IBEW LOCAL NO. 9 AND LINE CLEARANCE CONTRACTORS 401(k) RETIREMENT PLAN

Amended and Restated Effective January 1, 2024

IBEW LOCAL NO. 9 AND LINE CLEARANCE CONTRACTORS
401(k) RETIREMENT PLAN

WHEREAS, the Board of Trustees of the International Brotherhood of Electrical Workers ("IBEW") Local No. 9 and Clearance Contractors (hereinafter referred to as the "Trustees") established the IBEW Local No. 9 and Line Clearance Contractors 401(k) Retirement Plan (hereinafter referred to as the "Plan"), effective as of July 1, 1972; and

WHEREAS, the Trustees reserved the right to amend the Plan; and

WHEREAS, the Plan was most recently restated effective January 1, 2016; and

WHEREAS, the Trustees wish to amend the Plan to make certain Plan design changes; and

WHEREAS, it is intended that the Plan is to continue to be a qualified profit-sharing plan under Section 401(a) and 501(a) of the Internal Revenue Code for the exclusive benefit of the Participants and their Beneficiaries; and

WHEREAS, it is intended that the cash or deferred arrangement forming part of the Plan is to continue to qualify under Section 401(k) of the Internal Revenue Code;

NOW, THEREFORE, the Plan is hereby amended by restating the underlying document, effective as of January 1, 2024, except where the provisions of the Plan (or the requirements of applicable law) shall otherwise specifically provide, in its entirety as follows:

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ARTICLE ONE--DEFINITIONS

For purposes of the Plan, unless the context or an alternative definition specified within another Article provides otherwise, the following words and phrases shall have the definitions provided:

1.1 **"ACCOUNT"** shall mean the individual bookkeeping accounts maintained for a Participant under the Plan which shall record (a) the Participant's allocations of Employer contributions pursuant to Section 4.2 and forfeitures (if applicable), (b) amounts of Compensation contributed to the Plan pursuant to the Participant's election under Section 4.1, (c) amounts previously contributed to the Plan as money purchase pension plan contributions, (d) any amounts rolled over to this Plan under Section 4.3 from another qualified retirement plan and (e) the allocation of Trust investment experience.

1.2 **"ADMINISTRATOR"** shall mean Board of Trustees appointed from time to time in accordance with the provisions of Article Nine hereof, or such individual or entity duly authorized by the Board of Trustees to administer the Plan.

1.3 **"BENEFICIARY"** shall mean any person, trust, organization, or estate entitled to receive payment under the terms of the Plan upon the death of a Participant.

1.4 **"BREAK IN SERVICE"** shall have the meaning set forth in Article Two.

1.5 **"CODE"** shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.6 **"COMPENSATION"** shall mean wages, within the meaning of Section 3401(a) of the Code, 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 Sections 6041(d), 6051(a)(3) and 6052 of the Code. Compensation must be determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

Any Compensation paid after the Participant's severance from employment with the Employer (except for Compensation attributable to the pay period in which the severance from employment occurred) shall not be treated as Compensation for purposes of Section 4.1 and Section 4.2.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Participant taken into account under the Plan for a calendar year shall not exceed the amount set forth in Section 401(a)(17) of the Code, as adjusted by the Secretary of the Treasury or his delegate for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any

period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual compensation limit shall 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).

For purposes of determining who is a Highly-Compensated Employee, Compensation shall mean "Compensation" as defined in Section 415(c)(3) of the Code.

For purposes of applying the limitations described in Section 11.1, and for purposes of defining compensation under this Section, Section 1.15 and Article Thirteen of the Plan, compensation paid or made available during such limitations years (or Plan Years) shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 125, 132(f)(4), 402(g)(3), 402(h)(1)(B), 457(b) or 403(b) of the Code.

1.7 "CONTRIBUTION AGREEMENT" shall mean a written agreement to which (a) and Employer is a party; (b) incorporates the Trust Agreement by reference; (c) obligates an Employer to make contributions to the Plan; and (d) specifies the detailed basis upon which those contributions are to be made by an Employer to the Plan.

The Contribution Agreement shall be a "collective bargaining agreement" with the Union. For this purpose, a "collective bargaining agreement" is any labor agreement between the Union and an Employer (including a letter of assent to a collective bargaining agreement) which binds the Employer to make contributions to the Trust Fund.

1.8 "COVERED EMPLOYMENT" shall mean employment with an Employer for which a contribution is required to be made to the Plan pursuant to a Contribution Agreement.

1.9 "DISABILITY" shall mean a "permanent and total" disability incurred by a Participant while in the employ of the Employer. For this purpose, a Participant shall be deemed "Disabled" if, in the opinion of the Trustees and/or Initial Reviewer (as that term is meant in Section 9.2(b)) and based upon appropriate medical advice and examination, he is suffering from a physical or mental condition which may be expected to result in death or be of long and continued duration.

1.10 "EFFECTIVE DATE." The Plan's initial Effective Date was July 1, 1972. The Effective Date of this restated Plan, on and after which it supersedes the terms of the existing Plan document, is January 1, 2024, except where the provisions of the Plan (or the requirements of applicable law) shall otherwise specifically provide. The rights of any Participant who terminated Covered Employment with the Employer prior to the applicable date shall be established under the terms of the Plan and Trust as in effect at the time of the Participant's termination from employment, unless the Participant subsequently returns to Covered Employment with the Employer, or unless otherwise

provided under the terms of the Plan. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents.

1.11 **"EMPLOYEE"** shall mean any common law employee (other than a leased employee (as defined in Section 414(n)(2) of the Code) employed by an Employer in Covered Employment.

1.12 **"EMPLOYER"** shall any employer who is required to contribute to the Plan pursuant to a Contribution Agreement.

1.13 **"EMPLOYMENT DATE"** shall mean the first date as of which an Employee is credited with an Hour of Service, provided that, in the case of a Break in Service, the Employment Date shall be the first date thereafter as of which an Employee is credited with an Hour of Service.

1.14 **"FAIL-SAFE CONTRIBUTION"** shall mean a qualified nonelective contribution which is a contribution (other than matching contributions made by the Employer and allocated to a Participant's account that the Participant may not elect to receive in cash until distribution from the Plan); that are nonforfeitable when made; and that are distributable only in accordance with the distribution provisions (other than hardships) applicable to elective deferrals.

1.15 **"HIGHLY-COMPENSATED EMPLOYEE"** shall mean any Employee of the Employer who:

(a) was a five percent (5%) owner of the Employer (as defined in Section 416(i)(1) of the Code) at any time during the "determination year" or "look-back year"; or

(b) earned compensation (as defined under Section 11.1(b)(2) of the Plan) from the Employer during the "look-back year" in excess of the amount set forth in Section 414(q)(1) of the Code, as adjusted in accordance with Section 415(d) of the Code,

An Employee who terminated employment prior to the "determination year" shall be treated as a Highly-Compensated Employee for the "determination year" if such Employee was a Highly-Compensated Employee when such Employee terminated employment, or was a Highly-Compensated Employee at any time after attaining age fifty-five (55).

For purposes of this Section, the "determination year" shall be the Plan Year for which a determination is being made as to whether an Employee is a Highly-Compensated Employee. The "look-back year" shall be the twelve (12) month period immediately preceding the "determination year".

1.16 **"HOUR OF SERVICE"** shall have the meaning set forth below:

(a) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer, during the applicable computation period.

(b) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, by the Employer 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 leave of absence. Notwithstanding the preceding sentence,

(i) No more than five hundred and one (501) Hours of Service shall be credited under this paragraph (b) to any 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). Hours under this paragraph shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by reference;

(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 shall not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and

(iii) Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this paragraph (b), 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.

(c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. 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). Thus, for example, an Employee who receives a back pay award following a determination that he was paid at an unlawful rate for Hours of Service previously credited shall not be entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in paragraph (b) shall be subject to the limitations set forth in that paragraph.

(d) Hours of Service under this Section shall be determined under the terms of the Family and Medical Leave Act of 1993 and the Uniformed Services Employment and Reemployment Rights Act of 1994.

For eligibility and vesting purposes only, Hours of Service shall be credited for employment with other members of an affiliated service group (under Section 414(m) of the Code), a controlled group of corporations (under Section 414(b) of the Code), or a group of trades or businesses under common control (under Section 414(c) of the Code) of which the Employer is a member, and any other entity required to be aggregated under Section 414(o) of the Code.

Hours of Service shall be credited for any individual considered an Employee for purposes of this Plan under Section 414(n) or Section 414(o) of the Code.

1.17 **"NONHIGHLY-COMPENSATED EMPLOYEE"** shall mean an Employee of the Employer who is not a Highly-Compensated Employee.

1.18 **"NORMAL RETIREMENT DATE"** shall mean the Participant's fifty-fifth (55th) birthday. The date on which the Participant attains age fifty-five (55) shall also be the Participant's Normal Retirement Age.

1.19 **"PARTICIPANT"** shall mean any Employee who has satisfied the participation requirements of Article Three.

1.20 **"PLAN"** shall mean the IBEW Local No. 9 and Line Clearance Contractors 401(k) Retirement Plan, as set forth herein and as may be amended from time to time.

1.21 **"PLAN YEAR"** shall mean the twelve (12)-consecutive month period beginning July 1 and ending June 30.

1.22 **"TRUST"** shall mean the Trust Agreement entered into between the Employer and the Trustees forming part of this Plan, together with any amendments thereto, and any successor Trust Agreement. The Trust Agreement is incorporated by reference herein. "Trust Fund" shall mean any and all property held by the Trustee pursuant to the Trust Agreement, together with income therefrom.

1.23 **"TRUSTEE"** shall mean the Trustee or Trustees appointed pursuant **to** the provisions of the Trust Agreement.

1.24 **"UNION"** shall mean the International Brotherhood of Electrical Workers, Local Union No. 9.

1.25 **"VALUATION DATE"** shall mean each day on which the New York Stock Exchange is open for business.

1.26 "YEAR OF SERVICE" or "SERVICE" and the special rules with respect to crediting Service are in Article Two of the Plan.

ARTICLE TWO--SERVICE DEFINITIONS AND RULES

Service is the period of employment credited under the Plan. Definitions and special rules related to Service are as follows:

2.1 YEAR OF SERVICE. Effective for Employees initially hired on or after January 1, 2016 and solely for purposes of determining such an Employee's nonforfeitable right to that portion of his Account attributable to Employer contributions under the schedule set forth in Section 6.1, an Employee shall be credited with a Year of Service if he is credited with at least five hundred and one (501) Hours of Service during the twelve (12)-consecutive month period commencing on his Employment Date (his "initial computation period"); and for the Plan Year commencing in his initial computation period, and for each subsequent Plan Year, the Employee shall be credited with a Year of Service if he is credited with at least five hundred and one (501) Hours of Service during such Plan Year. For vesting purposes, an Employee shall be credited with a Year of Service upon completion of the five hundred and first (501st) hour in each such applicable twelve (12)-month period.

For Employees initially hired before January 1, 2016 and solely for purposes of determining such an Employee's nonforfeitable right to that portion of his Account attributable to Employer contributions under the schedule set forth in Section 6.1, an Employee shall be credited with a Year of Service if he is credited with at least five hundred and one (501) Hours of Service during the Plan Year. For vesting purposes, an Employee shall be credited with a Year of Service upon completion of the five hundred and first (501st) hour in each such Plan Year.

