IBEW NECA CONDUIT 401k PLAN

(Effective April 1, 2021)

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WHEREAS, the Board of Trustees of the IBEW NECA Conduit 401k Plan (hereinafter referred to as the "Trustees") wishes to adopt a discretionary contribution plan for the benefit of eligible Employees which allows for elective deferrals under Section 401(k) of the Internal Revenue Code; and

WHEREAS, the Trustees have authorized the adoption of the IBEW NECA Conduit 401k Plan (hereinafter referred to as the "Plan"), effective as of April 1, 2021; and

WHEREAS, it is intended that the Plan is to be a qualified profit sharing plan under Section 401(a) and 501(a) of the Internal Revenue Code and is to be 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 qualify under Section 401(k) of the Internal Revenue Code; and

WHEREAS, in connection with the establishment of the Plan, the following plans are merging into the Plan effective as of April 1, 2021: The Electricians Salary Deferral Plan of Local 146, IBEW/Midstate Division; the I.B.E.W. Local 538 401(k) Salary Deferral & Retirement Plan; the IBEW Local 193 401(k) Plan; the IBEW-NECA Benefits Administration Association 401(k) Profit Sharing Plan; and The Electricians Salary Deferral Plan of Local No. 601, Champaign-Urbana/Streator-Pontiac Division Chapter, NECA; and

WHEREAS, the Plan is drafted to reflect such plan mergers into the Plan;

NOW, THEREFORE, the Plan is hereby adopted as follows, with this restated Plan constituting an amendment of any plan merged into the Plan with respect to changes required by applicable law:

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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, if any, (b) amounts of Compensation contributed to the Plan pursuant to the Participant's election under Section 3.1, (c) any amounts rolled over or transferred to this Plan under Section 3.5 from another qualified retirement plan, or from another qualified plan in connection with a plan merger, and (d) the allocation of Trust investment experience.

1.2 **"ADMINISTRATOR"** shall mean the Board of Trustees, or other entity appointed in accordance with the provisions of Article Nine hereof.

1.3 **"ASSOCIATION"** shall mean the Illinois Chapter of the National Electrical Contractors Association, and its successors.

1.4 **"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.

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

1.6 **"COLLECTIVE BARGAINING AGREEMENT"** shall mean an agreement between the Union or Association and an Employer that requires contributions to the Plan, including any extension, amendment, modification, renewal or memorandum of understanding of such an agreement, or any substitution or successor agreement or agreements and any continuation of an obligation to contribute to the Plan.

1.7 **"COMPENSATION"** shall mean the compensation paid to a Participant by the Employer for the Plan Year and shall be defined as follows:

Wages under Code Section 3401(a) – Compensation means an Employee's wages within the meaning of Section 3401(a) of the Code for purposes of income tax withholding at the source but shall disregard any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Notwithstanding the foregoing, (a) Compensation prior to the Effective Date shall be excluded for purposes of Sections 3.1, 3.2 and 3.3, and (b) Compensation while not in Covered Employment shall be excluded for purposes of Sections 3.1, 3.2 and 3.3.

Any Compensation paid after the Participant's severance from employment with the Employer shall not be treated as Compensation for purposes of Section 3.1, Section 3.2 and Section 3.3.

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 10.1, and for purposes of defining Compensation under this Section, Section 1.17 and Article Twelve 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.

1.8 **"CONTRIBUTION AGREEMENT"** shall mean a written agreement to which (a) an Employer is a party; (b) incorporates the Trust by reference; (c) obligates an Employer to transmit elective deferrals (as described in Section 3.1) to the Plan, and (d) specifies the detailed basis upon which Employer contributions (if any) are to be made by an Employer to the Plan. The Trustees shall have the exclusive authority to approve and/or enter into a Contribution Agreement with any Employer.

The Contribution Agreement may be either (a) a Collective Bargaining Agreement, or (b) an agreement between an Employer and the Trustees.

1.9 **"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.

1.10 **"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" only if he has received confirmation from the Social Security Administration that he is entitled to receive Social Security disability benefits.

1.11 **"EARLY RETIREMENT AGE** shall mean (a) for a Participant covered under a Contribution Agreement with IBEW Local 193, age fifty-nine and one-half (59½) , and (b) for a Participant covered under any other Contribution Agreement, age fifty-five (55).

1.12 **"EARLY RETIREMENT DATE"** shall mean the date on which the Participant has a severance from employment after attaining Early Retirement Age and makes a valid election to receive (or commence) distribution from the Plan.

1.13 **"EFFECTIVE DATE."** The Effective Date of this Plan is April 1, 2021. No Employee who ceased Covered Employment with the Employer prior to this date shall have any rights hereunder unless that Employee either subsequently returns to Covered Employment with the Employer or has a benefit from another qualified retirement plan transferred to this Plan.

1.14 **"EMPLOYEE"** shall mean a person employed by an Employer for whom a contribution is required to be made to the Plan pursuant to a Contribution Agreement.

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

The Union, the Association and the Trustees may be an Employer for the limited purpose of paying elective deferrals (as defined in Section 3.1) and Employer contributions to the Plan for the benefit of Employees of the Union, the Association and the Plan by entering into a Contribution Agreement .

1.16 **"FAIL-SAFE CONTRIBUTION"** shall mean a qualified nonelective contribution which is a contribution (other than matching contributions or Qualified Matching Contributions (within the meaning of Section 9.2)) made by the Employer and allocated to Participants' Accounts that the Participants may not elect to receive in cash until distribution from the Plan; that are nonforfeitable when allocated to Participants' Accounts; and that are distributable only in accordance with the distribution restrictions (other than hardships) applicable to elective deferrals.

1.17 **"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 10.1(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".

1.18 **"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.

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

1.20 **"NORMAL RETIREMENT AGE"** shall mean (a) age 60 for Participants covered by a Contribution Agreement with I.B.E.W. Local 538 and (b) for a Participant covered under any other Contribution Agreement, age 65.

1.21 **"NORMAL RETIREMENT DATE"** shall mean the date a Participant has a severance from employment after attaining Normal Retirement Age and makes a valid election to receive (or commence) distribution from the Plan.

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

1.23 **"PLAN"** shall mean the Chicago I.B.E.W. Conduit 401k Plan, as set forth herein and as may be amended from time to time.

1.24 **"PLAN YEAR"** shall mean the twelve (12)-consecutive month period beginning January 1 and ending December 31. The Plan's first Plan Year is a short Plan Year which begins on April 1, 2021 and ends December 31, 2021.

1.25 **"SPOUSE"** shall mean the legally married spouse of a Participant determined in accordance with IRS and/or Department of Labor guidance applicable to the Plan. The Plan also recognizes the marriage of a Participant to a same-sex spouse that was valid in the state where it was entered into regardless of whether the Participant is domiciled in a state that recognizes same-sex marriages.

