2), the election by a designated Beneficiary to be excepted from the 5-year distribution requirement (if permitted in the Adoption Agreement) must be made no later than December 31st of the calendar year following the calendar year of the Participant's death, Except, however, with respect to a designated Beneficiary who is the Participant's surviving spouse, the election must be made by the earlier of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died or, if later, December 31st of the calendar year in which the Participant would have attained age 70 1/2; or (2) December 31st of the calendar year which contains the fifth anniversary of the date of the Participant's death. An election by a designated Beneficiary must be in writing (or in such other form as permitted by the IRS) and shall be irrevocable as of the last day of the election period stated herein. In the absence of an election by the Participant or a designated Beneficiary, the 5-year distribution requirement shall apply.

(j) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) shall or shall not be redetermined annually as elected in the Adoption Agreement and in accordance with Regulations. If the Participant may elect, pursuant to the Adoption Agreement, to have life expectancies recalculated, then the election, once made shall be irrevocable. If no election is made by the time distributions must commence, then the life expectancy of the Participant and the Participant's spouse shall not be subject to recalculation. Life expectancy and joint and last survivor life expectancy shall be computed using the return multiples in Tables V and VI of Regulation Section 1.72-9.

(k) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(l) In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

(m) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have death benefits paid in an alternative method acceptable under Code Section 401(a) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

6.7 TIME OF DISTRIBUTION

Except as limited by Sections 6.5 and 6.6, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Section 6.5(d)), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

6.8 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY

In the event a distribution is to be made to a minor or incompetent Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian, or if none in the case of a minor Beneficiary, to a parent of such Beneficiary, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor or incompetent Beneficiary shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

6.9 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000, then the amount distributable may be treated as a Forfeiture at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary can not be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution, if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Plan Section 6.14(b)(1) may be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.10 IN-SERVICE DISTRIBUTION

For Profit Sharing Plans and 401 (k) Profit Sharing Plans, if elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the accounts as elected in the Adoption Agreement maintained on behalf of such Participant. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts.

6.11 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) For Profit Sharing Plans and 401(k) Plans (except to the extent Section 12.9 applies), if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to the lesser of 100% of the Vested interest of the Participant's Combined Account valued as of the last Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

- (1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care as described in Code Section 213(d);
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) funeral expenses for a member of the Participant's family;
- (4) Payment of tuition, related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents (as defined in Code Section 152); or
- (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence.

(b) If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's hardship distribution from such accounts.

(c) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.

6.12 SPECIAL RULE FOR CERTAIN PROFIT SHARING PLANS

(a) The provisions of this Section apply to a Participant in a Profit Sharing Plan or 401 (k) Profit Sharing Plan to the extent elected in the Adoption Agreement.

(b) If an election is made to not offer life annuities as a form of distribution, then a Participant shall be prohibited from electing benefits in the form of a life annuity and the Joint and Survivor Annuity provisions of Section 6.5 shall not apply.

(c) Notwithstanding anything in Sections 6.2 and 6.6 to the contrary, upon the death of a Participant, the automatic form of distribution will be a lump-sum rather than a Qualified Pre-Retirement Survivor Annuity. Furthermore, the Participant's spouse will be the Beneficiary of the Participant's entire Vested interest in the Plan unless an election is made to waive the spouse as Beneficiary. The other provisions in Section 6.2 shall be applied by treating the death benefit in this subsection as though it is a Qualified Pre-Retirement Survivor Annuity.

(d) Except to the extent otherwise provided in this Section, the provisions of Sections 6.2, 6.5 and 6.6 regarding spousal consent shall be inoperative with respect to this Plan.

(e) If a distribution is one to which Code Sections 401 (a)(11) and 417 do not apply, such distribution may commence less than thirty (30) days after the notice required under Regulation 1.41 l(a)-l l(c) is given, provided that:

- (1) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after 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.

6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any “alternate payee” under a “qualified domestic relations order.” Furthermore, a distribution to an “alternate payee” shall be permitted if such distribution is authorized by a “qualified domestic relations order,” even if the affected Participant has not reached the “earliest retirement age” under the Plan. For the purposes of this Section, “alternate payee,” “qualified domestic relations order” and “earliest retirement age” shall have the meanings set forth under Code Section 414(p).

6.14 DIRECT ROLLOVERS

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a “distributee’s” election under this Section, a “distributee” may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an “eligible rollover distribution” that is equal to at least \$500 paid directly to an “eligible retirement plan” specified by the “distributee” in a “direct rollover.”

(b) For purposes of this Section, the following definitions shall apply:

(1) An “eligible rollover distribution” means any distribution described in Code Section 402(c)(4) and generally includes 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 (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); for distributions made after December 31, 1998, any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV); and any other distribution reasonably expected to total less than \$200 during a year.

(2) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified plan described in Code Section 401(a), that accepts the “distributee’s” “eligible rollover distribution.” However, in the case of an “eligible rollover distribution” to the surviving spouse, an “eligible retirement plan” is an individual retirement account or individual retirement annuity.

(3) 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 Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

(4) A “direct rollover” is a payment by the Plan to the “eligible retirement plan” specified by the “distributee.”

6.15 TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN

(a) This Section shall be effective as of the following date:

(1) for Plans not entitled to extended reliance as described in Revenue Ruling 94-76, the first day of the first Plan Year beginning on or after December 12, 1994, or if later, 90 days after December 12, 1994; or

(2) for Plans entitled to extended reliance as described in Revenue Ruling 94-76, as of the first day of the first Plan Year following the Plan Year in which the extended reliance period applicable to the Plan ends. However, in the event of a transfer of assets to the Plan from a money purchase plan that occurs after the date of the most recent determination letter, the effective date of the amendment shall be the date immediately preceding to the date of such transfer of assets.

(b) Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee’s retirement, death, disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(1), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution).

6.16 ELECTIVE TRANSFERS OF BENEFITS TO OTHER PLANS

(a) If a voluntary, fully-informed election is made by a Participant, then if the conditions set forth herein are satisfied, a Participant's entire benefit may be transferred between qualified plans (other than any direct rollover described in Q&A-3 of Regulation 1.401 (a)(31)-1). As an alternative to the transfer, the Participant may elect to retain the Participant's "Section 411(d)(6) protected benefits" under the Plan (or, if the plan is terminating, to receive any optional form of benefit for which the Participant is eligible under the plan as required by Code Section 411(d)(6)). A transfer between qualified plans may only be made pursuant to this subsection if the following additional requirements are met:

- (i) The transfer occurs at a time at which the participant's benefits are distributable. A Participant's benefits are distributable on a particular date if, on that date, the Participant is eligible, under the terms of the Plan, to receive an immediate distribution of these benefits (e.g., in the form of an immediately commencing annuity) from that plan under provisions of the plan not inconsistent with Code Section 401 (a);
- (ii) For transfers that occur on or after January 1, 2002, the transfer occurs at a time at which the Participant is not eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of Code Section 401(a)(31)(C);
- (iii) The participant is fully Vested in the transferred benefit in the transferee plan;
- (iv) In the case of a transfer from a defined contribution plan to a defined benefit plan, the defined benefit plan provides a minimum benefit, for each Participant whose benefits are transferred, equal to the benefit, expressed as an annuity payable at normal retirement age, that is derived solely on the basis of the amount transferred with respect to such Participant; and
- (v) The amount of the benefit transferred, together with the amount of any contemporaneous Code Section 401(a)(31) direct rollover to the transferee plan, equals the Participant's entire nonforfeitable accrued benefit under the Plan.

(b) If a voluntary, fully-informed election is made by a Participant, then if the conditions set forth herein are satisfied, a Participant's entire benefit may be transferred between qualified defined contribution plans (other than any direct rollover described in Q&A-3 of Regulation 1.401 (a)(31)-1). As an alternative to the transfer, the Participant may elect to retain the Participant's "Section 411(d)(6) protected benefits" under the Plan (or, if the plan is terminating, to receive any optional form of benefit for which the Participant is eligible under the plan as required by Code Section 411(d)(6)). A transfer between qualified plans may only be made pursuant to this subsection if the following additional requirements are met:

- (i) To the extent the benefits are transferred from a money purchase pension plan, the transferee plan must be a money purchase pension plan. To the extent the benefits being transferred are part of a qualified cash or deferred arrangement under Code Section 401 (k), the benefits must be transferred to a qualified cash or deferred arrangement under Code Section 401 (k). Benefits transferred from a profit-sharing plan other than from a qualified cash or deferred arrangement, or from a stock bonus plan other than an employee stock ownership plan, may be transferred to any type of defined contribution plan; and
- (ii) The transfer must be made either in connection with an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business (i.e., an acquisition or disposition within the meaning of Regulation 1.410(b)-2(f)) or in connection with the Participant's change in employment status to an employment status with respect to which the Participant is not entitled to additional allocations under the Plan.

**ARTICLE VII
TRUSTEE AND CUSTODIAN**

7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) The provisions of this Article, other than Section 7.6, shall not apply to this Plan if a separate trust agreement is being used as specified in the Adoption Agreement.

(b) The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

(c) The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(d) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures if the Plan permits Participant directed investments), the Employer, or an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any Fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense that may result from the Trustee's refusal or failure to comply with any direction from the Participant.

(4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.

(5) Notwithstanding anything herein above to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in "collectibles" within the meaning of Code Section 408(m).

(e) The Trustee will maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.9.

(f) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(g) The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

7.2 INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE

(a) This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a discretionary Trustee. If so designated, then the Trustee has the discretion and authority to invest, manage, and control those Plan assets except, however, with respect to those assets which are subject to the investment direction of a Participant (if Participant directed investments are permitted), or an Investment Manager, the Administrator, or other agent appointed by the Employer. The exercise of any investment discretion hereunder shall be consistent with the "funding policy and method" determined by the Employer.

(b) The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly

authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code or the Act so that at all times this Plan may qualify as a qualified Plan and Trust.

(c) The Trustee, in addition to all powers and authorities under common law, statutory authority, including the Act, and other provisions of this Plan, shall have the following powers and authorities to be exercised in the Trustee's sole discretion:

- (1) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (2) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (3) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party who will then have full responsibility for voting those proxies;
- (4) To cause any securities or other property to be registered in the Trustee's own name, in the name of one or more of the Trustee's nominees, in a clearing corporation, in a depository, or in book entry form or in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (5) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100, all or such part of the Trust Fund as the Trustee may deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in an addendum to the Adoption Agreement. The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable;
- (6) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (7) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agents or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a Profit Sharing Plan (including a 401 (k) plan), on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity,

or other Contracts; to collect, receive, and settle for the proceeds of all such annuity, or other Contracts as and when entitled to do so under the provisions thereof;

(12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);

(13) To invest in Treasury Bills and other forms of United States government obligations;

(14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

(15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee);

(16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and

(17) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.

7.3 INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE

(a) This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a nondiscretionary Trustee. If so designated, then the Trustee shall have no discretionary authority to invest, manage, or control those Plan assets, but must act solely as a directed Trustee of those Plan assets. A nondiscretionary Trustee, as directed Trustee of the Plan funds it holds, is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein and in Section 7.14. each of which the nondiscretionary Trustee exercises solely as directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction. Furthermore, the Employer and the nondiscretionary Trustee may, in writing, limit the powers of the nondiscretionary Trustee to any combination of powers listed within this Section.

(b) The Trustee, in addition to all powers and authorities under common law, statutory authority, including the Act, and other provisions of this Plan, shall have the following powers and authorities:

(1) To invest the assets, without distinction between principal and income, in securities or property, real or personal, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code or the Act so that at all times this Plan may qualify as a qualified Plan and Trust.

(2) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(3) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(4) At the direction of the party which has the authority or discretion, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in

connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;

(5) To cause any securities or other property to be registered in the Trustee's own name, in the name of one or more of the Trustee's nominees, in a clearing corporation, in a depository, or in book entry form or in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

(6) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81—100, all or such part of the Trust Fund as the party which has the authority to manage and control the investment of the assets shall deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in an addendum to the Adoption Agreement;

(7) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

(8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(9) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;

(10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be an agent or counsel for the Employer;

(11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a Profit Sharing Plan (including a 401(k) plan), on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;

(12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);

(13) To invest in Treasury Bills and other forms of United States government obligations;

(14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

(15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee); and

(16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

7.4 POWERS AND DUTIES OF CUSTODIAN

If there is a discretionary Trustee, the Employer may appoint a custodian. A custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a custodian unless the

context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the custodian's liability. Any action taken by the custodian at the discretionary Trustee's direction satisfies any provision in the Plan referring to the Trustee taking that action. The resignation or removal of the custodian shall be made in accordance with Section 7.11 as though the custodian were a Trustee.

7.5 LIFE INSURANCE

(a) The Trustee, at the direction of the Administrator and pursuant to instructions from the individual designated in the Adoption Agreement for such purpose and subject to the conditions set forth in the Adoption Agreement, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of Profit Sharing Plan (including a 401(k) plan), on the life of any person in whom the Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, the amount set forth in the Adoption Agreement, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant or Former Participant, then the aggregate premium for ordinary life insurance for each Participant or Former Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's or Former Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's or Former Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's or Former Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a Profit Sharing Plan (including a 401(k) plan), to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. Amounts transferred to this Plan in accordance with Section 4.6(e)(ii), (iii) or (v) and a Participant's or Former Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation.

(b) The Trustee must distribute the Contracts to the Participant or Former Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond commencement of benefits. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan.

(c) Notwithstanding anything herein above to the contrary, amounts credited to a Participant's Qualified Voluntary Employee Contribution Account pursuant to Section 4.9. shall not be applied to the purchase of life insurance Contracts. Furthermore, no life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) The Trustee will be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee; however, the Trustee shall be required to pay over all proceeds of the Contract to the Participant's designated Beneficiary in accordance with the distribution provisions of Article VI. A Participant's spouse will be the designated Beneficiary pursuant to Section 6.2, unless a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code Section 401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

7.6 LOANS TO PARTICIPANTS

(a) If specified in the Adoption Agreement, the Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments pursuant to the Adoption Agreement) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make loans to Participants or Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Participants; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan.

(b) Loans shall not be made to any Shareholder-Employee or Owner-Employee (including an Owner-Employee's family members as defined in Code Section 267(c)(4)) unless an exemption for such loan is obtained

pursuant to Act Section 408 or such loan would otherwise not be a prohibited transaction pursuant to Code Section 4975 and Act Section 408.

(c) An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a loan under this Section.

(d) If the Vested interest of a Participant is used to secure any loan made pursuant to this Section, then the written (or such other form as permitted by the IRS) consent of the Participant's spouse shall be required in a manner consistent with Section 6.5(a), provided the spousal consent requirements of such Section apply to the Plan. Such consent must be obtained within the 90-day period prior to the date the loan is made. Any security interest held by the Plan by reason of an outstanding loan to the Participant or Former Participant shall be taken into account in determining the amount of the death benefit or Pre-Retirement Survivor Annuity. However, unless the loan program established pursuant to this Section provides otherwise, no spousal consent shall be required under this paragraph if the total interest subject to the security is not in excess of \$5,000 (or, \$3,500 effective for loans made prior to the later of the first day of the first Plan Year beginning after August 5, 1997, or the date specified in the Adoption Agreement).

(e) The Administrator shall be authorized to establish a participant loan program to provide for loans under the Plan. The loan program shall be established in accordance with Department of Labor Regulation Section 2550.408(b)- 1(d)(2) providing for loans by the Plan to parties-in-interest under said Plan, such as Participants or Beneficiaries. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program:
- (2) a procedure for applying for loans:
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered:
- (5) the procedure under the program for determining a reasonable rate of interest:
- (6) the types of collateral which may secure a Participant loan: and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(f) Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(g) Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

7.7 MAJORITY ACTIONS

Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

7.8 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time compensation from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

7.9 ANNUAL REPORT OF THE TRUSTEE

(a) Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

7.10 AUDIT

(a) If an audit of the Plan's records shall be required by the Act and the regulations thereunder for any Plan Year, the Administrator shall engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Administrator and the Trustee a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists, that are required by Act Section 103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.

(b) All auditing and accounting fees shall be an expense of and may, at the election of the Employer, be paid from the Trust Fund.

(c) If some or all of the information necessary to enable the Administrator to comply with Act Section 103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Administrator as provided in Act Section 103(b) within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

7.11 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, any remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.9 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.9 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.9 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.9 and this subparagraph.

7.12 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code Section 401(a), provided that the trust to which such transfers are made permits the transfer to be made.

7.13 TRUSTEE INDEMNIFICATION

The Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

7.14 EMPLOYER SECURITIES AND REAL PROPERTY

The Trustee shall be empowered to acquire and hold "qualifying Employer securities" and "qualifying Employer real property," as those terms are defined in the Act. However, no more than one hundred percent (100%), in the case of a Profit Sharing Plan or 401(k) Plan, or ten percent (10%), in the case of a Money Purchase Plan, of the fair market value of all the assets in the Trust Fund may be invested in "qualifying Employer securities" and "qualifying Employer real property."

Notwithstanding the preceding, for Plan Years beginning after December 31, 1998, if the Plan does not permit Participants to direct the investment of their Participants' Elective Deferral Accounts, then the Trustee shall only be permitted to acquire or hold "qualifying Employer securities" and "qualifying Employer real property" to the extent permitted under Act Section 407.

ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) The Employer may (1) change the choice of options in the Adoption Agreement, (2) add any addendum to the Adoption Agreement that is specifically permitted pursuant to the terms of the Plan, (3) add overriding language to the Adoption Agreement when such language is necessary to satisfy Code Sections 415 or 416 because of the required aggregation of multiple plans, and (4) 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 an individually designed plan. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code Section 412(d), will no longer participate in this Prototype Plan and this Plan will be considered to be an individually designed plan. Notwithstanding the preceding, the attachment to the Adoption Agreement of any addendum specifically authorized by the Plan or a list of any "Section 41 l(d)(6) protected benefits" which must be preserved shall not be considered an amendment to the Plan.

(c) The Employer expressly delegates authority to the sponsor of this Prototype Plan, the right to amend each Employer's Plan by submitting a copy of the amendment to each Employer who has adopted this Prototype Plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the Prototype Plan as amended qualifies under Code Section 401(a) and the Act (unless a ruling or determination is not required by the IRS). For purposes of this Section, the mass submitter shall be recognized as the agent of the sponsor. If

the sponsor does not adopt any amendment made by the mass submitter, it will no longer be identical to, or a minor modifier of, the mass submitter plan.

(d) No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(e) Except as permitted by Regulations (including Regulation 1.411(d)-4) or other IRS guidance, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits unless such "Section 411(d)(6) protected benefits" are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. "Section 411(d)(6) protected benefits" are benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. A Plan amendment that eliminates or restricts the ability of a Participant to receive payment of the Participant's interest in the Plan under a particular optional form of benefit will be permissible if the amendment satisfies the conditions in (1) and (2) below:

(1) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

(2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of: (i) the ninetieth (90th) day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the Act requirements at 29 CFR 2520.104b-3 (relating to a summary of material modifications) or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

8.2 TERMINATION

(a) The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(b) Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" as described in Section 8.1(e).

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Section 8.1(e).

ARTICLE IX TOP HEAVY PROVISIONS

9.1 TOP HEAVY PLAN REQUIREMENTS

Notwithstanding anything in this Plan to the contrary, for any Top Heavy Plan Year, the Plan shall provide the special vesting requirements of Code Section 416(b) pursuant to Section 6.4 of the Plan and the special minimum allocation requirements of Code Section 416(c) pursuant to Section 4.3(f) of the Plan. Except as otherwise provided in the Plan, the minimum allocation shall be an Employer Non-Elective Contribution and, if no vesting schedule has been selected in the Adoption Agreement, shall be subject to the 6 Year Graded vesting schedule described in the Adoption Agreement.

9.2 DETERMINATION OF TOP HEAVY STATUS

(a) This Plan shall be a Top Heavy Plan for any plan year beginning after December 31, 1983, if any of the following conditions exists:

(1) if the “top heavy ratio” for this Plan exceeds sixty percent (60%) and this Plan is not part of any “required aggregation group” or “permissive aggregation group”:

(2) if this Plan is a part of a “required aggregation group” but not part of a “permissive aggregation group” and the “top heavy ratio” for the group of plans exceeds sixty percent (60%); or

(3) if this Plan is a part of a “required aggregation group” and part of a “permissive aggregation group” and the “top heavy ratio” for the “permissive aggregation group” exceeds sixty percent (60%).

(b) “Top heavy ratio” means, with respect to a “determination date”:

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan (as defined in Code Section 408(k))) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the “determination date” has or has had accrued benefits, the top heavy ratio for this plan alone or for the “required aggregation group” or “permissive aggregation group” as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the “determination date” (including any part of any account balance distributed in the 5-year period ending on the “determination date”), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 5-year period ending on the “determination date”), both computed in accordance with Code Section 416 and the Regulations thereunder. Both the numerator and denominator of the top heavy ratio are increased to reflect any contribution not actually made as of the “determination date,” but which is required to be taken into account on that date under Code Section 416 and the Regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the “determination date” has or has had any accrued benefits, the top heavy ratio for any “required aggregation group” or “permissive aggregation group” as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the “determination date,” and the denominator of which is the sum of the account balances under the aggregated or plans for all participants, determined in accordance with (1) above, and the “present value” of accrued benefits under the defined benefit plan or plans for all participants as of the “determination date,” all determined in accordance with Code Section 416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top heavy ratio are increased for any distribution of an accrued benefit made in the five-year period ending on the determination date.

(3) For purposes of (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent “valuation date” that falls within or ends with the 12-month period ending on the “determination date.” except as provided in Code Section 416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the plan at any time during the 5-year period ending on the “determination date” will be disregarded. The calculation of the top heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the Regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the “determination dates” that fall within the same calendar year.

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

(c) “Determination date” means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, “determination date” means the last day of that Plan Year.

(d) "Permissive aggregation group" means the "required aggregation group" of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(e) "Present value" means the present value based only on the interest and mortality rates specified in the Adoption Agreement.

(f) "Required aggregation group" means: (1) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the determination period (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code Sections 401 (a)(4) or 410.

(g) "Valuation date" means the date elected by the Employer in the Adoption Agreement as of which account balances or accrued benefits are valued for purposes of calculating the "top heavy ratio."

ARTICLE X MISCELLANEOUS

10.1 EMPLOYER ADOPTIONS

(a) Any organization may become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Trustee, and it shall provide such additional information as the Trustee may require. The consent of the Trustee to act as such shall be signified by its execution of the Adoption Agreement or a separate agreement (including, if elected in the Adoption Agreement, a separate trust agreement).

(b) Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

10.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

10.3 ALIENATION

(a) Subject to the exceptions provided below and as otherwise permitted by the Code and the Act, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.6. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.10 and 2.11.

(c) Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) Notwithstanding any provision of this Section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order,

or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code Sections 401 (a)(13)(C) and (D).

10.4 CONSTRUCTION OF PLAN

This Plan and Trust shall be construed and enforced according to the Code, the Act and the laws of the state or commonwealth in which the Employer's (or if there is a corporate Trustee, the Trustee's) principal office is located (unless otherwise designated in the Adoption Agreement), other than its laws respecting choice of law, to the extent not pre-empted by the Act.

10.5 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed, from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

10.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.

(b) In the event the Employer shall make a contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(c) Except as specifically stated in the Plan, any contribution made by the Employer to the Plan (if the Employer is not tax-exempt) is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following a final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a court of competent jurisdiction, demand repayment of such disallowed contribution and the Trustee shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

10.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

10.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

10.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer.

10.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.12 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The "named Fiduciaries" of this Plan are (1) the Employer. (2) the Administrator. (3) the Trustee (if the Trustee has discretionary authority as elected in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee), and (4) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under the Plan; and shall have the sole authority to appoint and remove the Trustee and the Administrator: to formulate the Plan's "funding policy and method": and to amend the elective provisions of the Adoption Agreement or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan: If the Trustee has discretionary authority, it shall have the sole responsibility of management of the assets held under the Trust, except those assets, the management of which has been assigned to an Investment Manager or Administrator, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

10.13 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

10.14 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to a timely application filed by or on behalf of the Plan, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this prototype plan and will be considered an individually designed plan.

10.15 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

10.16 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.10, 6.11 and 12.9, only upon death. Total and Permanent Disability, normal or early retirement, termination of employment, or termination of the Plan.

**ARTICLE XI
PARTICIPATING EMPLOYERS**

11.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee, any Affiliated Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer. Regardless of the preceding, an entity that ceases to be an Affiliated Employer may continue to be a Participating Employer through the end of the transition period for certain dispositions set forth in Code Section 410(b)(6)(C). In the event a Participating Employer is not an Affiliated Employer and the transition period in the preceding sentence, if applicable, has expired, then this Plan will be considered an individually designed plan.

11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) Each Participating Employer shall be required to select the same Adoption Agreement provisions as those selected by the Employer other than the Plan Year, the Fiscal Year, and such other items that must, by necessity, vary among employers.

(b) The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

11.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan: provided, however, that with respect to all of its relations with the Trustee and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

11.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

11.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. However, if a Participating Employer is not an Affiliated Employer (due to the transition rule for certain dispositions set forth in Code Section 410(b)(6)(C)) then any contributions made by such Participating Employer will only be allocated among the Participants eligible to share of the Participating Employer. On the basis of the information furnished by the Administrator, the Trustee may keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Participating Employer shall immediately notify the Trustee thereof.

11.6 AMENDMENT

Amendment of this Plan by the Employer at any time when there shall be a Participating Employer that is an Affiliated Employer hereunder shall only be by the written action of each and every Participating Employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

11.7 DISCONTINUANCE OF PARTICIPATION

Except in the case of a standardized Plan, any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation.

satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Trustee shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Section 8.1(e). If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the employees of such Participating Employer.

11.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

11.9 PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE

If any Participating Employer is prevented in whole or in part from making a contribution which it would otherwise have made under the Plan by reason of having no current or accumulated earnings or profits, or because such earnings or profits are less than the contribution which it would otherwise have made then, pursuant to Code Section 404(a)(3)(B), so much of the contribution which such Participating Employer was so prevented from making may be made, for the benefit of the participating employees of such Participating Employer, by other Participating Employers who are members of the same affiliated group within the meaning of Code Section 1504 to the extent of their current or accumulated earnings or profits, except that such contribution by each such other Participating Employer shall be limited to the proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution to the Plan made without regard to this paragraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the Participating Employers remaining after adjustment for all contributions made to the Plan without regard to this paragraph.

A Participating Employer on behalf of whose employees a contribution is made under this paragraph shall not be required to reimburse the contributing Participating Employers.

ARTICLE XII CASH OR DEFERRED PROVISIONS

Except as specifically provided elsewhere in this Plan, the provisions of this Article shall apply with respect to any 401(k) Profit Sharing Plan regardless of any provisions in the Plan to the contrary.