2.2 BREAK IN SERVICE. A Break in Service shall be a twelve (12)-month computation period (as used for measuring Years of Service for vesting and/or eligibility purposes) in which an Employee or Participant is not credited with at least five hundred and one (501) Hours of Service.

2.3 LEAVE OF ABSENCE. A Participant on an unpaid leave of absence pursuant to the Employer's normal personnel policies shall be credited with Hours of Service at his regularly-scheduled weekly rate while on such leave, provided the Employer acknowledges in writing that the leave is with its approval. These Hours of Service shall be credited only for purposes of determining if a Break in Service has occurred. Hours of Service during a paid leave of absence shall be credited as provided in Section 1.16.

For any individual who is absent from work for any period by reason of the individual's pregnancy, birth of the individual's child, placement of a child with the individual in connection with the individual's adoption of the child, or by reason of the individual's caring for the child for a period beginning immediately following such birth or adoption, the Plan shall treat as Hours of Service, solely for determining if a Break in Service has occurred, the following Hours of Service:

(a) the Hours of Service which otherwise normally would have been credited to such individual but for such absence; or

(b) in any case where the Administrator is unable to determine the Hours of Service, on the basis of an assumed eight (8) hours per day.

In no event shall more than five hundred and one (501) of such hours be credited by reason of such period of absence. The Hours of Service shall be credited in the computation period (used for measuring Years of Service for vesting purposes) which starts after the leave of absence begins. However, the Hours of Service shall instead be credited in the computation period in which the absence begins if it is necessary to credit the Hours of Service in that computation period to avoid the occurrence of a Break in Service.

2.4 SERVICE IN EXCLUDED JOB CLASSIFICATIONS OR WITH RELATED COMPANIES

(a) *Service while a Member of an Ineligible Classification.* A common law employee of an Employer who is not an Employee shall not be eligible to participate in the Plan while he is not an Employee. However, if any such individual becomes an Employee, such individual shall be credited with any Years of Service completed while a common law employee of the Employer.

(b) *Service with Related Group Members.* Subject to Section 2.1, for each Plan Year in which the Employer is a member of a "related group", as hereinafter defined, all Service of a common law employee of the Employer or "leased employee" (hereinafter collectively referred to as "Employee" solely for purposes of this Section 2.4(b)) with any one or more members of such related group shall be treated as employment by the Employer for purposes of determining the Employee's Years of Service under Section 2.1. The transfer of employment by any such Employee to another member of the related group shall not be deemed to constitute a retirement or other termination of employment by the Employee for purposes of this Section, but the Employee shall be deemed to have continued in employment with the Employer for purposes of determining the Employee's Years of Service. For purposes of this subsection (b), "leased employee" is defined in Section 414(n) of the Code, and "related group" shall mean the Employer and all corporations, trades or businesses (whether or not incorporated) which constitute a controlled group of corporations with the Employer, a group of trades or businesses under common control with the Employer, or an affiliated service group which includes the Employer, within the meaning of Section 414(b), Section 414(c), or Section 414(m), respectively, of the Code or any other entity required to be aggregated under Code Section 414(o).

(c) *Construction.* This Section is included in the Plan to comply with the Code provisions regarding the crediting of Service, and not to extend any additional rights to Employees in ineligible classifications other than as required by the Code and regulations thereunder.

ARTICLE THREE--PLAN PARTICIPATION

3.1 PARTICIPATION. All Employees participating in the Plan prior to the Plan's restatement shall continue to participate, subject to the terms hereof

Each other Employee shall become a Participant under the Plan as soon as administratively possible following his Employment Date.

3.2 TERMINATION OF ELIGIBILITY. In the event a Participant ceases to be an Employee and thus becomes ineligible to participate in the Plan, such Employee shall resume participating upon his again becoming an Employee; provided, however, that such an individual shall be entitled to commence elective deferrals (within the meaning of Section 4.1) as soon as administratively possible following his return to participation in the Plan.

In the event an individual who is not an Employee becomes an Employee, such Employee shall participate upon becoming an Employee, if such Employee has otherwise satisfied the eligibility requirements of Section 3.1 and would have otherwise previously become a Participant; provided, however, that such an individual shall be entitled to commence elective deferrals (within the meaning of Section 4.1) as soon as administratively possible following his becoming a Participant.

3.3 COMPLIANCE WITH USERRA. Notwithstanding any provision of this Plan to the contrary, Participants shall receive service credit and be eligible to make elective deferrals (within the meaning of Section 4.1) and receive Employer contributions with respect to periods of qualified military service (within the meaning of Section 414(u)(5) of the Code) in accordance with Section 414(u) of the Code.

ARTICLE FOUR--ELECTIVE DEFERRALS, EMPLOYER CONTRIBUTIONS, AND ROLLOVERS FROM OTHER PLANS

4.1 ELECTIVE DEFERRALS

(a) *Elections.* A Participant may elect to contribute to the Plan a portion of his Compensation for a Plan Year on a pre-tax basis. The amount of a Participant's Compensation contributed in accordance with the Participant's election shall be withheld by the Employer from the Participant's Compensation on a ratable basis throughout the Plan Year. The amount deferred on behalf of each Participant shall be contributed by the Employer to the Plan and allocated to the portion of the Participant's Account consisting of pre-tax contributions.

A Participant's election under this Section 4.1(a) shall be made in accordance with procedures established by the Trustees (which procedures may establish a uniform minimum deferral amount, and/or a uniform maximum deferral amount not in excess of the applicable limit under Code Section 402(g)), and shall become effective as soon as administratively feasible.

(b) *Changes in Election.* A Participant may prospectively elect to change or revoke the amount (or percentage) of his elective deferrals during the Plan Year by filing a written election with the Employer, or via such other method as permitted by applicable law.

(c) *Limitations on Deferrals.* Except to the extent permitted under Section 4.1(e), no Participant shall be permitted to make elective deferrals during any taxable year in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year.

(d) *Administrative Rules.* All elections made under this Section 4.1, including the amount and frequency of deferrals, shall be subject to the rules of the Administrator which shall be consistently applied and which may be changed from time to time.

(e) *Catch-up Contributions.* All Participants who are eligible to make elective deferrals under Section 4.1(a) and who have attained age fifty (50) before the close of the taxable year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code, as adjusted by the Secretary of the Treasury for cost-of-living increases under Section 414(v)(2)(C) 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 Section 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the requirements of the Plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 401(k)(13), 402A, 410(b), or 416 of the Code, as applicable, by reason of the making of such catchup contributions.

4.2 EMPLOYER CONTRIBUTIONS. Subject to the provisions of Article Eleven, for each calendar month an Employer shall contribute to the Account of each Participant employed by such Employer a profit-sharing contribution in an amount determined under the terms of the Contribution Agreement. Any such contribution and shall be made at the time and in the manner prescribed by the Contribution Agreement. Profit-sharing contributions shall be made without regard to current or accumulated profits. Profit-sharing contributions are subject to limits for tax deductions under the Code.

4.3 ROLLOVERS OF FUNDS FROM OTHER PLANS. With the approval of the Administrator, there may be paid to the Plan amounts which have been held under the following types of plans:

(1) a qualified plan described in Section 401(a) or 403(a) of the Code, excluding after-tax employee contributions and excluding designated Roth contributions under Section 402A of the Code;

(2) an annuity contract described in Section 403(b) of the Code, excluding after-tax employee contributions and excluding designated Roth contributions under Section 402A of the Code;

(3) 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, excluding after-tax employee contributions and excluding designated Roth contributions under Section 402A of the Code; and

(4) an individual retirement account.

Any amounts rolled over on behalf of any Employee shall be nonforfeitable and shall be maintained under a separate Plan account. Amounts rolled over shall be paid in addition to amounts otherwise payable under this Plan. The amount of any such account shall be equal to the fair market value of such account as adjusted for income, expenses, gains, losses, and withdrawals attributable thereto.

4.4 TIMING OF CONTRIBUTIONS. Employer contributions shall be made to the Plan no later than the time prescribed by law. Elective deferrals under Section 4.1 shall be paid to the Plan as soon as administratively possible, but no later than the fifteenth (15^{th}) business day of the month following the month in which such deferrals would have been payable to the Participant in cash, or such later date as permitted or prescribed by the Department of Labor.

ARTICLE FIVE--ACCOUNTING RULES

5.1 INVESTMENT OF ACCOUNTS AND ACCOUNTING RULES

(a) *Investment Funds.* The investment of Participants' Accounts shall be made by the Trustees in a manner consistent with the provisions of the Trust. Participants may not direct investments of funds allocated to their Accounts. Notwithstanding the foregoing, investment in employer securities that would subject the Plan to the provisions of Section 401(a)(35) of the Code shall not be permitted.

(b) *Allocation of Investment Experience.* As of each Valuation Date, the investment funds of the Trust shall be valued at fair market value, and the income, loss, appreciation and depreciation (realized and unrealized), and any paid expenses of the Trust attributable to such funds shall be apportioned among Participants' Accounts in the ratio that each such Participant's Account balance as of the preceding Valuation Date bears to the total Account balances of all such eligible Participants as of the preceding Valuation Date.

(c) *Allocation of Contributions.* Employer contributions shall be allocated to the Account of each eligible Participant as of the last day of the period for which the contributions are made, or as soon as administratively possible thereafter. Forfeitures which arise in a Plan Year shall, if allocated, be allocated as of the last day of such Plan Year, or as soon as administratively possible thereafter.

(d) *Manner and Time of Debiting Distributions.* For any Participant who is entitled to receive a distribution from his Account, such distribution shall be made in accordance with the provisions of Section 7.1 and Section 7.2. The amount distributed shall be based upon the fair market value of the Participant's vested Account as of the Valuation Date preceding the distribution.

5.2 ALLOCATION OF SERVICE CREDIT. Any amounts deposited to the Plan by a service provider pursuant to an agreement between the Employer and the service provider ("Service Credit") shall be used to pay Plan administrative expenses. To the extent that the Service Credit for a Plan Year exceeds the Plan administrative expenses incurred through the end of the third month (or prior business day) of the following Plan Year ("the following quarter end"), the excess (subject to such de minimis amount as may be established, which amount shall be used to pay future Plan administrative expenses) shall be allocated as of the following quarter end to Participants with Account balances on such allocation date. The Account of each Participant eligible to receive such allocation shall be credited with an amount equal to the total excess Service Credit multiplied by a fraction, the numerator of which is the Participant's Account balance as of the date on which such allocation is made, and the denominator of which is the Account balances of all eligible Participants as of that date.

ARTICLE SIX--VESTING AND RETIREMENT BENEFITS

6.1 VESTING. A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals (within the meaning of Section 4.1), Employer Fail-Safe Contributions, prior Employer money purchase pension plan contributions, and rollovers from other plans, as adjusted for investment experience. Except as otherwise provided with respect to Normal Retirement, Disability, or death, a Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from Employer profit-sharing contributions under Section 4.2 as follows:

Years of Service	Vested Percentage
Less than 1 year	*0%*
1 year and thereafter	*100%*

6.2 FORFEITURE OF NONVESTED BALANCE. The nonvested portion of a Participant's Account, as determined in accordance with Section 6.1, shall be forfeited as of the earlier of (i) as soon as administratively practical following the date on which the Participant receives distribution of his vested Account or (ii) as soon as administratively practical after the last day of the Plan Year in which the Participant incurs five (5) consecutive Breaks in Service. The amount forfeited shall be used to pay Plan administrative expenses, used to restore previously forfeited amounts under this Section 6.2, and/or reallocated to Participants in the same manner as investment earnings under Section 5.1(b). Forfeitures shall be used in accordance with the terms of the Plan no later than the end of the Plan Year following the Plan Year in which the forfeiture occurs.

