

## **AMENDED AND RESTATED PLAN OF BENEFITS FOR THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 ANNUITY FUND**

THIS PLAN OF BENEFITS is made and, unless otherwise provided herein, this Amendment and Restatement is effective the 3<sup>rd</sup> day of December, 2014, by and between Plumbers and Pipefitters Local No. 520 (hereinafter called the “Union”), and Mechanical Contractors Association of Central Pennsylvania (hereinafter called the “Association”).

### **WITNESSETH:**

WHEREAS, pursuant to the provisions of the Amended and Restated Agreement and Declaration of Trust of the Plumbers and Pipefitters Local No. 520 Annuity Fund, the Union and the Association have the power and authority to adopt a distinct document entitled the “Plan of Benefits for the Plumbers and Pipefitters Local No. 520 Annuity Fund.”

WHEREAS, the Union and the Association desire to amend and restate the Plan of Benefits they have previously established to satisfy Rev. Proc. 2007-44 and the 2013 Cumulative List Changes in Plan Qualification Requirements.

NOW, THEREFORE, the Union and Association hereby adopt the following Amended and Restated Plan of Benefits for the Plumbers and Pipefitters Local No. 520 Annuity Fund.

### **SECTION 1: DEFINITIONS**

The following definitions, in addition to the definitions stated in the Amended and Restated Agreement and Declaration of Trust, shall apply to this Plan of Benefits:

1.01 “Account” means an account established and maintained in respect of a Participant pursuant to this Plan of Benefits.

1.02 “Accounts” means Account and Rollover Account.

1.03 “Beneficiary” means any individual designated or determined in accordance with Section 9, except that it shall not include any person who becomes a Beneficiary by virtue of the laws of inheritance or intestate succession.

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

1.05 “Compensation” means all compensation paid during the year under consideration as W-2 income by the Employer to an Employee, including overtime payments and bonuses, but excluding director’s fees. It excludes all contributions by the Employer to the Plan and to any other retirement or deferred compensation plan maintained by the Employer.

Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. For purposes of this Section, the determination period shall mean the Plan Year.

If the Compensation for any prior determination period is taken into account in determining an Employee's allocations or benefits for the current determination period, the Compensation for such prior year is subject to the applicable annual Compensation limit in effect for that prior year.

For Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the annual compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$150,000, as adjusted 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 determination period beginning in such calendar year.

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

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

If the period for determining Compensation used in calculating an Employee's allocation for a determination period is a short Plan Year (i.e., shorter than 12 months), the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year, and the denominator of which is 12.

1.06 "Covered Employee" means any employee of a Covered Employer with respect to whom the Covered Employer is obligated, consistent with this Plan of Benefits, to make contributions to the Fund.

1.07 "Covered Employer" means:

(A) An employer who is a member of, or who is represented in collective bargaining by, the Association ("Association Employer"), and who is bound by a Collective Bargaining Agreement with the Union which provides for the making of payments to the Fund with respect to any Covered Employee.

(B) An employer who is not a member of, nor represented in collective bargaining by, the Association ("Non-Association Employer"), but who has executed, has assented to, or is bound by a Collective Bargaining Agreement with the Union providing for the making of payments to the Fund with respect to any Covered Employee.

(C) Such other employer to which the Trustees may extend the coverage of this Plan of Benefits upon such terms and conditions consistent with this Plan of Benefits as the Trustees shall determine, provided such employer agrees in writing to conform to the terms and conditions of this Plan of Benefits and such other terms and conditions as determined by the Trustees.

1.08 "Covered Employment" means employment by a Covered Employee for which a Covered Employer is obligated, consistent with this Plan of Benefits, to contribute to the Fund.

1.09 "Credited Service" means the Credited Service a Participant has under the Plumbers and Pipefitters Local No. 520 Annuity Fund.

1.10 "Disabled" or "Disability" means the inability of a Participant to carry out the duties of his/her regular work on account of sickness, accident or mental illness, which disability lasts more than six (6) consecutive months.

1.11 "Earliest Retirement Age" means the earliest date on which the Participant could elect to receive retirement benefits.