12.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

- (1) The amount of the total salary reduction elections of all Participants made pursuant to Section 12.2(a), which amount shall be deemed Elective Deferrals, plus
- (2) If elected in the Adoption Agreement, a matching contribution equal to the percentage, if any, specified in the Adoption Agreement of the Elective Deferrals of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer's matching contribution or Qualified Matching Contribution as elected in the Adoption Agreement, plus
- (3) If elected in the Adoption Agreement, a Prevailing Wage Contribution or a discretionary amount determined each year by the Employer, which amount if any, shall be deemed an Employer's Non-Elective Contribution, plus
- (4) If elected in the Adoption Agreement, a Qualified Non-Elective Contribution.

(b) Notwithstanding the foregoing, if the Employer is not a tax-exempt entity, then the Employer's contributions for any Fiscal Year may generally not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code Section 404. However, to the extent necessary to provide the top heavy minimum allocations, the Employer shall make a contribution even if it exceeds current or accumulated Net Profit or the amount that is deductible under Code Section 404. All contributions by the Employer shall be made in cash or in such property as is acceptable to the Trustee.

12.2 PARTICIPANT'S SALARY REDUCTION ELECTION

(a) Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year, but for the salary reduction election, subject to the limitations of this Section and the Adoption Agreement. A salary reduction election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election, or if later, the later of the date the Employer adopts this cash or deferred arrangement or the date such arrangement first became effective. Any elections made pursuant to this Section shall become effective as soon as is administratively feasible. If the automatic election option is elected in the Adoption Agreement, then in the event a Participant fails to make a deferral election and does not affirmatively elect to receive cash, such Participant shall be deemed to have made a deferral election equal to the percentage of Compensation set forth in the Adoption Agreement. The automatic election may, in accordance with procedures established by the Administrator, be applied to all Participants or to Eligible Employees who become Participants after a certain date. For purposes of this Section, the annual dollar limitation of Code Section 401(a)(17) (\$150,000 as adjusted) shall not apply.

Additionally, if elected in the Adoption Agreement, each Participant may elect to defer a different percentage or amount of any cash bonus to be paid by the Employer during the Plan Year. A deferral election may not be made with respect to cash bonuses which are currently available on or before the date the Participant executes such election.

The amount by which Compensation and/or cash bonuses are reduced shall be that Participant's Elective Deferrals and shall be treated as an Employer contribution and allocated to that Participant's Elective Deferral Account.

Once made, a Participant's election to reduce Compensation shall remain in effect until modified or terminated. Modifications may be made as specified in the Adoption Agreement, and terminations may be made at any time. Any modification or termination of an election will become effective as soon as is administratively feasible.

(b) The balance in each Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Non-Elective Contribution Account shall be fully Vested at all times and except as otherwise provided herein, shall not be subject to Forfeiture for any reason.

(c) Amounts held in a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Non-Elective Account may only be distributable as provided in (4), (5) or (6) below or as provided under the other provisions of this Plan, but in no event prior to the earlier of the following events or any other events permitted by the Code or Regulations:

- (1) the Participant's separation from service, Total and Permanent Disability, or death;
- (2) the Participant's attainment of age 59 1/2;
- (3) the proven financial hardship of the Participant, subject to the limitations of Section 12.9;
- (4) the termination of the Plan without the existence at the time of Plan termination of another defined contribution plan or the establishment of a successor defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution does not include an employee stock ownership plan (as defined in Code Section 4975(e)(7) or 409), a simplified employee pension plan (as defined in Code Section 408(k)), or a SIMPLE individual retirement account plan (as defined in Code Section 408(p));
- (5) the date of the sale by the Employer to an entity that is not an Affiliated Employer of substantially all of the assets (within the meaning of Code Section 409(d)(2)) with respect to a Participant who continues employment with the corporation acquiring such assets; or
- (6) the date of the sale by the Employer or an Affiliated Employer of its interest in a subsidiary (within the meaning of Code Section 409(d)(3)) to an entity that is not an Affiliated Employer with respect to a Participant who continues employment with such subsidiary.

Distributions that are made because of (4), (5), or (6) above must be made in a lump-sum.

(d) A Participant's "elective deferrals" made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation imposed by Code Section 402(g), as in effect at the beginning of such calendar year. This dollar limitation shall be adjusted annually pursuant to the method provided in Code Section 415(d) in accordance with Regulations. For this

purpose, “elective deferrals” means, with respect to a calendar year, the sum of all employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any salary reduction simplified employee pension (as defined in Code Section 408(k)(6)), any SIMPLE IRA plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plans described under Code Section 501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. “Elective deferrals” shall not include any deferrals properly distributed as excess “Annual Additions” pursuant to Section 4.5.

(e) If a Participant has Excess Deferrals for a taxable year, the Participant may, not later than March 1st following the close of such taxable year, notify the Administrator in writing of such excess and request that the Participant’s Elective Deferrals under this Plan be reduced by an amount specified by the Participant. In such event, the Administrator shall direct the distribution of such excess amount (and any “Income” allocable to such excess amount) to the Participant not later than the first April 15th following the close of the Participant’s taxable year. Any distribution of less than the entire amount of Excess Deferrals and “Income” shall be treated as a pro rata distribution of Excess Deferrals and “Income.” The amount distributed shall not exceed the Participant’s Elective Deferrals under the Plan for the taxable year. Any distribution on or before the last day of the Participant’s taxable year must satisfy each of the following conditions:

- (1) the Participant shall designate the distribution as Excess Deferrals;
- (2) the distribution must be made after the date on which the Plan received the Excess Deferrals; and
- (3) the Plan must designate the distribution as a distribution of Excess Deferrals.

Regardless of the preceding, if a Participant has Excess Deferrals solely from elective deferrals made under this Plan or any other plan maintained by the Employer, a Participant will be deemed to have notified the Administrator of such excess amount and the Administrator shall direct the distribution of such Excess Deferrals in a manner consistent with the provisions of this subsection.

Any distribution made pursuant to this subsection shall be made first from unmatched Elective Deferrals and, thereafter, from Elective Deferrals which are matched. Matching contributions which relate to Excess Deferrals that are distributed pursuant to this Section 12.2(e) shall be treated as a Forfeiture to the extent required pursuant to Code Section 401(a)(4) and the Regulations thereunder.

For the purpose of this subsection, “Income” means the amount of income or loss allocable to a Participant’s Excess Deferrals, which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(c). However, “Income” for the period between the end of the taxable year of the Participant and the date of the distribution (the “gap period”) is not required to be distributed.

(f) Notwithstanding the preceding, a Participant’s Excess Deferrals shall be reduced, but not below zero, by any distribution and/or recharacterization of Excess Deferrals pursuant to Section 12.5(a) for the Plan Year beginning with or within the taxable year of the Participant.

(g) In the event a Participant has received a hardship distribution pursuant to Regulation 1.401(k)-1(d)(2)(iii)(B) from any other plan maintained by the Employer or from the Participant’s Elective Deferral Account pursuant to Section 12.9, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan for a period of twelve (12) months following the receipt of the distribution. Furthermore, the dollar limitation under Code Section 402(g) shall be reduced, with respect to the Participant’s taxable year following the taxable year in which the hardship distribution was made, by the amount of such Participant’s Elective Deferrals, if any, made pursuant to this Plan (and any other plan maintained by the Employer) for the taxable year of the hardship distribution.

(h) At Normal Retirement Date, or such other date when the Participant shall be entitled to receive benefits, the fair market value of the Participant’s Elective Deferral Account shall be used to provide benefits to the Participant or the Participant’s Beneficiary.

(i) If during a Plan Year, it is projected that the aggregate amount of Elective Deferrals to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 12.4, then the Administrator may automatically reduce the deferral amount of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest actual deferral ratio until it is anticipated the Plan will pass the tests or until the actual deferral ratio equals the actual deferral ratio of the Highly Compensated Participant having the next highest actual deferral ratio. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 12.4. Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred by Highly Compensated Participants.

(j) The Employer and the Administrator shall establish procedures necessary to implement the salary reduction elections provided for herein. Such procedures may contain limits on salary deferral elections such as limiting elections to whole percentages of Compensation or to equal dollar amounts per pay period that an election is in effect.

12.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate contributions as follows:

(1) With respect to Elective Deferrals made pursuant to Section 12.1(a)(1), to each Participant's Elective Deferral Account in an amount equal to each such Participant's Elective Deferrals for the year.

(2) With respect to the Employer's matching contribution made pursuant to Section 12.1(a)(2), to each Participant's Account, or Participant's Qualified Matching Contribution Account, as elected in the Adoption Agreement, in accordance with Section 12.1(a)(2).

Except, however, in order to be entitled to receive any Employer matching contribution, a Participant must satisfy the conditions for sharing in the Employer matching contribution as set forth in the Adoption Agreement. Furthermore, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the Elapsed Time Method is elected).

(3) With respect to the Employer's Non-Elective Contribution made pursuant to Section 12.1(a)(3), to each Participant's Account in accordance with the provisions of Section 4.3(b)(2) or (3) whichever is applicable.

(4) With respect to the Employer's Qualified Non-Elective Contribution made pursuant to Section 12.1(a)(4), to each Participant's (excluding Highly Compensated Employees, if elected in the Adoption Agreement) Qualified Non-Elective Contribution Account in accordance with the Adoption Agreement.

(c) Notwithstanding anything in the Plan to the contrary, in determining whether a Non-Key Employee has received the required minimum allocation pursuant to Section 4.3(f) such Non-Key Employee's Elective Deferrals and matching contributions used to satisfy the ADP tests in Section 12.4 or the ACP tests in Section 12.6 shall not be taken into account.

(d) Notwithstanding anything herein to the contrary, Participants who terminated employment during the Plan Year shall share in the salary deferral contributions made by the Employer for the year of termination without regard to the Hours of Service credited.

(e) Notwithstanding anything herein to the contrary (other than Sections 4.3(f) and 12.3(f)), Participants shall only share in the allocations of the Employer's matching contribution made pursuant to Section 12.1(a)(2), the Employer's Non-Elective Contributions made pursuant to Section 12.1(a)(3), the Employer's Qualified Non-Elective Contribution made pursuant to Section 12.1(a)(4), and Forfeitures as provided in the Adoption Agreement. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than 500 Hours of Service (or three (3) Months of Service if the Elapsed Time method is chosen in the Adoption Agreement) during the Plan Year or who is employed on the last day of the Plan Year. Furthermore, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the Elapsed Time Method is elected).

(f) Notwithstanding anything in this Section to the contrary, the provisions of this subsection apply for any Plan Year if, in the non-standardized Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage failsafe provisions and the Plan fails to satisfy the "ratio percentage test" due to a last day of the Plan Year allocation condition or an Hours of Service (or months of service) allocation condition. A plan satisfies the "ratio percentage test" if, on the last day of the Plan Year, the "benefiting ratio" of the Non-Highly Compensated Employees who are "includible" is at least 70% of the "benefiting ratio" of the Highly Compensated Employees who are

“includible.” The “benefiting ratio” of the Non-Highly Compensated Employees is the number of “includible” Non-Highly Compensated Employees “benefiting” under the Plan divided by the number of “includible” Employees who are Non-Highly Compensated Employees. The “benefiting ratio” of the Highly Compensated Employees is the number of Highly Compensated Employees “benefiting” under the Plan divided by the number of “includible” Highly Compensated Employees. “Includible” Employees are all Employees other than: (1) those Employees excluded from participating in the plan for the entire Plan Year by reason of the collective bargaining unit exclusion or the nonresident alien exclusion described in the Code or by reason of the age and service requirements of Article III; and (2) any Employee who incurs a separation from service during the Plan Year and fails to complete at least 501 Hours of Service (or three (3) months of service if the Elapsed Time Method is being used) during such Plan Year.

For purposes of this subsection, an Employee is “benefiting” under the Plan on a particular date if, under the Plan, the Employee is entitled to an Employer contribution or an allocation of Forfeitures for the Plan Year.

If this subsection applies, then the Administrator will suspend the allocation conditions for the “includible” Non-Highly Compensated Employees who are Participants, beginning first with the “includible” Employees employed by the Employer on the last day of the Plan Year, then the “includible” Employees who have the latest separation from service during the Plan Year, and continuing to suspend the allocation conditions for each “includible” Employee who incurred an earlier separation from service, from the latest to the earliest separation from service date, until the Plan satisfies the “ratio percentage test” for the Plan Year. If two or more “includible” Employees have a separation from service on the same day, then the Administrator will suspend the allocation conditions for all such “includible” Employees, irrespective of whether the Plan can satisfy the “ratio percentage test” by accruing benefits for fewer than all such “includible” Employees. If the Plan for any Plan Year suspends the allocation conditions for an “includible” Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

If the Plan includes Employer matching contributions subject to ACP testing, this subsection applies separately to the Code Section 401(m) portion of the Plan.

12.4 ACTUAL DEFERRAL PERCENTAGE TESTS

(a) Except as otherwise provided herein, this subsection applies if the Prior Year Testing method is elected in the Adoption Agreement. The “Actual Deferral Percentage” (hereinafter “ADP”) for a Plan Year for Participants who are Highly Compensated Employees (hereinafter “HCEs”) for each Plan Year and the prior year’s ADP for Participants who were Non-Highly Compensated Employees (hereinafter “NHCEs”) for the prior Plan Year must satisfy one of the following tests:

(1) The ADP for a Plan Year for Participants who are HCEs for the Plan Year shall not exceed the prior year’s ADP for Participants who were NHCEs for the prior Plan Year multiplied by 1.25; or

(2) The ADP for a Plan Year for Participants who are HCEs for the Plan Year shall not exceed the prior year’s ADP for Participants who were NHCEs for the prior Plan Year multiplied by 2.0, provided that the ADP for Participants who are HCEs does not exceed the prior year’s ADP for Participants who were NHCEs in the prior Plan Year by more than two (2) percentage points.

Notwithstanding the above, for purposes of applying the foregoing tests with respect to the first Plan Year in which the Plan permits any Participant to make Elective Deferrals, the ADP for the prior year’s NHCEs shall be deemed to be three percent (3%) unless the Employer has elected in the Adoption Agreement to use the current Plan Year’s ADP for these Participants. However, the provisions of this paragraph may not be used if the Plan is a successor plan or is otherwise prohibited from using such provisions pursuant to IRS Notice 98-1 (or superseding guidance).

(b) Notwithstanding the foregoing, if the Current Year Testing method is elected in the Adoption Agreement, the ADP tests in (a)(1) and (a)(2), above shall be applied by comparing the current Plan Year’s ADP for Participants who are HCEs with the current Plan Year’s ADP (rather than the prior Plan Year’s ADP) for Participants who are NHCEs for the current Plan Year. Once made, this election can only be changed if the Plan meets the requirements for changing to the Prior Year Testing method set forth in IRS Notice 98-1 (or superseding guidance). Furthermore, this Plan must use the same testing method for both the ADP and ACP tests for Plan Years beginning on or after the date the Employer adopts its GUST restated plan.

(c) This subsection applies to prevent the multiple use of the test set forth in subsection (a)(2) above. Any HCE eligible to make Elective Deferrals pursuant to Section 12.2 and to make after-tax voluntary Employee contributions or to receive matching contributions under this Plan or under any other plan maintained by the Employer or an Affiliated Employer, shall have either the actual deferral ratio adjusted in the manner described in Section 12.5 or the actual contribution ratio adjusted in the manner described in Section 12.7 so that the “Aggregate Limit” is not

exceeded pursuant to Regulation 1.401(m)-2. The amounts in excess of the "Aggregate Limit" shall be treated as either an Excess Contribution or an Excess Aggregate Contribution. The ADP and ACP of the HCEs are determined after any corrections required to meet the ADP and ACP tests and are deemed to be the maximum permitted under such tests for the Plan Year. Multiple use does not occur if either the ADP or ACP of the HCEs does not exceed 1.25 multiplied by the ADP and ACP of the NHCEs.

"Aggregate Limit" means the sum of (i) 125 percent of the greater of the ADP of the NHCEs for the prior Plan Year or the ACP of such NHCEs under the plan subject to Code Section 401(m) for the Plan Year beginning with or within the prior Plan Year of the cash or deferred arrangement and (ii) the lesser of 200% or two (2) plus the lesser of such ADP or ACP. "Lesser" is substituted for "greater" in (i) above, and "greater" is substituted for "lesser" after "two (2) plus the" in (ii) above if it would result in a larger Aggregate Limit. If the Employer has elected in the Adoption Agreement to use the Current Year Testing method, then in calculating the "Aggregate Limit" for a particular Plan Year, the NHCEs ADP and ACP for that Plan Year, instead of the prior Plan Year, is used.

(d) A Participant is an HCE for a particular Plan Year if the Participant meets the definition of an HCE in effect for that Plan Year. Similarly, a Participant is an NHCE for a particular Plan Year if the Participant does not meet the definition of an HCE in effect for that Plan Year.

(e) For the purposes of this Section and Section 12.5, ADP means, for a specific group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) the amount of Employer contributions actually paid over to the Plan on behalf of such Participant for the Plan Year to (2) the Participant's 414(s) Compensation for such Plan Year. Employer contributions on behalf of any participant shall include: (1) any Elective Deferrals made pursuant to the Participant's deferral election (including Excess Deferrals of HCEs), but excluding (i) Excess Deferrals of NHCEs that arise solely from Elective Deferrals made under the plan or plans of this Employer and (ii) Elective Deferrals that are taken into account in the ACP tests set forth in Section 12.6 (provided the ADP test is satisfied both with and without exclusion of these Elective Deferrals); and (2) at the election of the Employer, Qualified Non-Elective Contributions and Qualified Matching Contributions to the extent such contributions are not used to satisfy the ACP test.

The actual deferral ratio for each Participant and the ADP for each group shall be calculated to the nearest one-hundredth of one percent. Elective Deferrals allocated to each Highly Compensated Participant's Elective Deferral Account shall not be reduced by Excess Deferrals to the extent such excess amounts are made under this Plan or any other plan maintained by the Employer.

(f) For purposes of this Section and Section 12.5, a Highly Compensated Participant and a Non-Highly Compensated Participant shall include any Employee eligible to make salary deferrals pursuant to Section 12.2 for the Plan Year. Such Participants who fail to make Elective Deferrals shall be treated for ADP purposes as Participants on whose behalf no Elective Deferrals are made.

(g) In the event this Plan satisfies the requirements of Code Sections 401(a)(4), 401(k), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. Any adjustments to the NHCE ADP for the prior year will be made in accordance with IRS Notice 98-1 and any superseding guidance, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same Plan Year and use the same ADP testing method.

(h) The ADP for any Participant who is an HCE for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Non-Elective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) allocated to such Participant's accounts under two (2) or more arrangements described in Code Section 401(k), that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-Elective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement for purposes of determining such HCE's actual deferral ratio. However, if the cash or deferred arrangements have different Plan Years, this paragraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code Section 401.

(i) For purposes of determining the ADP and the amount of Excess Contributions pursuant to Section 12.5, only Elective Deferrals, Qualified Non-Elective Contributions and Qualified Matching Contributions contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered.

(j) Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.5 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan"

within the meaning of Regulation 1.401(k)-I(g)(11). Furthermore, for Plan Years beginning after December 31, 1998, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Non-Highly Compensated Employees who have not satisfied the minimum age and service requirements of Code Section 410(a)(1)(A).

12.5 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TESTS

(a) In the event (or, with respect to subsection (c) when the Prior Year Testing method is being used, if it is anticipated) that for Plan Years beginning after December 31, 1996, the Plan does not satisfy one of the tests set forth in Section 12.4, the Administrator shall adjust Excess Contributions or the Employer shall make contributions pursuant to the options set forth below or any combination thereof. However, if the Prior Year testing method is being used and it is anticipated that the Plan might not satisfy one of such tests, then the Employer may make contributions pursuant to the options set forth in subsection (c) below.

(b) On or before the fifteenth day of the third month following the end of each Plan Year, but in no event later than the close of the following Plan Year, the Highly Compensated Participant allocated the largest amount of Elective Deferrals shall have a portion of such Elective Deferrals (and "Income" allocable to such amounts) distributed (and/or, at the Participant's election, recharacterized as a after-tax voluntary Employee contribution pursuant to Section 4.8) until the total amount of Excess Contributions has been distributed, or until the amount of the Participant's Elective Deferrals equals the Elective Deferrals of the Highly Compensated Participant having the next largest amount of Elective Deferrals allocated. This process shall continue until the total amount of Excess Contributions has been distributed. Any distribution and/or recharacterization of Excess Contributions shall be made in the following order:

(1) With respect to the distribution of Excess Contributions, such distribution:

- (i) may be postponed but not later than the close of the Plan Year following the Plan Year to which they are allocable;
- (ii) shall be made first from unmatched Elective Deferrals and, thereafter, simultaneously from Elective Deferrals which are matched and matching contributions which relate to such Elective Deferrals. Matching contributions which relate to Excess Contributions shall be forfeited unless the related matching contribution is distributed as an Excess Aggregate Contribution pursuant to Section 12.7;
- (iii) shall be adjusted for "Income"; and
- (iv) shall be designated by the Employer as a distribution of Excess Contributions (and "Income").

(2) With respect to the recharacterization of Excess Contributions pursuant to (a) above, such recharacterized amounts:

- (i) shall be deemed to have occurred on the date on which the last of those Highly Compensated Participants with Excess Contributions to be recharacterized is notified of the recharacterization and the tax consequences of such recharacterization;
- (ii) shall not exceed the amount of Elective Deferrals on behalf of any Highly Compensated Participant for any Plan Year;
- (iii) shall be treated as after-tax voluntary Employee contributions for purposes of Code Section 401(a)(4) and Regulation 1.401(k)-I(b). However, for purposes of Sections 4.3(f) and 9.2 (top heavy rules), recharacterized Excess Contributions continue to be treated as Employer contributions that are Elective Deferrals. Excess Contributions (and "Income" attributable to such amounts) recharacterized as after-tax voluntary Employee contributions shall continue to be nonforfeitable and subject to the same distribution rules provided for in Section 12.2(c); and
- (iv) are not permitted if the amount recharacterized plus after-tax voluntary Employee contributions actually made by such Highly Compensated Participant, exceed the maximum amount of after-tax voluntary Employee contributions (determined prior to application of Section 12.6) that such Highly Compensated Participant is permitted to make under the Plan in the absence of recharacterization.

(3) Any distribution and/or recharacterization of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution and/or recharacterization of Excess Contributions and "Income."

(4) For the purpose of this Section, “Income” means the income or losses allocable to Excess Contributions, which amount shall be allocated at the same time and in the same manner as income or losses are allocated pursuant to Section 4.3(c). However, “Income” for the period between the end of the Plan Year and the date of the distribution (the “gap period”) is not required to be distributed.

(5) Excess Contributions shall be treated as Employer contributions for purposes of Code Sections 404 and 415 even if distributed from the Plan.

(c) Notwithstanding the above, within twelve (12) months after the end of the Plan Year (or, if the Prior Year Testing method is used, within twelve (12) months after the end of the prior Plan Year), the Employer may make a special Qualified Non-Elective Contribution or Qualified Matching Contribution in accordance with one of the following provisions which contribution shall be allocated to the Qualified Non-Elective Contribution Account or Qualified Matching Contribution Account of each Non-Highly Compensated Participant eligible to share in the allocation in accordance with such provision. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and to which provision it relates.

(1) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant’s 414(s) Compensation for the year (or prior year if the Prior Year Testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year.

(2) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant’s 414(s) Compensation for the year (or prior year if the Prior Year Testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year. However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Non-Elective Contribution Account of the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum “Annual Addition” pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied).

(6) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Non-Elective Contribution Account of the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum “Annual Addition” pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied). However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive

calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(7) A Qualified Matching Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Matching Contribution Account of each Non-Highly Compensated Participant in the same proportion that each Non-Highly Compensated Participant's Elective Deferrals for the year bears to the total Elective Deferrals of all Non-Highly Compensated Participants.

(8) A Qualified Matching Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Matching Contribution Account of each Non-Highly Compensated Participant in the same proportion that each Non-Highly Compensated Participant's Elective Deferrals for the year bears to the total Elective Deferrals of all Non-Highly Compensated Participants. However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(9) A Qualified Matching Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Matching Contribution Account of the Non-Highly Compensated Participant having the lowest Elective Deferrals until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied).

(10) A Qualified Matching Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated to the Qualified Matching Contribution Account of the Non-Highly Compensated Participant having the lowest Elective Deferrals until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied). However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(d) Any Excess Contributions (and "Income") which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

12.6 ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) Except as otherwise provided herein, this subsection applies if the Prior Year Testing method is elected in the Adoption Agreement. The "Actual Contribution Percentage" (hereinafter "ACP") for Participants who are Highly Compensated Employees (hereinafter "HCEs") for each Plan Year and the prior year's ACP for Participants who were Non-Highly Compensated Employees (hereinafter "NHCEs") for the prior Plan Year must satisfy one of the following tests:

(1) The ACP for a Plan Year for Participants who are HCEs for the Plan Year shall not exceed the prior year's ACP for Participants who were NHCEs for the prior Plan Year multiplied by 1.25; or

(2) The ACP for a Plan Year for Participants who are HCEs for the Plan Year shall not exceed the prior year's ACP for Participants who were NHCEs for the prior Plan Year multiplied by 2.0, provided that the ACP for Participants who are HCEs does not exceed the prior year's ACP for Participants who were NHCEs in the prior Plan Year by more than two (2) percentage points.

Notwithstanding the above, for purposes of applying the foregoing tests with respect to the first Plan Year in which the Plan permits any Participant to make Employee contributions, provides for matching contributions, or both, the ACP for the prior year's NHCEs shall be deemed to be three percent (3%) unless the Employer

has elected in the Adoption Agreement to use the current Plan Year's ACP for these Participants. However, the provisions of this paragraph may not be used if the Plan is a successor plan or is otherwise prohibited from using such provisions pursuant to IRS Notice 98-1 (or superseding guidance).

(b) Notwithstanding the preceding, if the Current Year Testing method is elected in the Adoption Agreement, the ACP tests in (a)(1) and (a)(2), above shall be applied by comparing the current Plan Year's ACP for Participants who are HCEs with the current Plan Year's ACP (rather than the prior Plan Year's ACP) for Participants who are NHCEs for the current Plan Year. Once made, this election can only be changed if the Plan meets the requirements for changing to the Prior Year Testing method set forth in IRS Notice 98-1 (or superseding guidance). Furthermore, this Plan must use the same testing method for both the ADP and ACP tests for Plan Years beginning on or after the date the Employer adopts its GUST restated plan.

(c) This subsection applies to prevent the multiple use of the test set forth in subsection (a)(2) above. Any HCE eligible to make Elective Deferrals pursuant to Section 12.2 and to make after-tax voluntary Employee contributions or to receive matching contributions under this Plan or under any other plan maintained by the Employer or an Affiliated Employer, shall have either the actual deferral ratio adjusted in the manner described in Section 12.5 or the actual contribution ratio reduced in the manner described in Section 12.7 so that the "Aggregate Limit" is not exceeded pursuant to Regulation 1.401(m)-2. The amounts in excess of the "Aggregate Limit" shall be treated as either an Excess Contribution or an Excess Aggregate Contribution. The ADP and ACP of the HCEs are determined after any corrections required to meet the ADP and ACP tests and are deemed to be the maximum permitted under such test for the Plan Year. Multiple use does not occur if either the ADP or ACP of the HCEs does not exceed 1.25 multiplied by the ADP and ACP of the NHCEs.