If the Participant returns to the employment of the Employer prior to incurring five (5) consecutive Breaks in Service, and prior to receiving distribution of his vested Account, the nonvested portion shall remain in the Participant's Account. However, if the nonvested portion of the Participant's Account was allocated as a forfeiture as the result of the Participant receiving distribution of his vested Account balance (including a "deemed" distribution under Section 7.2), the nonvested portion shall be restored if:

(a) the Participant resumes employment prior to incurring five (5) consecutive Breaks in Service; and

(b) the Participant repays to the Plan, as of the earlier of (i) the date which is five (5) years after his reemployment date or (ii) the date which is the last day of the period in which the Participant incurs five (5) consecutive Breaks in Service, an amount equal to the total distribution derived from Employer contributions under Section 4.2 and, if applicable, Section 13.3.

Upon repayment, the Participant's Employer-derived benefit shall be restored to the amount at the time of distribution (i.e., the amount distributed and the amount forfeited), unadjusted by any subsequent gains or losses. The amount required to be restored shall be made by a special Employer contribution or from the next succeeding Employer contribution and forfeitures, as appropriate.

Following a repayment described in this Section, any Years of Service for which a Participant received a cash-out shall be recognized for purposes of vesting and eligibility under the Plan.

6.3 DISTRIBUTION OF LESS THAN ENTIRE VESTED ACCOUNT BALANCE. If a distribution (including a withdrawal) of any portion of a Participant's Account is made to the Participant at a time when he has a vested percentage in such Account equal to less than one-hundred percent (100%), a separate record shall be maintained of said Account balance. The Participant's vested interest at any time in this separate account shall be an amount equal to the formula *P(AB+D)-D,* where *P* is the vested percentage at the relevant time, *AB* is the Account balance at the relevant time, and *D* is the amount of the distribution (or withdrawal) made to the Participant.

6.4 NORMAL RETIREMENT. A Participant who is in the employment of the Employer at his Normal Retirement Age shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under the vesting schedule in Section 6.1. A Participant who continues employment with the Employer after his Normal Retirement Age shall continue to participate under the Plan but may, with his spouse's written and notarized consent, elect to have his Account payable at the time and in the manner specified in Article Seven.

6.5 DISABILITY. If a Participant, who is an Employee, incurs a Disability, the Participant shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under the vesting schedule in Section 6.1. Payment of such Participant's Account balance shall be made at the time and in the manner specified in Article Seven, following receipt by the Administrator of the Participant's distribution request.

ARTICLE SEVEN--MANNER AND TIME OF DISTRIBUTING BENEFITS

7.1 DISTRIBUTABLE EVENTS A Participant's vested Account shall become distributable to the Participant (or Beneficiary or Beneficiaries in the event of the Participant's death) following the occurrence of any of the following events:

(a) the Participant's death;

(b) the Participant's Disability;

(c) at or after the Participant's Normal Retirement Date;

(d) at or after the Participant initially leaves the trade. For this purpose, a Participant "initially leaves the trade" the first time the Participant files an affidavit (in such form as shall be required by the Trustees on a uniform basis) with the Trustees attesting to his intent to leave the trade permanently and has not received a contribution for three (3) consecutive months as a tree trimmer for any contractor which is a signatory to a Contribution Agreement. A Participant may only take one distribution under this subsection (d); or

(e) at or after the Participant subsequently leaves the trade. For this purpose, a Participant "subsequently leaves the trade" only after he initially leaves the trade (as defined in (d) above), again becomes employed by a contributing Employer, and subsequently files an affidavit (in such form as shall be required by the Trustees on a uniform basis) with the Trustees attesting to his intent to leave the trade permanently and has not received Employer contributions for at least six (6) months as a tree trimmer for any contractor which is a signatory to a Contribution Agreement. A Participant may take only one distribution under this subsection (e).

7.2 MANNER OF PAYMENT. Subject to the provisions of Section 7.6 and/or Section 7.10, the Participant's vested Account shall be distributed to the Participant (or to the Participant's Beneficiary in the event of the Participant's death) by any of the following methods, as elected by the Participant or, when applicable, the Participant's Beneficiary:

(a) in a single lump-sum payment; or

(b) provided the Participant's vested Account exceeds $5,000, in partial payments, subject to procedures established by the Administrator and subject to the provisions of this Article Seven; or

(c) provided the Participant's vested Account exceeds $5,000, in periodic installments (at least annual) over the life expectancy of the Participant, the joint life expectancy of the Participant and his Beneficiary, or in a flat dollar amount, subject to procedures established by the Trustees and the provisions of this Article Seven; or

(d) provided the Participant's vested Account exceeds $5,000, by purchase of a nontransferable annuity from an insurance company providing either a life annuity, a joint and 100% survivor annuity, a joint and 75% survivor annuity, or a joint and 50% survivor annuity. The terms of any annuity contract purchased and

distributed by the Plan shall comply with the requirements of the Plan and applicable law.

7.3 TIME OF COMMENCEMENT OF BENEFIT PAYMENTS.

(a) ***Distribution in General.*** Distribution of the Participant's vested Account balance shall normally be made or commence no later than sixty (60) days following the close of the Plan Year in which a distributable event (as set forth in Section 7.1) occurs; provided, however, that it the amount required to be distributed cannot be ascertained by such date, distribution shall be made or commence no later than sixty (60) days after the earliest date on which such amount can be ascertained; and provided that the Participant may elect to defer distribution of his Account. Notwithstanding the foregoing, no distribution to the Participant shall be made or commence prior to the Participant's required beginning date (as defined in the penultimate paragraph of this Section 7.3) unless the Participant consents to such earlier distribution.

(b) ***Effect of a Qualified Domestic Relations Order.*** Notwithstanding the foregoing, a Participant's Account may be frozen to prevent the Participant from taking withdrawals, and/or distributions from his Account in accordance with the Plan's qualified domestic relations order procedures.

(c) ***Deemed Distribution.*** A Participant who is not vested in any portion of his Account shall be deemed to have received distribution of his Account as of the end of the Plan Year following the Plan Year in which he terminates employment with the Employer ("deemed distribution").

(d) ***Required Beginning Date.*** In no event shall distribution of the Participant's vested Account be made or commence later than the April 1st following the end of the calendar year in which the Participant attains age seventy and one-half (70½) or, except for a Participant who is a five percent (5%) owner of the Employer (within the meaning of Section 401(a)(9)(C) of the Code), if later, the April 1st following the calendar year in which the Participant retires from employment with the Employer (the "required beginning date"). Notwithstanding the foregoing:

(1) Effective April 1, 2020 and with respect to a Participant who attains age seventy-two (72) on or after January 1, 2020, a Participant's required beginning date means the April 1st following the end of the calendar year in which the Participant attains age seventy-two (72);

(2) Effective April 1, 2023 and with respect to a Participant who attains age seventy-three (73) on or after January 1, 2023 a Participant's required beginning date means the April 1st following the end of the calendar year in which the Participant attains age seventy-three (73); and

(3) Effective April 1, 2033 and with respect to a Participant who attains age seventy-five (75) on or after January 1, 2033 a Participant's required beginning date means the April 1st following the end of the calendar year in which the Participant attains age seventy-five (75).

(e) ***No Effect on Prior TEFRA Election.*** Notwithstanding the foregoing, the provisions of this paragraph shall be subject to any prior election complying with the provisions of Section 242(b) of TEFRA.

(f) ***Minimum Distribution Amount Allowed.*** Notwithstanding the provisions of Section 7.1, in the event distribution is required to be made while the Participant is employed by the Employer or to a terminated Participant, the Participant may elect to receive the minimum amount required to be distributed pursuant to the provisions of Section 401(a)(9) of the Code and the regulations thereunder.

7.4 FURNISHING INFORMATION. Prior to the payment of any benefit under the Plan, each Participant or Beneficiary may be required to complete such administrative forms and furnish such proof as may be deemed necessary or appropriate by the Employer, Administrator, and/or Trustees.

7.5 MINIMUM DISTRIBUTION REQUIREMENTS.

(a) ***General Rules.***

(1) Effective Date. The provisions of this Article will apply for purposes of determining required minimum distributions.

(2) Precedence. The requirements of this Article shall take precedence over any inconsistent provisions of the Plan; provided, however, that this Article shall not require the Plan to provide any form of benefit, or any option, not otherwise provided under Section 7.2.

(3) Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code and the minimum distribution incidental benefit requirement of Section 401(a)(9)(G) of the Code.

(b) ***Time and Manner of Distribution***

(1) Required Beginning Date. The Participant's vested account shall be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's vested Account shall be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated Beneficiary:

(i) distribution of the Participant's vested Account shall be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(ii) If distribution is to be made over the surviving spouse's life or over a period certain not exceeding their life expectancy

(if permitted under Section 7.2 of the Plan) in which case distribution shall commence 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 the required age for distribution of his benefit as set forth in Section 7.3(d) of the Plan, if later. Notwithstanding the foregoing, a surviving spouse may elect to be treated as if they were the Participant, thereby delaying the commencement of distribution to the December 31 of the calendar year in which the surviving spouse attains the required age for distribution of the benefit as set forth in Section 7.3 of the Plan.

(B) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, distribution of the Participant's vested Account shall be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death unless distribution is to be made over the life or over a period certain not exceeding the life expectancy of the designated Beneficiary (if permitted under Section 7.2 of the Plan), in which case distribution shall commence by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's vested Account shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 7.5(b), other than Section 7.5(b)(2)(A), shall apply as if the surviving spouse were the Participant.

For purposes of Sections 7.5(b) and 7.5(d), unless Section 7.5(b)(2)(D) applies, distributions are considered to begin on the Participant's required beginning date. If Section 7.5(b)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.5(b)(2)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.5(b)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions shall be made in accordance with Sections 7.5(c) and (d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

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

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that shall be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's vested Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's vested Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, 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) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions shall be determined under this Section 7.5(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 Date Distributions Begin.

(A) *Participant Survived by Designated Beneficiary.* Subject to the provisions of this Article, if the, Participant dies on or after 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 vested Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) *No Designated Beneficiary.* If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that 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 vested 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 Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that 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 vested Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 7.5(d)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the

Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.5(b)(2)(A), this Section 7.5(d) 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 7.8 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-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 7.5(b)(2). The required minimum distribution for the Participant's first distribution calendar year shall 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, shall 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, Q&A-1, of the Treasury regulations.

(4) Participant's Vested Account Balance. The vested Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the vested 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 vested 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 date specified in Section 7.3 of the Plan.

(f) ***TEFRA Section 242(6)(2) Elections.***

(1) Notwithstanding the other requirements of this Article and subject to the requirements of Section 7.7, distribution on behalf of any Employee, including a 5-percent owner, who has made a designation under Section 242(b) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) Election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

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

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

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

(D) The Employee had accrued a benefit under the Plan as of December 31, 1983.