1.26 **"TRUST"** shall mean the Agreement and Declaration of Trust of the I.B.E.W. Conduit 401k Trust Fund, as amended from time to time. "Trust Fund" shall mean any and all property held by the Trustees pursuant to such Agreement and Declaration of Trust, together with income therefrom.

1.27 **"TRUSTEES"** shall mean the Board of Trustees of the IBEW NECA Conduit 401k Plan, the members of which are appointed from time to time by the Union and the Association, in accordance with the Trust.

1.28 **"UNION"** shall mean the International Brotherhood of Electrical Workers Local Unions 146, 193, 538 and 601.

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

1.30 **"YEAR OF SERVICE" or "SERVICE"** is credited to an Employee as follows: an Employee shall be credited with a Year of Service if he completes at least one thousand (1,000) Hours of Service during the twelve (12)-consecutive month period commencing on his Employment Date. If an Employee fails to be credited with at least one thousand (1,000) Hours of Service during that computation period, he shall be credited with a Year of Service for such purposes if he is credited with at least one thousand (1,000) Hours of Service in any Plan Year commencing on or after his Employment Date. Notwithstanding the foregoing, any Participant of a plan that is merged into the Plan shall have all prior

service with any predecessor employer that is credited under such plan treated as Service with the Employer for purposes of eligibility under Section 2.1 and vesting under Section 5.1; provided, there shall be no double crediting of the same service, and any change in computation period or service method shall be done in accordance with applicable regulatory guidance. A "Break in Service" shall be a twelve (12)-month computation period (as used for measuring Years of Service for eligibility purposes) in which an Employee or Participant is not credited with at least five hundred and one (501) Hours of Service.

ARTICLE TWO--PLAN PARTICIPATION

2.1 **PARTICIPATION.** An Employee shall become a Participant under the Plan effective as of the first day of the month coincident with or next following the later of (a) April 1, 2021, (b) completion of one Hour of Service in Covered Employment, or (c) completion of the eligibility requirements specified in the Contribution Agreement (which requirements cannot be later than attainment of age twenty-one (21) and completion of one (1) Year of Service). An Employee shall be eligible to make elective deferrals under Section 3.1 as soon as administrative practicable after becoming a Participant.

2.2 **PARTICIPATION UPON REEMPLOYMENT.** A Participant who receives a distribution of his entire vested Account shall be eligible to resume participation in the Plan upon reemployment by an Employer, provided that the former Participant satisfies the participation requirements designated in Section 2.1 upon reemployment. Notwithstanding the foregoing to the contrary, a Participant eligible to make elective deferrals (within the meaning of Section 3.1) shall be entitled to commence elective deferrals as soon as administratively possible following his return to participation in the Plan.

2.3 **COMPLIANCE WITH USERRA.** Notwithstanding any provisions of this Plan to the contrary, for reemployments on or after December 12, 1994, Participants shall receive service credit and be eligible to make elective deferrals (as described in Section 3.1) 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. For this purpose, the Administrator shall have the authority and discretion to adopt such lawful rules and procedures, otherwise consistent with the terms of this Plan and applicable law, regarding the administration of contributions, benefits and service credits with respect to qualified military service, as the Administrator deems necessary or appropriate to comply with the preceding sentence.

In addition, the Plan will comply with the applicable provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act") as described in Section 7.6.

2.4 **TERMINATION OF ELIGIBILITY.** In the event a Participant is an Employee but is no longer a member of a class of Employees for whom contributions are required to be made to the Plan pursuant to a Contribution Agreement, and he becomes ineligible to participate, such Employee shall resume participating upon his return to the class of Employees for whom a contribution is required to be made to the Plan; provided, however, that eligibility to make elective deferrals (as described in Section 3.1) with respect to such Employee shall commence as soon as administratively possible following his return to participation in the Plan.

In the event an Employee who is not a member of a class of Employees for whom contributions are required to be made to the Plan pursuant to a Contribution Agreement becomes a member of such class, such Employee shall participate upon becoming a member of a class of Employees for whom contributions are required to be made to the Plan, if such Employee has otherwise satisfied the eligibility requirements of Section 2.1 and would have otherwise previously become a Participant; provided, however, that eligibility to make elective deferrals (as described in Section 3.1) with respect to such Employee shall commence as soon as administratively possible following his becoming a Participant.

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

3.1 ELECTIVE DEFERRALS

(a) *Elections.* A Participant for whom an Employer contribution is required may elect to contribute to the Plan a portion of his Compensation for a Plan Year on a pre-tax basis for the period he is working in the jurisdiction of the Union or Association (or is entitled to the terms and condition of a Contribution Agreement while working outside the jurisdiction of the Union or Association). 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; provided dollar (versus percentage) deferrals may be permitted in accordance with procedures established by the Administrator. For purposes of making elective deferrals pursuant to this Section, only Compensation earned while working in the jurisdiction of the Union or Association (or while the Participant is entitled to the terms and conditions of a Contribution Agreement while working outside the jurisdiction of the Union or Association) shall be considered. 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.

Each Participant may elect to contribute from one percent (1%) to one hundred percent (100%) of such Participant's Compensation. A Participant's election shall remain in effect under the Plan until he elects to cease making elective deferrals.

Notwithstanding the foregoing, any individual who is an Employee on April 1, 2021 and who, on April 1, 2021, had an affirmative deferral election under (i) The Electricians Salary Deferral Plan of Local 146, IBEW/Midstate Division, (ii) the I.B.E.W. Local 538 401(k) Salary Deferral & Retirement Plan, (iii) the IBEW Local 193 401(k) Plan, (iv) the IBEW-NECA Benefits Administration Association 401(k) Profit Sharing Plan, or (v) The Electricians Salary Deferral Plan of Local No. 601, Champaign-Urbana/Streator-Pontiac Division Chapter, NECA , shall continue such affirmative deferral election under the Plan on April 1, 2021, unless and until he elects otherwise in accordance with procedures established by the Administrator.

(b) *Changes in Election.* At any time, 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. Such election shall be effective as soon as administratively feasible thereafter.

(c) *Limitations on Deferrals.* Except to the extent permitted under Section 3.1(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.

The Administrator may, at any time and from time to time, unilaterally amend or revoke a Participant's salary reduction election, or a deemed election, if the Administrator determines that such revocation or amendment is necessary to ensure (1) that a Participant's annual additions for any Plan Year will not exceed the limitations of Section 415 of the Code, (2) compliance with the nondiscrimination tests of Sections 401(k) and/or 401(m) of the Code; (3) compliance with Section 401(a) of the Code; or (4) that contributions made by the Employer to the Plan will be deductible for federal income tax purposes.