"Aggregate Limit" means the sum of (i) 125 percent of the greater of the ADP of the NHCEs for the Plan Year or the ACP of such NHCEs under the plan subject to Code Section 401 (m) for the Plan Year beginning with or within the prior Plan Year of the cash or deferred arrangement and (ii) the lesser of 200% or two plus the lesser of such ADP or ACP. "Lesser" is substituted for "greater" in (i) above, and "greater" is substituted for "lesser" after "two plus the" in (ii) above if it would result in a larger Aggregate Limit. If the Employer has elected in the Adoption Agreement to use the Current Year Testing method, then in calculating the "Aggregate Limit" for a particular Plan Year, the NHCEs ADP and ACP for that Plan Year, instead of the prior Plan Year, is used.

(d) A Participant is a Highly Compensated Employee for a particular Plan Year if the Participant meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a Non-highly Compensated Employee for a particular Plan Year if the Participant does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

(e) For the purposes of this Section and Section 12.7, ACP for a specific group of Participants for a Plan Year means the average of the "Contribution Percentages" (calculated separately for each Participant in such group). For this purpose, "Contribution Percentage" means the ratio (expressed as a percentage) of the Participant's "Contribution Percentage Amounts" to the Participant's 414(s) Compensation. The actual contribution ratio for each Participant and the ACP for each group, shall be calculated to the nearest one-hundredth of one percent of the Participant's 414(s) Compensation.

(f) "Contribution Percentage Amounts" means the sum of (i) after-tax voluntary Employee contributions, (ii) Employer "Matching Contributions" made pursuant to Section 12.1(a)(2) (including Qualified Matching Contributions to the extent such Qualified Matching Contributions are not used to satisfy the tests set forth in Section 12.4), (iii) Excess Contributions recharacterized as nondeductible voluntary Employee contributions pursuant to Section 12.5, and (iv) Qualified Non-Elective Contributions (to the extent not used to satisfy the tests set forth in Section 12.4). However, "Contribution Percentage Amounts" shall not include "Matching Contributions" that are forfeited either to correct Excess Aggregate Contributions or due to Code Section 401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions. In addition, "Contribution Percentage Amounts" may include Elective Deferrals provided the ADP test in Section 12.4 is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

(g) For purposes of determining the ACP and the amount of Excess Aggregate Contributions pursuant to Section 12.7, only Employer "Matching Contributions" (excluding "Matching Contributions" forfeited or distributed pursuant to Section 12.2(e), 12.5(b), or 12.7(b)) contributed to the Plan prior to the end of the succeeding Plan Year shall be considered. In addition, the Administrator may elect to take into account, with respect to Employees eligible to have Employer "Matching Contributions" made pursuant to Section 12.1 (a)(2) or after-tax voluntary Employee contributions made pursuant to Section 4.7 allocated to their accounts, elective deferrals (as defined in Regulation 1.402(g)-1(b)) and qualified non-elective contributions (as defined in Code Section 401(m)(4)(C)) contributed to any plan maintained by the Employer. Such elective deferrals and qualified non-elective contributions shall be treated as Employer matching contributions subject to Regulation 1.401(m)-1 (b)(2) which is incorporated herein by reference.

The Plan Year must be the same as the plan year of the plan to which the elective deferrals and the qualified non-elective contributions are made.

(h) In the event that this Plan satisfies the requirements of Code Sections 401(a)(4), 401 (m), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ACP of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code section 401(m) only if they have the same Plan Year.

Any adjustments to the NHCE ACP for the prior year will be made in accordance with IRS Notice 98-1 and any superseding guidance, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy Code Section 401 (k) only if they have the same Plan Year and use the same ACP testing method.

(i) For the purposes of this Section, if an HCE is a Participant under two (2) or more plans (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) which are maintained by the Employer or an Affiliated Employer to which "Matching Contributions," nondeductible voluntary Employee contributions, or both, are made, all such contributions on behalf of such HCE shall be aggregated for purposes of determining such HCP's actual contribution ratio. However, if the plans have different plan years, this paragraph shall be applied by treating all plans ending with or within the same calendar year as a single plan.

(j) For purposes of this Section and Section 12.7, a Highly Compensated Participant and a Non-Highly Compensated Participant shall include any Employee eligible to have "Matching Contributions" made pursuant to Section 12.1 (a)(2) (whether or not a deferral election was made or suspended pursuant to Section 12.2(g)) allocated to such Participant's account for the Plan Year or to make salary deferrals pursuant to Section 12.2 (if the Employer uses salary deferrals to satisfy the provisions of this Section) or after-tax voluntary Employee contributions pursuant to Section 4.7 (whether or not nondeductible voluntary Employee contributions are made) allocated to the Participant's account for the Plan Year.

(k) For purposes of this Section and Section 12.7, "Matching Contribution" means an Employer contribution made to the Plan, or to a contract described in Code Section 403(b), on behalf of a Participant on account of a nondeductible voluntary Employee contribution made by such Participant, or on account of a Participant's elective deferrals under a plan maintained by the Employer.

(l) For purposes of determining the ACP and the amount of Excess Aggregate Contributions pursuant to Section 12.7, only Elective Deferrals, Qualified Non-Elective Contributions, "Matching Contributions" and Qualified Matching Contributions contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered.

(m) Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation 1.401(k)-1(g)(11). Furthermore, for Plan Years beginning after December 31, 1998, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Non-Highly Compensated Employees who have not satisfied the minimum age and service requirements of Code Section 410(a)(1)(A).

12.7 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) In the event (or, with respect to subsection (g) below when the Prior Year Testing method is being used, if it is anticipated) that for Plan Years beginning after December 31, 1996, the Plan does not satisfy one of the tests set forth in Section 12.6, the Administrator shall adjust Excess Aggregate Contributions or the Employer shall make contributions pursuant to the options set forth below or any combination thereof. However, if the Prior Year testing method is being used and it is anticipated that the Plan might not satisfy one of such tests, then the Employer may make contributions pursuant to the options set forth in subsection (c) below.

(b) On or before the fifteenth day of the third, month following the end of the Plan Year, but in no event later than the close of the following Plan Year the Highly Compensated Participant having the largest allocation of "Contribution Percentage Amounts" shall have a portion of such "Contribution Percentage Amounts" (and "Income" allocable to such amounts) distributed or, if non-Vested, Forfeited (including "Income" allocable to such Forfeitures) until the total amount of Excess Aggregate Contributions has been distributed, or until the amount of the Participant's "Contribution Percentage Amounts" equals the "Contribution Percentage Amounts" of the Highly Compensated Participant having the next largest amount of "Contribution Percentage Amounts." This process shall continue until the total amount of Excess Aggregate Contributions has been distributed or forfeited. Any distribution and/or Forfeiture of "Contribution Percentage Amounts" shall be made in the following order:

(1) Employer matching contributions distributed and/or forfeited pursuant to Section 12.5(b)(1);

(2) After-tax voluntary Employee contributions including Excess Contributions recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5(b)(2);

(3) Remaining Employer matching contributions.

(c) Any distribution or Forfeiture of less than the entire amount of Excess Aggregate Contributions (and "Income") shall be treated as a pro rata distribution of Excess Aggregate Contributions and "Income." Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and "Income"). Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.3. However, no such Forfeiture may be allocated to a Highly Compensated Participant whose contributions are reduced pursuant to this Section.

(d) For the purpose of this Section, "Income" means the income or losses allocable to Excess Aggregate Contributions, which amount shall be allocated, at the same time and in the same manner as income or losses are allocated pursuant to Section 4.3(c). However, "Income" for the period between the end of the Plan Year and the date of the distribution (the "gap period") is not required to be distributed.

(e) Excess Aggregate Contributions attributable to amounts other than nondeductible voluntary Employee contributions, including forfeited matching contributions, shall be treated as Employer contributions for purposes of Code Sections 404 and 415 even if distributed from the Plan.

(f) The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as nondeductible voluntary Employee contributions due to recharacterization for the plan year of any other qualified cash or deferred arrangement (as defined in Code Section 401 (k)) maintained by the Employer that ends with or within the Plan Year or which are treated as after-tax voluntary Employee contributions due to recharacterization pursuant to Section 12.5.

(g) Notwithstanding the above, within twelve (12) months after the end of the Plan Year (or, if the Prior Year Testing method is used, within twelve (12) months after the end of the prior Plan Year), the Employer may make a special Qualified Non-Elective Contribution or Qualified Matching Contribution in accordance with one of the following provisions which contribution shall be allocated to the Qualified Non-Elective Contribution Account or Qualified Matching Contribution Account of each Non-Highly Compensated eligible to share in the allocation in accordance with such provision. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to.

(1) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant's 414(s) Compensation for the year (or prior year if the Prior Year Testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year.

(2) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant's 414(s) Compensation for the year (or prior year if the Prior Year Testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year. However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive

calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated to the Qualified Non-Elective Contribution Account of the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 12.6 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.6 is satisfied (or is anticipated to be satisfied).

(6) A Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated to the Qualified Non-Elective Contribution Account of the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 12.6 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.6 is satisfied (or is anticipated to be satisfied). However, for purposes of this contribution, Non-Highly Compensated Employees who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(7) A "Matching Contribution" may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated on behalf of each Non-Highly Compensated Participant in the same proportion that each Non-Highly Compensated Participant's Elective Deferrals for the year bears to the total Elective Deferrals of all Non-Highly Compensated Participants. The Employer shall designate, at the time the contribution is made, whether the contribution made pursuant to this provision shall be a Qualified Matching Contribution allocated to a Participant's Qualified Matching Contribution Account or an Employer Non-Elective Contribution allocated to a Participant's Non-Elective Account.

(8) A "Matching Contribution" may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.6. Such contribution shall be allocated on behalf of each Non-Highly Compensated Participant in the same proportion that each Non-Highly Compensated Participant's Elective Deferrals for the year bears to the total Elective Deferrals of all Non-Highly Compensated Participants. The Employer shall designate, at the time the contribution is made, whether the contribution made pursuant to this provision shall be a Qualified Matching Contribution allocated to a Participant's Qualified Matching Contribution Account or an Employer Non-Elective Contribution allocated to a Participant's Non-Elective Account. However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(9) A "Matching Contribution" may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated on behalf of the Non-Highly Compensated Participant having the lowest Elective Deferrals until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied). The Employer shall designate, at the time the contribution is made, whether the contribution made pursuant to this provision shall be a Qualified Matching Contribution allocated to a Participant's Qualified Matching Contribution Account or an Employer Non-Elective Contribution allocated to a Participant's Non-Elective Account.

(10) A "Matching Contribution" may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 12.4. Such contribution shall be allocated on behalf of the Non-Highly Compensated Participant having the lowest Elective Deferrals until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "Annual Addition" pursuant to Section 4.4. This process shall continue until one of the tests set forth in Section 12.4 is satisfied (or is anticipated to be satisfied). The Employer shall designate, at the time the contribution is made, whether the

contribution made pursuant to this provision shall be a Qualified Matching Contribution allocated to a Participant's Qualified Matching Contribution Account or an Employer Non-Elective Contribution allocated to a Participant's Non-Elective Account. However, for purposes of this contribution, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the Prior Year Testing method is being used) and, if this is a standardized Plan, who have not completed more than 500 Hours of Service (or three (3) consecutive calendar months if the Elapsed Time Method is selected in the Adoption Agreement) during such Plan Year, shall not be eligible to share in the allocation and shall be disregarded.

(h) Any Excess Aggregate Contributions (and "Income") which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

12.8 SAFE HARBOR PROVISIONS

(a) The provisions of this Section will apply if the Employer has elected, in the Adoption Agreement, to use the "ADP Test Safe Harbor" or "ACP Test Safe Harbor." If the Employer has elected to use the "ADP Test Safe Harbor" for a Plan Year, then the provisions relating to the ADP test described in Section 12.4 and in Code Section 401(k)(3) do not apply for such Plan Year. In addition, if the Employer has also elected to use the "ACP Test Safe Harbor" for a Plan Year, then the provisions relating to the ACP test described in Section 12.6 and in Code Section 401(m)(2) do not apply for such Plan Year. Furthermore, to the extent any other provision of the Plan is inconsistent with the provisions of this Section, the provisions of this Section will govern.

(b) For purposes of this Section, the following definitions apply:

(1) "ACP Test Safe Harbor" means the method described in subsection (c) below for satisfying the ACP test of Code Section 401(m)(2).

(2) "ACP Test Safe Harbor Matching Contributions" means "Matching Contributions" described in subsection (d)(1).

(3) "ADP Test Safe Harbor" means the method described in subsection (c) for satisfying the ADP test of Code Section 401(k)(3).

(4) "ADP Test Safe Harbor Contributions" means "Matching Contributions" and nonelective contributions described in subsection (c)(1) below.

(5) "Compensation" means Compensation as defined in Section 1.11, except, for purposes of this Section, no dollar limit, other than the limit imposed by Code Section 401(a)(17), applies to the Compensation of a Non-Highly Compensated Employee. However, solely for purposes of determining the Compensation subject to a Participant's deferral election, the Employer may use an alternative definition to the one described in the preceding sentence, provided such alternative definition is a reasonable definition within the meaning of Regulation 1.414(s)-1(d)(2) and permits each Participant to elect sufficient Elective Deferrals to receive the maximum amount of "Matching Contributions" (determined using the definition of Compensation described in the preceding sentence) available to the Participant under the Plan.

(6) "Eligible Participant" means a Participant who is eligible to make Elective Deferrals under the Plan for any part of the Plan Year (or who would be eligible to make Elective Deferrals but for a suspension due to a hardship distribution described in Section 12.9 or to statutory limitations, such as Code Sections 402(g) and 415) and who is not excluded as an "Eligible Participant" under the 401(k) Safe Harbor elections in the Adoption Agreement.

(7) "Matching Contributions" means contributions made by the Employer on account of an "Eligible Participant's" Elective Deferrals.

(c) The provisions of this subsection apply for purposes of satisfying the "ADP Test Safe Harbor."

(1) The "ADP Test Safe Harbor Contribution" is the contribution elected by the Employer in the Adoption Agreement to be used to satisfy the "ADP Test Safe Harbor." However, if no contribution is elected in the Adoption Agreement, the Employer will contribute to the Plan for the Plan Year a "Basic Matching Contribution" on behalf of each "Eligible Employee." The "Basic Matching Contribution" is equal to (i) one-hundred percent (100%) of the amount of an "Eligible Participant's" Elective Deferrals that do not exceed three percent (3%) of the Participant's "Compensation" for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Participant's Elective Deferrals that exceed three percent (3%) of the Participant's "Compensation" but do not exceed five percent (5%) of the Participant's "Compensation."

(2) Except as provided in subsection (e) below, for purposes of the Plan, a Basic Matching Contribution or an Enhanced Matching Contribution will be treated as a Qualified Matching Contribution and a Nonelective Safe Harbor Contribution will be treated as a Qualified Non-Elective Contribution. Accordingly, the "ADP Test Safe Harbor Contribution" will be fully Vested and subject to the distribution restrictions set forth in Section 12.2(c) (i.e., may generally not be distributed earlier than separation from service, death, disability, an event described in Section 401(k)(1), or, in case of a profit sharing plan, the attainment of age 59 1/2.). In addition, such contributions must satisfy the "ADP Test Safe Harbor" without regard to permitted disparity under Code Section 401(1).

(3) At least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each "Eligible Participant" a comprehensive notice of the Participant's rights and obligations under the Plan, written in a manner calculated to be understood by the average Participant. However, if an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice must be provided no more than ninety (90) days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

(4) In addition to any other election periods provided under the Plan, each "Eligible Participant" may make or modify a deferral election during the thirty (30) day period immediately following receipt of the notice described in subsection (3) above. Furthermore, if the "ADP Test Safe Harbor" is a "Matching Contribution" each "Eligible Employee" must be permitted to elect sufficient Elective Deferrals to receive the maximum amount of "Matching Contributions" available to the Participant under the Plan.

(d) The provisions of this subsection apply if the Employer has elected to satisfy the "ACP Test Safe Harbor".

(1) In addition to the "ADP Test Safe Harbor Contributions," the Employer will make any "Matching Contributions" in accordance with elections made in the Adoption Agreement. Such additional "Matching Contributions" will be considered "ACP Test Safe Harbor Matching Contributions."

(2) Notwithstanding any election in the Adoption Agreement to the contrary, an "Eligible Participant's" Elective Deferrals in excess of six percent (6%) of "Compensation" may not be taken into account in applying "ACP Test Safe Harbor Matching Contributions." In addition, effective with respect to Plan Years beginning after December 31, 1999, any portion of an "ACP Test Safe Harbor Matching Contribution" attributable to a discretionary "Matching Contribution" may not exceed four percent (4%) of an "Eligible Participant's" "Compensation."

(e) The Plan is required to satisfy the ACP test of Code Section 401 (m)(2), using the current year testing method, if the Plan permits after-tax voluntary Employee contributions or if matching contributions that do not satisfy the "ACP Test Safe Harbor" may be made to the Plan. In such event, only "ADP Test Safe Harbor Contributions" or "ACP Test Safe Harbor Contributions" that exceed the amount needed to satisfy the "ADP Test Harbor" or "ACP Test Safe Harbor" (if the Employer has elected to use the "ACP Test Safe Harbor") may be treated as Qualified Nonelective Contributions or Qualified Matching Contributions in applying the ACP test. In addition, in applying the ACP test, elective contributions may not be treated as matching contributions under Code Section 401(m)(3). Furthermore, in applying the ACP test, the Employer may elect to disregard with respect to all "Eligible Participants" (1) all "Matching Contributions" if the only "Matching Contributions" made to the Plan satisfy the "ADP Test Safe Harbor Contribution" (the "Basic Matching Contribution" or the "Enhanced Matching Contribution") and (2) if the "ACP Test Safe Harbor" is satisfied, "Matching Contributions" that do not exceed four percent (4%) of each Participant's "Compensation."

12.9 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) The Administrator, at the election of a Participant, shall direct the Trustee to distribute to the Participant in any one Plan Year up to the lesser of (1) 100% of the accounts as elected in the Adoption Agreement valued as of the last Valuation Date or (2) the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for one of the following or any other item permitted under Regulation 1.401(k)-1(d)(2)(iv):

(1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care as described in Code Section 213(d);

- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payment of tuition and related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents (as defined in Code Section 152); or
- (4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence.

(b) No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the distribution);
- (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer (to the extent the loan would not increase the hardship);
- (3) The Plan, and all other plans maintained by the Employer, provide that the Participant's elective deferrals and nondeductible voluntary Employee contributions will be suspended for at least twelve (12) months after receipt of the hardship distribution; and
- (4) The Plan, and all other plans maintained by the Employer, provide that the Participant may not make elective deferrals for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such next taxable year less the amount of such Participant's elective deferrals for the taxable year of the hardship distribution.

(c) Notwithstanding the above, distributions from the Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Non-Elective Account pursuant to this Section shall be limited solely to the Participant's Elective Deferrals and any income attributable thereto credited to the Participant's Elective Deferral Account as of December 31, 1988. Furthermore, if a hardship distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's hardship distribution from such accounts.

(d) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 411(a)(11) and 417 and the Regulations thereunder.

ARTICLE XIII SIMPLE 401(K) PROVISIONS

13.1 SIMPLE 401(k) PROVISIONS

(a) If elected in the Adoption Agreement, this Plan is intended to be a SIMPLE 401 (k) plan which satisfies the requirements of Code Sections 401 (k)(11) and 401 (m)(10).

(b) The provisions of this Article apply for a "year" only if the following conditions are met:

- (1) The Employer adopting this Plan is an "eligible employer." An "eligible employer" means, with respect to any "year," an Employer that had no more than 100 Employees who received at least \$5,000 of "compensation" from the Employer for the preceding "year." In applying the preceding sentence, all employees of an Affiliated Employer are taken into account.

An "eligible employer" that has elected to use the SIMPLE 401 (k) provisions but fails to be an "eligible employer" for any subsequent "year," is treated, as an "eligible employer" for the two (2) "years" following the last "year" the Employer was an "eligible employer." If the failure is due to any acquisition, disposition, or similar transaction involving an "eligible employer," the preceding sentence applies only if the provisions of Code Section 410(b)(6)(C)(i) are satisfied.

- (2) No contributions are made, or benefits accrued for services during the "year," on behalf of any "eligible employee" under any other plan, contract, pension, or trust described in Code Section 219(g)(5)(A) or (B), maintained by the Employer.

(c) To the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article govern.

13.2 DEFINITIONS

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

(b) "Eligible employee" means, for purposes of this Article, any Participant who is entitled to make elective deferrals described in Code Section 402(g) under the terms of the Plan.

(c) "Year" means the calendar year.

13.3 CONTRIBUTIONS

(a) Salary Reduction Contributions

(1) Each "eligible employee" may make a salary reduction election to have "compensation" reduced for the "year" in any amount selected by the Employee subject to the limitation in subsection (c) below. The Employer will make a salary reduction contribution to the Plan, as an Elective Deferral, in the amount by which the Employee's "compensation" has been reduced.

(2) The total salary reduction contribution for the "year" cannot exceed \$6,000 for any Employee. To the extent permitted by law, this amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS.

(b) Other Contributions

(1) Matching Contributions. Unless (2) below is elected, each "year" the Employer will make a matching contribution to the Plan on behalf of each Employee who makes a salary reduction election under Section 13.3(a). The amount of the matching contribution will be equal to the Employee's salary reduction contribution up to a limit of three percent (3%) of the Employee's "compensation" for the full "year."

(2) Nonelective Contributions. For any "year," instead of a matching contribution, the Employer may elect to contribute a nonelective contribution of two percent (2%) of "compensation" for the "year" for each "eligible employee" who received at least \$5,000 of "compensation" from the Employer for the "year."

(c) Limitation on Other Contributions

No Employer or Employee contributions may be made to this Plan for the "year" other than salary reduction contributions described in Section 13.3(a), matching or nonelective contributions described in Section 13.3(b) and rollover contributions described in Regulation Section 1.402(c)-2, Q&A-1 (a). Furthermore, the provisions of Section 4.4 which, implement the limitations of Code Section 415 apply to contributions made pursuant to this Section.

13.4 ELECTION AND NOTICE REQUIREMENTS

(a) Election Period

(1) In addition to any other election periods provided under the Plan, each "eligible employee" may make or modify a salary reduction election during the 60-day period immediately preceding each January 1st.

(2) For the "year" an Employee becomes eligible to make salary reduction contributions under this Article, the 60-day election period requirement of subsection (a)(1) is deemed satisfied if the Employee may make or modify a salary reduction election during a 60-day period that includes either the date the Employee becomes eligible or the day before.

(3) Each “eligible employee” may terminate a salary reduction election at any time during the “year.”

(b) Notice Requirements

(1) The Employer will notify each “eligible employee” prior to the 60-day election period described in Section 13.4(a) that a salary reduction election or a modification to a prior election may be made during that period.

(2) The notification described in (1) above will indicate whether the Employer will provide a matching contribution described in Section 13.3(b)(1) or a two percent (2%) nonelective contribution described in section 13.3(b)(2).

13.5 VESTING REQUIREMENTS

All benefits attributable to contributions made pursuant to this Article are nonforfeitable at all times, and all previous contributions made under the Plan are nonforfeitable as of the beginning of the Plan Year that the 401(k) SIMPLE provisions apply.

13.6 TOP-HEAVY RULES

The Plan is not treated as a top heavy plan under Code Section 416 for any year for which the provisions of this Article are effective and satisfied.

13.7 NONDISCRIMINATION TESTS

The Plan is treated as meeting the requirements of Code Sections 401(k)(3)(A)(ii) and 401(m)(2) for any “year” for which the provisions of this Article are effective and satisfied. Accordingly, Sections 12.4, 12.5, 12.6 and 12.7 shall not apply to the Plan.

**ADOPTION AGREEMENT FOR
BOSTON FINANCIAL DATA SERVICES
STANDARDIZED 401(K) PROFIT SHARING
PLAN AND TRUST**

The undersigned Employer adopts Boston Financial Data Services Prototype and Trust and elects the following provisions:

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS AND TELEPHONE NUMBER

Name: New Penn Motor Express, Inc.

Address: 625 South Fifth Avenue

Street

Lebanon

City

Pennsylvania

State

17042-7728

Zip

Telephone: (800) 950-5046

2. EMPLOYER'S TAXPAYER IDENTIFICATION NUMBER 23-2209533

3. TYPE OF ENTITY

a. Corporation (including Tax-exempt or Non-profit Corporation)

b. Professional Service Corporation

c. S Corporation

d. Limited Liability Company that is taxed as:

1. a partnership or sole proprietorship

2. a Corporation

3. an S Corporation

e. Sole Proprietorship

f. Partnership (including Limited Liability)

g. Other: _____

AND, the Employer is a member of (select all that apply):

h. a controlled group

i. an affiliated service group

4. EMPLOYER FISCAL YEAR means the 12 consecutive month period:

Beginning on January 1st (e.g., January 1st)
month day

and ending on December 31st
month day

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

5. PLAN NAME:

New Penn Motor Express, Inc. 401(k) Retirement Plan.

IF d. OR e. IS SELECTED, the following exclusions apply for such purposes (select f. or g.):

- f. N/A. No exclusions.
- g. The following are excluded, except that if g.3. is selected, such Employees will be included (select all that apply):
1. Union Employees (as defined in Plan Section 1.18).
 2. Non-resident aliens (as defined in Plan Section 1.18).
 3. Employees who became Employees as the result of a "Code Section 410(b)(6)(C) transaction" (as defined in Plan Section 1.18).

14. THE FOLLOWING AFFILIATED EMPLOYER (Plan Section 1.6) will adopt this Plan as a Participating Employer (if there is more than one, or if Affiliated Employers adopt this Plan after the date the Adoption Agreement is executed, attach a list to this Adoption Agreement of such Affiliated Employers including their names, addresses, taxpayer identification numbers and types of entities):

NOTE: Regardless of the election below, Employees of an Affiliated Employer are generally treated as Employees of the Employer. However, if the transition rule for certain acquisitions and dispositions applies (Code Section 410(b)(6)(C)), then Employees of the Affiliated Employer will not be considered Employees of the Employer until the expiration of the transition period unless the Affiliated Employer actually adopts the Plan prior to such date.