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

(2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to distributions to be made upon the death of the Employee.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfied the requirements in subsections (A) and (E) above.

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

(5) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Section 1.401(a)(9)-8, Q&A-14 and 15, of the Treasury regulations shall apply.

7.6 JOINT AND SURVIVOR ANNUITY. Notwithstanding the foregoing provisions of this Article Seven, the provisions of this Section 7.6 shall apply to any distribution made to a Participant following his retirement or other termination of employment

(a) ***Annuity Form of Payment:*** If distribution of a Participant's vested Account balance commences during his lifetime, his vested Account shall be applied to the purchase of a *"single life annuity"* for a Participant who is unmarried as of his benefit commencement date, or if the Participant is married as of his benefit commencement date, applied to the purchase of a *"qualified joint and survivor annuity"*.

A *"qualified joint and survivor annuity"* is an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is seventy-five percent (75%) of the amount of the annuity which is payable during the joint lives of the Participant and his spouse.

A *"single life annuity"* is an annuity for the life of the Participant.

(b) ***Waiver of Annuity:*** The Participant may, at any time during the *"election period",* elect to waive the annuity form of payment described above and elect an optional form of payment set forth under Section 7.2.

The *"election period"* under this Section shall be the one hundred and eighty (180) day period prior to the "annuity starting date," which date shall be the first day of the first period in which an amount is payable as an annuity or, if such benefit is not payable as an annuity, the first day on which the Participant may begin to receive distribution from the Plan.

An election to waive the applicable annuity form of payment under the Plan must be made in writing in a form acceptable to the Administrator. In addition, an election by a married Participant to waive the qualified joint and survivor annuity shall not take effect unless (1) the Participant's spouse consents in writing to the election, (2) the election designates a specific alternate Beneficiary, if applicable, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the Participant's spouse expressly permits designations by the Participant without any further spousal consent), (3) the spouse's consent acknowledges the effect of the election, and (4) the spouse's consent is witnessed by a notary public. In addition, the Participant's waiver of a qualified joint and survivor annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Participant's spouse expressly permits designation by the Participant without any further spousal consent). Notwithstanding the foregoing, spousal consent hereunder shall not be required if it is established to the satisfaction of the Administrator that the spouse's consent cannot be obtained because such spouse cannot be located, or because of such other circumstances as may be prescribed in regulations pursuant to Section 417 of the Code.

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

(c) ***Qualified Optional Survivor Annuity:*** To the extent required under applicable law, effective for Plan Years beginning after December 31, 2007, a Participant who elects to waive the qualified joint and survivor annuity form of benefit shall be entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the "qualified optional survivor annuity".

For such purposes, the term "qualified optional survivor annuity" means an annuity for the life of the Participant, with a survivor annuity for the life of the spouse which is equal to fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and his or her spouse, and which is the actuarial equivalent of a single annuity for the life of the participant.

(d) ***Notice Requirement:*** The Administrator shall provide to each Participant, not less than thirty (30) days, and not more than one hundred and eighty (180) days prior to the commencement of benefits, a written explanation of:

(1) the terms and conditions (including any other material features) of the qualified joint and survivor annuity, qualified optional survivor annuity or life annuity;

(2) the Participant's right to waive such applicable annuity and the effect of such waiver;

(3) the rights of the Participant's spouse regarding the required consent to an election to waive the qualified joint and survivor annuity; and

(4) the right to make, and the effect of, a revocation of an election to waive the applicable annuity.

(e) ***Restrictions:*** Notwithstanding anything contained herein to the contrary, if the vested balance of the Participant's Account does not exceed $5,000, distribution of the Participant's vested Account shall be made in the form of a lump-sum payment. However, no distribution shall be made pursuant to this subsection after the first day of the first period for which an amount is payable as an annuity unless the Participant and the Participant's spouse, if applicable, consent in writing to such distribution. For purposes of this subsection, "vested balance of a Participant's Account" shall mean the aggregate value of a Participant's vested Account balance attributable to Employer contributions, Employee contributions

and rollover contributions, if applicable, whether vested before or upon the death of a Participant.

7.7 AMOUNT OF DEATH BENEFIT

(a) *Death Before Termination of Employment.* In the event of the death of a Participant while in the employ of the Employer, vesting in the Participant's Account shall be one hundred percent (100%), if not otherwise one hundred percent (100%) vested under Section 6.1, with the credit balance of the Participant's Account being payable to his Beneficiary.

(b) *Death After Termination of Employment.* In the event of the death of a former Participant after termination of employment, but prior to the complete distribution of his vested Account balance under the Plan, the undistributed vested balance of the Participant's Account shall be paid to the Participant's Beneficiary.

7.8 DESIGNATION OF BENEFICIARY. Each Participant shall designate a Beneficiary in a manner acceptable to the Administrator to receive payment of any death benefit payable hereunder if such Beneficiary should survive the Participant. However, no Participant who is married shall be permitted to designate a Beneficiary other than his spouse, unless the Participant's spouse has signed a written consent witnessed by a notary public, which provides for the designation of an alternate Beneficiary.

Subject to the above, Beneficiary designations may include primary and contingent Beneficiaries, and may be revoked or amended at any time in similar manner or form, and the most recent designation shall govern. A designation of a Beneficiary made by a Participant shall cease to be effective upon his marriage or remarriage. In addition, a spousal Beneficiary designation shall cease to be effective upon written notification to the Administrator of the divorce of the Participant and such spouse. In the absence of an effective designation of Beneficiary, or if no designated Beneficiary is surviving as of the date of the Participant's death, any death benefit shall be paid to the surviving spouse of the Participant, or, if no surviving spouse, to the Participant's surviving lineal descendants (in equal shares), or, if none, to the Participant's surviving parents (in equal shares), or, if none, to the Participant's estate. Notification to Participants of the death benefits under the Plan and the method of designating a Beneficiary shall be given at the time and in the manner provided by regulations and rulings under the Code.

In the event a Beneficiary survives the Participant, but dies before receipt of all payments due that Beneficiary hereunder, any benefits remaining to be paid to the Beneficiary shall be paid to the Beneficiary's estate.

7.9 DISTRIBUTION OF DEATH BENEFITS. Subject to the provisions of Section 7.3 and 7.10 below, if applicable, the Beneficiary shall be allowed to designate the mode of receiving benefits in accordance with Section 7.2, unless the Participant had designated a method in writing and indicated that the method was not revocable by the Beneficiary.

(a) *Distribution Beginning Before Death* - If the Participant dies after distribution of his vested Account has commenced, any survivor's benefit must be paid at least as rapidly as under the method of payment in effect at the time of the Participant's death.

(b) *Distribution Beginning After Death* - If the Participant dies before distribution of his vested Account has commenced, distribution of the Participant's vested Account shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death, except as provided below:

(i) if any portion of the Participant's vested Account is payable to a designated Beneficiary, and if distribution is to be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary (if permitted under Section 7.2 above), such payments shall commence on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;

(ii) if the Participant's surviving spouse is the Participant's sole designated Beneficiary, the date distribution is required to begin shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year in which the Participant died and (B) December 31 of the calendar year in which the Participant would have attained the required age for the distribution of his benefit as set forth in Section 7.3(d) of the Plan.

For purposes of this paragraph (b), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of this paragraph, with the exception of paragraph (ii) herein, shall be applied as if the surviving spouse were the Participant.

Notwithstanding the foregoing, if the Participant has no designated Beneficiary (within the meaning of Section 401(a)(9) of the Code and the regulations thereunder), distribution of the Participant's vested Account must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

Nothing within this Section shall, however, invalidate any Participant's previous designation of a mode of paying death benefits, provided such designation was made prior to January 1, 1984 and was in accordance with all requirements announced by the Internal Revenue Service with respect to the transitional rule established under Section 242(b) of TEFRA. No modification of the mode set out in any such election shall be allowed, however, unless it is in compliance with this Section 7.9.

7.10 QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY. Notwithstanding the foregoing provisions of this Article Seven, the provisions of this Section 7.10 shall apply in the event a Participant dies before distribution of benefits has commenced and is survived by his spouse.

(a) If a Participant dies before distribution of benefits has commenced and is survived by his spouse, his vested Account, to the extent payable to the Participant's

surviving spouse, shall be applied to the purchase of an annuity for the life of the Participant's surviving spouse. The Participant's surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

(b) The Participant may elect to waive such survivor annuity death benefit and/or revoke any such election at any time during the period commencing on the first day of the Plan Year in which the Participant attains age thirty-five (35) (or the date he terminates employment, if earlier) and ending on the date of his death. Any election to waive the survivor annuity death benefit, however, shall not take effect unless it is accompanied by the written consent of the Participant's spouse, which consent acknowledges the effect of such election and is witnessed by a notary public. A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special qualified election to waive the qualified pre-retirement survivor annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the qualified pre-retirement survivor annuity in such terms as are comparable to the explanation required under Section 7.10(c). Qualified pre-retirement survivor annuity coverage shall be reinstated automatically as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Section.

The election to waive such survivor annuity death benefit must be made in writing in a form acceptable to the Administrator and must include the Participant's designation of a Beneficiary. The designation of a Beneficiary may not be changed unless a new consent is signed by the Participant's spouse.

In the event of such an election, hereunder, any death benefit (otherwise payable in accordance with this Section) shall be paid to the Participant's Beneficiary in a manner selected by the Beneficiary or Participant subject to the provisions of Section 7.9.

(c) The Administrator shall furnish to each Participant, subject to the provisions of this Section 7.10, a written explanation of: (1) the terms and conditions of the survivor annuity death benefit; (2) the Participant's right to make, and the effect of, an election to waive the survivor annuity death benefit, and to revoke such election; and (3) the right of the Participant's spouse to prevent such an election by withholding the necessary consent. Such explanation shall be provided to the Participant within the period beginning on the later of the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending on the last day of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35), or within a reasonable period after the Participant commences participation in the Plan, or after the Participant separates from Service if the Participant has not attained age thirty-five (35) at the time of his termination from employment.

For purposes of the preceding paragraph, a "reasonable period" shall mean 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 thirty-five (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.

Following the Participant's death, if such death benefit is to be paid to the Participant's surviving spouse in the form of a survivor annuity, the surviving spouse may elect to waive the survivor annuity and receive any optional form of death benefit available under the Plan.

Notwithstanding the foregoing, the provisions of this Section shall not apply if the vested balance of the Participant's Account does not exceed $5,000. Instead, distribution of the vested balance of the Participant's Account shall be made in the form of a lump-sum payment.

7.11 ELIGIBLE ROLLOVER DISTRIBUTIONS. Notwithstanding the foregoing provisions of this Article Seven, the provisions of this Section 7.11 shall apply to distributions made under the Plan.

(a) A "distributee" (as hereinafter defined) may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" (as hereinafter defined) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions:

(i) *Eligible Rollover Distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any hardship distribution described in Section 8.1. 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 (1) a traditional individual retirement account or annuity described in Section 408(a) or (b) of the Code (a "traditional IRA") or a Roth individual retirement account or annuity described in Section 408A of the Code (a "Roth IRA"); or (2) to a qualified plan or an annuity contract described in Section 401(a) and 403(b) of the Code, respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such

distribution which is includible in gross income and the portion of such distribution which is not so includible.