(d) *Administrative Rules*. All elections made under this Section 3.1, 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 3.1(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 catch-up contributions. Any intended catch-up contribution shall not be subject to an Employer match.

3.2 EMPLOYER MATCHING CONTRIBUTIONS. Subject to the following provisions of the Plan, for each payroll period (or other period specified in the Contribution Agreement) the Employer shall contribute to the Account of each Participant employed by such Employer the discretionary matching contribution (if any) determined under the terms of the Contribution Agreement.

3.3 EMPLOYER PROFIT-SHARING CONTRIBUTIONS. Subject to the following provisions of the Plan, for each payroll period (or other period specified in the Contribution Agreement) the Employer shall contribute to the Account of each Participant employed by such Employer the discretionary profit sharing contribution (if any) determined under the terms of the Contribution Agreement.

3.4 MERGED IN MONEY PURCHASE PLAN CONTRIBUTIONS. In connection with the establishment of the Plan, amounts from one or more money purchase plans have been

transferred into the Plan. No future money purchase plan contributions shall be made under the Plan, except as otherwise permitted under Section 3.5.

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

(a) 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;

(b) 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;

(c) 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

(d) an individual retirement account , including a SIMPLE IRA; provided, however, that the Employee was a participant in the SIMPLE IRA for at least two (2) years. For this purpose, the two (2) year period begins on the first day on which contributions were deposited to the SIMPLE IRA on behalf the Employee.

Any amounts rolled over on behalf of any Participant who is an Employee shall be nonforfeitable and shall be maintained under a separate Plan account. Any amounts transferred (not rolled over) on behalf of any Participant shall be maintained in accordance with procedures established by the Plan Administrator and shall be subject to the applicable vesting schedule under Section 5.1. Amounts rolled over or transferred 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.

Notwithstanding anything contained herein to the contrary and except for transfers that occur in connection with the establishment of the Plan, in no event shall the Administrator accept on behalf of any Employee a transfer of funds from a qualified plan which would subject the Plan to the provisions of Section 401(a)(11) of the Code.

3.6 TIMING OF CONTRIBUTIONS. Employer contributions shall be made to the Plan consistent with the terms of the Contribution Agreement, but no later than the time prescribed by law for filing the Employer's federal income tax return (including extensions) for its taxable year ending with or within the Plan Year. Elective deferrals under Section 3.1 and loan repayments under Section 7.1 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 FOUR--ACCOUNTING RULES

4.1 INVESTMENT OF ACCOUNTS AND ACCOUNTING RULES

(a) *Investment Funds*. The investment of Participants' Accounts shall be made in a manner consistent with the provisions of the Trust. The Administrator, in its discretion, may allow the Trust to provide for separate funds for the directed investment of each Participant's Account. The Plan shall not permit investments in Employer stock.

(b) *Participant Direction of Investments*. In the event Participants' Accounts are subject to their investment direction, each Participant (including, for this purpose, any former Employee, Beneficiary, or "alternate payee" (within the meaning of Section 414(p)(4)(B) of the Code) with an Account balance) may direct how his Account is to be invested among the available investment funds in the percentage multiples established by the Administrator. In the event a Participant fails to make an investment election, with respect to all or any portion of his Account subject to his investment direction, the Trustees shall invest all or such portion of his Account in the default investment fund to be designated by the Administrator. A Participant may change his investment election, with respect to future contributions and, if applicable, forfeitures, and/or amounts previously accumulated in the Participant's Account, in accordance with procedures established by the Administrator. Any such change in a Participant's investment election shall be effective at such time as may be prescribed by the Administrator. However, where it deems appropriate, and subject to the requirements of applicable law, the Administrator may decline to implement, or otherwise limit the frequency by which a Participant may direct the investment of his Account. If the Plan's recordkeeper or investments are changed, the Administrator may apply such administrative rules and procedures as are necessary to provide for the transfer of records and/or assets, including, without limitation, the suspension of Participant's investment directions, withdrawals and distributions for such period of time as is necessary, and the transfer of Participants' Accounts to designated funds or an interest bearing account until such change has been completed.

If a Participant believes an error was made in implementing his investment directions under this Section, the Participant shall notify the Administrator of such error or suspected error within sixty (60) days following the date on which such error or suspected error was believed to have occurred. Absent extraordinary circumstances, failure to so notify the Administrator shall foreclose the Participant from seeking a correction of any such error and the actions taken by the Administrator under (a) above shall be deemed consistent with the Participant's directions and shall be binding on the Participant, his Beneficiary, and all other parties.

Notwithstanding the foregoing, if an investment manager (within the meaning of Section 3(38) of the Employee Retirement Income Security Act of 1974, as

amended ("ERISA")) is appointed by a named fiduciary pursuant to Section 402(c)(3) of ERISA, a Participant may elect to have such investment manager direct the investment of his Account in accordance with the provisions of the preceding paragraph.

(c) *Allocation of Investment Experience*. As of each Valuation Date, the investment fund(s) 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 fund shall be apportioned among Participants' Accounts within the fund based upon the value of each Account within the fund as of the preceding Valuation Date.

(d) *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.

(e) *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 Article Six or Article Seven, as applicable. 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.

4.2 REDUCTION OF ACCOUNTS. In no event on any Valuation Date shall the total amount in all Accounts plus expenses and reserves payable exceed the market value of the total net assets of the Plan. If such an event should occur, then all existing Accounts shall automatically be proportionately reduced so that the total of all Accounts plus the amount previously established for these expenses and reserves is not more than the total net assets.

4.3 NO RIGHTS CREATED BY ALLOCATION OR VALUATION OF ACCOUNTS. The fact that Account are established and valued as of each Valuation Date shall not cause any Employee, or others, to have any right, title or interest in any assets of the Trust, or in the Accounts, except at the time and under the terms and conditions expressly provided in the Plan.

4.4 SAFE-HARBOR UNDER SECTION 404(c) OF ERISA. It is intended that the Plan shall comply with the requirements of Section 404(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and Title 29 of the Code of Federal Regulations Section 2550.404c-1, and the fiduciaries of the Plan shall, to the extent permitted by the law, be relieved of liability for any losses which are the direct and necessary result of the investment instructions given by any Participant or Beneficiary.

4.5 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 calendar year exceeds the Plan administrative expenses incurred through March 31 (or prior business day) of the following calendar year, 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 such March 31 (or the prior business day) 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 FIVE--VESTING AND RETIREMENT BENEFITS

5.1 **VESTING.** A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals (within the meaning of Section 3.1), Employer matching contributions under Section 3.2, Employer profit-sharing contributions under Section 3.3, transferred money purchase plan contributions under Section 3.4, rollovers from other plans under Section 3.5, transfers from other plans under Section 3.5 (except as provided in this Section 5.1), and Employer Fail-Safe Contributions.

A Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from any Employer contributions transferred to the Plan from a plan merged into the Plan in connection with the establishment of the Plan.

5.2 **FORFEITURES.** The nonvested portion (if any) of a Participant's Account, as determined in accordance with Section 5.1, shall be forfeited as soon as administratively practical following the date on which the Participant receives distribution of his vested Account. Any forfeitures under the Plan shall be used to pay Plan expenses and/or used to restore previously forfeited amounts.

5.3 **NORMAL RETIREMENT.** A Participant who is in Covered Employment 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 Section 5.1. Payment of such Participant's vested Account balance shall be made at the time and in the manner specified in Article Seven. Notwithstanding the foregoing, a Participant who continues Covered Employment after his Normal Retirement Age shall continue to participate under the Plan.

5.4 **DISABILITY.** If a Participant incurs a Disability while in Covered Employment, the Participant shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under Section 5.1. Payment of such Participant's vested Account balance shall be made at the time and in the manner specified in Article Six.

5.5 **EARLY RETIREMENT.** A Participant who ceases Covered Employment on or after Early Retirement Age shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under Section 5.1. Payment shall commence at the time and in a manner specified in Article Six following receipt by the Administrator of the Participant's distribution request.

ARTICLE SIX--MANNER AND TIME OF DISTRIBUTING BENEFITS

6.1 DISTRIBUTABLE EVENTS. The vested Account of a Participant shall become distributable to the Participant (or his Beneficiary or Beneficiaries if the Participant is not then alive) following the occurrence of any of the following events:

(a) the Participant's death;

(b) termination of Covered Employment due to the Participant's Disability;

(c) termination of Covered Employment at or after Early or Normal Retirement Date; or

(d) after termination of Covered Employment.

6.2 MANNER OF PAYMENT. Subject to the provisions of Section 6.6, 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 before commencement of benefits) 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; or

(c) provided the Participant's vested Account exceeds $5,000, in monthly, quarterly, semi-annual or annual installments over a period not exceeding twenty (20) years, subject to the provisions of this Article Six; or

(d) provided the Participant's vested Account, exceeds $5,000, in monthly, quarterly, semi-annual or annual installments over the Participant's life expectancy (or the life expectancy of the Participant and his designated Beneficiary), if elected by the Participant, subject to the provisions of this Article Six; or

(e) provided the Participant's vested Account, exceeds $5,000, in monthly, quarterly, semi-annual or annual installments in specified increments, if elected by the Participant, subject to the provisions of this Article Six; or

(f) provided the Participant's vested Account, exceeds $5,000, in monthly, quarterly, semi-annual or annual installments in a flat dollar amount, if elected by the Participant, subject to the provisions of this Article Six; or

(g) provided the Participant's vested Account exceeds $5,000, in monthly, quarterly, semi-annual or annual installments over the Beneficiary's life expectancy, if elected by the Beneficiary, subject to the provisions of this Article Six; or

(h) provided the Participant's vested Account exceeds $5,000, by purchase of a nontransferable annuity from an insurance company, subject to the provisions of Section 6.6. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of the Plan and applicable law.

Notwithstanding the foregoing provisions of this Section 6.2, and except as otherwise provided in Section 6.6 with respect to amounts transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, option (h) above shall not apply to any distribution requested on or after the adoption of this amended and restated Plan.

6.3 **TIME OF COMMENCEMENT OF BENEFIT PAYMENTS.** Subject to the following provisions of this Section, unless the Participant elects otherwise in accordance with provisions of the Plan, distribution of the Participant's vested Account shall normally be made or commence no later than the sixtieth (60) day after the later of the close of the Plan Year in which: (a) the Participant attains age sixty-five (65) (or Normal Retirement Date, if earlier), (b) occurs the tenth (10^{th}) anniversary of the year in which the Participant commenced participation in the Plan, or (c) the Participant severs employment with the Employer. Distribution shall not be made to a Participant without his consent (and Spouse's consent, if required) if his vested Account exceeds $5,000 and such Account is immediately distributable (within the meaning of Section 1.411(a)-11(c)(4) of the IRS Regulations).

Notwithstanding the foregoing, a Participant's Account may be frozen to prevent the Participant from taking withdrawals, loans and/or distributions from his Account in accordance with the Plan's qualified domestic relations order procedures.

Moreover, if the Participant's vested Account does not exceed $5,000, the Participant's entire vested Account shall be normally distributed to the Participant (or, in the event of the Participant's death, his Beneficiary) in a lump-sum payment as soon as administratively practicable following the date the Participant retires or dies, or as soon as administratively practicable following the date the Participant terminates Covered Employment for a period of twenty-four (24) months. However, in the event of a mandatory distribution to a Participant whose vested Account is greater than $1,000, if the Participant does not elect to have such automatic distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with Section 6.2 or this Section 6.3, then the Plan Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

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 the "required age", 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 ceases Covered Employment (the "required beginning date"). For this purpose, "required age" is (a) age 70½ for Participants born before July 1, 1949, and (b) age 72 for Participants born on or after July 1, 1949.

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.

Notwithstanding the provisions of Section 6.2, in the event distribution is required to be made while the Participant is employed by the Employer 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. In the event the Participant's vested Account is subject to the provisions of Section 6.6 or 6.10, such minimum may be calculated based on assumptions adopted by the Administrator.

6.4 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.

6.5 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 6.2 or Section 6.3.

(3) Requirements of Treasury Regulations Incorporated**.** All distributions required under this Article shall 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, 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 surviving Spouse's life or over a period certain not exceeding the life expectancy of the surviving Spouse (if permitted under Section 6.2 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 age 70½ if the Participant is born before July 1, 1949 or age 72 if the Participant is born on our after July 1, 1949, if later.

(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 6.2 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 6.5(b), other than Section 6.5(b)(2)(A), shall apply as if the surviving Spouse were the Participant.

For purposes of Sections 6.5(b) and 6.5(d), unless Section 6.5(b)(2)(D) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.5(b)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.5(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 6.5(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 6.5(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 6.5(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 6.5(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 6.5(b)(2)(A), this Section 6.5(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 6.8 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 6.5(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 6.3 of the Plan.

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

(1) Notwithstanding the other requirements of this Article and subject to the requirements of Section 6.6, 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.

6.6 JOINT AND SURVIVOR ANNUITY. The provisions of this Section 6.6 shall apply only to (1) the portion of a Participant's vested Account, if any, derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, or (2) the remainder of a Participant's Account, but only prior to the date of adoption of this amended and restated Plan.

(a) ***Annuity Form of Payment:*** If distribution of a Participant's vested Account balance commences during his lifetime his vested Account (which is subject to the provisions of this Section 6.6) 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 not less than fifty percent (50%), and not more than one hundred percent (100%), of the amount of the annuity which is payable during the joint lives of the Participant and his Spouse. The percentage of the survivor annuity under the Plan shall be fifty percent (50%).