- a. N/A
- b. Name of First Affiliated Employer: _____

Address: _____

Street

_____ Pennsylvania _____

City

State

Zip

Telephone: _____

Taxpayer Identification Number: _____

AND, the Affiliated Employer is:

- c. Corporation (including Tax-exempt, Non-profit or Professional Service Corporation)
- d. S Corporation
- e. Limited Liability Company that is taxed as:
1. a partnership or sole proprietorship
 2. a Corporation
 3. an S Corporation
- f. Sole Proprietorship
- g. Partnership (including Limited Liability)
- h. Other: _____

15. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)

Any Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following:

NOTE: If the Year(s) of Service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in months of service, an Employee will not be required to complete any specified number of Hours of Service in a particular month, unless elected in b.4. or i.4. below.

ELIGIBILITY FOR ALL PURPOSES OF THE PLAN (EXCEPT AS ELECTED IN e.-k. BELOW FOR EMPLOYER CONTRIBUTIONS) (select a. or all that apply of b., c., and d.):

NOTE: If different conditions apply to Elective Deferrals than to other Employer contributions, complete this part a.-d. for the Elective Deferral component of the Plan.

- a. No age or service required (Go to e.-g. below)
- b. Completion of the following service requirement which is based on Years of Service (or Periods of Service if the Elapsed Time Method is elected):
1. No service requirement
 2. 1/2 Year of Service or Period of Service
 3. 1 Year of Service or Period of Service
 4. (not to exceed 1,000) Hours of Service within _____ (not to exceed 12) months from the Eligible Employee's employment commencement date. If an Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the Year of Service requirement in b.3. above.
 5. Other: _____
(may not exceed one (1) Year of Service or Period of Service)

- c. Attainment of age:
1. No age requirement
 2. 20 1/2
 3. 21
 4. Other: 18 (may not exceed 21)
- d. The service and/or age requirements specified above shall be waived with respect to any Eligible Employee who was employed on _____ and such Eligible Employee shall enter the Plan as of such date.
- The requirements to be waived are (select one or both):
1. service requirement (will let part-time Eligible Employees in Plan)
 2. age requirement

HOWEVER, DIFFERENT ELIGIBILITY CONDITIONS WILL APPLY (select e. OR f. and/or g.):

- e. N/A. The options elected in a.-d. above apply for all purposes of the Plan.
- f. For purposes of all Employer contributions (other than Elective Deferrals and matching contributions).
- g. For purposes of Employer matching contributions.

If f. OR g. IS SELECTED, the following eligibility conditions apply for such purposes:

- h. No age or service requirements
- i. Completion of the following service requirement which is based on Years of Service (or Periods of Service if the Elapsed Time Method is elected):
1. No service requirement
 2. 1/2 Year of Service or Period of Service
 3. 1 Year of Service or Period of Service
 4. (not to exceed 1,000) Hours of Service within _____ (not to exceed 12) months from the Eligible Employee's employment commencement date. If an Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the Year of Service requirement in i.3. above.
 5. 1 1/2 Years of Service or Periods of Service
 6. 2 Years of Service or Periods of Service
 7. Other: _____
(may not exceed two (2) Years of Service or Periods of Service)

NOTE: If more than one(1) Year of Service is elected 100% immediate vesting is required,

- j. Attainment of age:
1. No age requirement
 2. 20 1/2
 3. 21
 4. Other: _____ (may not exceed 21)
- k. The service and/or age requirements specified above shall be waived with respect to any Eligible Employee who was employed on and such Eligible Employee shall enter the Plan as of such date.
- The requirements to be waived are (select one or both):
1. service requirement (will let part-time Eligible Employees in Plan)
 2. age requirement

16. EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant for all purposes of the Plan (except as elected in g.-p. below for Employer contributions):

NOTE: If different entry dates apply to Elective Deferrals than to other Employer contributions, complete this part a.-f. for the Elective Deferral component of the Plan.

- a. the day on which such requirements are satisfied.
- b. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
- c. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are satisfied.
- d. the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied.
- e. the first day of the Plan Year next following the date on which such requirements are satisfied.
(Eligibility must be 1/2 Year of Service (or Period of Service) or less and age must be 20 1/2 or less.)
- f. other: _____
provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year or Period of Service) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are

satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

HOWEVER, different entry dates will apply (select g. OR h. and/or i.):

- g. N/A. The options elected in a.-f. above apply for all purposes of the Plan.
- h. For purposes of all Employer contributions (other than Elective Deferrals and matching contributions)...
- i. For purposes of Employer matching contributions...

IF h. OR i. IS SELECTED, the following entry dates apply for such purposes (select one):

- j. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
- k. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are satisfied.
- l. the first day of the Plan Year in which such requirements are satisfied.
- m. the first day of the Plan Year in which such requirements are satisfied, if such requirements are satisfied in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are satisfied in the last 6 months of the Plan Year.
- n. the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied.
- o. the first day of the Plan Year next following the date on which such requirements are satisfied. (Eligibility must be 1/2 (or 1 1/2 if 100% immediate Vesting is selected) Year of Service (or Period of Service) or less and age must be 20 1/2 or less.)
- p. other: _____,
provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year or Period of Service (or more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

SERVICE

17. RECOGNITION OF SERVICE WITH PREDECESSOR EMPLOYER (Plan Sections 1.57 and 1.85)

- a. No service with a predecessor Employer shall be recognized.
- b. Service with Arnold Transportation Services, Inc. will be recognized except as follows (select 1. or all that apply of 2. through 4.):
1. N/A, no limitations.
 2. service will only be recognized for vesting purposes.
 3. service will only be recognized for eligibility purposes.
 4. service prior to _____ will not be recognized.

NOTE: If the predecessor Employer maintained this qualified Plan, then Years of Service (and/or Periods of Service) with such predecessor Employer shall be recognized pursuant to Plan Sections 1.57 and 1.85 and b.l. will apply.

18. SERVICE CREDITING METHOD (Plan Sections 1.57 and 1.85)

NOTE: If no elections are made in this Section, then the Hours of Service Method will be used and the provisions set forth in the definition of Year of Service in Plan Section 1.85 will apply.

ELAPSED TIME METHOD shall be used for the following purposes (select all that apply):

- a. N/A. Plan only uses the Hours of Service Method.
- b. all purposes. (If selected, skip to Question 19.)
- c. eligibility to participate.
- d. vesting.
- e. sharing in allocations or contributions.

HOURS OF SERVICE METHOD shall be used for the following purposes (select all that apply):

- f. N/A. Plan only uses the Elapsed Time Method.
- g. eligibility to participate in the Plan. The eligibility computation period after the initial eligibility computation period shall...
1. shift to the Plan Year after the initial computation period.
 2. be based on the date an Employee first performs an Hour of Service (initial computation period) and subsequent computation periods shall be based on each anniversary date thereof.
- h. vesting. The vesting computation period shall be...
1. the Plan Year.
 2. the date an Employee first performs an Hour of Service and each anniversary thereof.
- i. sharing in allocations or contributions (the computation period shall be the Plan Year).

AND, IF THE HOURS OF SERVICE METHOD IS BEING USED, the Hours of Service will be determined on the basis of the method selected below. Only one method may be selected. The method selected below will be applied to (select j. or k.):

- j. all Employees.
- k. salaried Employees only (for hourly Employees, actual Hours of Service will be used).

ON THE BASIS OF:

- l. actual hours for which an Employee is paid or entitled to payment.
- m. days worked. An Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.
- n. weeks worked. An Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.
- o. semi-monthly payroll periods worked. An Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.
- p. months worked. An Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

AND, a Year of Service means the applicable computation period during which an Employee has completed at least:

- q. 1,000 (may not be more than 1,000) Hours of Service (if left blank, the Plan will use 1,000 Hours of Service).

VESTING

19. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))

Vesting for Employer Contributions (except as otherwise elected in j.-q. below for matching contributions). The vesting schedule, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time Method is elected), shall be as follows:

- a. 100% upon entering Plan. (Required if eligibility requirement is greater than one (1) Year of Service or Period of Service.)
- b. 3 Year Cliff:

0-2 years	0%
3 years	100%
- c. 5 Year Cliff:

0-4 years	0%
5 years	100%
- d. 6 Year Graded

0-1 year	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years	100%
- e. 4 Year Graded:

1 year	25%
2 years	50%
3 years	75%
4 years	100%
- f. 5 Year Graded:

1 year	20%
2 years	40%
3 years	60%
4 years	80%
5 years	100%
- g. 7 Year Graded:

0-2 years	0%
3 years	20%
4 years	40%
5 years	60%
6 years	80%
7 years	100%
- h. Other-Must be at least as liberal as either c. or g. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

VESTING FOR EMPLOYER MATCHING CONTRIBUTIONS

The vesting schedule for Employer matching contributions, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time Method is elected) shall be as follows:

- i. N/A. There are no matching contributions subject to a vesting schedule OR the schedule in a.-h. above shall also apply to matching contributions.
- j. 100% upon entering Plan. (Required if eligibility requirement is greater than one (1) Year of Service or Period of Service.)
- k. 3 Year Cliff
- l. 5 Year Cliff
- m. 6 Year Graded
- n. 4 Year Graded
- o. 5 Year Graded
- p. 7 Year Graded
- q. Other-Must be at least as liberal as either 1. or p. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

20. FOR AMENDED PLANS (Plan Section 6.4(f))

If the vesting schedule has been amended to a less favorable schedule, enter the pre-amended schedule below:

- a. Vesting schedule has not been amended, amended schedule is more favorable in all years or prior schedule was immediate 100% vesting.
- b. Pre-amended schedule:

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

21. TOP HEAVY VESTING (Plan Section 6.4(c))

If this Plan becomes a Top Heavy Plan, the following vesting schedule, based on number of Years of Service (or Periods of Service if the Elapsed Time Method is elected), shall apply and shall be treated as a Plan amendment pursuant to this Plan. Once effective, this schedule shall also apply to any contributions made before the Plan became a Top Heavy Plan and shall continue to apply if the Plan ceases to be a Top Heavy Plan unless an amendment is made to change the vesting schedule.

a. N/A (the regular vesting schedule already satisfies one of the minimum top heavy schedules).

b. 6 Year Graded:

0-1 year	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years	100%

c. 3 Year Cliff:

0-2 years	0%
3 years	100%

d. Other - Must be at least as liberal as either b. or c. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NOTE: This Section does not apply to the account balances of any Participant who does not have an Hour of Service after the Plan has initially become top heavy. Such Participant’s Account balance attributable to Employer contributions and Forfeitures will be determined without regard to this Section.

22. EXCLUDED VESTING SERVICE

- a. No exclusions.
- b. Service prior to the Effective Date of the Plan or a predecessor plan.
- c. Service prior to the time an Employee has attained age 18.

23. VESTING FOR DEATH AND TOTAL AND PERMANENT DISABILITY

Regardless of the vesting schedule, Participants shall become fully Vested upon (select a. or all that apply of b. and c.)

- a. N/A. Apply vesting schedule, or all contributions to the Plan are fully Vested.
- b. Death.
- c. Total and Permanent Disability.

24. NORMAL RETIREMENT AGE (“NRA”) (Plan Section 1.45) means the:

- a. date of a Participant’s 59.5 birthday (not to exceed 65th).
- b. later of a Participant’s _____ birthday (not to exceed 65th) or the _____ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

25. NORMAL RETIREMENT DATE (Plan Section 1.46) means the:

a. Participant’s “NRA”.

OR (select one)

- b. first day of the month coinciding with or next following the Participant’s “NRA”.
- c. first day of the month nearest the Participant’s “NRA”.
- d. Anniversary Date coinciding with or next following the Participant’s “NRA”.
- e. Anniversary Date nearest the Participant’s “NRA”.

26. EARLY RETIREMENT DATE (Plan Section 1.15) means the:

a. No Early Retirement provision provided.

- b. date on which a Participant...
- c. first day of the month coinciding with or next following the date on which a Participant.
- d. Anniversary Date coinciding with or next following the date on which a Participant.

AND, if b., c., or d. is selected...

- e. attains age _____.
- f. attains age _____ and completes at least _____ Years of Service (or Periods of Service) for vesting purposes.

AND, if b., c. or d is selected, shall a Participant become fully Vested upon attainment of the Early Retirement Date?

- g. Yes
- h. No

COMPENSATION

27. COMPENSATION (Plan Section 1.11) with respect to any Participant means:

- a. Wages, tips and other compensation on Form W-2.
- b. Section 3401(a) wages (wages for withholding purposes).
- c. 415 safe-harbor compensation.

COMPENSATION shall be based on the following determination period:

- d. the Plan Year.
- e. the Fiscal Year coinciding with or ending within the Plan Year.
- f. the calendar year coinciding with or ending within the Plan Year.

NOTE: The Limitation Year for Code Section 415 purposes shall be the same as the determination period for Compensation unless an alternative period is specified: _____ (must be a consecutive twelve month period).

ADJUSTMENTS TO COMPENSATION

- g. N/A. No adjustments.
- h. Compensation shall be adjusted by: (select all that apply)
1. including compensation which is not currently includible in the Participant's gross income by reason of the application of Code Sections 125 (cafeteria plan), 132(f)(4) (qualified transportation fringe), 402(e)(3) (401(k) plan), 402(h)(1)(B) (simplified employee pension plan), 414(h) (employer pickup contributions under a governmental plan), 403(b) (tax sheltered annuity) or 457(b) (eligible deferred compensation plan).
 2. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 3. excluding Compensation paid during the determination period while not a Participant in the component of the Plan for which the definition is being used.

HOWEVER, FOR SALARY DEFERRAL AND MATCHING PURPOSES Compensation shall be adjusted by (for salary deferral purposes the Plan automatically includes amounts in h. 1. above):

- i. N/A. No adjustments or same adjustments as in above.
- j. Compensation shall be adjusted by: (select all that apply)
1. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in h. 1. above) and welfare benefits.
 2. excluding Compensation paid during the determination period while not a Participant in the component of the Plan for which the definition is being used.

CONTRIBUTIONS AND ALLOCATIONS

28. SALARY REDUCTION ARRANGEMENT-ELECTIVE DEFERRALS (Plan Section 12.2)

Each Participant may elect to have Compensation deferred by:

- a. ____%.
- b. up to 15%.
- c. from ____% to ____%.
- d. up to the maximum percentage allowable not to exceed the limits of Code Sections 401(k), 402(g), 404 and 415.

AND, Participants who are Highly Compensated Employees determined as of the beginning of a Plan Year may only elect to defer Compensation by:

- e. Same limits as specified above.
- f. The percentage equal to the deferral limit in effect under Code Section 402(g)(3) for the calendar year that begins with or within the Plan Year divided by the annual compensation limit in effect for the Plan Year under Code Section 401(a)(17).

MAY PARTICIPANTS make a special salary deferral election with respect to bonuses?

- g. No.
- h. Yes, a Participant may elect to defer up to ____% of any bonus.

PARTICIPANTS MAY commence salary deferrals on the effective date of participation and on any day thereafter (must be at least once each calendar year).

Participants may modify salary deferral elections:

1. As of each payroll period
2. On the first day of the month
3. On the first day of each Plan Year quarter
4. On the first day of the Plan Year or the first day of the 7th month of the Plan Year
5. Other: daily (must be at least once each calendar year)

AUTOMATIC ELECTION: Shall Participants who do not affirmatively elect to receive cash or have a specified amount contributed to the Plan automatically have Compensation deferred?

- i. No.
- j. Yes, by ____% of Compensation.

SHALL THERE BE a special effective date for the salary deferral component of the Plan?

- k. No.
1. Yes, the effective date of the salary deferral component of the Plan is ____ (enter month day, year).

29. SIMPLE 401(k) PLAN ELECTION (Plan Section 13.1)

Shall the simple 401(k) provisions of Article XIII apply?

- a. No. The simple 401(k) provisions will not apply.
- b. Yes. The simple 401 (k) provisions will apply.

30. 401 (k) SAFE HARBOR PROVISIONS (Plan Section 12.8)

Will the ADP and/or ACP test safe harbor provisions be used? (select a, b. or c.)

- a. No. (If selected, skip to Question 31.)
- b. Yes, but only the ADP (and NOT the ACP) Test Safe Harbor provisions will be used.
- c. Yes, both the ADP and ACP Test Safe Harbor provisions will be used.

IF c. is selected, does the Plan permit matching contributions in addition to any safe harbor contributions elected in d. or e. below?

1. No or N/A. Any matching contributions, other than any Safe Harbor Matching Contributions elected in d. below, will be suspended in any Plan Year in which the safe harbor provisions are used.
2. Yes, the Employer may make matching contributions in addition to any Safe Harbor Matching contributions elected in d. below. (If elected, complete the provisions of the Adoption Agreement relating to matching contributions (i.e., Questions 31. and 32.) that will apply in addition to any elections made in d. below. NOTE: Regardless of any election made in Question 31., the Plan automatically provides that only Elective Deferrals up to 6% of Compensation are taken into account in applying the match set forth in that Question and that the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.)

THE EMPLOYER WILL MAKE THE FOLLOWING ADP TEST SAFE HARBOR CONTRIBUTION FOR THE PLAN YEAR:

NOTE: The ACP Test Safe Harbor is automatically satisfied if the only matching contribution made to the Plan is either (1) a Basic Matching Contribution or (2) an Enhanced Matching Contribution that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

- d. Safe Harbor Matching Contribution (select 1. or 2. **AND** 3.)
1. **Basic Matching Contribution.** The Employer will make Matching Contributions to the account of each "Eligible Participant" in an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed 3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.
2. **Enhanced Matching Contribution.** The Employer will make Matching Contributions to the account of each "Eligible Participant" in an amount equal to the sum of:
 - a. ____% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed ____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - b. ____% of the Participants Elective Deferrals that exceed ____% of the Participant's Compensation but do not exceed ____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

NOTE: a. and b. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to the matching contribution receivable if the Employer were making Basic Matching Contributions, but the rate of match cannot increase as deferrals increase. For example, if a. is completed to provide a match equal to 100% of deferrals up to 4% of Compensation, then b. need not be completed.

3. The safe harbor matching contribution will be determined on the following basis (and Compensation for such purpose will be based on the applicable period):
- a. the entire Plan Year.
 - b. each payroll period.
 - c. all payroll periods ending with or within each month.
 - d. all payroll periods ending with or within the Plan Year quarter.
- e. Nonelective Safe Harbor Contributions (select one)
- 1. The Employer will make a Safe Harbor Nonelective Contribution to the account of each "Eligible Participant" in an amount equal to ____% (may not be less than 3%) of the Employee's Compensation for the Plan Year.
 - 2. The Employer will make a Safe Harbor Nonelective Contribution to another defined contribution plan maintained by the Employer (specify the name of the other plan): _____.

FOR PURPOSES OF THE ADP Test Safe Harbor contribution, the term "Eligible Participant" means any Participant who is eligible to make Elective Deferrals with the following exclusions:

- f. Highly Compensated Employees.
- g. Employees who have not satisfied the greatest minimum age and service conditions permitted under Code Section 410(a).
- h. Other: _____
(must be a category that could be excluded under the permissive or mandatory disaggregation rules of Regulations 1.401(k)-1(b)(3) and 1.401(m)-1(b)(3)).

SPECIAL EFFECTIVE DATE OF ADP AND ACP TEST SAFE HARBOR PROVISIONS

- i. N/A. The safe harbor provisions are effective as of the later of the Effective Date of this Plan or, if this is an amendment or restatement, the effective date of the amendment or restatement.
- j. The ADP and ACP Test Safe Harbor provisions are effective for the Plan Year beginning: _____
_____ (enter the first day of the Plan Year for which the provisions are (or, for GUST updates, were) effective and, if necessary, enter any other special effective dates that apply with respect to the provisions).

31. FORMULA FOR DETERMINING EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 12.1(a)(2))

NOTE: Regardless of any election below, if the ACP test safe harbor is being used (i.e., Question 30.c. is selected), then the Plan automatically provides that only Elective Deferrals up to 6% of Compensation are taken into account in applying the match set forth below and that the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

- a. N/A. There will not be any matching contributions (Skip to Question 33).
- b. The Employer . (select 1. or 2.)
 - 1. may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
 - 2. will make matching contributions equal to ____% (e.g., 50) of the Participant's Elective Deferrals, plus:
 - a. N/A.
 - b. an additional discretionary percentage, to be determined by the Employer.

AND, in determining the matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched: (select 3. and/or 4. OR 5.)

- 3. ____% of a Participant's Compensation.
 - 4. \$_____.
 - 5. a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis to all Participants.
- c. The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of each tier, to be determined by the Employer, of the Participant's Elective Deferrals.
 - d. The Employer will make matching contributions equal to the sum of ____% of the portion of the Participant's Elective Deferrals which do not exceed ____% of the Participant's Compensation or \$_____ plus ____% of the portion of the Participant's Elective Deferrals which exceed ____% of the Participant's Compensation or \$_____, but does not exceed ____% of the Participant's Compensation or \$_____.

NOTE: If c. or d. above is elected, the rate of matching contributions must decrease as a Participant's Elective Deferrals or Years of Service (or Periods of Service) increase.

PERIOD OF DETERMINING MATCHING CONTRIBUTIONS

Matching contributions will be determined on the following basis (and any Compensation or dollar limitation used in determining the match will be based on the applicable period):

- e. the entire Plan Year.
- f. each payroll period.
- g. all payroll periods ending within each month.
- h. all payroll periods ending with or within the Plan Year quarter.

THE MATCHING CONTRIBUTION MADE ON BEHALF OF ANY PARTICIPANT for any Plan Year will not exceed:

- i. N/A.
- j. \$_____.

MATCHING CONTRIBUTIONS WILL BE MADE ON BEHALF OF:

- k. all Participants.
- l. only Non-Highly Compensated Employees.

SHALL THE MATCHING CONTRIBUTIONS BE QUALIFIED MATCHING CONTRIBUTIONS?

- m. Yes. If elected, ALL matching contributions will be fully Vested and will be subject to restrictions on withdrawals. In addition, Qualified Matching Contributions may be used in either the ADP or ACP test.
- n. No.

32. ONLY PARTICIPANTS WHO SATISFY THE FOLLOWING CONDITIONS WILL BE ELIGIBLE TO SHARE IN THE ALLOCATION OF MATCHING CONTRIBUTIONS:

REQUIREMENTS FOR PARTICIPANTS WHO ARE ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR: Participants who are actively employed at the end of the Plan Year will share in allocations regardless of the service completed during such Plan Year.

REQUIREMENTS FOR PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR (except as provided in c. through e. below)

- a. A Participant must complete more than ____Hours of Service (not more than 500) or, if the Elapsed Time Method is elected, ____ months of service (not more than three (3)).
- b. Participants will share in such allocations, regardless of service.

PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR due to the following shall be eligible to share in the allocation of matching contributions regardless of the above conditions (select all that apply):

- c. Death.
- d. Total and Permanent Disability.
- e. Early or Normal Retirement.

33. FORMULA FOR DETERMINING EMPLOYER'S PROFIT SHARING CONTRIBUTION (Plan Section 12. l(a)(3))

- a. N/A. No Employer Profit Sharing Contributions may be made (other than top heavy minimum contributions) (Skip to Question 34.)
- b. Discretionary, to be determined by the Employer, not limited to current or accumulated Net Profits.
- c. Discretionary, to be determined by the Employer, out of current or accumulated Net Profits.

CONTRIBUTION ALLOCATIONS

If b. or c. above is selected, the Employer's discretionary profit sharing contribution for a Plan Year will be allocated as follows:

- d. **NON-INTEGRATED ALLOCATION**
 - 1. In the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
 - 2. In the same dollar amount to all Participants (per capita).
 - 3. In the same dollar amount per Hour of Service completed by each Participant.

- e. **INTEGRATED ALLOCATION**

In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:

- 1. The Taxable Wage Base.
- 2. ____% (not to exceed 100%) of the Taxable Wage Base. (See Note below)
- 3. 80 % of the Taxable Wage Base plus \$1.00.
- 4. \$____(not greater than the Taxable Wage Base). (See Note below)

NOTE: The integration percentage of 5.7% shall be reduced to:

1. 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base.
2. 5.4% if 3. is elected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

34. QUALIFIED NON-ELECTIVE CONTRIBUTIONS (Plan Section 12.1 (a)(4))

NOTE: Regardless of any election made in this Question, the Plan automatically permits Qualified Non-Elective Contributions to correct a failed ADP or ACP test.

- a. N/A. There will be no additional Qualified Non-Elective Contributions except as otherwise provided in the Plan.
- b. The Employer will make a Qualified Non-Elective Contribution equal to ____% of the total Compensation of those Participants eligible to share in the allocations.
- c. The Employer may make a Qualified Non-Elective Contribution in an amount to be determined by the Employer, to be allocated in proportion to the Compensation of those Participants eligible to share in the allocations.
- d. The Employer may make a Qualified Non-Elective Contribution in an amount to be determined by the Employer, to be allocated equally to all Participants eligible to share in the allocations (per capita).

AND, if b., c., or d. is selected, the Qualified Non-Elective Contributions above will be made on behalf of:

- e. all Participants.
- f. only Non-Highly Compensated Employees.

35. REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER DISCRETIONARY PROFIT SHARING CONTRIBUTION, QUALIFIED NON-ELECTIVE CONTRIBUTIONS (other than Qualified Non-Elective Contributions under Plan Sections 12.5(c) and 12.7(g)) AND FORFEITURES

REQUIREMENTS FOR PARTICIPANTS WHO ARE ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR: Participants who are actively employed at the end of the Plan Year will share in allocations regardless of the service completed during such Plan Year.

REQUIREMENTS FOR PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR (except as provided in d. through f. below)

- a. N/A. Plan does not permit such contributions and all contributions under the Plan are fully Vested.
- b. A Participant must complete more than Hours of Service (not more than 500) (or _____ months of service (not more than three (3)) if the Elapsed Time Method is elected).
- c. Participants will share in such allocations, regardless of service.

PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR due to the following will be eligible to share in the allocations regardless of the above conditions (select all that apply):

- d. Death.
- e. Total and Permanent Disability.
- f. Early or Normal Retirement.

36. FORFEITURES (Plan Sections 1.27 and 4.3(e))

Except as provided in Plan Section 1.27, a Forfeiture will occur (if no election is made, a. will apply):

- a. as of the earlier of (1) the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
- b. as of the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1-Year Breaks in Service.

Will Forfeitures first be used to pay any administrative expenses?

- c. Yes.
- d. No.

AND, EXCEPT as otherwise provided below with respect to Forfeitures attributable to matching contributions, any remaining Forfeitures will be...

- e. added to any Employer discretionary contribution.
- f. used to reduce any Employer contribution.
- g. added to any Employer matching contribution and allocated as an additional matching contribution.
- h. allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.

FORFEITURES OF MATCHING CONTRIBUTIONS WILL BE....

- i. N/A. Same as above or no matching contributions.
- j. used to reduce the Employer's matching contribution.
- k. added to any Employer matching contribution and allocated as an additional matching contribution.
- l. added to any Employer discretionary profit sharing contribution.
- m. allocated to all Participants eligible to share in the matching allocations (regardless of whether a Participant elected any salary reductions) in proportion to each such Participant's Compensation for the year.
- n. allocated to all Non-Highly Compensated Employees eligible to share in the matching allocations (regardless of whether a Participant elected any salary reductions) in proportion to each such Participant's Compensation for the year.