(ii) *Eligible Retirement Plan.* An eligible retirement plan is 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, a traditional IRA, a Roth IRA, an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

(iii) *Distributee.* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse, and the Employee's or former Employee's spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A distributee includes the Employee's or former Employee's non-spouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth inherited IRA established on behalf of the non-spouse designated Beneficiary for the purpose of receiving the distribution.

(iv) *Direct Rollover.* A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) If a distribution is one to which Sections 401(a)(11) and 417 of the Code do not apply, such distribution may commence less than thirty (30) days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

(i) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(ii) the Participant, after receiving the notice, affirmatively elects a distribution.

(d) If a distribution is one to which Sections 401(a)(11) and 417 of the Code applies, the distribution may commence less than thirty (30) days, but not less than seven (7) days, after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that the requirements of paragraphs (c)(i) and (c)(ii) above are satisfied with respect to both the Participant and the Participant's spouse, if applicable.

(e) The description of a Participant's right, if any, to defer distribution shall also describe the consequences of failing to defer receipt of the distribution in accordance with the requirements of applicable law. In addition, any reference to the ninety (90) day maximum notice period prior to distribution in applying the notice requirements of Code Sections 402(f), 411(a)(11) and 417 shall become one hundred and eighty (180) days.

ARTICLE EIGHT--IN-SERVICE WITHDRAWALS

8.1 HARDSHIP DISTRIBUTIONS. In the case of a financial hardship resulting from a proven immediate and heavy financial need, an active Participant may receive a distribution not to exceed the lesser of (i) the value of the Participant's Account attributable to his elective deferrals (within the meaning of Section 4.1), including accumulated investment earnings received thereon, or (ii) the amount necessary to satisfy the financial hardship. The amount of any such immediate and heavy financial need may include any amounts necessary to pay Federal, state or local income taxes reasonably anticipated to result from the distribution. Such distribution shall be made in accordance with nondiscriminatory and objective standards and procedures consistently applied by the Administrator. For purposes of this Section, an active Participant shall include an Employee who has severed employment with the Employer but is still employed by a member of the Employer's controlled group and who has an Account under the Plan. In addition, if the Participant is married, the Participant must obtain the written consent of the Participant's spouse, which consent must be witnessed by a notary.

Hardship distributions under this Section shall be deemed to be the result of an immediate and heavy financial need if such distribution is to: (a) pay expenses for (or to obtain) medical care that would be deductible under Section 213(d) of the Code determined without regard to whether the expenses exceed seven and one-half percent (7.5%) of adjusted gross income; (b) purchase the principal residence of the Participant (excluding mortgage payments); (c) pay tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, Participant's spouse, or any of the Participant's dependents (as defined in Section 152 of the Code, and without regard to Section 152(b)(1), (b)(2) and (d)(1)(B) of the Code); (d) prevent the eviction of the Participant from his principal residence or foreclosure on the Participant's principal residence; (e) pay funeral or burial expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Section 152 of the Code, and without regard to Section 152(d)(1)(B) of the Code); (f) repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Section 165 of the Code (determined without regard to whether the loss exceeds ten percent (10%) of adjusted gross income); (g) other immediate and heavy financial need as determined by the Trustees based on all the relevant facts and circumstances and as approved by the Trustees, provided the need cannot be relieved from other resources that are reasonably available to the Participant; or (h) such other financial needs as prescribed by the Commissioner of the Internal Revenue Service. Distributions paid pursuant to this Section shall be deemed to be made as of the Valuation Date immediately preceding the hardship distribution, and the Participant's Account shall be reduced accordingly.

A distribution shall be deemed necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:

(1) The Participant has obtained all other currently available, non-hardship distributions under plans maintained by the Employer (including both qualified and non-qualified plans);

(2) The Participant represents to the Trustees in writing that the Participant has insufficient cash or other liquid assets that are "reasonably available" to satisfy the financial need; and

(3) The Trustees do not have "actual" knowledge that is contrary to the Participant's representation.

8.2 WITHDRAWALS OF ROLLOVER CONTRIBUTIONS. An active Participant may withdraw from the Plan a sum (a) not in excess of the credit balance of the Participant's Account attributable to any rollover contributions made to the Plan and (b) not less than such minimum amount as the Trustees may establish from time to time to facilitate administration of the Plan. Any such withdrawals shall be made in accordance with nondiscriminatory and objective standards and procedures consistently applied by the Administrator. For purposes of this Section, an active Participant shall include an Employee who has severed employment with the Employer but is still employed by a member of the Employer's controlled group and who has an Account under the Plan. In addition, if the Participant is married, the Participant must obtain the written consent of the Participant's spouse, which consent must be witnessed by a notary.

8.3 HEART ACT PROVISIONS

(a) *Death benefits.* In the case of a Participant's death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiary(ies) (or surviving spouse, if the qualified joint and survivor annuity or qualified pre-retirement survivor annuity rules apply) of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the **Plan** as if the Participant had resumed employment and then terminated employment on account of death. In addition, vesting service credit for the deceased Participant's period of qualified military service shall be credited to the extent required by Code Section 401(a)(37).

(b) *Severance from employment.* Effective January 1, 2016, and for purposes of Code Section 401(k)(2)(B)(i)(I), an individual shall be treated as having severed from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

Effective as of the dates specified above, the provisions of this Section 8.2 shall be interpreted consistent with, and governed by, the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and regulatory guidance issued thereunder.

8.4 QUALIFIED DISASTER RECOVERY DISTRIBUTIONS. A Participant who experiences a "qualified disaster" under Section 72(t)(11) of the Code may receive a "qualified disaster recovery distribution" in an amount not to exceed the lesser of the value of the Participant's Account or $22,000. A qualified disaster recovery distribution is any distribution made (a) on or after the first day of the "incident period" of a qualified

disaster and before the date that is 180 days after the applicable date with respect to such disaster and (b) to a Participant whose principal place of abode at any time during the incident period of such qualified disaster is located in the disaster area with respect to such qualified disaster and who has sustained an economic loss by reason of such qualified disaster. For purposes of this Section, "incident period," "applicable date," and "qualified disaster area" shall all have the same meanings as prescribed in Section 72(t)(11)(F) of the Code.

ARTICLE NINE --ADMINISTRATION OF THE PLAN

9.1 PLAN ADMINISTRATION. The Trustees shall serve as the Plan Administrator, hereinbefore and hereinafter called the Administrator, and a "named fiduciary" (for purposes of Section 402(a)(1) of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA")) of the Plan, unless the Trustees shall designate a person or committee of persons to be the Administrator. The administration of the Plan, as provided herein, including a determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator; provided, however, that the Administrator may delegate any of its powers, authority, duties or responsibilities to any person or committee of persons, such delegation to be in accordance with ERISA Section 405. The Administrator shall have full discretion to interpret the terms of the Plan, to determine factual questions that arise in the course of administering the Plan, to adopt rules and regulations regarding the administration of the Plan, to determine the conditions under which benefits become payable under the Plan, and to make any other determinations that the Administrator believes are necessary and advisable for the administration of the Plan. Any determination made by the Administrator shall be final and binding on all parties, and shall be given the maximum deference allowed by law.

In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (a) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (b) consult with counsel, who may be counsel to the Employer, and (c) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.

The reasonable expenses of administering the Plan and the compensation of all employees, agents, or counsel of the Administrator, including accounting fees, recordkeeper's fees, and the fees of any benefit consulting firm, shall be paid by the Plan.

If the Trustees do not serve as the Administrator, then the Administrator shall obtain from the Trustee, not less often than annually, a report with respect to the value of the assets held in the Trust Fund, in such form as may be required by the Administrator.

The Administrator shall administer the Plan and adopt such rules and regulations as, in the opinion of the Administrator, are necessary or advisable to implement and administer the Plan and to transact its business.

Benefits under this Plan shall be paid only when the Board of Trustees or persons delegated by them decide, in their discretion, that the Participant or Beneficiary is entitled to benefits under the terms of the Plan.

9.2 CLAIMS PROCEDURE

The provisions of paragraph (a) below shall apply to all benefit claims under the Plan, except as provided in paragraph (b) below. In addition, the provisions of paragraph (c) below shall apply to all benefit claims under the Plan.

(a) Pursuant to procedures established by the Trustees, claims for benefits under the Plan made by a Participant or Beneficiary (the "claimant") must be submitted in writing to the Administrator. Approved claims shall be processed and instructions issued to the Trustee or custodian authorizing payment as claimed.

If a claim is denied in whole or in part, the Administrator shall notify the claimant within ninety (90) days after receipt of the claim (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial ninety (90) day period).

The notice of the denial of the claim shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

(i) the specific reason or reasons for the denial of the claim;

(ii) the specific references to the pertinent Plan provisions on which the denial is based;

(iii) a description of any additional material or information necessary to perfect the claim, and an explanation of why such material or information is necessary;

(iv) a statement that any appeal of the denial must be made by giving to the Administrator, within sixty (60) days after receipt of the denial of the claim, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim; and

(v) a statement about the claimant's right to bring civil action under Section 502(a) under ERISA if the claim is denied on review.

Upon denial of a claim in whole or part, the claimant (or his duly authorized representative) shall have the right to submit a written request to the Trustees for a full and fair review of the denied claim, to be permitted to review documents (free of charge) pertinent to the denial, and to submit issues and comments in writing. Any appeal of the denial must be given to the Fund Office within the period of time prescribed under (a)(iv) above. If the claimant (or his duly authorized representative) fails to appeal the denial to the Trustees within the prescribed time, the Administrator's adverse determination shall be final, binding and conclusive.

The Trustees shall hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision which shall be binding upon both parties. The Trustees or their designated representative shall advise the claimant of the results of the review within sixty (60) days after receipt of the written request for the review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be written in a manner calculated to be understood by

the claimant and shall include specific reasons for the decision, specific references to the pertinent Plan provisions on which the decision is based, the claimant's right to receive free of charge upon written request, reasonable access to and copies of, all Plan documents, records, and other information relevant to the claim, and a statement about the claimant's right to bring a civil action under Section 502(a) of ERISA. The decision of the Trustees shall be final, binding, and conclusive and shall be given the maximum deference afforded by law.

(b) The provisions of this subsection (b) shall apply to a claim involving a determination by the Trustees of a Participant's Disability.

Such a claim for Disability benefits must be submitted in writing to the Fund Office and shall be reviewed by the person or persons appointed by the Trustees (the "Initial Reviewer"). Approved claims shall be processed and instructions issued to the Trustees or their delegee, or custodian, authorizing payment as claimed.

If such a claim is denied in whole or in part, the Initial Reviewer shall notify the claimant within forty-five (45) days after receipt of the claim (or within seventy-five (75) days, if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial forty-five (45) day period).

If, prior to the end of the seventy five (75) day extended period, the Initial Reviewer determines that a decision cannot be rendered within the initial extension period due to special circumstances, the period for making a determination may be extended for up to an additional thirty (30) days, provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the originally extended seventy-five (75) day period.