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 6.2.

The *"election period"* under this Section shall be the period from the date the annuity is elected to the date prior to the "annuity starting date" (but not more than 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.

An election to waive the applicable annuity form of payment under the Plan must be made in accordance with rules and procedures established by 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:*** 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:

(1) for the life of the Participant, with a survivor annuity for the life of the Spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and his or her Spouse; and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

The "applicable percentage" shall be based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the Participant and his or her Spouse). For this purpose, if the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" shall be seventy-five percent (75%); otherwise, the "applicable percentage" shall be fifty percent (50%).

(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.

6.7 AMOUNT OF DEATH BENEFIT

(a) *Death Before Termination of Employment.* In the event of the death of a Participant while in employed with the Employer in Covered Employment, vesting in the Participant's Account shall be one hundred percent (100%), if not otherwise one hundred percent (100%) vested under Section 5.1, 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 ceasing Covered 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.

6.8 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. 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.

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 non-Spouse 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 a redesignation by the Participant). 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 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.

6.9 DISTRIBUTION OF DEATH BENEFITS. Subject to the provisions of Section 6.3 and 6.10 below, if applicable, the Beneficiary shall be allowed to designate the mode of receiving benefits in accordance with Section 6.2, 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 6.2 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 age seventy and one-half (70½).

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 6.9.

6.10 QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY. The provisions of this Section 6.10 shall apply only to (1) the portion of a Participant's vested Account, if any, derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, or (2) the remainder of a Participant's Account, but only prior to the date of adoption of this amended and restated Plan.

(a) If a Participant dies before distribution of benefits has commenced and is survived by his spouse, the portion of his vested Account which is subject to the provisions of this Section 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 and any number of times 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 6.10(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 accordance with rules and procedures established by 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 given 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 6.8.

(c) The Administrator shall furnish to each Participant, subject to the provisions of this Section 6.10, 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.

6.11 ELIGIBLE ROLLOVER DISTRIBUTIONS. Notwithstanding the foregoing provisions of this Article Seven, the provisions of this Section 6.11 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 as a hardship distribution (within the meaning of Code Section 401(k) and the regulations promulgated thereunder). 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. Finally, a distributee also includes the Employee's or former Employee's non-Spouse designated Beneficiary, in which case, the distribution can only be transferred to an 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 distribution notice required herein, shall include a description of the Participant's right, if any, to defer distribution and the consequences of failing to defer receipt of the distribution in accordance with the requirements of applicable law.

ARTICLE SEVEN--LOANS AND IN-SERVICE WITHDRAWALS

7.1 LOANS

(a) *Permissible Amount and Procedures*. Upon the application of an active Participant, the Administrator may, in accordance with a uniform and nondiscriminatory policy, direct the Trustees to grant a loan to the Participant, which loan shall be secured by the Participant's vested Account balance. In addition, if the Participant is married and any portion of his Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, such Participant's spouse shall be required to consent in writing to the making of the loan. Such written consent must (1) be obtained within the one hundred-eighty (180)-day period preceding the granting of the loan, (2) acknowledge the effect of the loan, and (3) be witnessed by a notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. The rate of interest on any such loan shall be equal to the "Prime Rate" (as reported in *The Wall Street Journal* on the date the loan is initiated) plus two percent 2%. Participant loans shall be treated as segregated investments, and interest repayments shall be credited only to the Participant's Account.

(b) *Limitation on Amount of Loans*. A Participant's loan shall not exceed the lesser of:

(1) $50,000, which amount shall be reduced by the highest outstanding loan balance during the preceding twelve (12)-month period; or

(2) one-half (½) of the vested value of the Participant's Account, determined as of the Valuation Date preceding the date of the Participant's loan.

Any loan must be repaid within five (5) years (or such longer period permitted by law), unless made for the purpose of acquiring the primary residence of the Participant, in which case such loan may be repaid over a longer period of time not to exceed fifteen (15) years. The repayment of any loan must be made in at least quarterly installments of principal and interest; provided, however, that this requirement shall not apply for a period, not longer than one year, or such longer period as may apply under Section 414(u) of the Code, that a Participant is on a leave of absence ("Leave"), either without pay from the Employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan must be repaid by the latest date permitted under Sections 72(p)(2)(B) and 414(u) of the Code and the installments due after the Leave ends (or, unless Section 414(u) of the Code applies, if earlier, upon the expiration of the first year of the Leave) must not be less than those required under the terms of the original loan.

If a Participant defaults on any outstanding loan, the unpaid balance, and any interest due thereon, shall become due and payable in accordance with the terms of the underlying promissory note; provided, however, that such foreclosure on the promissory note and

attachment of security shall not occur until a distributable event occurs in accordance with the provisions of Article Six.

If a Participant terminates employment with an outstanding loan balance, the Participant may, subject to the terms and conditions of the underlying promissory note, continue to make loan repayments. However, in the event the loan goes into default, or to the extent distribution of the Participant's Account is to be made or commenced, the outstanding loan balance shall be charged against the amounts that are otherwise payable to the Participant or the Participant's Beneficiary under the provisions of the Plan. For any Participant with a loan or loans in good standing as of the original Effective Date, loan repayments may be made after termination of employment regardless of anything to the contrary in the underlying promissory note.

In the case of a Participant who has loans outstanding from other plans of the Employer (or a member of the Employer's related group, the Administrator shall be responsible for reporting to the Trustees the existence of said loans in order to aggregate all such loans within the limits of Section 72(p) of the Code.

7.2 **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 vested value of the Participant's Account excluding the portion of a Participant's vested Account, if any, derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, 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 related group and who has an Account under the Plan. .

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, and determined without regard to Section 165(h)(5) of the Code); or (g) pay expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster. 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.

In connection herewith, hardship distributions shall also be permitted by the Participant for the above-referenced educational expenses, funeral expenses and/or medical expenses incurred by a Participant's "Primary Beneficiary". For purposes hereof, a Participant's "Primary Beneficiary" shall mean an individual who is named as a Beneficiary under the Plan pursuant to Section 6.8 and has an unconditional right to all or a portion of the Participant's vested Account under the Plan upon the Participant's death.

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 distribution is not in excess of the amount of the immediate and heavy financial need of the Participant;

(2) The Participant has obtained all currently available distributions (including distributions of ESOP dividends under Section 404(k) of the Code), but not hardship distributions, under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer, and all nontaxable (at the time of the loan) loans currently available under the Plan;

(3) The Participant represents, in accordance with procedures established by the Administrator, that he has insufficient cash or other liquid assets reasonably available to satisfy the financial need. The Administrator may rely on the Participant's representation unless the Administrator has actual knowledge to the contrary.