37. ALLOCATIONS OF EARNINGS (Plan Section 4.3(c))

Allocations of earnings with respect to amounts which are not subject to Participant directed investments and which are contributed to the Plan after the previous Valuation Date will be determined....

- a. N/A. All assets in the Plan are subject to Participant investment direction.
- b. by using a weighted average based on the amount of time that has passed between the date a contribution or distribution was made and the date of the prior Valuation Date.
- c. by treating one-half of all such contributions as being a part of the Participant's nonsegregated account balance as of the previous Valuation Date.
- d. by using the method specified in Plan Section 4.3(c) (balance forward method).
- e. other: _____
(must be a definite predetermined formula that is not based on Compensation and that satisfies the nondiscrimination requirements of Regulation 1.401(a)(4)-4 and is applied uniformly to all Participants).

38. LIMITATIONS ON ALLOCATIONS (Plan Section 4.4)

If any Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a Master or Prototype Plan, or if the Employer maintains a welfare benefit fund, as defined in Code Section 419(e), or an individual medical account, as defined in Code Section 415(1)(2), under which amounts are treated as Annual Additions with respect to any Participant in this Plan:

- a. N/A. The Employer does not maintain another qualified defined contribution plan other than a paired plan.
- b. The provisions of Plan Section 4.4(b) will apply as if the other plan were a Master or Prototype Plan.
- c. Specify the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any Excess Amounts, in a manner that precludes Employer discretion:

NOTE: If b. or c. is selected, an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

IF ANY PARTICIPANT is a Participant in a qualified defined benefit plan maintained by the Employer:

- d. N/A. The Employer does not maintain, and has never maintained, a qualified defined benefit plan OR the provisions of Code Section 415(e) no longer apply to the Plan.
- e. N/A. The provisions of Code Section 415(e) no longer apply to this Plan effective with respect to Limitation Years beginning after December 31, 1999, or if later _____ (if a later date is entered, this Plan will not be considered a safe harbor plan under Code Section 401(a)(4) and the Regulations thereunder).
- f. In any Limitation Year, the Annual Additions credited to the Participant under this Plan may not cause the sum of the Defined Benefit Plan Fraction and the Defined Contribution Fraction to exceed 1.0. If the Employer's contribution that would otherwise be made on the Participant's behalf during the Limitation Year would cause the 1.0 limitation to be exceeded, the rate of contribution under this Plan will be reduced so that the sum of the fractions equals 1.0. If the 1.0 limitation is exceeded because of an Excess Amount, such Excess Amount will be reduced in accordance with Section 4.5 of the Plan.
- g. Specify the method under which the plans involved will satisfy the 1.0 limitation in a manner that precludes Employer discretion:

NOTE: If f. or g. is selected, an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

DISTRIBUTIONS**39. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply)...

- a. lump-sums.
- b. substantially equal installments.
- c. partial withdrawals provided the minimum withdrawal is \$_____.

AND, pursuant to Plan Section 6.12,

- d. no annuities are allowed (Plan Section 6.12(b) will apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will not apply to the Plan).

AND, if this is an amendment that is eliminating annuities, then an annuity form of payment is not available with respect to distributions that have an Annuity Starting Date beginning on or after:

- 1. N/A
- 2. _____ (may not be a retroactive date), except that regardless of the date entered, the amendment will not be effective prior to the time set forth in Plan Section 8.1(e).

- e. annuities are allowed as the normal form of distribution (Plan Section 6.12 will not apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will automatically apply). If elected, the Pre-Retirement Survivor Annuity (minimum spouse's death benefit) will be equal to:

- 1. 100% of Participant's interest in the Plan.
- 2. 50% of Participant's interest in the Plan.
- 3. _____ % (may not be less than 50%) of a Participant's interest in the Plan.

AND, the normal form of the Qualified Joint and Survivor Annuity will be a joint and 50% survivor annuity unless otherwise elected below.

- 4. N/A.
- 5. Joint and 100% survivor annuity.
- 6. Joint and 75% survivor annuity.
- 7. Joint and 66 2/3% survivor annuity.

NOTE: If only a portion of the Plan assets may be distributed in an annuity form of payment, then selected AND e. and the assets subject to the joint and survivor annuity provisions will be those assets attributable to (specify): _____ (e.g., the money purchase pension plan that was merged into this Plan).

AND, distributions may be made in...

- f. cash only (except for insurance or annuity contracts).
- g. cash or property.

40. CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT

Distributions upon termination of employment pursuant to Plan Section 6.4(a) of the Plan will not be made unless the following conditions have been satisfied:

- a. No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- b. Distributions may be made as soon as administratively feasible at the Participant's election.
- c. The Participant has incurred _____ 1 -Year Break(s) in Service (or Period(s) of Severance if the Elapsed Time Method is elected).
- d. Distributions may be made at the Participant's election as soon as administratively feasible after the Plan Year coincident with or next following termination of employment.
- e. Distributions may be made at the Participant's election as soon as administratively feasible after the Plan Year quarter coincident with or next following termination of employment.
- f. Distributions may be made at the Participant's election as soon as administratively feasible after the Valuation Date coincident with or next following termination of employment.
- g. Distributions may be made at the Participant's election as soon as administratively feasible _____ months following termination of employment.
- h. Other: _____ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation 1.411(d)-4 and may not exceed the limits of Code Section 401(a)(14) as set forth in Plan Section 6.7).

41. INVOLUNTARY DISTRIBUTIONS

Will involuntary distributions of amounts less than \$5,000 be made in accordance with the provisions of Sections 6.4, 6.5 and 6.6?

- a. Yes
- b. No

42. MINIMUM DISTRIBUTION TRANSITIONAL RULES (Plan Section 6.5(e))

NOTE: This Section does not apply to (1) a new Plan or (2) an amendment or restatement of an existing Plan that never contained the provisions of Code Section 401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA).

The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:

- a. N/A. (This is a new Plan or this Plan has never included the pre-SBJPA provisions.)
- b. April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (The pre-SBJPA rules will continue to apply.)
- c. April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both and if no election is made, both will apply effective as of January 1, 1996):
 1. A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (not earlier than January 1, 1996) may elect to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following will apply:
 - a. N/A. Annuity distributions are not permitted.
 - b. Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 - c. Upon the recommencement of distributions, a new Annuity Starting Date is created.
 2. A Participant who had not begun receiving required minimum distributions as of _____ (not earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) will apply to all such Participants unless the option below is elected:
 - a. N/A.
 - b. The in-service distribution option is eliminated with respect to Participants who attain age 70 1/2 in or after the calendar year that begins after the later of (1) December 31, 1998, or (2) the adoption date of the amendment and restatement to bring the Plan into compliance with SBJPA. (This option may only be elected if the amendment to eliminate the in-service distribution is adopted no later than the last day of the remedial amendment period that applies to the Plan for changes under SBJPA.)

43. DISTRIBUTIONS UPON DEATH (Plan Section 6.6(h))

Distributions upon the death of a Participant prior to receiving any benefits shall.

- a. be made pursuant to the election of the Participant or beneficiary.
- b. begin within 1 year of death for a designated beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such beneficiary, except that if the beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2.
- c. be made within 5 (or if lesser _____) years of death for all beneficiaries.
- d. be made within 5 (or if lesser _____) years of death for all beneficiaries, except that if the beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.

44. HARDSHIP DISTRIBUTIONS (Plan Sections 6.11 and/or 12.9)

- a. No hardship distributions are permitted.
- b. Hardship distributions are permitted from the following accounts (select all that apply):
 1. All accounts.
 2. Participant's Elective Deferral Account.
 3. Participant's Account attributable to Employer matching contributions.
 4. Participant's Account attributable to Employer profit sharing contributions.
 5. Participant's Rollover Account.
 6. Participant's Transfer Account.
 7. Participant's Voluntary Contribution Account.

NOTE: Distributions from a Participant's Elective Deferral Account are limited to the portion of such account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are not permitted from a Participant's Qualified Non-Elective Account (including any 401(k) Safe Harbor Contributions) or Qualified Matching Contribution Account.

AND, shall the safe harbor hardship rules of Plan Section 12.9 apply to distributions made from all accounts? (Note: The safe harbor hardship rules automatically apply to hardship distributions of Elective Deferrals.)

- c. No or N/A. The provisions of Plan Section 6.11 apply to hardship distributions from all accounts other than a Participant's Elective Deferral Account.
- d. Yes. The provisions of Plan Section 12.9 apply to all hardship distributions.

AND, are distributions restricted to those accounts in which a Participant is fully Vested?

- e. Yes, distributions may only be made from accounts which are fully Vested.
 f. No. (If elected, the fraction at Plan Section 6.5(h) shall apply in determining vesting of the portion of the account balance not withdrawn).

AND, the minimum hardship distribution shall be...

- g. N/A. There is no minimum.
 h. \$_____ (may not exceed \$1,000).

45. IN-SERVICE DISTRIBUTIONS (Plan Section 6.10)

- a. In-service distributions may not be made (except as otherwise elected for Hardship Distributions).
 b. In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select all that apply):
1. the Participant has attained age 59 1/2
 2. the Participant has reached Normal Retirement Age.
 3. the Participant has been a Participant in the Plan for at least _____ years (may not be less than five (5)).
 4. the amounts being distributed have accumulated in the Plan for at least two (2) years.

AND, in-service distributions are permitted from the following accounts (select all that apply):

- c. All accounts.
 d. Participant's Elective Deferral Account.
 e. Qualified Matching Contribution Account and portion of Participant's Account attributable to Employer matching contributions.
 f. Participant's Account attributable to Employer profit sharing contributions.
 g. Qualified Non-Elective Contribution Account,
 h. Participant's Rollover Account.
 i. Participant's Transfer Account.
 j. Participant's Voluntary Contribution Account.

NOTE: Distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Non-Elective Account (including 401(k) Safe Harbor Contributions) are subject to restrictions and generally may not be distributed prior to age 59 1/2.

AND, are distributions restricted to those accounts in which a Participant is fully Vested?

- k. Yes, distributions may only be made from accounts which are fully Vested.
 l. No, (If elected, the fraction at Plan Section 6.5(h) will apply in determining vesting of the portion of the account balance not withdrawn.)

AND, the minimum distribution shall be...

- m. N/A. There is no minimum.
 n. \$_____ (may not exceed \$1,000).

NONDISCRIMINATION TESTING

46. HIGHLY COMPENSATED EMPLOYEE (Plan Section 1.31)

NOTE: If this is a GUST restatement, complete the questions in this Section retroactively to the first Plan Year beginning after 1996.

Top-Paid Group Election. Will the top-paid group election be made? (The election made below for the latest year will continue to apply to subsequent Plan Years unless a different election is made.)

- a. Yes, for the Plan Year beginning in: _____.
 b. No, for the Plan Year beginning in: 2002.

Calendar Year Data Election. Will the calendar year data election be used?

(The election made below for the latest year will continue to apply to subsequent Plan Years unless a different election is made.)

- c. Yes, for the Plan Year beginning in: _____.
 d. No, for the Plan Year beginning in: 2002.

47. ADP AND ACP TESTS (Plan Sections 12.4 and 12.6). The ADP ratio and ACP ratio for Non-Highly Compensated Employees will be based on the following. The election made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended to a different election.
- N/A. This Plan satisfies the ADP Test Safe Harbor rules and there are no contributions subject to an ACP test or for all Plan Years beginning in or after the Effective Date of the Plan or, in the case of an amendment and restatement, for all Plan Years to which the amendment and restatement relates.
 - PRIOR YEAR TESTING: The prior year ratio will be used for the Plan Year beginning in 2002 . (Note: If this election is made for the first year the Code Section 401(k) or 401(m) feature is added to this Plan (unless this Plan is a successor plan), the amount taken into account as the ADP and ACP of Non-Highly Compensated Employees for the preceding Plan Year will be 3%.)
 - CURRENT YEAR TESTING: The current year ratio will be used for the Plan Year beginning in _____.

NOTE: In any Plan Year where the ADP Test Safe Harbor is being used but not the ACP Test Safe Harbor, then c. above must be used if an ACP test applies for such Plan Year.

TOP HEAVY REQUIREMENTS

48. TOP HEAVY DUPLICATIONS (Plan Section 4.3(i)): When a Non-Key Employee is a Participant in this Plan and a Defined Benefit Plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top heavy minimum benefits: (If b., c., d. or e. is elected, f. must be completed.)
- N/A. The Employer does not maintain a Defined Benefit Plan other than a paired plan. (Go to next Question)
 - The full top heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) shall not apply).
 - 5% defined contribution minimum.
 - 2% defined benefit minimum.
 - Specify the method under which the Plans will provide top heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions:

NOTE: If c. or d. is selected and both plans do not cover the same Employees, or if e. is selected, then an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

AND, the "Present Value of Accrued Benefit" (Plan Section 9.2) for Top Heavy purposes shall be based on...

f. Interest Rate: _____

Mortality Table: _____

49. TOP HEAVY DUPLICATIONS (Plan Section 4.3(f)): When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top heavy minimum benefits:
- N/A. The Employer does not maintain another qualified defined contribution plan other than a paired plan.
 - The full top heavy minimum will be provided in each plan.
 - A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation shall be provided in the Money Purchase Plan (or other plan subject to Code Section 412), where the Employer maintains two (2) or more non-paired Defined Contribution Plans.
 - Specify the method under which the Plans will provide top heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code Section 415:

The top heavy minimum will be provided under the NPME Profit Sharing Plan

NOTE: If c. is selected and both plans do not cover the same Employees, or if d. is selected, then an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

MISCELLANEOUS

50. LOANS TO PARTICIPANTS (Plan Section 7.6)
- Loans are not permitted.
 - Loans are permitted.

IF loans are permitted (select all that apply)...

- c. loans will be treated as a Participant directed investment.
- d. loans will only be made for hardship or financial necessity.
- e. the minimum loan will be \$_____ (may not exceed \$1,000).
- f. a Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
- g. all outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution).
- h. loans will only be permitted from the following accounts (select all that apply):
 - 1. All accounts.
 - 2. Participant's Elective Deferral Account.
 - 3. Qualified Matching Contribution Account and/or portion of Participant's Account attributable to Employer matching contributions.
 - 4. Participant's Account attributable to Employer profit sharing contributions.
 - 5. Qualified Non-Elective Contribution Account.
 - 6. Participant's Rollover Account.
 - 7. Participant's Transfer Account.
 - 8. Participant's Voluntary Contribution Account.

NOTE: Department of Labor Regulations require the adoption of a separate written loan program setting forth the requirements outlined in Plan Section 7.6.

51. DIRECTED INVESTMENT ACCOUNTS (Plan Section 4.10)

- a. Participant directed investments are not permitted.
- b. Participant directed investments are permitted for the following accounts (select all that apply):
 - 1. All accounts.
 - 2. Participant's Elective Deferral Account.
 - 3. Qualified Matching Contribution Account and/or portion of Participant's Account attributable to Employer matching contributions.
 - 4. Participant's Profit Sharing Account.
 - 5. Qualified Non-Elective Contribution Account.
 - 6. Participant's Rollover Account.
 - 7. Participant's Transfer Account.
 - 8. Participant's Voluntary Contribution Account.
 - 9. Other. _____

AND, is it intended that the Plan comply with Act Section 404(c) with respect to the accounts subject to Participant investment direction?

- c. No.
- d. Yes

AND, will voting rights on directed investments be passed through to Participants?

- e. No. Employer stock is not an alternative OR Plan is not intended to comply with Act Section 404(c).
- f. Yes, for Employer stock only.
- g. Yes, for all investments.

52. ROLLOVERS (Plan Section 4.6)

- a. Rollovers will not be accepted by this Plan.
- b. Rollovers will be accepted by this Plan.

AND, if b. is elected, rollovers may be accepted...

- c. from any Eligible Employee, even if not a Participant.
- d. from Participants only.

AND, distributions from a Participant's Rollover Account may be made...

- e. at any time.
- f. only when the Participant is otherwise entitled to a distribution under the Plan.

53. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8)

- a. After-tax voluntary Employee contributions will not be allowed.
- b. After-tax voluntary Employee contributions will be allowed.

54. LIFE INSURANCE (Plan Section 7.5)

- a. Life insurance may not be purchased.
- b. Life insurance may be purchased at the option of the Administrator.
- c. Life insurance may be purchased at the option of the Participant.

AND, if b. or c. is elected, the purchase of initial or additional life insurance will be subject to the following limitations (select all that apply):

- d. N/A, no limitations.
- e. each initial Contract will have a minimum face amount of \$_____.
- f. each additional Contract will have a minimum face amount of \$_____.
- g. the Participant has completed _____ Years of Service (or Periods of Service).
- h. the Participant has completed _____ Years of Service (or Periods of Service) while a Participant in the Plan.
- i. the Participant is under age _____ on the Contract issue date.
- j. the maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
- k. the maximum face amount of any life insurance Contract will be \$_____.

The adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under Code Section 401 except to the extent provided in Rev. Proc. 2000-20, 2000-61.R.B. 553 and Announcement 2001-77, 2001-30 I.R.B.

An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code Section 419A(d)(3), or an individual medical account, as defined in Code Section 415(1X2)) in addition to this Plan may not rely on the opinion letter issued by the National Office of the Internal Revenue Service with respect to the requirements of Code Sections 415 and 416.

If the Employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of Code Sections 415 and 416, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the plan or in Revenue Procedure 2000-20 and Announcement 2001 -77.

This Adoption Agreement may be used only in conjunction with basic Plan document 01. This Adoption Agreement and the basic Plan document shall together be known as Boston Financial Data Services Prototype and Trust 01-001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Boston Financial Data Services will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, we agree to notify Boston Financial Data Services of any change in address.

This Plan may not be used, and shall not be deemed to be a Prototype Plan, unless an authorized representative of Boston Financial Data Services has acknowledged the use of the Plan. Such acknowledgment is for administrative purposes only. It acknowledges that the Employer is using the Plan but does not represent that this Plan, including the choices selected on the Adoption Agreement, has been reviewed by a representative of the sponsor or constitutes a qualified retirement plan.

Boston Financial Data Services

By: _____ /s/ Illegible

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Boston Financial Century Plan Services

Address: P. O. Box 8374
Boston Massachusetts 02266-8374

Telephone: (800) 215-8659

**EGTRRA
AMENDMENT TO THE
NEW PENN MOTOR EXPRESS, INC. 401(K) RETIREMENT PLAN
[EFFECTIVE THROUGH DECEMBER 31, 2002]**

**ARTICLE I
PREAMBLE**

- 1.1 Adoption and effective date of amendment. This amendment of the plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.
- 1.2 Adoption by prototype sponsor. Except as otherwise provided herein, pursuant to Section 5.01 of Revenue Procedure 2000-20 (or pursuant to the corresponding provision in Revenue Procedure 89-9 or Revenue Procedure 89-13), the sponsor hereby adopts this amendment on behalf of all adopting employers.
- 1.3 Supersession of inconsistent provisions. This amendment shall supersede the provisions of the plan to the extent those provisions are inconsistent with the provisions of this amendment.

**ARTICLE II
ADOPTION AGREEMENT ELECTIONS**

The questions in this Article II only need to be completed in order to override the default provisions set forth below. If all of the default provisions will apply, then these questions should be skipped.

Unless the employer elects otherwise in this Article II, the following defaults apply:

- 1) The vesting schedule for matching contributions will be a 6 year graded schedule (if the plan currently has a graded schedule that does not satisfy EGTRRA) or a 3 year cliff schedule (if the plan currently has a cliff schedule that does not satisfy EGTRRA), and such schedule will apply to all matching contributions (even those made prior to 2002).
- 2) Rollovers are automatically excluded in determining whether the \$5,000 threshold has been exceeded for automatic cash-outs (if the plan is not subject to the qualified joint and survivor annuity rules and provides for automatic cash-outs). This is applied to all participants regardless of when the distributable event occurred.
- 3) The suspension period after a hardship distribution is made will be 6 months and this will only apply to hardship distributions made after 2001.
- 4) Catch-up contributions will be allowed.
- 5) For target benefit plans, the increased compensation limit of \$200,000 will be applied retroactively (i.e., to years prior to 2002).

2.1 Vesting Schedule for Matching Contributions

If there are matching contributions subject to a vesting schedule that does not satisfy EGTRRA, then unless otherwise elected below, for participants who complete an hour of service in a plan year beginning after December 31, 2001, the following vesting schedule will apply to all matching contributions subject to a vesting schedule:

If the plan has a graded vesting schedule (i.e., the vesting schedule includes a vested percentage that is more than 0% and less than 100%) the following will apply:

Years of vesting service	Nonforfeitable percentage
2	20%
3	40%
4	60%
5	80%
6	100%

If the plan does not have a graded vesting schedule, then matching contributions will be nonforfeitable upon the completion of 3 years of vesting service.

In lieu of the above vesting schedule, the employer elects the following schedule:

- a. 3 year cliff (a participant’s accrued benefit derived from employer matching contributions shall be nonforfeitable upon the participant’s completion of three years of vesting service).
- b. 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).
- c. Other (must be at least as liberal as a. or the b. above):

Years of vesting service	Nonforfeitable percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

The vesting schedule set forth herein shall only apply to participants who complete an hour of service in a plan year beginning after December 31, 2001, and, unless the option below is elected, shall apply to **all** matching contributions subject to a vesting schedule.

- d. The vesting schedule will only apply to matching contributions made in plan years beginning after December 31, 2001 (the prior schedule will apply to matching contributions made in prior plan years).

2.2 Exclusion of Rollovers in Application of Involuntary Cash-out Provisions (for profit sharing and 401(k) plans only). If the plan is not subject to the qualified joint and survivor annuity rules and includes involuntary cash-out provisions, then unless one of the options below is elected, effective for distributions made after December 31, 2001, rollover contributions will be excluded in determining the value of the participant’s nonforfeitable account balance for purposes of the plan’s involuntary cash-out rules.

- a. Rollover contributions will not be excluded.
- b. Rollover contributions will be excluded only with respect to distributions made after _____ (Enter a date no earlier than December 31, 2001.)
- c. Rollover contributions will only be excluded with respect to participants who separated from service after _____. (Enter a date. The date may be earlier than December 31, 2001.)

2.3 Suspension period of hardship distributions. If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-1(d)(2)(iv), then, unless the option below is elected, the suspension period following a hardship distribution shall only apply to hardship distributions made after December 31, 2001.

- With regard to hardship distributions made during 2001, a participant shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

2.4 Catch-up contributions (for 401(k) profit sharing plans only): The plan permits catch-up contributions (Article VI) unless the option below is elected.

- The plan does not permit catch-up contributions to be made. (Effective January 1, 2002 through December 31, 2002)

**ARTICLE III
VESTING OF MATCHING CONTRIBUTIONS**

3.1 Applicability. This Article shall apply to participants who complete an Hour of Service after December 31, 2001, with respect to accrued benefits derived from employer matching contributions made in plan years beginning after December 31, 2001. Unless otherwise elected by the employer in Section 2.1 above, this Article shall also apply to all such participants with respect to accrued benefits derived from employer matching contributions made in plan years beginning prior to January 1, 2002.

3.2 Vesting schedule. A participant’s accrued benefit derived from employer matching contributions shall vest as provided in Section 2.1 of this amendment.

**ARTICLE IV
INVOLUNTARY CASH-OUTS**

4.1 Applicability and effective date. If the plan provides for involuntary cash-outs of amounts less than \$5,000, then unless otherwise elected in Section 2.2 of this amendment, this Article shall apply for distributions made after December 31, 2001, and shall apply to all participants. However, regardless of the preceding, this Article shall not apply if the plan is subject to the qualified joint and survivor annuity requirements of Sections 401(a)(11) and 417 of the Code.

4.2 Rollovers disregarded in determining value of account balance for involuntary distributions. For purposes of the Sections of the plan that provide for the involuntary distribution of vested accrued benefits of \$5,000 or less, the value

of a participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. If the value of the participant's nonforfeitable account balance as so determined is \$5,000 or less, then the plan shall immediately distribute the participant's entire nonforfeitable account balance.

**ARTICLE V
HARDSHIP DISTRIBUTIONS**

- 5.1 Applicability and effective date. If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-1(d)(2)(iv), then this Article shall apply for calendar years beginning after 2001.
- 5.2 Suspension period following hardship distribution. A participant who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for 6 months after receipt of the distribution. Furthermore, if elected by the employer in Section 2.3 of this amendment, a participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

**ARTICLE VI
CATCH-UP CONTRIBUTIONS**

Catch-up Contributions. Unless otherwise elected in Section 2.4 of this amendment, all employees who are eligible to make elective deferrals under this plan and who have attained age 50 before the close of the plan year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Sections 402(g) and 415 of the Code. The plan shall not be treated as failing to satisfy the provisions of the plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

**ARTICLE VII
INCREASE IN COMPENSATION LIMIT**

Increase in Compensation Limit. The annual compensation of each participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). If this is a target benefit plan, then except as otherwise elected in Section 2.5 of this amendment, for purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited to \$200,000. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

**ARTICLE VIII
PLAN LOANS**

Plan loans for owner-employees or shareholder-employees. If the plan permits loans to be made to participants, then effective for plan loans made after December 31, 2001, plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

**ARTICLE IX
LIMITATION ON CONTRIBUTIONS (IRC SECTION 415 LIMITS)**

- 9.1 Effective date. This Section shall be effective for limitation years beginning after December 31, 2001.
- 9.2 Maximum annual addition. Except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:
- a. \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or
 - b. 100 percent of the participant's compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in b. shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

**ARTICLE X
MODIFICATION OF TOP-HEAVY RULES**

- 10.1 Effective date. This Article shall apply for purposes of determining whether the plan is a top-heavy plan under Section 416(g) of the Code for plan years beginning after December 31, 2001, and whether the plan satisfies the minimum benefits requirements of Section 416(c) of the Code for such years. This Article amends the top-heavy provisions of the plan.
- 10.2 Determination of top-heavy status.
- 10.2.1 Key employee. Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.
- 10.2.2 Determination of present values and amounts. This Section 10.2.2 shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.
- a. Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under Section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."
- b. Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.
- 10.3 Minimum benefits.
- 10.3.1 Matching contributions. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the plan. The preceding sentence shall apply with respect to matching contributions under the plan or, if the plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.
- 10.3.2 Contributions under other plans. The employer may provide, in an addendum to this amendment, that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met). The addendum should include the name of the other plan, the minimum benefit that will be provided under such other plan, and the employees who will receive the minimum benefit under such other plan.

**ARTICLE XI
DIRECT ROLLOVERS**

- 11.1 Effective date. This Article shall apply to distributions made after December 31, 2001.
- 11.2 Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions of the plan, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

- 11.3 Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions of the plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.
- 11.4 Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

**ARTICLE XII
ROLLOVERS FROM OTHER PLANS**

Rollovers from other plans. The employer, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this plan.