The notice of the denial of the claim shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

(i) the specific reason or reasons for the denial of the claim;

(ii) the specific references to the pertinent Plan provisions on which the denial is based;

(iii) a description of any additional materials or information necessary to perfect the claim, and an explanation of why such material or information is necessary;

(iv) a statement that any appeal of the denial must be made by giving to the Administrator, within one hundred eighty (180) days after receipt of the denial of the claim, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim;

(v) a statement about the claimant's right to bring a civil action under Section 502(a) of ERISA if the claim is denied on review; and

(vi) to the extent that an internal rule, guideline, protocol, or other similar criterion was relied upon in the denial, the notification shall set forth the specific rule, guideline, protocol, or criterion or indicate that such was relied upon and that a copy will be provided free of charge to the claimant upon request.

Upon denial of a claim in whole or in part, the claimant (or his duly authorized representative) shall have the right to submit a written request to the Trustees for a full and fair review of the denied claim, to be permitted to review documents (free of charge) pertinent to the denial, and to submit issues and comments in writing. Any appeal of the denial must be given to the Fund Office within the period of time prescribed under (b)(iv) above. If the claimant (or his duly authorized representative) fails to appeal the denial to the Trustees within the prescribed time, the Initial Reviewer's initial adverse determination shall be final, binding and conclusive.

The Trustees shall consider the full record of the claimant's appeal without deference to the initial determination and, if the determination is based in whole or in part on a medical judgment, shall consult with a health care professional experienced in the field of medicine involved in the medical judgment. The health care professional consulted on the appeal shall be an individual who was not consulted in connection with the initial denied claim (nor a subordinate of any individual consulted in connection with the initial denied claim) and whose identity shall be disclosed to the claimant upon written request of the claimant, regardless of whether the health care professional's advice was relied upon in making the subsequent claim determination.

The Trustees shall render a decision that shall be binding upon both parties. The Trustees shall advise the claimant of the results of their review within forty-five (45) days after receipt of the written request for the review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than ninety (90) days after receipt of the request for review. If such extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

(A) the specific reason or reasons for the denial of the claim;

(B) the specific references to the pertinent Plan provisions on which the denial is based;

(C) the claimant's right to receive free of charge, upon written request, reasonable access to and copies of, all Plan documents, records, and other information relevant to the claim;

(D) a statement about the claimant's right to bring a civil action under Section 502(a) of ERISA; and

(E) to the extent that an internal rule, guideline, protocol, or other similar criterion was relied upon in the denial, the notification

shall set forth the specific rule, guideline, protocol, or criterion or indicate that such was relied upon and that a copy will be provided free of charge to the claimant upon request.

The decision of the Trustees shall be final, binding and conclusive, and shall be given the maximum deference afforded by law.

(c) Benefits under this Plan shall be paid only when the Board of Trustees or persons delegated by them decide, in their discretion, that the Participant or Beneficiary is entitled to benefits under the terms of the Plan. Moreover, any lawsuit claiming a benefit under the Plan must be filed within the limitations period provided in this paragraph. The limitation period ends three (3) years after the date of the notice to the Participant or Beneficiary advising of the determination of the Participant's or Beneficiary's claim. If a timely request for review has been filed under this Section 9.2, the limitations period ends three (3) years from the date of notice advising the claimant of the determination of the request for review. Notwithstanding the foregoing, if a claim for a benefit has been approved, the limitations period ends three (3) years from the date a benefit is first paid to the Participant or Beneficiary.

ARTICLE TEN--SPECIAL COMPLIANCE PROVISIONS

10.1 DISTRIBUTION OF EXCESS ELECTIVE DEFERRALS. Notwithstanding any other provision of the Plan, "Excess Elective Deferrals" (as defined below) (and income or loss allocable thereto, including all earnings, expenses and appreciation or depreciation in value, whether or not realized) shall be distributed no later than each April 15 to Participants who claim Excess Elective Deferrals for the preceding calendar year.

"Excess Elective Deferrals" shall mean the amount of Elective Deferrals (as defined below) for a calendar year that the Participant designates to the Plan pursuant to the following procedure. The Participant's designation: shall be submitted to the Administrator in writing no later than March 1; shall specify the Participant's Excess Elective Deferrals for the preceding calendar year; and shall be accompanied by the Participant's written statement that if the Excess Elective Deferrals are not distributed, they shall, when added to amounts deferred under other plans or arrangements described in Section 401(k), 408(k) or 403(b) of the Code, exceed the limit imposed on the Participant by Section 402(g) of the Code for the year in which the deferral occurred. Excess Elective Deferrals shall mean those Elective Deferrals that are includible in a Participant's gross income under Section 402(g) of the Code to the extent such Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code section.

An Excess Elective Deferral, and the income or loss allocable thereto, may be distributed before the end of the calendar year in which the Elective Deferrals were made. A Participant who has an Excess Elective Deferral for a taxable year, taking into account only his Elective Deferrals under the Plan or any other plans of the Employer (including any member of the Employer's related group (within the meaning of Sections 414(b), (c), (m) or (o) of the Code), shall be deemed to have designated the entire amount of such Excess Elective Deferral.

Excess Elective Deferrals shall be adjusted for any income or loss. For purposes of this Section 10.1, whenever reference is made to the income or loss allocable to an Excess Elective Deferral, such income or loss shall be determined as follows. The income or loss allocable to Excess Elective Deferrals allocated to each Participant shall be the income or loss allocable to the Participant's deferred amounts for the Plan Year multiplied by a fraction, the numerator of which is the Excess Elective Deferrals made on behalf of the Participant for the Plan Year, and the denominator of which is the Participant's Account balance attributable to the Participant's Elective Deferrals on the last day of the Plan Year.

For purposes of this Article Ten, "Elective Deferrals" shall mean any Employer contributions made to the Plan at the election of the Participant, in lieu of cash compensation, and shall include contributions made pursuant to a salary deferral reduction agreement or other deferral mechanism. With respect to any taxable year, a Participant's Elective Deferrals are 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 described in Section 401(k) of the Code, any salary reduction simplified employee pension described in Section 408(k)(6) of the Code, any SIMPLE IRA Plan described in Section 408(p) of the Code, any eligible deferred compensation plan under

Section 457 of the Code, any plan described under Section 501(c)(18) of the Code, and any Employer contributions made on behalf of a Participant for the purchase of an annuity

contract under Section 403(b) of the Code pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess annual additions.

10.2 LIMITATIONS ON 401(k) CONTRIBUTIONS

(a) *Actual Deferral Percentage Test ("ADP Test").* Amounts contributed as elective deferrals under Section 4.1(a) and any Fail-Safe Contributions made under this Section, are considered to be amounts deferred pursuant to Section 401(k) of the Code. For purposes of this Section, these amounts are referred to as the "deferred amounts." For purposes of the "actual deferral percentage test" described below, (i) such deferred amounts must be made before the last day of the twelve (12)-month period immediately following the Plan Year to which the contributions relate, and (ii) the deferred amounts relate to Compensation that either (A) would have been received by the Participant in the Plan Year but for the Participant's election to make deferrals, or (B) is attributable to services performed by the Participant in the Plan Year and, but for the Participant's election to make deferrals, would have been received by the Participant within two and one-half (2'/2) months after the close of the Plan Year. The Employer shall maintain records sufficient to demonstrate satisfaction of the actual deferral percentage test and the deferred amounts used in such test.

As of the last day of each Plan Year, the deferred amounts for the Participants who are Highly-Compensated Employees for the Plan Year shall satisfy either of the following tests:

(1) The actual deferral percentage for the eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the actual deferral percentage for eligible Participants who are Nonhighly-Compensated Employees for the current Plan Year multiplied by 1.25; or

(2) The actual deferral percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the actual deferral percentage of eligible Participants who are Nonhighly-Compensated Employees for the current Plan Year multiplied by two (2), provided that the actual deferral percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year does not exceed the actual deferral percentage for eligible Participants who are Nonhighly-Compensated Employees by more than two (2) percentage points.

For purposes of the above tests, the "actual deferral percentage" shall mean for a specified group of Participants (either Highly Compensated Employees or Nonhighly-Compensated Employees) for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) deferred amounts

actually paid over to the Trust on behalf of such Participant for the Plan Year to (2) the Participant's compensation (within the meaning of Section 1.6 of the Plan if such definition satisfies Section 414(s) of the Code) or, if the Employer chooses, Participant's compensation determined by using any other definition of compensation that satisfies the nondiscrimination requirements of Section 414(s) of the Code and the regulations thereunder. For purposes hereof, the Participant's compensation shall be referred to as "414(s) Compensation." An Employer may limit the period taken into account for determining 414(s) Compensation 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. Deferred amounts on behalf of any Participant shall include (1) any Elective Deferrals made pursuant to the Participant's deferral election (including Excess Elective Deferrals of Highly Compensated Employees), but excluding (a) Excess Elective Deferrals of Nonhighly-Compensated Employees that arise solely from Elective Deferrals made under the Plan or plans of this Employer and (b) Elective Deferrals that are taken into account in the actual contribution percentage test (provided the actual deferral percentage test is satisfied both with and without exclusion of these Elective Deferrals); and (2) Fail-Safe Contributions. For purposes of computing Actual Deferral Percentages, a Participant shall mean any Employee who is eligible to make Elective Deferrals under the Plan for all or a portion of the Plan Year and shall include any Employee whose eligibility to make Elective Deferrals is suspended because of an election (other than certain one-time elections) not to participate, a distribution, or a loan; an Employee who cannot make Elective Deferrals because of the limitations under Section 415 of the Code; and an Employee who would be a Participant but for the failure to make required contributions to another plan. In addition, an Employee who would be a Participant but for failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

For purposes of this Section 10.2, the actual deferral percentage for any eligible Participant who is a Highly-Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals allocated to his account under two (2) or more plans or arrangements described in Code Section 401(k) that are maintained by the Employer or any employer who is a related group member (within the meaning of Section 10.1) shall be determined as if all such deferrals were made under a single arrangement. In the event that this Plan satisfies the requirements of Code Section 401(k), 401(a)(4) or 410(b) only if aggregated with one (1) or more other plans, or if one (1) or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this Plan, then the provisions of this Section 10.2 shall be applied by determining the actual deferral percentage of eligible Participants as if all such plans were a single plan. If the Employer elects by Plan amendment to use the prior year testing method, any adjustments to the Nonhighly-Compensated Employee actual deferral percentage for the prior year shall be made in accordance with the Final 401(k) and 401(m) Regulations. Plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have

the same Plan Year and use the same average actual deferral percentage testing method.

Notwithstanding anything in this Section to the contrary, the provisions of Section 401(k)(3)(F) of the Code may be used to exclude all Nonhighly-Compensated Employees who have not satisfied the minimum age and service requirements of Section 410(a)(1)(A) of the Code from the ADP Test. For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Section 410(b) of the Code provided such date is applied on a consistent and uniform basis to all Participants.

The determination and treatment of deferred amounts and the actual deferral percentage of any Participant shall be subject to the prescribed requirements of the Secretary of the Treasury.

In the event the actual deferral percentage test is not satisfied for a Plan Year, the Employer, in its discretion, may make a Fail-Safe Contribution for eligible Participants who are Nonhighly-Compensated Employees, to be allocated among their Accounts in proportion to their compensation for the Plan Year. For purposes of this paragraph, "compensation" shall mean compensation used for the actual deferral percentage test.