7.3 WITHDRAWALS AFTER SPECIFIED AGE. After attaining the "specified age", an active Participant may withdraw from the Plan a sum (a) not in excess of the credit balance of his vested Account excluding the portion of a Participant's vested Account, if any, derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 and (b) not less than such minimum amount as the Administrator 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 7.3, "specified age" means age 60 for Participants covered by a Collective Bargaining

Agreement with I.B.E.W. Local 538, and age fifty-nine and one-half (59½) for all other Participants.

7.4 MATCHING CONTRIBUTIONS WITHDRAWALS. An active Participant covered by a Collective Bargaining Agreement with the Association may withdraw from the Plan a sum (a) not in excess of the credit balance of his vested Account attributable to Employer matching contributions merged into the Plan in connection with the establishment of the Plan and (b) not less than such minimum amount as the Administrator 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.

7.5 QUALIFIED RESERVIST DISTRIBUTION. A Participant may elect a "Qualified Reservist Distribution". For purposes of this Section 7.5, a "Qualified Reservist Distribution" is any distribution to a Participant who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals (within the meaning of Section 3.1); (ii) the individual was (by reason of being a member of a reserve component, as defined in Section 101 of Title 37, United States Code) ordered or called to active duty for a period in excess of one hundred seventy-nine (179) days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

7.6 HEART ACT PROVISIONS.

(a) *Death benefits.* In the case of a Participant's death, 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) *Differential wage payments*. For years beginning after December 31, 2008, (i) a Participant receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment, (ii) the differential wage payment shall be treated as Compensation, and (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

Effective as of the dates specified above, the provisions of this Section 7.6 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.

ARTICLE EIGHT --ADMINISTRATION OF THE PLAN

8.1 **PLAN ADMINISTRATION.** The Trustees shall be 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 Union and Association shall designate a person or committee of persons to be the Administrator. The Trust may also designate a person, a committee of persons, and/or other entity as a named fiduciary or named fiduciaries. 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 weighted 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 Union, Association or an 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 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. To the extent required by applicable law, compensation may not be paid by the Plan to full-time Employees of the Union, the Association, the Trustees, or an Employer.

The Administrator shall obtain from the Trustees, 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. As a named fiduciary, the Administrator is required to discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then

prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

8.2 CLAIMS PROCEDURE

Pursuant to procedures established by the Trustees, claims for benefits under the Plan made by a Participant, Beneficiary or the authorized representative of a Participant or Beneficiary (the "claimant") must be submitted in writing to the Trustees. Approved claims shall be processed by the Trustees (or if applicable by the custodian pursuant to instructions from the Trustees authorizing payment as claimed).

If a claim is denied in whole or in part, the Trustees 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:

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

(d) a statement that any appeal of the denial must be made by giving to the Trustees, 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

(e) 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 shall have the right to submit a written request to the Administrator 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 Trustees within the period of time prescribed under (d) above. If the claimant fails to appeal the denial to the Trustees within the prescribed time, the Trustees' adverse determination shall be final, binding and conclusive. If the claimant appeals the denial to the Trustees within the prescribed time, the Trustees' determination upon appeal shall be final, binding and conclusive.

The Trustees may hold a hearing or otherwise ascertain such facts as they deem necessary and shall render a decision which shall be binding on both parties. The Trustees or a committee designated by the Trustees shall meet quarterly to render a determination on appeals received since the prior meeting, provided any appeal filed within the 30 day period preceding a meeting shall be decided at the next following quarterly meeting. If special circumstances require a delay in the decision, the decision shall be rendered no later than the third quarterly meeting following receipt of the appeal, and the Administrator shall notify the claimant of the reasons for the delay prior to the extension. The Administrator shall notify the claimant of the decision within five (5) days of the date the decision is made. The decision of the review shall be written in a manner calculated to be understood by the claimant and shall include: the specific reason or reasons for the denial of the claim; the specific references to the pertinent Plan provisions on which the denial 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; a statement about the claimant's right to bring a civil action under Section 502(a) of ERISA; and a description of any contractual limitation period in bring civil action, and the latest date such civil action can be brought. The decision of the Trustees shall be final, binding and conclusive.

The procedures set forth herein shall be administered in accordance with the claims procedure regulations of the Department of Labor set forth at 29 C.F.R. 2560.503-1. Notwithstanding the foregoing, to the extent any of the time periods specified in this Section are amended by law or the Department of Labor regulation, then the time periods specified herein shall be changed in accordance with such law or regulation.

Notwithstanding anything to the contrary herein contained, no legal action to recover Plan benefits or to enforce or clarify rights under the Plan or under any provision of the law, whether or not statutory, may be commenced before a claimant has exhausted the claims and claims review procedure described herein. Any legal action for recovery of benefits under the Plan must be commenced no later than the earlier of: (i) twelve (12) months after the date the claimant knows or reasonably should have known of the facts on which the claim is based, (ii) six (6) months after the date of the claimant has received a final written notification of the denial of the benefit claim, or (iii) six (6) months after the date the claimant has exhausted the claims and review procedure. To the extent that the claim relates to a failure to affect a Participant's election regarding contributions or a Participant's or Beneficiary's investment directions, the twelve (12) month period shall be sixty (60) days.

ARTICLE NINE--SPECIAL COMPLIANCE PROVISIONS

9.1 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, 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 9.1, 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.

9.2 LIMITATIONS ON 401(k) CONTRIBUTIONS

(a) *Actual Deferral Percentage Test ("ADP Test").* Amounts contributed as elective deferrals under Section 3.1(a) and, if so elected by the Trustees, "Qualified Matching Contributions" (as defined below) 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 (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 (2½) months after the close of the Plan Year. The Trustees shall maintain records sufficient to demonstrate satisfaction of the actual deferral percentage test and the deferred amounts used in such test.

For purposes of this Section, "Qualified Matching Contributions" shall mean matching contributions that are nonforfeitable when allocated to Participants' Accounts and that are distributable only in accordance with the distribution restrictions (other than hardships) applicable to elective deferrals.

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.

Notwithstanding the foregoing, if elected by the Trustees by Plan amendment, the foregoing percentage tests shall be applied based on the actual deferral percentage of the Nonhighly-Compensated Employees for the prior Plan Year; provided, however, the change in testing methods complies with the requirements set forth in the Final 401(k) and 401(m) Regulations and any other superseding guidance.

In the event the Plan changes from the current year testing method to the prior year testing method, then, for purposes of the first testing year for which the change is effective, the actual deferral percentage for Nonhighly-Compensated Employees for the prior year shall be determined by taking into account only elective deferrals (within the meaning of Section 3.1) for those Nonhighly-Compensated Employees that were taken into account for purposes of the actual deferral percentage test (and not the actual contribution percentage test) under the current year testing method for the prior year.