**ARTICLE XIII
REPEAL OF MULTIPLE USE TEST**

Repeal of Multiple Use Test. The multiple use test described in Treasury Regulation Section 1.401(m)-2 and the plan shall not apply for plan years beginning after December 31, 2001.

**ARTICLE XIV
ELECTIVE DEFERRALS**

- 14.1 Elective Deferrals-Contribution Limitation. No participant shall be permitted to have elective deferrals made under this plan, or any other qualified plan maintained by the employer during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable.
- 14.2 Maximum Salary Reduction Contributions for SIMPLE plans. If this is a SIMPLE 401(k) plan, then except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the maximum salary reduction contribution that can be made to this plan is the amount determined under Section 408(p)(2)(A)(ii) of the Code for the calendar year.

**ARTICLE XV
SAFE HARBOR PLAN PROVISIONS**

Modification of Top-Heavy Rules. The top-heavy requirements of Section 416 of the Code and the plan shall not apply in any year beginning after December 31, 2001, in which the plan consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401 (m)(11) of the Code are met.

**ARTICLE XVI
DISTRIBUTION UPON SEVERANCE OF EMPLOYMENT**

- 16.1 Effective date. This Article shall apply for distributions and transactions made after December 31, 2001, regardless of when the severance of employment occurred.
- 16.2 New distributable event. A participant's elective deferrals, qualified nonselective contributions, qualified matching contributions, and earnings attributable to these contributions shall be distributed on account of the participant's severance from employment. However, such a distribution shall be subject to the other provisions of the plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

**EGTRRA
AMENDMENT TO THE
NEW PENN MOTOR EXPRESS, INC. 401(K) RETIREMENT PLAN
[EFFECTIVE JANUARY 1, 2003]**

**ARTICLE I
PREAMBLE**

- 1.1 Adoption and effective date of amendment. This amendment of the plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.
- 1.2 Adoption by prototype sponsor. Except as otherwise provided herein, pursuant to Section 5.01 of Revenue Procedure 2000-20 (or pursuant to the corresponding provision in Revenue Procedure 89-9 or Revenue Procedure 89-13), the sponsor hereby adopts this amendment on behalf of all adopting employers.
- 1.3 Supersession of inconsistent provisions. This amendment shall supersede the provisions of the plan to the extent those provisions are inconsistent with the provisions of this amendment.

**ARTICLE II
ADOPTION AGREEMENT ELECTIONS**

The questions in this Article II only need to be completed in order to override the default provisions set forth below. If all of the default provisions will apply, then these questions should be skipped.

Unless the employer elects otherwise in this Article II the following defaults apply:

- 1) The vesting schedule for matching contributions will be a 6 year graded schedule (if the plan currently has a graded schedule that does not satisfy EGTRRA) or a 3 year cliff schedule (if the plan currently has a cliff schedule that does not satisfy EGTRRA), and such schedule will apply to all matching contributions (even those made prior to 2002).
- 2) Rollovers are automatically excluded in determining whether the \$5,000 threshold has been exceeded for automatic cash-outs (if the plan is not subject to the qualified joint and survivor annuity rules and provides for automatic cash-outs). This is applied to all participants regardless of when the distributable event occurred.
- 3) The suspension period after a hardship distribution is made will be 6 months and this will only apply to hardship distributions made after 2001.
- 4) Catch-up contributions will be allowed.
- 5) For target benefit plans, the increased compensation limit of \$200,000 will be applied retroactively (i.e., to years prior to 2002).

2.1 Vesting Schedule for Matching Contributions

If there are matching contributions subject to a vesting schedule that does not satisfy EGTRRA, then unless otherwise elected below, for participants who complete an hour of service in a plan year beginning after December 31, 2001, the following vesting schedule will apply to all matching contributions subject to a vesting schedule:

If the plan has a graded vesting schedule (i.e., the vesting schedule includes a vested percentage that is more than 0% and less than 100%) the following will apply:

Years of vesting service	Nonforfeitable percentage
2	20%
3	40%
4	60%
5	80%
6	100%

If the plan does not have a graded vesting schedule, then matching contributions will be nonforfeitable upon the completion of 3 years of vesting service.

In lieu of the above vesting schedule, the employer elects the following schedule:

- a. 3 year cliff (a participant’s accrued benefit derived from employer matching contributions shall be nonforfeitable upon the participant’s completion of three years of vesting service).
- b. 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).
- c. Other (must be at least as liberal as a. or the b. above):

Years of vesting service	Nonforfeitable percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

The vesting schedule set forth herein shall only apply to participants who complete an hour of service in a plan year beginning after December 31, 2001, and, unless the option below is elected, shall apply to **all** matching contributions subject to a vesting schedule.

- d. The vesting schedule will only apply to matching contributions made in plan years beginning after December 31, 2001 (the prior schedule will apply to matching contributions made in prior plan years).

2.2 **Exclusion of Rollovers in Application of Involuntary Cash-out Provisions (for profit sharing and 401(k) plans only).** If the plan is not subject to the qualified joint and survivor annuity rules and includes involuntary cash-out provisions, then unless one of the options below is elected, effective for distributions made after December 31, 2001, rollover contributions will be excluded in determining the value of the participant’s nonforfeitable account balance for purposes of the plan’s involuntary cash-out rules.

- a. Rollover contributions will not be excluded.
- b. Rollover contributions will be excluded only with respect to distributions made after _____ (Enter a date no earlier than December 31, 2001.)
- c. Rollover contributions will only be excluded with respect to participants who separated from service after _____, (Enter a date. The date may be earlier than December 31, 2001.)

2.3 **Suspension period of hardship distributions.** If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-1(d)(2)(iv), then, unless the option below is elected, the suspension period following a hardship distribution shall only apply to hardship distributions made after December 31, 2001.

- With regard to hardship distributions made during 2001, a participant shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

2.4 **Catch-up contributions (for 401(k) profit sharing plans only):** The plan permits catch-up contributions (Article VI) unless the option below is elected. (Effective January 1, 2003)

- The plan does not permit catch-up contributions to be made.

**ARTICLE III
VESTING OF MATCHING CONTRIBUTIONS**

3.1 **Applicability.** This Article shall apply to participants who complete an Hour of Service after December 31, 2001, with respect to accrued benefits derived from employer matching contributions made in plan years beginning after December 31, 2001. Unless otherwise elected by the employer in Section 2.1 above, this Article shall also apply to all such participants with respect to accrued benefits derived from employer matching contributions made in plan years beginning prior to January 1, 2002.

3.2 **Vesting schedule.** A participant’s accrued benefit derived from employer matching contributions shall vest as provided in Section 2.1 of this amendment.

**ARTICLE IV
INVOLUNTARY CASH-OUTS**

4.1 **Applicability and effective date.** If the plan provides for involuntary cash-outs of amounts less than \$5,000, then unless otherwise elected in Section 2.2 of this amendment, this Article shall apply for distributions made after December 31, 2001, and shall apply to all participants. However, regardless of the preceding, this Article shall not apply if the plan is subject to the qualified joint and survivor annuity requirements of Sections 401(a)(11) and 417 of the Code.

4.2 **Rollovers disregarded in determining value of account balance for involuntary distributions.** For purposes of the Sections of the plan that provide for the involuntary distribution of vested accrued benefits of \$5,000 or less, the value of a participant’s nonforfeitable account balance shall be determined without regard to that portion of the account

balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) (A)(ii), and 457(e)(16) of the Code. If the value of the participant's nonforfeitable account balance as so determined is \$5,000 or less, then the plan shall immediately distribute the participant's entire nonforfeitable account balance.

**ARTICLE V
HARDSHIP DISTRIBUTIONS**

- 5.1 Applicability and effective date. If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-1(d)(2)(iv), then this Article shall apply for calendar years beginning after 2001.
- 5.2 Suspension period following hardship distribution. A participant who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for 6 months after receipt of the distribution. Furthermore, if elected by the employer in Section 2.3 of this amendment, a participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

**ARTICLE VI
CATCH-UP CONTRIBUTIONS**

Catch-up Contributions. Unless otherwise elected in Section 2.4 of this amendment, all employees who are eligible to make elective deferrals under this plan and who have attained age 50 before the close of the plan year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Sections 402(g) and 415 of the Code. The plan shall not be treated as failing to satisfy the provisions of the plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

**ARTICLE VII
INCREASE IN COMPENSATION LIMIT**

Increase in Compensation Limit. The annual compensation of each participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). If this is a target benefit plan, then except as otherwise elected in Section 2.5 of this amendment, for purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited to \$200,000. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

**ARTICLE VIII
PLAN LOANS**

Plan loans for owner-employees or shareholder-employees. If the plan permits loans to be made to participants, then effective for plan loans made after December 31, 2001, plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

**ARTICLE IX
LIMITATIONS ON CONTRIBUTIONS (IRC SECTION 415 LIMITS)**

- 9.1 Effective date. This Section shall be effective for limitation years beginning after December 31, 2001.
- 9.2 Maximum annual addition. Except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:
- a. \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or
 - b. 100 percent of the participant's compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in b. shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

**ARTICLE X
MODIFICATION OF TOP-HEAVY RULES**

- 10.1 Effective date. This Article shall apply for purposes of determining whether the plan is a top-heavy plan under Section 416(g) of the Code for plan years beginning after December 31, 2001, and whether the plan satisfies the minimum benefits requirements of Section 416(c) of the Code for such years. This Article amends the top-heavy provisions of the plan.
- 10.2 Determination of top-heavy status.
- 10.2.1 Key employee. Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.
- 10.2.2 Determination of present values and amounts. This Section 10.2.2 shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.
- a. Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under Section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”
- b. Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.
- 10.3 Minimum benefits.
- 10.3.1 Matching contributions. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the plan. The preceding sentence shall apply with respect to matching contributions under the plan or, if the plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401 (m) of the Code.
- 10.3.2 Contributions under other plans. The employer may provide, in an addendum to this amendment, that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met). The addendum should include the name of the other plan, the minimum benefit that will be provided under such other plan, and the employees who will receive the minimum benefit under such other plan.

**ARTICLE XI
DIRECT ROLLOVERS**

- 11.1 Effective date. This Article shall apply to distributions made after December 31, 2001.
- 11.2 Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions of the plan, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.
- 11.3 Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions of the plan, any amount that is distributed on account of hardship shall not be an eligible rollover

distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

- 11.4 Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

**ARTICLE XII
ROLLOVERS FROM OTHER PLANS**

Rollovers from other plans. The employer, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this plan.

**ARTICLE XIII
REPEAL OF MULTIPLE USE TEST**

Repeal of Multiple Use Test. The multiple use test described in Treasury Regulation Section 1.401(m)-2 and the plan shall not apply for plan years beginning after December 31, 2001.

**ARTICLE XIV
ELECTIVE DEFERRALS**

- 14.1 Elective Deferrals-Contribution Limitation. No participant shall be permitted to have elective deferrals made under this plan, or any other qualified plan maintained by the employer during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable.
- 14.2 Maximum Salary Reduction Contributions for SIMPLE plans. If this is a SIMPLE 401(k) plan, then except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the maximum salary reduction contribution that can be made to this plan is the amount determined under Section 408(p)(2)(A)(ii) of the Code for the calendar year.

**ARTICLE XV
SAFE HARBOR PLAN PROVISIONS**

Modification of Top-Heavy Rules. The top-heavy requirements of Section 416 of the Code and the plan shall not apply in any year beginning after December 31, 2001, in which the plan consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met.

**ARTICLE XVI
DISTRIBUTION UPON SEVERANCE OF EMPLOYMENT**

- 16.1 Effective date. This Article shall apply for distributions and transactions made after December 31, 2001, regardless of when the severance of employment occurred.
- 16.2 New distributable event. A participant's elective deferrals, qualified nonelective contributions, qualified matching contributions, and earnings attributable to these contributions shall be distributed on account of the participant's severance from employment. However, such a distribution shall be subject to the other provisions of the plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

**Amendment #1
to the
New Penn Motor Express, Inc. 401(k) Retirement Plan**

As authorized by Section 8.1 of the New Penn Motor Express, Inc. 401(k) Retirement Plan ("Plan") as amended and restated effective January 1, 2002, the employer, New Penn Motor Express, Inc., hereby amends the Plan in the following manner:

FIRST: The following three employees were mistakenly allowed to participate in the Plan on July 1, 2002, six months earlier than allowed by the Plan provisions: Angela Ford, hire date 7/16/2001; Jessica Trumble, hire date 7/9/2001; and Belinda Carr, hire date 7/30/2001. Section 16 of the adoption agreement is amended to provide for a one-time entry requirement for these employees in accordance with the provisions of Revenue Procedure 2003-44 self-correction procedures regarding an operational failure wherein employees prematurely participated. This amendment retroactively changes the participation date for these three employees to July 1, 2002. As amended, Section 16 shall read as follows:

16. EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant for all purposes of the Plan (except as elected in g.-p. below for Employer contributions):

NOTE: If different entry dates apply to Elective deferrals than to other Employer contributions, complete this part a.-f. for the Elective Deferral component of the Plan.

- a. the day on which such requirements are satisfied.
- b. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
- c. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are satisfied.
- d. the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied.
- e. the first day of the Plan Year next following the date on which such requirements are satisfied. (Eligibility must be 20 1/2 Year of Service (or Period of Service) or less and age must be 20 1/2 or less.)
- f. other: With respect to all Eligible Employees except Angela Ford, Jessica Trumble and Belinda Carr, the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied. With respect to Angela Ford, Jessica Trumble, and Belinda Carr, the first day of the seventh month preceding the date on which such requirements are satisfied.

SECOND: This amendment is made effective July 1, 2002.

THIRD: All other provisions of the Plan remain in full force and effect.

Executed this 3rd day of December, 2003, by the duly authorized agent of New Penn Motor Express, Inc.

/s/ Illegible
Title: VP Finance & Administration

**MANDATORY DISTRIBUTION AMENDMENT
(Code Section 401(a)(31)(B))**

**ARTICLE I
APPLICATION OF AMENDMENT**

- 1.1 Effective Date. Unless a later effective date is specified in Article III of this Amendment, the provisions of this Amendment will apply with respect to distributions made on or after March 28, 2005.
- 1.2 Precedence. This Amendment supersedes any inconsistent provision of the Plan.
- 1.3 Adoption by prototype sponsor. Except as otherwise provided herein, pursuant to authority granted by Section 5.01 of Revenue Procedure 2000-20, the sponsoring organization of the prototype hereby adopts this amendment on behalf of all adopting employers.

**ARTICLE II
DEFAULT PROVISION: LOWER MANDATORY CASH-OUT
THRESHOLD TO \$1,000**

Unless the Employer otherwise elects in Article III of this Amendment, the provisions of the Plan for the mandatory distribution of amounts not exceeding \$5,000, are amended as follows:

The \$5,000 threshold in such provisions is reduced to \$1,000 and the value of the Participant's interest in the Plan for such purpose shall include any rollover contributions (and earnings thereon) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

**ARTICLE III
EMPLOYER'S ALTERNATIVE ELECTIONS**

- 3.1 () **Effective Date of Plan Amendment**
 - This Amendment applies with respect to distributions made on or after (may be a date later than March 28, 2005, only if the terms of the Plan already comply with Code Section 401(a)(31)(B)).
- 3.2 () **Election to implement automatic IRA rollover rules**
 - a. () IRA rollover of amounts over \$1,000. In lieu of the default provision in Article II of this Amendment, the provisions of the Plan concerning mandatory distributions of amounts not exceeding \$5,000 are amended as follows:
 - In the event of a mandatory distribution greater than \$1,000 that is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant's consent, if the Participant does not elect to have such distribution paid directly to an

“eligible retirement plan” specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

- b. () IRA rollover of amounts over and under \$1,000. In lieu of the default provision in Article II of this Amendment, the provisions of the Plan concerning mandatory distributions of amounts not exceeding \$5,000 are amended as follows:

In the event of a mandatory distribution that is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant’s consent, if the Participant does not elect to have such distribution paid directly to an “eligible retirement plan” specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

3.3 () **Election to modify mandatory distribution threshold (may not be elected if 3.2 above is elected)**

In lieu of the default provision in Article II of this Amendment, the provisions of the Plan that provide for the involuntary distribution of vested accrued benefits of \$5,000 or less, are modified as follows:

- a. () No mandatory distributions. Participant consent to the distribution shall now be required before the distribution may be made.
- b. () Reduction of threshold to amount less than \$1,000. The \$5,000 dollar threshold in such provisions is reduced to \$_____ (enter an amount less than \$1,000) and the value of the Participant’s interest in the Plan for such purpose shall include any rollover contributions (and earnings thereon) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

Except with respect to any election made by the employer in Article III, this Amendment is hereby adopted by the prototype sponsoring organization on behalf of all adopting employers on 3/28, 2005.

Sponsor Name: New Penn Motor Express, Inc.

By: _____ /s/ Illegible

NOTE: The employer (and any Participating Employer) only need to execute this Amendment if the employer has made an election in Article III herein.

Sponsor – lower cash-out threshold

This amendment is executed as follows:

Name of Plan: New Penn Motor Express, Inc. 401(k) Retirement Plan

Name of Employer: New Penn Motor Express, Inc.

By: /s/ Illegible Date: 3/28, 2005
EMPLOYER

Name of Participating Employer: _____

By: _____
PARTICIPATING EMPLOYER

DATE

Name of Participating Employer: _____

By: _____
PARTICIPATING EMPLOYER

DATE

**AMENDMENT TO
NEW PENN MOTOR EXPRESS, INC 401(K) PLAN
As amended and restated January 1, 2004**

WHEREAS, New Penn Motor Express, Inc. (the "Company") maintains the New Penn Motor Express, Inc. 401(k) Plan, as amended and restated January 1, 2004 (the "Plan");

WHEREAS, the Plan is an individually designed plan comprised of an adoption agreement (the "Adoption Agreement") and a prototype plan document (the "Plan Document");

WHEREAS, the Company desires to amend the Plan to (i) designate YRC Worldwide Inc. ("YRC") as the Plan Sponsor; (ii) designate the YRC Benefits Administrative Committee as the Plan Administrator; (iii) provide for a Company matching contribution equal to 50% of a participant's elective deferrals up to 6% of the participant's compensation; (iv) provide that 50% of the Company matching contribution made on behalf of a participant will be automatically invested in YRC stock; (v) designate Fidelity Management Trust Company as Trustee of the Plan; (vi) provide that the Plan will comply with Section 404(c) of ERISA; (vii) add a spousal consent requirement to in-service withdrawals; (viii) provide that a participant may not make an in-service withdrawal of employer contributions (other than elective deferrals) after the participant reaches age 59 1/2; (ix) expand the financial hardship events that allow a participant to make a hardship withdrawal; and (x) change the definition of the term "Permanent Disability" to mean disability within the meaning of the Company's long term disability plan or the federal Social Security Act.

NOW, THEREFORE, BE IT RESOLVED, that, effective January 1, 2007, the Plan Document shall be, and it hereby is, amended as follows:

1. Replace the term "Employer" (but not "Affiliated Employer" or "Participating Employer") with the term "Company" in the following Sections: 1.5; the next following two places the term "Employer" appears after clause (4), and in the next to the last sentence, of 1.11(c); the first place in the second, third and fourth paragraphs the term "Employer" appears in 1.18; 1.59; 1.82; the first sentence, and the last two places the term "Employer" appears in the last sentence, of 2.1(a); 2.3; 2.4; 2.8; the second place the term "Employer" appears in 4.1(b)(1); 4.8(a); 4.10(f); 5.1; 6.2(e); 6.4(c); 6.5(e)(3); 6.5(h); 6.8; the first place the term "Employer" appears in 7.1(b); 7.1(d)(4); 7.1(e); the first sentence of 7.2(a); 7.3(a) (except the next to the last sentence); 7.4; 7.8; the second place the term "Employer" appears in 7.9(a); 7.9(b); 7.10(b); 7.11; 7.13; 8.1(a), (b) and (c); 8.2; 10.6; 10.8; 10.9; the second place the term "Employer" appears in 10.12; 11.1; 11.2(a); the first two places the term "Employer" appears in 11.2(c); 11.6; the second sentence of 12.2(a); 12.3(f); 12.4(a) and (b); the last place the term "Employer" appears in 12.4(c); 12.4(g); 12.6(a), (b), (c) and (h); 12.8(a); the first place the term "Employer" appears in 12.8(c)(1); and 12.8(d) and (e).

2. Replace the term "Employer" (but not "Affiliated Employer" or "Participating Employer") with the term "Administrator" in the following Sections: 1.13, the second, third and

fourth places the term “Employer” appears in 2.1(a); 2.1(b), (c) and (d); 3.6; 4.10; 7.1(d); 7.1(d)(1); the last two sentences of 7.2(a); the next to the last sentence of 7.3(a); 12.2(i); 12.8(a)(5); and 12.8(c)(3).

3. Restate Section 1.4 in its entirety as follows:

1.4 “Administrator” means the YRC Worldwide Inc. Benefits Administrative Committee.

4. Add a new Section 1.10A as follows:

1.10A “Company” means YRC Worldwide Inc.

5. Restate Section 1.20 as follows:

1.20 “Employer” means the entity specified in the Adoption Agreement, any successor and any predecessor. In addition, unless the context means otherwise, the term “Employer” shall include any Participating Employer (as defined in Section 11.1) which shall adopt this Plan.

6. Restate Section 1.79 in its entirety as follows:

“Total and Permanent Disability” means, with respect to a Participant, that the Participant is eligible for, and receiving disability benefits under, the Participant’s Employer’s long-term disability plan or the federal Social Security Act.

7. Delete Section 2.2; and renumber all subsequent sections in Article II accordingly.

8. Add the following new Section 4.4(f)(1)(A):

(1)(A) “Company” means YRC Worldwide Inc.

9. Restate Section 4.4(f)(5) as follows:

(5) “Employer” means the Employer indicated in the Adoption Agreement and all Affiliated Employers, except that for purposes of this Section, the determination of whether an entity is an Affiliated Employer shall be made by applying Code Section 415(h).

10. In Section 4.10(f), add the following new subparagraph (7):

(7) a description of the following rules and restrictions on investment in qualifying Employer securities (as defined in Section 7.14 hereof):

(i) 50% of the Employer matching contribution (and earnings thereon) made on behalf of a Participant shall automatically be invested in qualifying Employer securities, and no other contributions hereunder shall be so invested;

(ii) other than Employer matching contributions automatically invested in qualifying Employer securities, a Participant may not direct the investment of any existing amounts credited to his or her Account hereunder in qualifying Employer securities; and

(iii) a Participant may direct, at any time, that qualifying Employer securities allocated to his or her Account as a result of the automatic investment of Employer matching contributions be liquidated and the proceeds thereof invested in other investment options under the Plan.

11. Add the following new paragraph at the end of Section 7.14:

For the purposes of this Section 7.14, “qualifying Employer securities” and “qualifying Employer real property” shall mean securities and real property of the Company

12. In Section 8.1, replace the term “each Employer’s Plan” with the term “the Plan.”

13. In the first sentence of Section 10.12, delete the clause “(1) the Employer”, and renumber the subsequent clauses accordingly.

14. In Sections 10.14 and 11.1, replace the term “Employer’s Plan” with the term “Plan.”

15. Restate Sections 12.9(a)(1) through (4) in their entireties as follows:

(1) Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

(2) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);

(3) Payment of tuition, related educational fees, and

room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or the Participant's spouse, children, or dependents (as defined in Code Section 152, and, for Plan Years beginning on and after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B));

(4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;

(5) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on and after January 1, 2005, without regard to Code Section 152(d)(1)(B));

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

(7) Any other emergency that the Administrative Committee, pursuant to a uniform and nondiscriminatory policy and in accordance with guidelines issued by the Internal Revenue Service, deems a bona fide financial emergency.

16. Add the following new Section 10.17

10.17 No Duplication of Benefit.

There shall be no duplication of any benefit payable under this Plan to any Participant or Beneficiary and of any benefit under a defined contribution plan (other than the Yellow Roadway Corporation Core Retirement Plan) maintained or contributed to by any Employer or Affiliate (or any predecessor of the Employer or Affiliate) to the same person, the amount of which is based, in whole or in part on the same period of employment of an Employee with, or on compensation from, any Employer or Affiliate (or any predecessor of the Employer or Affiliate) or both, the amount of which is based, in whole or in part on the same period of employment of the Employee with, or on the same compensation from, any Employer or Affiliate (or any predecessor of either the Employer or the Affiliate) or both. The Administrative Committee shall make an appropriate adjustment to any benefit otherwise payable under the Plan to prevent any duplication unless the other benefit is appropriately adjusted or is clearly intended to supplement the benefits under this Plan. No benefit shall be paid to any Participant, Beneficiary or other person under more than one Section of this Plan for the same period of time.

AND BE IT FURTHER RESOLVED, that, effective January 1, 2007, Sections 10. b, c and d; 11; 19; 31; 32; 39. f and g; 45. c, d and h; and 51 of the Adoption Agreement shall be, and they hereby are, restated in the form attached hereto as Exhibit A.

AND BE IT FURTHER RESOLVED, that, effective January 1, 2007, the Adoption Agreement shall be, and it hereby is, amended by adding an Addendum in the form attached hereto as Exhibit A.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed by its duly authorized officers on this 22nd day of December, 2006.

NEW PENN MOTOR EXPRESS, INC.

By: _____

Name:

Title:

Exhibit A

ADDENDUM

New Penn Motor Express, Inc. 401(k) Retirement Plan Adoption Agreement

Effective January 1, 2007

This Addendum to the New Penn Motor Express, Inc. 401(k) Retirement Plan Adoption Agreement modifies the following Sections of the Adoption Agreement to the extent set forth below.

1. Section 44.b of the Adoption Agreement. A Participant shall obtain his or her spouse's consent prior to obtaining a hardship withdrawal of amounts from his or her Elective Deferral Account.
2. Sections 45.c through j of the Adoption Agreement. A Participant who has attained age 59 1/2 shall obtain his or her spouse's consent prior to obtaining an in-service withdrawal of amounts from his or her Elective Deferral Account and/or Rollover Contribution Account attributable to Elective Deferrals and/or Rollover Contributions made on or after January 1, 2007. A Participant who has attained age 59 1/2 shall be eligible to obtain an in-service withdrawal of amounts from any or all of his or her Accounts attributable to contributions and deferrals credited thereto prior to January 1, 2007, without obtaining his or her spouse's consent.
3. Section 52.b of the Adoption Agreement. The Plan shall not accept rollovers of employee after-tax contributions.
4. Section 52.e of the Adoption Agreement. A Participant shall obtain his or her spouse's consent prior to obtaining an in-service withdrawal of amounts from his or her Rollover Contribution Account attributable to Rollover Contributions made on or after January 1, 2007. A Participant shall be eligible to obtain an in-service withdrawal of amounts from his or her Rollover Contribution Account attributable to Rollover Contributions made prior to January 1, 2007, without obtaining his or her spouse's consent.