(b) *Distributions of Excess Contributions.*

(1) In General. If the actual deferral percentage test of Section 10.2(a) is not satisfied for a Plan Year, then the "excess contributions", and income allocable thereto, shall be distributed, to the extent required under Treasury regulations, no later than the last day of the Plan Year following the Plan Year for which the excess contributions were made. However, if such excess contributions are distributed later than two and one-half ($2^1/_2$) months (or such longer period as permitted by applicable law and/or regulatory guidance) following the last day of the Plan Year in which such excess contributions were made, a ten percent (10%) excise tax shall be imposed upon the Employer with respect to such excess contributions.

(2) Excess Contributions. For purposes of this Section, "excess contributions" shall mean, with respect to any Plan Year, the excess of:

(A) The aggregate amount of Employer contributions actually taken into account in computing the numerator of the actual deferral percentage of Highly-Compensated Employees for such Plan Year, over

(B) The maximum amount of such contributions permitted by the ADP Test under Section 10.2(a) (determined by hypothetically reducing contributions made on behalf of Highly-Compensated Employees in order of the actual deferral percentages, beginning with the highest of such percentages).

Excess contributions shall be allocated to the Highly-Compensated Employees with the highest dollar amounts of contributions taken into account in calculating the actual deferral percentage test for the year in

which the excess arose, beginning with the Highly-Compensated Employee with the highest dollar amount of such contributions and continuing in descending order until all the excess contributions have been allocated. For purposes of the preceding sentence, the "highest dollar amount" is determined after distribution of any excess deferrals. To the extent a Highly-Compensated Employee has not reached his catch-up contribution limit (set forth in Section 4.1(e) of the Plan), excess deferrals allocated to such Highly-Compensated Employee shall be treated as catch-up contributions and shall not be treated as excess contributions.

Notwithstanding anything in this Section to the contrary, the amount of excess contributions to be distributed with respect to a Highly Compensated Employee for a Plan Year shall be reduced by the amount of excess deferrals previously distributed to such Highly Compensated Employee for the taxable year that ends in the same Plan Year. Further, the amount of excess deferrals to be distributed with respect to a Highly Compensated Employee for a taxable year shall be reduced by the amount of excess contributions previously distributed to such Highly Compensated Employee for the Plan Year which begins in such taxable year.

(3) Determination of Income. Excess contributions shall be adjusted for any income or loss. The income or loss allocable to excess contributions allocated to each Participant shall be the income or loss allocable to the Participant's deferred amounts for the Plan Year multiplied by a fraction, the numerator of which is the excess contributions made on behalf of the Participant for the Plan Year, and the denominator of which is the Participant's Account balance attributable to the Participant's deferred amounts on the last day of the Plan Year.

(4) Accounting for Excess Contributions. Excess contributions shall be distributed from that portion of the Participant's Account attributable to such deferred amounts to the extent allowable under Treasury regulations.

ARTICLE ELEVEN--LIMITATION ON ANNUAL ADDITIONS

11.1 RULES AND DEFINITIONS

(a) *Rules.* The following rules shall limit additions to Participants' Accounts:

(1) If the Participant does not participate, and has never participated, in another qualified plan maintained by the Employer, the amount of annual additions which may be credited to the Participant's Account for any limitation year shall not exceed the lesser of the "maximum permissible" amount (as hereafter defined) or any other limitation contained in this Plan. If the Employer contribution that would otherwise be allocated to the Participant's Account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount allocated shall be reduced so that the annual additions for the limitation year shall equal the maximum permissible amount.

(2) Prior to determining the Participant's actual 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 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 shall be determined on the basis of the Participant's actual compensation for the limitation year.

(4) If the limitations of Section 415 of the Code are exceeded, such excess amount shall be corrected in accordance with the requirements of applicable law, including pursuant to the Employee Plans Compliance Resolution System.

(5) If, in addition to this Plan, the Participant is covered under another defined contribution 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 which provides an annual addition, the annual additions which may be credited to a Participant's account under all such plans for any such limitation year shall not exceed the maximum permissible amount. Benefits shall be reduced under any discretionary defined contribution plan before they are reduced under

any defined contribution pension plan. If both plans are discretionary contribution plans, they shall first be reduced under this Plan. Any excess amount attributable to this Plan shall be disposed of in the manner described in Section 11.1(a)(4).

(b) *Definitions.*

(1) Annual additions: The following amounts credited to a Participant's Account for the limitation year shall be treated as annual additions:

(A) Employer contributions;

(B) Elective deferrals (within the meaning of Section 4.1);

(C) Employee after-tax contributions, if any;

(D) Forfeitures, if any; and

(E) Amounts allocated after March 31, 1984 to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer. Also, 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 Section 419A(d)(3), and amounts under a welfare benefit fund, as defined in Section 419(e), maintained by the Employer, shall be treated as annual additions to a defined contribution plan.

Employer and employee contributions taken into account as annual additions shall include "excess contributions" as defined in Section 401(k)(8)(B) of the Code, "excess aggregate contributions" as defined in Section 401(m)(6)(B) of the Code, and "excess deferrals" as defined in Section 402(g) of the Code, regardless of whether such amounts are distributed, recharacterized or forfeited, unless such amounts constitute excess deferrals that were distributed to the Participant no later than April 15 of the taxable year following the taxable year of the Participant in which such deferrals were made.

For this purpose, any excess amount applied under Section 11.1(a)(4) in the limitation year to reduce Employer contributions shall be considered annual additions for such limitation year.

(2) Compensation: For purposes of determining maximum permitted benefits under this Section, compensation shall include all of a Participant's earned income, wages, differential wage payments as defined by Section 3401(h)(2) of the Code, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer, including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses, elective deferrals (as defined in Section 402(g)(3) of the Code) made by an Employee to the Plan and any amount contributed or deferred by an Employee on an elective basis and not includable in the gross income of the Employee under Section 125, 132(f), or 457 of the Code. Notwithstanding the foregoing, Compensation for purposes of this Section shall exclude the following:

(A) Except as provided in the preceding paragraph of this Section 11.1(b)(2), Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which

contributed, or Employer contributions under a simplified employee pension plan (funded with individual retirement accounts or annuities) to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(B) 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;

(C) Amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option;

(D) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee); and

(E) Amounts in excess of the applicable Code Section 401(a)(17) limit.

Compensation shall be measured on the basis of compensation paid in the limitation year.

Any compensation described in this Section 11.1(b)(2) does not fail to be Compensation merely because it is paid after the Participant's severance from employment with the Employer, provided the Compensation is paid by the later of $2^1/_2$ months after severance from employment with the Employer or the end of the limitation year that includes the date of severance from employment. In addition, payment for unused bona fide sick, vacation or other leave shall be included as Compensation if (i) the Participant would have been able to use the leave if employment had continued, (ii) such amounts are paid by the later of 2'/2 months after severance from employment with the Employer or the end of the Plan Year that includes the date of severance from employment and (iii) such amounts would have been included as Compensation if they were paid prior to the Participant's severance from employment with the Employer.

(3) Defined contribution dollar limitation: This shall mean $40,000, as adjusted under Section 415(d) of the Code.

(4) Employer: This term refers to the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code, as modified by Section 415(h)), commonly-controlled

trades or businesses (as defined in Section 414(c), as modified by Section 415(h)), or affiliated service groups (as defined in Section 414(m)) of which the Employer is a part, or any other entity required to be aggregated with the Employer under Code Section 414(o).

(5) Limitation year: This shall mean the Plan Year, unless the Employer elects a different twelve (12) consecutive month period. The election shall be made by the adoption of a Plan amendment by the Employer. 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.

(6) Maximum permissible amount: Except to the extent permitted under Section 4.1(e) and Section 414(v) of the Code, if applicable, this shall mean an amount equal to the lesser of the defined contribution dollar limitation or one hundred percent (100%) of the Participant's compensation for the limitation year. If a short limitation year is created because of an amendment changing the limitation year to a different twelve (12)-consecutive month period, the maximum permissible amount shall not exceed the defined contribution dollar limitation multiplied by the following fraction:

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

ARTICLE TWELVE--AMENDMENT AND TERMINATION

12.1 AMENDMENT. The Trustees reserve the right to amend, or modify the Plan at any time, or from time to time, in whole or in part. Any such amendment shall become effective under its terms upon adoption by the Trustees, or named fiduciary, as the case may be. No amendment shall be made to the Plan which shall:

(a) make it possible (other than as provided in Section 14.3) for any part of the corpus or income of the Trust Fund (other than such part as may be required to pay taxes and administrative expenses) to be used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries;

(b) decrease a Participant's Account balance, or otherwise place greater restrictions or conditions on a Participant's rights to Section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Section 411(a)(3) through (11) of the Code;

(c) eliminate an optional form of payment (unless permitted by applicable law) with respect to benefits accrued as of the later of (i) the date such amendment is adopted, or (ii) the date the amendment becomes effective; or

(d) alter the schedule for vesting in a Participant's Account with respect to any Participant with three (3) or more Years of Service for vesting purposes without his consent or deprive any Participant of any nonforfeitable portion of his Account.

Notwithstanding paragraph (b) above, a Participant's Account balance may be reduced to the extent permitted under Section 412(d)(2) of the Code or to the extent permitted under Treasury Regulations Sections 1.411(d)-3 and 1.411(d)-4. For purposes of paragraph (b) above, a Plan amendment which has the effect of decreasing a Participant's Account balance, with respect to benefits attributable to service before the amendment, shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's employer-derived contribution will not be less than the percentage computed under the Plan without regard to such amendment. The application of Section 411(a) nonforfeitability provisions to Section 411(d)(6) protected benefits shall apply to amendments adopted after August 9, 2006.

Notwithstanding the other provisions of this Section or any other provisions of the Plan, any amendment or modification of the Plan may be made retroactively if necessary or appropriate within the remedial amendment period to conform to or to satisfy the conditions of any law, governmental regulation, or ruling, and to meet the requirements of the Employee Retirement Income Security Act of 1974, as it may be amended.

If any corrective amendment (within the meaning of Section 1.401(a)(4)-11(g) of the IRS Treasury Regulations) is made after the end of a Plan Year, such amendment shall satisfy the requirements of Section 1.401(a)(4)-11(g)(3) and (4) of the IRS Treasury Regulations.

12.2 TERMINATION OF THE PLAN. The Trustees reserve the right at any time and in their sole discretion to discontinue payments under the Plan and to terminate the Plan. In the event the Plan is terminated, or upon complete discontinuance of contributions under the Plan, the rights of each Participant to his Account on the date of such termination or discontinuance of contributions, to the extent of the fair market value under the Trust Fund, shall become fully vested and nonforfeitable. The Trustees shall distribute the Trust Fund in accordance with the Plan's distribution provisions to the Participants and their Beneficiaries, each Participant or Beneficiary receiving a portion of the Trust Fund equal to the value of his Account as of the date of distribution. These distributions may be implemented by the continuance of the Trust and the distribution of the Participants' Account shall be made at such time and in such manner as though the Plan had not terminated, or by any other appropriate method, including rollover into Individual Retirement Accounts. Upon distribution of the Trust Fund, the Trustees shall be discharged from all obligations under the Trust and no Participant or Beneficiary shall have any further right or claim therein. In the event of the partial termination of the Plan, the Accounts of all affected Participants shall become fully vested and nonforfeitable.