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 1.7 of the Plan if such definition satisfies Section 414(s) of the Code) or, if the Trustees choose, 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." The Trustees 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 to the extent required by the Code or regulations thereunder. 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 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) Qualified Matching Contributions and 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 9.2, 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 shall be determined as if all such deferrals were made under a single arrangement if so required by the Code or regulations thereunder. 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 9.2 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 Plan utilizes the current Plan Year testing method and 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 9.2(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 (2½) 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 9.2(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 3.1(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.

9.3 NONDISCRIMINATION TEST FOR EMPLOYER MATCHING CONTRIBUTIONS

(a) *Average Contribution Percentage Test ("ACP Test").* . The provisions of this Section 9.3 shall become applicable only if, and to the extent, required under Section 401(m) of the Code and the regulations issued thereunder. To the extent required by applicable law, the provisions of this Section shall apply if Employer matching contributions are made in any Plan Year under Section 3.2 and such matching contributions are not used to satisfy the actual deferral percentage test of Section 9.2.

As of the last day of each Plan Year, the average contribution percentage for Highly-Compensated Employees for the Plan Year shall satisfy either of the following tests:

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

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

Notwithstanding the foregoing, if elected by the Employer by Plan amendment, the foregoing percentage tests shall be applied based on the average contribution

percentage of the Nonhighly-Compensated Employees for the prior Plan Year; provided, however, the change in testing methods complies with the requirements set forth in the Final 401(k) and 401(m) Regulations and any other superseding guidance.

In the event the Plan changes from the current year testing method to the prior year testing method, then, for purposes of the first testing year for which the change is effective, the average contribution percentage for Nonhighly-Compensated Employees for the prior year shall be determined by taking into account only matching contributions for those Nonhighly-Compensated Employees that were taken into account for purposes of the average contribution percentage test (and not the average actual deferral percentage test) under the current year testing method for the prior year.

For purposes of the above tests, the "average contribution percentage" shall mean the average (expressed as a percentage) of the contribution percentages of the "eligible Participants" in each group. The "contribution percentage" shall mean the ratio (expressed as a percentage) that the sum of Employer matching contributions, and elective deferrals under Section 3.1 (to the extent such elective deferrals are not used to satisfy the actual deferral percentage test of Section 9.2), under the Plan on behalf of the eligible Participant for the Plan Year bears to the eligible Participant's compensation (within the meaning of Section 1.7 of the Plan if such definition satisfies Section 414(s) of the Code) or, if the Trustees choose, 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." The Trustees 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 to the extent required by Code or regulations thereunder. Such average contribution percentage shall be determined without regard to matching contributions that are used either to correct excess contributions hereunder or because contributions to which they relate are excess deferrals under Section 9.1 or excess contributions under Section 9.2. "Eligible Participant" shall mean each Employee who is eligible to receive Employer matching contributions.

For purposes of this Section 9.3, the contribution percentage for any eligible Participant who is a Highly-Compensated Employee for the Plan Year and who is eligible to have Employer matching contributions, elective deferrals and/or after-tax contributions allocated to his account under two (2) or more plans described in Section 401(a) of the Code or under arrangements described in Section 401(k) of the Code that are maintained by the Employer or any member of the Employer's related group, shall be determined as if all such contributions were made under a single plan to the extent required by the Code or regulations thereunder.

In the event that this Plan satisfies the requirements of Section 401(m), 401(a)(4) or 410(b) of the Code 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 9.3 shall be applied by determining the contribution percentages of eligible Participants as if all such plans were a single plan. If the Trustees elect by Plan amendment to use the prior year testing method, any adjustments to the Nonhighly-Compensated Employee actual contribution 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(m) of the Code only if they have the same Plan Year and use the same average contribution percentage testing method.

The determination and treatment of the contribution percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(b) *Distribution of Excess Aggregate Contributions.*

(1) In General. If the nondiscrimination tests of Section 9.3(a) are not satisfied for a Plan Year, then the "excess aggregate contributions", and any income allocable thereto, shall be forfeited, if otherwise forfeitable, no later than the last day of the Plan Year following the Plan Year for which the nondiscrimination tests are not satisfied, and shall be used to reduce Employer matching contributions under the Plan. To the extent that such "excess aggregate contributions" are nonforfeitable, such excess aggregate contributions shall be distributed to the Participant on whose behalf the excess contributions were made no later than the last day of the Plan Year following the Plan Year for which such "excess aggregate contributions" were made. However, if such excess aggregate contributions are distributed later than two and one-half (2½) 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 aggregate contributions were made, a ten percent (10%) excise tax shall be imposed upon the Employer with respect to such excess aggregate contributions. For purposes of the limitations of Section 10.1(b)(1) of the Plan, excess aggregate contributions shall be considered annual additions.

In accordance with the rules under Treasury Regulation Section 1.401(m)-2(b), any excess aggregate contributions shall be forfeited from the Participant's matching contribution account under the Plan.

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

(A) The aggregate amount of Employer matching contributions and elective deferrals under Section 3.1 (to the extent not used to satisfy

the actual deferral percentage test of Section 9.2) actually taken into account in computing the numerator of the actual contribution percentage of Highly-Compensated Employees for such Plan Year, over

(B) The maximum amount of such contributions permitted by the ACP Test under Section 9.3(a) (determined by hypothetically reducing contributions made on behalf of Highly-Compensated Employees in order of the actual contribution percentages, beginning with the highest of such percentages).

Excess aggregate contributions shall be allocated to the Highly-Compensated Employee with the largest "contribution percentage amounts" (as defined below) taken into account in calculating the average contribution percentage test for the year in which the excess arose, beginning with the Highly-Compensated Employee with the largest amount of such contribution percentage amounts and continuing in descending order until all the excess aggregate contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution of any excess aggregate contributions.

For purposes of the preceding paragraph, "contribution percentage amounts" shall mean the sum of Employer matching contributions and elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 9.2) made under the Plan on behalf of the Participant for the Plan Year.

(3) Determination of Income. Excess aggregate 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 Employer matching contributions and such elective deferrals for the Plan Year multiplied by a fraction, the numerator of which is the excess aggregate contributions on behalf of the Participant for the Plan Year, and the denominator of which is the Participant's Account balance attributable to Employer matching contributions and such elective deferrals (to the extent not used to satisfy the average actual deferral percentage test of Section 9.2) on the last day of the Plan Year.

Notwithstanding the foregoing, to the extent otherwise required to comply with the requirements of Section 401(a)(4) of the Code and the regulations thereunder, vested matching contributions may be forfeited.

To the extent permitted by applicable law, the Plan may be disaggregated under Section 1.410(b)-7(c) of the Income Tax Regulations, in which case the testing provisions of Sections 9.2 and 9.3 above may separately apply to the disaggregated plans.