**ADOPTION AGREEMENT FOR
BOSTON FINANCIAL DATA SERVICES
STANDARDIZED 401(K) PROFIT SHARING
PLAN AND TRUST**

The undersigned Employer adopts Boston Financial Data Services Prototype Standardized 401(k) Profit Sharing Plan and Trust and elects the following provisions:

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS AND TELEPHONE NUMBER

Name: New Penn Motor Express, Inc.

Address: 625 South Fifth Avenue
Street

Lebanon
City

Pennsylvania
State

17042-7728
Zip

Telephone: (800) 950-5046

2. EMPLOYER'S TAXPAYER IDENTIFICATION NUMBER 23-2209533

3. TYPE OF ENTITY

- a. Corporation (including Tax-exempt or Non-profit Corporation)
b. Professional Service Corporation
c. S Corporation
d. Limited Liability Company that is taxed as:
 1. a partnership or sole proprietorship
 2. a Corporation
 3. an S Corporation
e. Sole Proprietorship
f. Partnership (including Limited Liability)
g. Other:

AND, the Employer is a member of (select all that apply):

- h. a controlled group
i. an affiliated service group

4. EMPLOYER FISCAL YEAR means the 12 consecutive month period:

Beginning on January 1st (e.g., January 1st)
month day

and ending on December, 31st
month day

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

5. PLAN NAME:

New Penn Motor Express, Inc., 401(k) Retirement Plan

6. EFFECTIVE DATE
- a. This is a new Plan effective as of _____ (hereinafter called the "Effective Date").
 - b. This is an amendment and restatement of a previously established qualified plan of the Employer which was originally effective April 1, 1999 (hereinafter called the "Effective Date"). The effective date of this amendment and restatement is January 1, 2004 .
 - c. FOR GUST RESTATEMENTS; This is an amendment and restatement of a previously established qualified plan of the Employer to bring the Plan into compliance with GUST (GATT, USERRA, SBJPA and TRA '97).
The original Plan effective date was _____ (hereinafter called the "Effective Date"). Except as specifically provided in the Plan, the effective date of this amendment and restatement is _____.
(May enter a restatement date that is the first day of the current Plan Year. The Plan contains appropriate retroactive effective dates with respect to provisions for the appropriate laws.)

7. PLAN YEAR means the 12 consecutive month period:

Beginning on January 1st _____ (e.g., January 1st)
month day

and ending on December 31st _____
month day

EXCEPT that there will be a Short Plan Year:

- a. N/A
- b. beginning on _____ (e.g., July 1, 2000)
month day, year
, and ending on _____
month day, year

8. VALUATION DATE means:
- a. Every day that the Trustee, any transfer agent appointed by the Trustee or the Employer, and any stock exchange used by such agent are open for business (daily valuation).
 - b. The last day of each Plan Year.
 - c. The last day of each Plan Year half (semi-annual).
 - d. The last day of each Plan Year quarter.
 - e. Other (specify day or dates):(must be at least once each Plan Year).

9. PLAN NUMBER assigned by the Employer. Effective 1/1/2007
- a. 001
 - b. 002
 - c. 003
 - d. Others 008

10. TRUSTEE(S):

- a. Individual Trustee(s) who serve as discretionary Trustee(s) over assets not subject to control by a corporate Trustee.

Name(s)	Title(s)
_____	_____
_____	_____

Address and Telephone number

- 1. Use Employer address and telephone number.
- 2. Use address and telephone number below.

Address: _____
Street

City State Zip

Telephone: _____

b. Corporate Trustee. Effective 1/1/2007
Name: Fidelity Management Trust Company
Address: 82 Devonshire Street
Street Boston Massachusetts 02109
City State Zip
Telephone: _____

AND, the corporate Trustee shall serve as:

1. a directed (nondiscretionary) Trustee over all Plan assets except for the following:
n/a.
2. a discretionary Trustee over all Plan assets except for the following:

AND, shall a separate trust agreement be used with this Plan? Effective 1/1/2007

- c. Yes
- d. No

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee shall be those specified in the trust agreement.

11. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER: Effective 1/1/2007

(If none is named, the Employer will become the Administrator.)

- a. Employer (Use Employer address and telephone number).
- b. Use name, address and telephone number below:
Name: YRC Worldwide Inc. Benefits Administrative Committee
Address: 10990 Roe Avenue
Street
Overland Park KS 66211
City State Zip
Telephone: _____

12. CONSTRUCTION OF PLAN

This Plan shall be governed by the laws of the state or commonwealth where the Employer's (or, in the case of a corporate Trustee, such Trustee's) principal place of business is located unless another state or commonwealth is specified:

ELIGIBILITY REQUIREMENTS

13. ELIGIBLE EMPLOYEES (Plan Section 1.18)

FOR ALL PURPOSES OF THE PLAN (EXCEPT AS ELECTED IN d. or e. BELOW FOR EMPLOYER CONTRIBUTIONS) means all Employees (including Leased Employees) EXCEPT:

NOTE: If different exclusions apply to Elective Deferrals than to other Employer contributions, complete this part a.-b. for the Elective Deferral component of the Plan.

- a. N/A. No exclusions.
- b. The following are excluded, except that if b.3. is selected, such Employees will be included (select all that apply):
 1. Union Employees (as defined in Plan Section 1.18).
 2. Non-resident aliens (as defined in Plan Section 1,18).
 3. Employees who became Employees as the result of a "Code Section 410(b)(6)(C) transaction" (as defined in Plan Section 1.18).

HOWEVER, different exclusions will apply (select c. OR d. and/or e.):

- c. N/A. The options elected in a.-b. above apply for all purposes of the Plan.
- d. For purposes of all Employer contributions (other than Elective Deferrals and matching contributions).
- e. For purposes of Employer matching contributions.

- c. Attainment of age:
1. No age requirement
 2. 20 1/2
 3. 21
 4. Other: 18 (may not exceed 21)
- d. The service and/or age requirements specified above shall be waived with respect to any Eligible Employee who was employed on _____ and such Eligible Employee shall enter the Plan as of such date.
The requirements to be waived are (select one or both):
1. service requirement (will let part-time Eligible Employees in Plan)
 2. age requirement

HOWEVER, DIFFERENT ELIGIBILITY CONDITIONS WILL APPLY (select e. OR f. and/or g.):

- e. N/A. The options elected in a.-d. above apply for all purposes of the Plan.
- f. For purposes of all Employer contributions (other than Elective Deferrals and matching contributions).
- g. For purposes of Employer matching contributions.

If f. OR g. IS SELECTED, the following eligibility conditions apply for such purposes:

- h. No age or service requirements
- i. Completion of the following service requirement which is based on Years of Service (or Periods of Service if the Elapsed Time Method is elected):
1. No service requirement
 2. 1/2 Year of Service or Period of Service
 3. 1 Year of Service or Period of Service
 4. _____ (not to exceed 1,000) Hours of Service within _____ (not to exceed 12) months from the Eligible Employee's employment commencement date. If an Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the Year of Service requirement in i.3. above.
 5. 1 1/2 Years of Service or Periods of Service
 6. 2 Years of Service or Periods of Service
 7. Other: _____
(may not exceed two (2) Years of Service or Periods of Service)

NOTE: If more than one (1) Year of Service is elected 100% immediate vesting is required.

- J. Attainment of age:
1. No age requirement
 2. 20 1/2
 3. 21
 4. Other: _____ (may not exceed 21)
- k. The service and/or age requirements specified above shall be waived with respect to any Eligible Employee who was employed on _____ and such Eligible Employee shall enter the Plan as of such date.
The requirements to be waived are (select one or both):
1. service requirement (will let part-time Eligible Employees in Plan)
 2. age requirement

16. EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant for all purposes of the Plan (except as elected in g.-p. below for Employer contributions):

NOTE: If different entry dates apply to Elective Deferrals than to other Employer contributions, complete this part a. -f. for the Elective Deferral component of the Plan.

- a. the day on which such requirements are satisfied.
- b. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
- c. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are satisfied.
- d. the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied.
- e. the first day of the Plan Year next following the date on which such requirements are satisfied. (Eligibility must be 1/2 Year of Service (or Period of Service) or less and age must be 20 1/2 or less.)
- f. other: _____, provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year or Period of Service) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

HOWEVER, different entry dates will apply (select g, OR h, and/or i.):

- g. N/A. The options elected in a.-f. above apply for all purposes of the Plan.
- h. For purposes of all Employer contributions (other than Elective Deferrals and matching contributions)
- i. For purposes of Employer matching contributions.

IF h, OR i, IS SELECTED, the following entry dates apply for such purposes (select one):

- j. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
- k. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are satisfied.
- l. the first day of the Plan Year in which such requirements are satisfied.
- m. the first day of the Plan Year in which such requirements are satisfied, if such requirements are satisfied in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are satisfied in the last 6 months of the Plan Year.
- n. the earlier of the first day of the seventh month or the first day of the Plan Year coinciding with or next following the date on which such requirements are satisfied.
- o. the first day of the Plan Year next following the date on which such requirements are satisfied. (Eligibility must be 1/2 (or 1 1/2 if 100% immediate Vesting is selected) Year of Service (or Period of Service) or less and age must be 20 1/2 or less.)
- p. other: _____, provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year or Period of Service (or more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

SERVICE

17. RECOGNITION OF SERVICE WITH PREDECESSOR EMPLOYER (Plan Sections 1.57 and 1.85)

- a. No service with a predecessor Employer shall be recognized.
- b. Service with Arnold Transportation Services, Inc. will be recognized except as follows (select 1, or all that apply of 2. through 4.):
 - 1. N/A, no limitations.
 - 2. service will only be recognized for vesting purposes.
 - 3. service will only be recognized for eligibility purposes.
 - 4. service prior will not be recognized.

NOTE: If the predecessor Employer maintained this qualified Plan, then Years of Service (and/or Periods of Service) with such predecessor Employer shall be recognized pursuant to Plan Sections 1.57 and 1.85 and b.1. will apply.

18. SERVICE CREDITING METHOD (Plan Sections 1.57 and 1.85)

NOTE: If no elections are made in this Section, then the Hours of Service Method will be used and the provisions set forth in the definition of Year of Service in Plan Section 1.85 will apply.

ELAPSED TIME METHOD shall be used for the following purposes (select all that apply):

- a. N/A. Plan only uses the Hours of Service Method.
- b. all purposes. (If selected, skip to Question 19.)
- c. eligibility to participate.
- d. vesting.
- e. sharing in allocations or contributions.

HOURS OF SERVICE METHOD shall be used for the following purposes (select all that apply):

- f. N/A. Plan only uses the Elapsed Time Method.
- g. eligibility to participate in the Plan. The eligibility computation period after the initial eligibility computation period shall.
 - 1. shift to the Plan Year after the initial computation period.
 - 2. be based on the date an Employee first performs an Hour of Service (initial computation period) and subsequent computation periods shall be based on each anniversary date thereof.
- h. vesting. The vesting computation period shall be.
 - 1. the Plan Year.
 - 2. the date an Employee first performs an Hour of Service and each anniversary thereof.
- i. sharing in allocations or contributions (the computation period shall be the Plan Year).

AND, IF THE HOURS OF SERVICE METHOD IS BEING USED, the Hours of Service will be determined on the basis of the method selected below. Only one method may be selected. The method selected below will be applied to (select j. or k.):

- j. all Employees.
- k. salaried Employees only (for hourly Employees, actual Hours of Service will be used).

ON THE BASIS OF:

- l. actual hours for which an Employee is paid or entitled to payment.
- m. days worked. An Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.
- n. weeks worked. An Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.
- o. semi-monthly payroll periods worked. An Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.
- p. months worked. An Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

AND, a Year of Service means the applicable computation period during which an Employee has completed at least:

- q. 1,000 (may not be more than 1,000) Hours of Service (if left blank, the Plan will use 1,000 Hours of Service).

VESTING

19. VESTING OF PARTICIPANTS INTEREST (Plan Section 6.4(b)), Effective 1/1/2007

Vesting for Employer Contributions (except as otherwise elected in j.—q. below for matching contributions). The vesting schedule, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time Method is elected), shall be as follows;

- a. 100% upon entering Plan. (Required if eligibility requirement is greater than one (1) Year of Service or Period of Service.)
- b. 3 Year Cliff:

0-2 years	0%
3 years	100%
- c. 5 Year Cliff:

0-4 years	0%
5 years	100%
- d. 6 Year Graded:

0-1 year	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years	100%
- e. 4 Year Graded:

1 year	25%
2 years	50%
3 years	75%
4 years	100%
- f. 5 Year Graded:

1 years	20%
2 years	40%
3 years	60%
4 years	80%
5 years	100%
- g. 7 Year Graded:

0-2 years	0%
3 years	20%
4 years	40%
5 years	60%
6 years	80%
7 years	100%
- h. Other - Must be at least as liberal as either c. or g. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

VESTING FOR EMPLOYER MATCHING CONTRIBUTIONS

The vesting schedule for Employer matching contributions, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time Method is elected) shall be as follows:

- i. N/A. There are no matching contributions subject to a vesting schedule OR the schedule in a.-h. above shall also apply to matching contributions.
- j. 100% upon entering Plan. (Required if eligibility requirement is greater than one (1) Year of Service or Period of Service.)
- k. 3 Year Cliff
- l. 5 Year Cliff
- m. 6 Year Graded
- n. 4 Year Graded
- o. 5 Year Graded
- p. 7 Year Graded
- q. Other - Must be at least as liberal as either l. or p. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

20. **FOR AMENDED PLANS (Plan Section 6 4(f))**

If the vesting schedule has been amended to a less favorable schedule, enter the pre-amended schedule below:

- a. Vesting schedule has not been amended, amended schedule is more favorable in all years or prior schedule was immediate 100% vesting.
- b. Pre-amended schedule:

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

21. TOP HEAVY VESTING (Plan Section 6.4(c))

If this Plan becomes a Top Heavy Plan, the following vesting schedule, based on number of Years of Service (or Periods of Service if the Elapsed Time Method is elected), shall apply and shall be treated as a Plan amendment pursuant to this Plan. Once effective, this schedule shall also apply to any contributions made before the Plan became a

Top Heavy Plan and shall continue to apply if the Plan ceases to be a Top Heavy Plan unless an amendment is made to change the vesting schedule.

- a. N/A (the regular vesting schedule already satisfies one of the minimum top heavy schedules).
- b. 6 Year Graded:
 - 0-1 year 0%
 - 2 years 20%
 - 3 years 40%
 - 4 years 60%
 - 5 years 80%
 - 6 years 100%
- c. 3 Year Cliff:
 - 0-2 years 0%
 - 3 years 100%
- d. Other - Must be at least as liberal as either b. or c. above.

Service	Percentage
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NOTE: This Section does not apply to the account balances of any Participant who does not have an Hour of Service after the Plan has initially become top heavy. Such Participant's Account balance attributable to Employer contributions and Forfeitures will be determined without regard to this Section.

22. EXCLUDED VESTING SERVICE

- a. No exclusions.
- b. Service prior to the Effective Date of the Plan or a predecessor plan.
- c. Service prior to the time an Employee has attained age 18.

23. VESTING FOR DEATH AND TOTAL AND PERMANENT DISABILITY

Regardless of the vesting schedule, Participants shall become fully Vested upon (select a or all that apply of b. and c.)

- a. N/A. Apply vesting schedule, or all contributions to the Plan are fully Vested.
- b. Death.
- c. Total and Permanent Disability.

24. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.45) means the:

- a. date of a Participant's 59.5 birthday (not to exceed 65th).
- b. later of a Participant's birthday (not to exceed 65th) or the _____ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

25. NORMAL RETIREMENT DATE (Plan Section 1.46) means the:

- a. Participant's "NRA".

OR (select one)

- b. first day of the month coinciding with or next following the Participant's "NRA".
- c. first day of the month nearest the Participant's "NRA".
- d. Anniversary Date coinciding with or next following the Participant's "NRA".
- e. Anniversary Date nearest the Participant's "NRA".

26. EARLY RETIREMENT DATE (Plan Section 1.15) means the:

- a. No Early Retirement provision provided.
- b. date on which a Participant
- c. first day of the month coinciding with or next following the date on which a Participant.
- d. Anniversary Date coinciding with or next following the date on which a Participant.

AND if b., c., or & is selected.

e. attains age _____.

f. attains age _____ and completes at least _____ Years of Service (or Periods of Service) for vesting purposes.

AND, if b., c. or d. is selected, shall a Participant become fully Vested upon attainment of the Early Retirement Date?

g. Yes

h. No

COMPENSATION

27. COMPENSATION (Plan Section 1.11) with respect to any Participant means:

a. Wages, tips and other compensation on Form W-2.

b. Section 3401(a) wages (wages for withholding purposes).

c. 415 safe-harbor compensation.

COMPENSATION shall be based on the following determination period:

d. the Plan Year.

e. the Fiscal Year coinciding with or ending within the Plan Year.

f. the calendar year coinciding with or ending within the Plan Year.

NOTE: The Limitation Year for Code Section 415 purposes shall be the same as the determination period for Compensation unless an alternative period is specified: _____(must be a consecutive twelve month period).

ADJUSTMENTS TO COMPENSATION

g. N/A. No adjustments.

h. Compensation shall be adjusted by: (select all that apply)

1. including compensation which is not currently includible in the Participant's gross income by reason of the application of Code Sections 125 (cafeteria plan), 132(f)(4) (qualified transportation fringe, 402(e)(3) (401(k) plan), 402(h)(1)(B) (simplified employee pension plan), 414(h) (employer pickup contributions under a governmental plan), 403(b) (tax sheltered annuity) or 457(b) (eligible deferred compensation plan).

2. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.

3. excluding Compensation paid during the determination period while not a Participant in the component of the Plan for which the definition is being used.

HOWEVER, FOR SALARY DEFERRAL AND MATCHING PURPOSES Compensation shall be adjusted by (for salary deferral purposes the Plan automatically includes amounts in h. 1. above):

i. N/A. No adjustments or same adjustments as in above.

j. Compensation shall be adjusted by: (select all that apply)

1. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in h. 1. above) and welfare benefits.

2. excluding Compensation paid during the determination period while not a Participant in the component of the Plan for which the definition is being used.

CONTRIBUTIONS AND ALLOCATIONS

28. SALARY REDUCTION ARRANGEMENT - ELECTIVE DEFERRALS (Plan Section 12.2)

Each Participant may elect to have Compensation deferred by:

a. ____%.

b. up to 15 %.

c. from ____% to ____%.

d. up to the maximum percentage allowable not to exceed the limits of Code Sections 401(k), 402(g), 404 and 415.

AND, Participants who are Highly Compensated Employees determined as of the beginning of a Plan Year may only elect to defer Compensation by:

e. Same limits as specified above.

f. The percentage equal to the deferral limit in effect under Code Section 402(g)(3) for the calendar year that begins with or within the Plan Year divided by the annual compensation limit in effect for the Plan Year under Code Section 401(a)(17).

MAY PARTICIPANTS make a special salary deferral election with respect to bonuses?

g. No.

h. Yes, a Participant may elect to defer up to ____% of any bonus.

PARTICIPANTS MAY commence salary deferrals on the effective date of participation and on any day thereafter (must be at least once each calendar year).

Participants may modify salary deferral elections:

1. As of each payroll period
2. On the first day of the month
3. On the first day of each Plan Year quarter
4. On first day of the Plan Year or the first day of the 7th month of the Plan Year
5. Other: daily (must be at least once each calendar year)

AUTOMATIC ELECTION: Shall Participants who do not affirmatively elect to receive cash or have a specified amount contributed to the Plan automatically have Compensation deferred?

- i. No.
- j. Yes, by ___% of Compensation.

SHALL THERE BE a special effective date for the salary deferral component of the Plan?

- k. No.
- l. Yes, the effective date of the salary deferral component of the Plan is _____ (enter month day, year).

29. SIMPLE 401(k) PLAN ELECTION (Plan Section 13.1)

Shall the simple 401(k) provisions of Article XIII apply?

- a. No. The simple 401(k) provisions will not apply.
- b. Yes. The simple 401(k) provisions will apply.

30. 401(k) SAFE HARBOR PROVISIONS (Plan Section 12.8)

Will the ADP and/or ACP test safe harbor provisions be used? (select a. b. or c.)

- a. No. (If selected, skip to Question 31.)
- b. Yes, but only the ADP (and NOT the ACP) Test Safe Harbor provisions will be used
- c. Yes, both the ADP and ACP Test Safe Harbor provisions will be used.

IF c. is selected, does the Plan permit matching contributions in addition to any safe harbor contributions elected in d. or e. below?

1. No or N/A. Any matching contributions, other than any Safe Harbor Matching Contributions elected in d. below, will be suspended in any Plan Year in which the safe harbor provisions are used
2. Yes, the Employer may make matching contributions in addition to any Safe Harbor Matching contributions elected in d. below. (If elected, complete the provisions of the Adoption Agreement relating to matching contributions (i.e., Questions 31. and 32.) that will apply in addition to any elections made in d. below. NOTE: Regardless of any election made in Question 31., the Plan automatically provides that only Elective Deferrals up to 6% of Compensation are taken into account in applying the match set forth in that Question and that the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.)

THE EMPLOYER WILL MAKE THE FOLLOWING ADP TEST SAFE HARBOR CONTRIBUTION FOR THE PLAN YEAR;

NOTE: The ACP Test Safe Harbor is automatically satisfied if the only matching contribution made to the Plan is either (1) a Basic Matching Contribution or (2) an Enhanced Matching Contribution that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

- d. Safe Harbor Matching Contribution (select 1. or 2. AND 3.)
 1. **Basic Matching Contribution.** The Employer will make Matching Contributions to the account of each "Eligible Participant" in an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed 3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.
 2. **Enhanced Matching Contribution.** The Employer will make Matching Contributions to the account of each "Eligible Participant" in an amount equal to the sum of:
 - a. ___ % (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed ___% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - b. ___% of the Participant's Elective Deferrals that exceed ___% of the Participant's Compensation but do not exceed ___% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

NOTE: a. and b. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to the matching contribution receivable if the Employer were making Basic Matching Contributions, but the rate of match cannot increase as deferrals increase. For example, if a. is completed to provide a match equal to 100% of deferrals up to 4% of Compensation, then b. need not be completed

3. The safe harbor matching contribution will be determined on the following basis (and Compensation for such purpose will be based on the applicable period):
- a. the entire Plan Year.
 - b. each payroll period.
 - c. all payroll periods ending with or within each month.
 - d. all payroll periods ending with or within the Plan Year quarter.
- e. Nonelective Safe Harbor Contributions (select one)
- 1. The Employer will make a Safe Harbor Nonelective Contribution to the account of each "Eligible Participant" in an amount equal to ___% (may no be less than 3%) of the Employee's Compensation for the Plan Year.
 - 2. The Employer will make a Safe Harbor Nonelective Contribution to another defined contribution plan maintained by the Employer (specify the name of the other plan):_____.

FOR PURPOSES OF THE ADP Test Safe Harbor contribution, the term "Eligible Participant" means any Participant who is eligible to make Elective Deferrals with the following exclusions:

- f. Highly Compensated Employees.
 - g. Employees who have not satisfied the greatest minimum age and service conditions permitted under Code Section 410(a).
 - h. Other:_____
- (must be a category that could be excluded under the permissive or mandatory disaggregation rules of Regulations 1.401(k)-1(b)(3) and 1.401(m)-1(b)(3)).

SPECIAL EFFECTIVE DATE OF ADP AND ACP TEST SAFE HARBOR PROVISIONS

- i. N/A. The safe harbor provisions are effective as of the later of the Effective Date of this Plan or, if this is an amendment or restatement, the effective date of the amendment or restatement.
- j. The ADP and ACP Test Safe Harbor provisions are effective for the Plan Year beginning: _____(enter the first day of the Plan Year for which the provisions are (or, for GUST updates, were) effective and, if necessary, enter any other special effective dates that apply with respect to the provisions).

31. FORMULA FOR DETERMINING EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 12.1(a)(2)). Effective 1/1/2007

NOTE: Regardless of any election below, if the ACP test safe harbor is being used (i.e. Question 30.c. is selected), then the Plan automatically provides that only Elective Deferrals up to 6% of Compensation are taken into account in applying the match set forth below and that the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

- a. N/A. There will not be any matching contributions (Skip to Question 33).
- b. The Employer. (select 1. or 2.)
 - 1. may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
 - 2. will make matching contributions equal to 50% (e.g., 50) of the Participant's Elective Deferrals, plus:
 - a. N/A.
 - b. an additional discretionary percentage, to be determined by the Employer.

AND, in determining the matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched: (select 3. and/or 4. OR 5.)

- 3. 6% of a Participant's Compensation.
 - 4. \$_____.
 - 5. a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis to all Participants.
- c. The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of each tier, to be determined by the Employer, of the Participant's Elective Deferrals.
 - d. The Employer will make matching contributions equal to the sum of ___% of the portion of the Participant's Elective Deferrals which do not exceed ___% of the Participant's Compensation or \$_____ plus ___% of the portion of the Participant's Elective Deferrals which exceed ___% of the Participant's Compensation or \$_____, but does not exceed ___% of the Participant's Compensation or \$_____.

NOTE: If c. or d. above is elected, the rate of matching contributions must decrease as a Participant's Elective Deferrals or Years of Service (or Periods of Service) increase.

PERIOD OF DETERMINING MATCHING CONTRIBUTIONS

Matching contributions will be determined on the following basis (and any Compensation or dollar limitation used in determining the match will be based on the applicable period):

- e. the entire Plan Year.
- f. each payroll period.
- g. all payroll periods ending within each month.
- h. all payroll periods ending with or within the Plan Year quarter.

THE MATCHING CONTRIBUTION MADE ON BEHALF OF ANY PARTICIPANT for any Plan Year will not exceed:

- i. N/A.
- j. \$_____.

MATCHING CONTRIBUTIONS WILL BE MADE ON BEHALF OF:

- k. all Participants.
- l. only Non-Highly Compensated Employees.

SHALL THE MATCHING CONTRIBUTIONS BE QUALIFIED MATCHING CONTRIBUTIONS?

- m. Yes, If elected, ALL matching contributions will be fully Vested and will be subject to restrictions on withdrawals. In addition, Qualified Matching Contributions may be used in either the ADP or ACP test.
- n. No.

32. **ONLY PARTICIPANTS WHO SATISFY THE FOLLOWING CONDITIONS WILL BE ELIGIBLE TO SHARE IN THE ALLOCATION OF MATCHING CONTRIBUTIONS: Effective 1/1/2007**

REQUIREMENTS FOR PARTICIPANTS WHO ARE ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR: Participants who are actively employed at the end of the Plan Year will share in allocations regardless of the service completed during such Plan Year.

REQUIREMENTS FOR PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR (except as provided in c, through e. below)

- a. A Participant must complete more than _____ Hours of Service (not more than 500) or, if the Elapsed Time Method is elected, _____ months of service (not more than three (3)).
- b. Participants will share in such allocations, regardless of service.

PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR due to the following shall be eligible to share in the allocation of matching contributions regardless of the above conditions (select all that apply):

- c. Death.
- d. Total and Permanent Disability.
- e. Early or Normal Retirement.

33. **FORMULA FOR DETERMINING EMPLOYER'S PROFIT SHARING CONTRIBUTION (Plan Section 12 1(a)(3))**

- a. N/A. No employer Profit Sharing Contributions may be made (other than top heavy minimum contributions)(Skip to Question 34.)
- b. Discretionary, to be determined by the Employer, not limited to current or accumulated Net Profits.
- c. Discretionary, to be determined by the Employer, out of current or accumulated Net Profits.

CONTRIBUTION ALLOCATION

If b. or c. above is selected, the Employer's discretionary profit sharing contribution for a Plan Year will be allocated as follows:

- d. **NON-INTEGRATED ALLOCATION**
 - 1. In the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
 - 2. In the same dollar amount to all Participants (per capita).
 - 3. In the same dollar amount per Hour of Service completed by each Participant.
- e. **INTEGRATED ALLOCATION**

In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:

 - 1. The Taxable Wage Base.
 - 2. _____% (not to exceed 100%) of the Taxable Wage Base. (See Note below)
 - 3. 80% of the Taxable Wage Base plus \$1.00.
 - 4. \$_____(not greater than the Taxable Wage Base). (See Note below)

- NOTE: The integration percentage of 5% shall be reduced to:
1. 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base.
 2. 5.4% if 3. is elected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

34. QUALIFIED NON-ELECTIVE CONTRIBUTIONS (Plan Section 12.1(a)(4))

NOTE: Regardless of any election made in this Question, the Plan automatically permits Qualified Non-Elective Contributions to correct a failed ADP or ACP test.

- N/A. There will be no additional Qualified Non-Elective Contributions except as otherwise provided in the Plan.
- The Employer will make a Qualified Non-Elective Contribution equal to ___% of the total Compensation of those Participants eligible to share in the allocations.
- The Employer may make a Qualified Non-Elective Contribution in an amount to be determined by the Employer, to be allocated in proportion to the Compensation of those Participants eligible to share in the allocations.
- The Employer may make a Qualified Non-Elective Contribution in an amount to be determined by the Employer, to be allocated equally to all Participants eligible to share in the allocations (per capita).

AND, if b., c., or d. is selected, the Qualified Non-Elective Contributions above will be made on behalf of:

- all Participants.
- only Non-Highly Compensated Employees.

35. REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER DISCRETIONARY PROFIT SHARING CONTRIBUTION, QUALIFIED NON-ELECTIVE CONTRIBUTIONS (other than Qualified Non-Elective Contributions under Plan Sections 12.5(c) and 12.7(g)) AND FORFEITURES

REQUIREMENTS FOR PARTICIPANTS WHO ARE ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR: Participants who are actively employed at the end of the Plan Year will share in allocations regardless of the service completed during such Plan Year.

REQUIREMENTS FOR PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR (except as provided in d. through f. below)

- N/A. Plan does not permit such contributions and all contributions under the Plan are fully Vested.
- A Participant must complete more than ___ Hours of Service (not more than 500) (or ___ months of service (not more than three (3)) if the Elapsed Time Method is elected).
- Participants will share in such allocations, regardless of service.

PARTICIPANTS WHO ARE NOT ACTIVELY EMPLOYED AT THE END OF THE PLAN YEAR due, to the following will be eligible to share in the allocations regardless of the above conditions (select all that apply):

- Death.
- Total and Permanent Disability.
- Early or Normal Retirement.

36. FORFEITURES (Plan Sections 1.27 and 4.3(e))

Except as provided in Plan Section 1.27, a Forfeiture will occur (if no election is made, a. will apply):

- as of the earlier of (1) the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire vested portion of the Participant's Account.
- as of the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1- Year Breaks in Service.

Will Forfeitures first be used to pay any administrative expenses?

- Yes.
- No.

AND, EXCEPT as otherwise provided below with respect to Forfeitures attributable to matching contributions, any remaining Forfeitures will be.

- added to any Employer discretionary contribution.
- used to reduce any Employer contribution.
- added to any Employer matching contribution and allocated as an additional matching contribution,
- allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.

FORFEITURES OF MATCHING CONTRIBUTIONS WILL BE.

- i. N/A. Same as above or no catching contributions.
- j. used to reduce the Employer's matching contribution.
- k. added to any Employer matching contribution and allocated as an additional matching contribution.
- l. added to any Employer discretionary profit sharing contribution.
- m. allocated to all Participants eligible to share in the matching allocations (regardless of whether a Participant elected any salary reductions) in proportion to each such Participant's Compensation for the year.
- n. allocated to all Non-Highly Compensated Employees eligible to share in the matching allocations (regardless of whether a Participant elected any salary reductions) in proportion to each such Participant's Compensation for the year.

37 ALLOCATIONS OF EARNINGS (Plan Section 4.3(c))

Allocations of earnings with respect to amounts which are not subject to Participant directed investments and which are contributed to the Plan after the previous Valuation Date will be determined.

- a. N/A. All assets in the Plan are subject to Participant investment direction.
- b. by using a weighted average based on the amount of time that has passed between the date a contribution or distribution was made and the date of the prior Valuation Date.
- c. by treating one-half of all such contributions as being a part of the Participant's nonsegregated account balance as of the previous Valuation Date.
- d. by using the method specified in Plan Section 4.3(c) (balance forward method).
- e. other _____ (must be a definite predetermined formula that is not based on Compensation and that satisfies the nondiscrimination requirements of Regulation 1.401(a)(4)-4 and is applied uniformly to all Participants).

38. LIMITATIONS ON ALLOCATIONS (Plan Section 4.4)

If any Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a Master or Prototype Plan, or if the Employer maintains a welfare benefit fund, as defined in Code Section 419(e), or an individual medical account, as defined in Code Section 415(1)(2), under which amounts are treated as Annual Additions with respect to any Participant in this Plan:

- a. N/A. The Employer does not maintain another qualified defined contribution plan other than a paired plan.
- b. The provisions of Plan Section 4.4(b) will apply as if the other plan were a Master or Prototype Plan.
- c. Specify the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any Excess Amounts, in a manner that precludes Employer discretion:

NOTE: _____
If b. or c. is selected, an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

IF ANY PARTICIPANT is a Participant in a qualified defined benefit plan maintained by the Employer:

- d. N/A. The Employer does not maintain, and has never maintained, a qualified defined benefit plan OR the provisions of Code Section 415(e) no longer apply to the Plan.
- e. N/A. The provisions of Code Section 415(e) no longer apply to this Plan effective with respect to Limitation Years beginning after December 31, 1999, or if later _____ (if a later date is entered, this Plan will not be considered a safe harbor plan under Code Section 401(a)(4) and the Regulations thereunder).
- f. In any Limitation Year, the Annual Additions credited to the Participant under this Plan may not cause the sum of the Defined Benefit Plan Fraction and the Defined Contribution Fraction to exceed 1.0. If the Employer's contribution that would otherwise be made on the Participant's behalf during the Limitation Year would cause the 1.0 limitation to be exceeded, the rate of contribution under this Plan will be reduced so that the sum of the fractions equals 1.0. If the 1.0 limitation is exceeded because of an Excess Amount, such Excess Amount will be reduced in accordance with Section 4.5 of the Plan.
- g. Specify the method under which the plans involved will satisfy the 1.0 Limitation in a manner that precludes Employer discretion:

NOTE: _____
If f. or g. is selected, an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

39. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply)...

- a. lump-sums.
- b. substantially equal installments.
- c. partial withdrawals provided the minimum withdrawal is \$_____.

AND, pursuant to Plan Section 6.12,

- d. no annuities are allowed (Plan Section 6.12(b) will apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will not apply to the Plan).

AND, if this is an amendment that is eliminating annuities, then an annuity form of payment is not available with respect to distributions that have an Annuity Starting Date beginning on or after:

- 1. N/A
- 2. _____ (may not be a retroactive date), except that regardless of the date entered, the amendment will not be effective prior to the time set forth in Plan Section 8.1(e).

- e. annuities are allowed as the normal form of distribution (Plan Section 6.12 will not apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will automatically apply). If elected, the Pre-Retirement Survivor Annuity (minimum spouse's death benefit) will be equal to:

- 1. 100% of Participant's interest in the Plan
- 2. 50% of Participant's interest in the Plan.
- 3. _____% (may not be less than 50%) of a Participant's interest in the Plan.

AND, the normal form of the Qualified Joint and Survivor Annuity will be a joint and 50% survivor annuity unless otherwise elected below:

- 4. N/A.
- 5. Joint and 100% survivor annuity.
- 6. Joint and 75% survivor annuity.
- 7. Joint and 66 2/3% survivor annuity.

NOTE: If only a portion of the Plan assets may be distributed in an annuity form of payment, then select d. AND e. and the assets subject to the joint and survivor annuity provisions will be those assets attributable to (specify): _____ (e.g., the money purchase pension plan that was merged into this Plan).

AND, distributions may be made in. Effective 1/1/2007

- f. cash only (except for insurance or annuity contracts).
- g. cash or property.

40. CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT

Distributions upon termination of employment pursuant to Plan Section 6.4(a) of the Plan will not be made unless the following conditions have been satisfied:

- a. No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- b. Distributions may be made as soon as administratively feasible at the Participant's election.
- c. The Participant has incurred _____ 1-Year Break(s) in Service (or Period(s) of Severance if the Elapsed Time Method is elected).
- d. Distributions may be made at the Participant's election as soon as administratively feasible after the Plan Year coincident with or next following termination of employment.
- e. Distributions may be made at the Participant's election as soon as administratively feasible after the Plan Year quarter coincident with or next following termination of employment.
- f. Distributions may be made at the Participant's election as soon as administratively feasible after the Valuation Date coincident with or next following termination of employment.
- g. Distributions may be made at the Participant's election as soon as administratively feasible _____ months following termination of employment.
- h. Other: _____ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation 1.411(d)-4 and may not exceed the limits of Code Section 401(a)(14) as set forth in Plan Section 6.7).

41. INVOLUNTARY DISTRIBUTIONS

Will involuntary distributions of amounts less than \$5,000 be made in accordance with the provisions of Sections 6.4, 6.5 and 6.6?

- a. Yes
- b. No

42. MINIMUM DISTRIBUTION TRANSITIONAL RULES (Plan Section 6.5(e))

NOTE: This Section does not apply to (1) a new Plan or (2) an amendment or restatement of an existing Plan that never contained the provisions of Code Section 401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA).

The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:

- a. N/A. (This is a new Plan or this Plan has never included the pre-SBJPA provisions.)
- b. April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (The pre-SBJPA rules will continue to apply.)
- c. April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both and if no election is made, both will apply effective as of January 1,1996):
 1. A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____(not earlier than January 1,1996) may elect to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following will apply:
 - a. N/A. Annuity distributions are not permitted.
 - b. Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 - c. Upon the recommencement of distributions, a new Annuity Starting Date is created.
 2. A Participant who had not begun receiving required minimum distributions as of _____(not earlier than January 1,1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) will apply to all such Participants unless the option below is elected:
 - a. N/A.
 - b. The in-service distribution option is eliminated with respect to Participants who attain age 70 1/2 in or after the calendar year that begins after the later of (1) December 31, 1998, or (2) the adoption date of the amendment and restatement to bring the Plan into compliance with SBJPA. (This option may only be elected if the amendment to eliminate the in-service distribution is adopted no later than the last day of the remedial amendment period that applies to the Plan for changes under SBJPA.)

43. DISTRIBUTIONS UPON DEATH (Plan Section 6.6(h))

Distributions upon the death of a Participant prior to receiving any benefits shall.

- a. be made pursuant to the election of the Participant or beneficiary.
- b. begin within 1 year of death for a designated beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such beneficiary, except that if the beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2.
- c. be made within 5 (or if lesser ___) years of death for all beneficiaries.
- d. be made within 5 (or if lesser ___) years of death for all beneficiaries, except that if the beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.

44. HARDSHIP DISTRIBUTIONS (Plan Sections 6.11 and/or 12.9)

- a. No hardship distributions are permitted.
- b. Hardship distributions are permitted from the following accounts (select all that apply):
 1. All accounts.
 2. Participant's Elective Deferral Account.
 3. Participant's Account attributable to Employer matching contributions.
 4. Participant's Account attributable to Employer profit sharing contributions.
 5. Participant's Rollover Account
 6. Participant's Transfer Account.
 7. Participant's Voluntary Contribution Account

NOTE: Distributions from a Participant's Elective Deferral Account are limited to the portion of such account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are not permitted from a Participant's Qualified Non-Elective Account (including any 401(k) Safe Harbor Contributions) or Qualified Matching Contribution Account.

AND, shall the safe harbor hardship rules of Plan Section 12.9 apply to distributions made from all accounts? (Note: The safe harbor hardship rules automatically apply to hardship distributions of Elective Deferrals.)

- c. No or N/A. The provisions of Plan Section 6.11 apply to hardship distributions from all accounts other than a Participant's Elective Deferral Account.
- d. Yes. The provisions of Plan Section 12.9 apply to all hardship distributions.

AND, are distributions restricted to those accounts in which a Participant is fully Vested?

- e. Yes, distributions may only be made from accounts which are fully Vested.
f. No. (If elected, the fraction at Plan Section 6.5(h) shall apply in determining vesting of the portion of the account balance not withdrawn).

AND, the minimum hardship distribution shall be.

- g. N/A. There is no minimum.
h. \$___ (may not exceed \$1,000).

45. IN-SERVICE DISTRIBUTIONS (Plan Section 6.10)

- a. In-service distributions may not be made (except as otherwise elected for Hardship Distributions).
b. In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select all that apply):
1. the Participant has attained age 59 1/2.
2. the Participant has reached Normal Retirement Age.
3. the Participant has been a Participant in the Plan for at least ___ years (may not be less than five (5)).
4. the amounts being distributed have accumulated in the Plan for at least two (2) years.

AND, in-service distributions are permitted from the following accounts (select all that apply): Effective 1/1/2007

- c. All accounts.
d. Participant's Elective Deferral Account.
e. Qualified Matching Contribution Account and portion of Participant's Account attributable to Employer matching contributions.
f. Participant's Account attributable to Employer profit sharing contributions.
g. Qualified Non-Elective Contribution Account.
h. Participant's Rollover Account.
i. Participant's Transfer Account.
j. Participant's Voluntary Contribution Account.

NOTE: Distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Non-Elective Account (including 401 (k) Safe Harbor Contributions) are subject to restrictions and generally may not be distributed prior to age 59 1/2.

AND, are distributions restricted to those accounts in which a Participant is fully Vested?

- k. Yes, distributions may only be made from accounts which are fully Vested.
l. No. (If elected, the fraction at Plan Section 6.5(h) will apply in determining vesting of the portion of the account balance not withdrawn.)

AND, the minimum distribution shall be.

- m. N/A. There is no minimum.
n. \$___ (may not exceed \$1,000).

NONDISCRIMINATION TESTING

46. HIGHLY COMPENSATED EMPLOYEE (Plan Section 1.31)

NOTE: If this is a GUST restatement, complete the questions in this Section retroactively to the first Plan Year beginning after 1996.

Top-Paid Group Election. Will the top-paid group election be made? (The election made below for the latest year will continue to apply to subsequent Plan Years unless a different election is made.)

- a. Yes, for the Plan Year beginning in: _____.
b. No, for the Plan Year beginning in: 2002.

Calendar Year Data Election. Will the calendar year data election be used?

(The election made below for the latest year will continue to apply to subsequent Plan Years unless a different election is made.)

- c. Yes, for the Plan Year beginning in: _____.
d. No, for the Plan Year beginning in: 2002.

47. ADP AND ACP TESTS (Plan Sections 12.4 and 12.6). The ADP ratio and ACP ratio for Non-Highly Compensated Employees will be based on the following. The election made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended to a different election.
- a. N/A. This Plan satisfies the ADP Test Safe Harbor rules and there are no contributions subject to an ACP test or for all Plan Years beginning in or after the Effective Date of the Plan or, in the case of an amendment and restatement, for all Plan Years to which the amendment and restatement relates.
 - b. PRIOR YEAR TESTING: The prior year ratio will be used for the Plan Year beginning in 2002. (Note: If this election is made for the first year the Code Section 401(k) or 401(m) feature is added to this Plan (unless this Plan is a successor plan), the amount taken into account as the ADP and ACP of Non-Highly Compensated Employees for the preceding Plan Year will be 3%.)
 - c. CURRENT YEAR TESTING: The current year ratio will be used for the Plan Year beginning in _____.
- NOTE:** In any Plan Year where the ADP Test Safe Harbor is being used but not the ACP Test Safe Harbor, then c. above must be used if an ACP test applies for such Plan Year.

TOP HEAVY REQUIREMENTS

48. TOP HEAVY DUPLICATIONS (Plan Section 4.3(i)): When a Non-Key Employee is a Participant in this Plan and a Defined Benefit Plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top heavy minimum benefits: (If b., c., d. or e. is elected, f. must be completed.)
- a. N/A. The Employer does not maintain a Defined Benefit Plan other than a paired plan. (Go to next Question)
 - b. The full top heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) shall not apply).
 - c. 5% defined contribution minimum.
 - d. 2% defined benefit minimum.
 - e. Specify the method under which the Plans will provide top heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions:

NOTE: If c. or d. is selected and both plans do not cover the same Employees, or if e. is selected, then an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

AND, the "Present Value of Accrued Benefit" (Plan Section 9.2) for Top Heavy purposes shall be based on.

- f. Interest Rate: _____
Mortality Table: _____

49. TOP HEAVY DUPLICATIONS (Plan Section 4.3(f)): When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top heavy minimum benefits:
- a. N/A. The Employer does not maintain another qualified defined contribution plan other than a paired plan.
 - b. The full top heavy minimum will be provided in each plan.
 - c. A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation shall be provided in the Money Purchase Plan (or other plan subject to Code Section 412), where the Employer maintains two (2) or more non-paired Defined Contribution Plans.
 - d. Specify the method under which the Plans will provide top heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code Section 415:
The top heavy minimum will be provided under the NPME Profit Sharing Plan
- NOTE:** If c. is selected and both plans do not cover the same Employees, or if d. is selected, then an Employer may not rely on the opinion letter issued by the Internal Revenue Service that this Plan is qualified under Code Section 401.

MISCELLANEOUS

50. LOANS TO PARTICIPANTS (Plan Section 7.6)
- a. Loans are not permitted.
 - b. Loans are permitted.

IF loans are permitted (select all that apply).

- c. loans will be treated as a Participant directed investment.
- d. loans will only be made for hardship or financial necessity.
- e. the minimum loan will be \$ _____ (may not exceed \$1,000).
- f. a Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
- g. all outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution).
- h. loans will only be permitted from the following accounts (select all that apply):
 - 1. All accounts.
 - 2. Participant's Elective Deferral Account.
 - 3. Qualified Matching Contribution Account and/or portion of Participant's Account attributable to Employer matching contributions.
 - 4. Participants Account attributable to Employer profit sharing contributions.
 - 5. Qualified Non-Elective Contribution Account.
 - 6. Participant's Rollover Account.
 - 7. Participant's Transfer Account.
 - 8. Participant's Voluntary Contribution Account.

NOTE: Department of Labor Regulations require the adoption of a separate written loan program setting forth the requirements outlined in Plan Section 7.6.

51. DIRECTED INVESTMENT ACCOUNTS (Plan Section 4.10). Effective 1/1/2007

- a. Participant directed investments are not permitted.
- b. Participant directed investments are permitted for the following accounts (select all that apply).*
 - 1. All accounts.
 - 2. Participant's Elective Deferral Account.
 - 3. Qualified Matching Contribution Account and/or portion of Participant's Account attributable to Employer matching contributions.
 - 4. Participant's Profit Sharing Account.
 - 5. Qualified Non-Elective Contribution Account.
 - 6. Participant's Rollover Account.
 - 7. Participant's Transfer Account.
 - 8. Participant's Voluntary Contribution Account.
 - 9. Other: **

AND, is it intended that the Plan comply with Act Section 404(c) with respect to the accounts subject to Participant investment direction?

- c. No.
- d. Yes

AND, will voting rights on directed investments be passed through to Participants?

- e. No. Employer stock is not an alternative OR Plan is not intended to comply with Act Section 404(c).
- f. Yes, for Employer stock only.
- g. Yes, for all investments.

52. ROLLOVERS (Plan Section 4.6)

- a. Rollovers will not be accepted by this Plan.
- b. Rollovers will be accepted by this Plan.

AND, if b. is elected, rollovers may be accepted.

- c. from any Eligible Employee, even if not a Participant.
- d. from Participants only.

AND, distributions from a Participant's Rollover Account may be made.

- e. at any time.
- f. only when the Participant is otherwise entitled to a distribution under the Plan.

53. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8)

- a. After-tax voluntary Employee contributions will not be allowed.
- b. After-tax voluntary Employee contributions will be allowed.

54. LIFE INSURANCE (Plan Section 7.5)

- a. Life insurance may not be purchased.
- b. Life insurance may be purchased at the option of the Administrator.
- c. Life insurance may be purchased at the option of the Participant.

* The following accounts are subject to participant direction subject to the restrictions in Plan Section 4.10.

** 50% of the amounts in the Participant's Account attributable to Employer matching contributions.

AND, if b. or c. is elected, the purchase of initial or additional life insurance will be subject to the following limitations (select all that apply):

- d. N/A, no limitations.
- e. each initial Contract will have a minimum face amount of \$_____.
- f. each additional Contract will have a minimum face amount of \$_____.
- g. the Participant has completed ____ Years of Service (or Periods of Service).
- h. the Participant has completed ____ Years of Service (or Periods of Service) while a Participant in the Plan.
- i. the Participant is under age ____ on the Contract issue date.
- j. the maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
- k. the maximum face amount of any life insurance Contract will be \$_____.

The adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under Code Section 401 except to the extent provided in Rev. Proc. 2000-20, 2000-6 I.R.B. 553 and Announcement 2001-77, 2001-30 I.R.B.

An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code Section 419A(d)(3), or an individual medical account, as defined in Code Section 415(l)(2) in addition to this Plan may not rely on the opinion letter issued by the National Office of the Internal Revenue Service with respect to the requirements of Code Sections 415 and 416.

If the Employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of Code Sections 415 and 416, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the plan or in Revenue Procedure 2000-20 and Announcement 2001 -77.

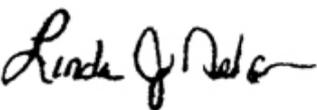
This Adoption Agreement may be used only in conjunction with basic Plan document 01. This Adoption Agreement and the basic Plan document shall together be known as Boston Financial Data Services Prototype Standardized 401(k) Profit Sharing Plan and Trust 01-001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Boston Financial Data Services will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, we agree to notify Boston Financial Data Services of any change in address.

This Plan may not be used, and shall not be deemed to be a Prototype Plan, unless an authorized representative of Boston Financial Data Services has acknowledged the use of the Plan. Such acknowledgment is for administrative purposes only. It acknowledges that the Employer is using the Plan but does not represent that this Plan, including the choices selected on the Adoption Agreement, has been reviewed by a representative of the sponsor or constitutes a qualified retirement plan.

Boston Financial Data Services

By: 

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Boston Financial Century Plan Services

Address: P.O. Box 8374

Boston

Massachusetts

02266-8374

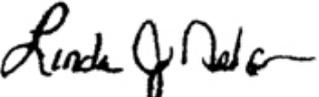
Telephone: (800) 215-8659

The Employer and Trustee hereby cause this Plan to be executed on 7/16/2004 Furthermore, this Plan may not be used unless acknowledged by Boston Financial Data Services or its authorized representative.

EMPLOYER:

By: 
New Penn Motor Express, Inc.

TRUSTEE:

By: 
State Street Bank & Trust Company

December 27, 2006

YRC Worldwide Inc.
10990 Roe Avenue
Overland Park, Kansas 66211

Gentlemen:

I am the Senior Vice President, General Counsel and Secretary of YRC Worldwide Inc., a Delaware corporation (the "Registrant"), and in such capacity, I have acted as counsel for the Registrant in connection with the registration under the Securities Act of 1933 of 700,000 shares of the Registrant's common stock, par value \$1.00 per share (the "Shares"), of which shares, 600,000 are to be offered upon the terms and subject to the conditions set forth in the YRC Regional Transportation, Inc. 401(k) Retirement Plan and 100,000 are to be offered upon the terms and subject to the conditions set forth in the New Penn Motor Express, Inc. 401(k) Retirement Plan.

In connection therewith, I have examined originals or copies, certified or otherwise identified to my satisfaction, of the Restated Certificate of Incorporation of the Registrant, the Bylaws of the Registrant, as amended, the Plan, the records of relevant corporate proceedings with respect to the offering of the Shares and such other documents and instruments as I have deemed necessary or appropriate for the expression of the opinions contained herein. I also have examined the Registrant's Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission with respect to the Shares.

I have assumed the authenticity and completeness of all records, certificates and other instruments submitted to me as originals, the conformity to original documents of all records, certificates and other instruments submitted to me as copies, the authenticity and completeness of the originals of those records, certificates and other instruments submitted to me as copies and the correctness of all statements of fact contained in all records, certificates and other instruments that I have examined.

Based on the foregoing, and having regard for such legal considerations as we have deemed relevant, I am of the opinion that the Shares have been duly and validly authorized for issuance and, when issued in accordance with the terms of the Plans, will be duly and validly issued, fully paid and nonassessable.

The opinions expressed herein relate solely to, are based solely upon and are limited exclusively to the laws of the State of Delaware and the federal laws of the United States of America, to the extent applicable.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/S/ DANIEL J. CHURAY

Daniel J. Churay

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
YRC Worldwide Inc.:

We consent to the use of our reports dated March 15, 2006, with respect to the consolidated balance sheets of YRC Worldwide Inc. as of December 31, 2005 and 2004, and the related consolidated statements of operations, shareholders' equity, cash flows, and comprehensive income for each of the years in the three-year period ended December 31, 2005, and the related financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2005, and the effectiveness of internal control over financial reporting as of December 31, 2005, incorporated herein by reference.

Our report dated March 15, 2006, on management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2005, contains an explanatory paragraph that states YRC Worldwide Inc. acquired USF Corporation and the Asia business of GPS Logistics Group Ltd. during 2005 and management excluded from its assessment of the effectiveness of YRC Worldwide Inc.'s internal control over financial reporting as of December 31, 2005, USF Corporation and the Asia business of GPS Logistics Group Ltd's internal control over financial reporting associated with total assets of \$1.9 billion and total revenues of \$1.5 billion included in the consolidated financial statements of YRC Worldwide, Inc. and subsidiaries as of and for the year ended December 31, 2005. Our audit of internal control over financial reporting of YRC Worldwide Inc. also excluded an evaluation of internal control over financial reporting of USF Corporation and the Asia business of GPS Logistics Group Ltd.

/s/ KPMG LLP

Kansas City, Missouri
December 27, 2006