In the event of the termination of the Plan, any amounts to be distributed to Participants or Beneficiaries who cannot be located shall be handled in accordance with the provisions of applicable law (which may include the establishment of an account for such Participant or Beneficiary).

ARTICLE THIRTEEN--TOP-HEAVY PROVISIONS

13.1 APPLICABILITY. The provisions of this Article shall become applicable only for any Plan Year in which the Plan is a Top-Heavy Plan (as defined in Section 13.2(b)) and only if, and to the extent, required under Section 416 of the Code and the regulations issued thereunder.

13.2 DEFINITIONS. For purposes of this Article, the following definitions shall apply:

(a) "Key Employee": "Key Employee" shall mean 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), a five percent (5%) owner of the Employer, or a one percent (1%) owner of the Employer having annual compensation of more than $150,000. For this purpose, annual compensation shall mean compensation as defined in Section 11.1(b)(2) of the Plan. The determination of who is a Key Employee (including the terms "5% owner" and "1% owner") shall be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(b) "Top-Heavy Plan":

(1) The Plan shall constitute a "Top-Heavy Plan" if any of the following conditions exist:

(A) The top-heavy ratio for the Plan exceeds sixty percent (60%) and the Plan is not part of any required aggregation group or permissive aggregation group of plans; or

(B) The Plan is part of a required aggregation group of plans (but is not part of a permissive aggregation group) and the top-heavy ratio for the group of plans exceeds sixty percent (60%); or

(C) The Plan is a part of a required aggregation group of plans and part of a permissive aggregation group and the top-heavy ratio for the permissive aggregation group exceeds sixty percent (60%).

(2) If the Employer maintains one (1) or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer maintains or has maintained one (1) or more defined benefit plans which have covered or could cover a Participant in this Plan, the top-heavy ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the actuarial equivalents of accrued benefits under the defined benefit plans for all Key Employees, and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the actuarial equivalents of accrued benefits under the defined benefit plans for all Participants.

Both the numerator and denominator of the top-heavy ratio shall include any distribution of an account balance or an accrued benefit made in the one (1)-year period ending on the determination date and any contribution due to a defined contribution pension plan but unpaid as of the determination date. However, in the case of any distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting a five (5)-year period for a one (1)-year period. In determining the accrued benefit of a non-Key Employee who is participating in **a** plan that is part of a required aggregation group, the method of determining such benefit shall be either (i) in accordance with the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Employer or any member of the Employer's related group (within the meaning of Section 2.4(b)), 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 accrual rate of Code Section 411(b)(1)(C).

(3) For purposes of (1) and (2) above, the value of account balances and the actuarial equivalents of accrued benefits shall be determined as of the most recent Valuation Date that falls within or ends with the twelve (12)-month period ending on the determination date. The account balances and accrued benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year shall be disregarded. The accrued benefits and account balances of Participants who have performed no service with any Employer maintaining the plan for the one (1)-year period ending on the determination date shall be disregarded. The calculations of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account shall be made under Section 416 of the Code and regulations issued thereunder. Deductible Employee contributions shall not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits shall be calculated with reference to the determination dates that fall within the same calendar year.

(4) Definition of terms for Top-Heavy status:

(A) **"Top-heavy ratio"** shall mean the following:

(i) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer has never maintained any defined benefit plans which have covered or could cover a Participant in this Plan, the top-heavy ratio is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the determination date, and the denominator of which is the sum of the account balances of all Participants as of the determination date. Both the numerator and the denominator shall be increased by any

contributions due but unpaid to a defined contribution pension plan as of the determination date.

(B) **"Permissive aggregation group"** shall mean 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 Sections 401(a)(4) and 410 of the Code.

(C) **"Required aggregation group"** shall mean (i) each qualified plan of the Employer (including any terminated plan) in which at least one Key Employee participates or participated at any time during the Plan Year containing the Determination date or any of the four preceding Plan Years, and (ii) any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Section 401(a)(4) or 410 of the Code.

(D) **"Determination date"** shall mean, 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" shall mean the last day of that Plan Year.

(E) **"Valuation Date"** shall mean the last day of the Plan Year.

(F) Actuarial equivalence shall be based on the interest and mortality rates utilized to determine actuarial equivalence when benefits are paid from any defined benefit plan. If no rates are specified in said plan, the following shall be utilized: pre- and post-retirement interest -- five percent (5%); post-retirement mortality based on the Unisex Pension (1984) Table as used by the Pension Benefit Guaranty Corporation on the date of execution hereof

13.3 ALLOCATION OF EMPLOYER CONTRIBUTIONS AND FORFEITURES FOR A TOP-HEAVY PLAN YEAR.

(a) Except as otherwise provided below, in any Plan Year in which the Plan is a Top-Heavy Plan, the Employer contributions and forfeitures allocated on behalf of any Participant who is a non-Key Employee shall not be less than the lesser of three percent (3%) of such Participant's compensation (as defined in Section 11,1(b)(2) and as limited by Section 401(a)(17) of the Code) or the largest percentage of Employer contributions, and elective deferrals (within the meaning of Section 4.1), and forfeitures (if allocated) as a percentage of the Key Employee's compensation (as defined in Section 11.1(b)(2) and as limited by Section 401(a)(17) of the Code), allocated on behalf of any Key Employee for that Plan Year. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation or would have received a lesser allocation for the Plan Year because of insufficient Employer contributions under Section 4.2, the Participant's failure to

complete one thousand (1,000) Hours of Service, the Participant's failure to make elective deferrals under Section 4.1, or compensation is less than a stated amount.

(b) The minimum allocation under this Section shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

(c) Elective deferrals may not be taken into account for the purpose of satisfying the minimum allocation. However, Employer matching contributions may be taken into account for the purpose of satisfying the minimum allocation.

(d) For purposes of the Plan, a non-Key Employee shall be any Employee or Beneficiary of such Employee, any former Employee, or Beneficiary of such former Employee, who is not or was not a Key Employee during the Plan Year ending on the determination date.

(e) If no defined benefit plan has ever been part of a permissive or required aggregation group of plans of the Employer, the contributions and forfeitures under this Section shall be offset by any allocation of contributions and forfeitures under any other defined contribution plan of the Employer with a Plan Year ending in the same calendar year as this Plan's Valuation Date.

(f) There shall be no duplication of the minimum benefits required under Code Section 416. Benefits shall be provided under defined contribution plans before under defined benefit plans. If a defined benefit plan (active or terminated) is part of the permissive or required aggregation group of plans, the allocation method of subparagraph (a) above shall apply, except that "3%" shall be increased to "5%."

13.4 VESTING. The provisions contained in Section 6.1 relating to vesting shall continue to apply in any Plan Year in which the Plan is a Top-Heavy Plan, and apply to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee contributions and elective deferrals under Section 4.1, including benefits accrued before the effective date of Section 416 and benefits accrued before the Plan became a Top-Heavy Plan.

Payment of a Participant's vested Account balance under this Section shall be made in accordance with the provisions of Article Seven.

ARTICLE FOURTEEN--MISCELLANEOUS PROVISIONS

14.1 PLAN DOES NOT AFFECT EMPLOYMENT. Neither the creation of this Plan, any amendment thereto, the creation of any fund nor the payment of benefits hereunder shall be construed as giving any legal or equitable right to any Employee or Participant against an Employer, its officers or Employees, or against the Trustees. All liabilities under this Plan shall be satisfied, if at all, only out of the Trust Fund held by the Trustees. Participation in the Plan shall not give any Participant any right to be retained in the employ of any Employer.

14.2 REPAYMENTS TO THE EMPLOYER. Notwithstanding any provisions of this Plan to the contrary:

(a) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer because of a mistake of fact or law may be returned to the Employer within six (6) months after the Trustees determine that contributions were made by such mistake, at their sole discretion.

(b) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer shall be refunded to the Employer, to the extent such contribution is predicated on the deductibility thereof under the Code and the income tax deduction for such contribution is disallowed. Such amount shall be refunded within one (1) taxable year after the date of such disallowance or within one (1) year of the resolution of any judicial or administrative process with respect to the disallowance. All Employer contributions hereunder are expressly contributed based upon such contributions' deductibility under the Code.

14.3 BENEFITS NOT ASSIGNABLE. Except as provided in Section 414(p) of the Code with respect to "qualified domestic relations orders," or except as provided in Section 401(a)(13)(C) of the Code with respect to certain judgments and settlements, the rights of any Participant or his Beneficiary to any benefit or payment hereunder shall not be subject to voluntary or involuntary alienation or assignment.

With respect to any "qualified domestic relations order" relating to the Plan, the Plan shall permit distribution to an alternate payee under such order at any time, irrespective of whether the Participant has attained his "earliest retirement age" (within the meaning of Section 414(p)(4)(B) of the Code) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of his earliest retirement age shall, however, be available only if the order specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this paragraph shall, however, give a Participant a right to receive distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not otherwise permitted under the Plan or under said Section 414(p) of the Code.

14.4 MERGER OF PLANS. In the case of any merger or consolidation of this Plan with, or transfer of the assets or liabilities of the Plan to, any other plan, the terms of such merger, consolidation or transfer shall be such that each Participant would receive (in the event of termination of this Plan or its successor immediately thereafter) a benefit which is no less than what the Participant would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer.

14.5 INVESTMENT EXPERIENCE NOT A FORFEITURE. The decrease in value of any Account due to adverse investment experience shall not be considered an impermissible "forfeiture" of any vested balance.

14.6 CONSTRUCTION. Wherever appropriate, the use of the masculine gender shall be extended to include the feminine and/or neuter or vice versa; and the singular form of words shall be extended to include the plural; and the plural shall be restricted to mean the singular.

14.7 GOVERNING DOCUMENTS. A Participant's rights shall be determined under the terms of the Plan as in effect at the Participant's date of termination from Covered Employment, or, if later, and to the extent permitted by applicable law, as determined under the terms of the Plan.

14.8 GOVERNING LAW. The provisions of this Plan shall be construed under the laws of the state of Illinois, except to the extent such laws are preempted by Federal law.

14.9 HEADINGS. The Article headings and Section numbers are included solely for ease of reference. If there is any conflict between such headings or numbers and the text of the Plan, the text shall control.

14.10 COUNTERPARTS. This Plan may be executed in any number of counterparts, each of which shall be deemed an original; said counterparts shall constitute **but one and the same instrument,** which may be sufficiently evidenced by any one counterpart.

14.11 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN. In the event that all or any portion of the distribution payable to a Participant or to a Participant's Beneficiary hereunder shall, at the expiration of five (5) years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, the amount so distributable may be forfeited and used to pay Plan expenses. In the event a Participant or Beneficiary is located subsequent to the forfeiture of his Account balance, such Account balance shall be restored.

14.12 DISTRIBUTION TO MINOR OR LEGALLY INCAPACITATED INDIVIDUAL. In the event any benefit is payable to a minor or to a person deemed to be incompetent or to a person otherwise under legal disability, or who is by sole reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his property, the Administrator, may direct the Trustee to make payment of such benefit to the minor's or legally incapacitated person's court appointed guardian, person designated in a valid power of attorney, or any other person authorized under state law. The receipt of any such payment or distribution shall be a complete discharge of liability for Plan obligations.