ARTICLE TEN--LIMITATION ON ANNUAL ADDITIONS

10.1 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 10.1(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 3.1);

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

(D) Forfeitures, if any; and

(E) Amounts allocated to an individual medical account, as defined in Section 415(l)(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 10.1(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 10.1(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 10.1(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 2½ 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 2½ 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: For purposes of this Section 10.1, 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 Trustees elects a different twelve (12) consecutive month period. The election shall be made by the adoption of a Plan amendment by the Trustees. 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 3.1(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 ELEVEN--AMENDMENT AND TERMINATION

11.1 **AMENDMENT.** The Trustees reserves 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 and upon notification to the Union, the Association and the Employer. However, no amendment shall be made to the Plan which shall:

(a) make it possible (other than as provided in Section 13.3) 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.

11.2 **TERMINATION OF THE PLAN.** The Trustees reserves the right at any time and in its 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 by the Employer, 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 remain or 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 remain or 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 TWELVE--TOP-HEAVY PROVISIONS

12.1 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 12.2(b)) and only if, and to the extent, required under Section 416 of the Code and the regulations issued thereunder. Notwithstanding the foregoing, this Article shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) or 401(k)(13) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) or 401(m)(12) of the Code are met.

Notwithstanding the foregoing, this Article shall not apply in any Plan Year in which the Plan constitutes a "qualified automatic contribution arrangement" within the meaning of Section 401(k)(13) of the Code and in which the matching contributions (if any) meet the requirements of Section 401(m)(12) of the Code.

12.2 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 10.1(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 to the extent required by the Code or regulations thereunder, 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:

(1) 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.

12.3 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 (if allocated) 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 10.1(b)(2) and as limited by Section 401(a)(17) of the Code) or the largest percentage of Employer contributions, elective deferrals (within the meaning of Section 3.1), and forfeitures, as a percentage of the Key Employee's compensation (as defined in Section 10.1(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 3.2 or Section 3.3, the Participant's failure to complete one thousand (1,000) Hours of Service, the Participant's failure to make elective deferrals under Section 3.1, 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 benefit plans before under any defined contribution plans. If a defined benefit plan (active or terminated) is part of the permissive or required aggregation group of plans of the Employer, the minimum allocation in subparagraph (a) shall be deemed to be five percent (5%) and shall be offset by a Participant's accrued benefit under a defined benefit plan

according to the following equivalencies: a one percent (1%) "qualifying benefit accrual" under a defined benefit plan equals a two and one-half percent (2.5%) allocation under a defined contribution plan. To be a "qualifying benefit accrual," the pension under the defined benefit plan must be converted to a pension payable for life based on the average of the five (5) consecutive years of the Participant's highest compensation, payable at that plan's normal retirement date. Accordingly, for a Participant whose "qualifying benefit accrual" equals two percent (2%) multiplied by each year of his participation in the Plan while a Top-Heavy Plan, there shall be no minimum allocation hereunder. (If the "qualifying benefit accrual" is a lesser amount than two percent (2%) for each such year, the minimum allocation under this Plan shall be provided on a *pro rata* basis, adjusted on the basis of the above equivalencies. Except as provided in subparagraph (g), in no event shall additional minimum allocations be provided for any Participant who has earned a "qualifying benefit accrual" equal to twenty percent (20%) of his final average Compensation computed on the basis of his total taxable remuneration over the five (5) consecutive years in which the Participant's Compensation was the highest.

12.4 **VESTING.** The provisions contained in Section 5.1 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 3.1, 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 THIRTEEN--MISCELLANEOUS PROVISIONS

13.1 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 the Employer, its officers or Employees, or against the Trustees, the Union or the Association. 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 the Employer, and the Employer hereby expressly retains the right to hire and discharge any Employee at any time with or without cause, as if the Plan had not been established, and any such discharged Participant shall have only such rights or interests in the Trust Fund as may be specified in the Trust.

13.2 REPAYMENTS TO AN 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 an Employer because of a mistake of fact shall be returned to the Employer within one (1) year after the date of contribution.

(b) Any monies or other Plan assets attributable to any contribution made to this Plan by an Employer for any fiscal year for which initial Plan qualification under the Code is denied shall be refunded to the Employer within one (1) year after the date such qualification of the Plan is denied or within one (1) year of the resolution of any judicial or administrative process with respect to the disallowance, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

(c) 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.

13.3 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. Furthermore, a domestic relations order shall not fail to be a qualified domestic relations order solely because (a) the order is issued after, or revises, another domestic relations order or qualified domestic relations order, or (b) of the date on which the order is issued, including issuance after a Participant's annuity starting date or death.

13.4 **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.

13.5 **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.

13.6 **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.

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

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

13.9 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.

13.10 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.

13.11 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 administrative expenses. In the event a Participant or Beneficiary is located subsequent to the forfeiture of his Account balance, such Account balance shall be restored.

13.12 DISTRIBUTION TO MINOR OR LEGALLY INCAPACITATED. 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 Trustees 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.

13.13 CORRECTIVE ACTION. The Administrator with the Trustee's consent and approval, may correct mistakes in distributions or crediting amounts to Accounts or pursuant to a settlement or judgement awarding back pay, or such other matters as may be appropriate. The Employer may, in Employer's sole discretion, elect to make special contributions to the Plan in order to correct such mistakes. Any such contribution shall be allocated as specified by the Administrator.

13.14 ERRONEOUS PAYMENTS. If any person receives any amount of benefits that the Administrator in its sole discretion later determines that such person was not entitled to receive under the terms of the Plan, the Administrator shall have the right to require such person to make reimbursement to the Plan and/or to offset or adjust any future claims for benefits under the Plan against amounts that such person was not otherwise entitled to receive.

13.15 **COMPLIANCE WITH SECTION 410.** Notwithstanding the foregoing provisions, if, for any Plan Year, the requirements of Code Section 410(b) are not satisfied, the Administrator may take such action as is necessary to bring the Plan into compliance with such Code Section, including, without limitation, specifying that additional individual(s) are also entitled to share in the allocation process.

13.16 **PROVISION REGARDING CONFLICTING TRUST PROVISIONS.** The provisions of the Plan shall govern and override any conflicting provision contained in the Trust or, if applicable, custody agreement used in connection with the Plan.

IN WITNESS WHEREOF, the Trustees have caused this Plan to be executed on the _____ day of _____, 2021.

UNION TRUSTEES	**EMPLOYER TRUSTEES**
_____	_____
Joshua Sapp (Local 146)	**Mark O'Dell (Local 146)**
_____	_____
Jarrett Clem (Local 601)	**Robert Kacich (Local 601)**
_____	_____
Michael P. Arbuckle (Local 538)	**Brian Allison (Local 538)**
_____	_____
Neil Hervey (Local 193)	**Billy Serbousek (Local 193)**