1.12 "Early Retirement Age" means the time when the Participant attains age 55 with five (5) years from the time he/she began initial participation in the Plan.

1.13 "Eligible Spouse"

(A) In order to be eligible, a Spouse must have been married, under applicable law, to the Participant for the one year period ending on the earlier of:

- (1) The day on which a Pension commences, or
- (2) The day the Participant dies.

(B) If a Spouse was married to the Participant during the one year period ending on the day the pension commences, the Spouse need not be married to the Participant at the time of his/her death in order to be eligible.

(C) If a Spouse is married to a Participant for less than one year on the day the Pension commences, but has been married for at least one year ending on the date the Participant dies, the Spouse is eligible.

(D) If a Qualified Domestic Relations Order provides that a former spouse is not entitled to a survivor benefit, the Spouse shall not be eligible.

(E) If a Qualified Domestic Relations Order provides that a former spouse is entitled to a survivor benefit the provisions of Section 1.11 will not be applicable unless they are consistent with such Order.

1.14 “Employee” shall, in addition to the meaning stated in the Amended and Restated Agreement and Declaration of Trust, mean any employee of the Employer or of any other employer required to be aggregated with such Employer under Code Sections 414(b), (c), (m) or (o). An Employee is an individual who would be an Employee but who is on a Leave of Absence. Directors acting solely in that capacity and independent contractors shall not be Employees.

The term Employee shall also include any leased employee deemed to be an employee of any employer described in the previous paragraph as provided in Code Sections 414(n) or (o).

The term “leased employee” means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (“leasing organization”), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an Employee of the recipient if: (i) such employee is covered by a money purchase pension plan maintained by the leasing organization providing: (1) a nonintegrated employer contribution rate of at least 10% of Compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 132(f)(4) (for Plan Years beginning on or after January 1, 2000), 402(e)(3), 402(h), or 403(b), (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20% of the recipient's non-Highly Compensated workforce.

1.15 “Highly Compensated Employee” means a highly compensated active Employee and a highly compensated former Employee. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from that Employer and relationship to that Employer.

(A) A Highly Compensated Active Employee is an Employee of the Employer who:

(1) was a 5-percent owner; as defined below, at any time during the Plan Year or preceding year; or

(2) for the preceding year, had compensation, as defined below, from the Employer in excess of \$80,000.

The \$80,000 amount shall be subject to adjustment in the same manner and at the same time as provided for by the Secretary under Internal Revenue Code Section 415(d), using the calendar quarter ending September 30, 1996 as the base period.

(B) For Plan Years beginning before July 1, 1997, a Highly Compensated Active Employee is an Employee of the Employer who performs services for the Employer during the Plan Year and who during the Plan Year or the preceding year:

(1) was a 5-percent owner;

(2) received compensation from the Employer in excess of the amount under Internal Revenue Code Section 414(q)(1)(B) (as then in effect), as adjusted;

(3) received compensation from the Employer in excess of the amount under Internal Revenue Code Section 414(q)(1)(C) (as then in effect), as adjusted and who was a member of the top-paid group for that Plan Year within the meaning of Internal Revenue Code Section 414(q)(4) (as then in effect); or

(4) was an officer of the Employer and received compensation from the Employer in an amount greater than 50% of the dollar limitation in effect for that Plan Year under Internal Revenue Code Section 415(b)(1)(A). If no officer received compensation in the determination year or the preceding year at the level described in the preceding sentence, the officer who received the highest compensation from the Employer in that year shall be treated as a Highly Compensated Active Employee.

For purpose of determining officers under (4), above, the number of officers shall be limited to the lesser of (i) 50 Employees, or (ii) the greater of three Employees or 10 percent of all Employees. However, an Employee described in (2), (3) or (4), above, who was not so described in the preceding year, shall not be considered an active Highly Compensated Employee unless he or she was a member of the group of 100 Employees of the Employer who received the greatest compensation from the Employer during the determination year.

(C) In lieu of determining which Employees are Highly Compensated Employees in accordance with the provisions of (B) above, the Trustees can elect, for any Plan Years begin-

ning before January 1, 1997, to use the simplified "snapshot" method under IRS Revenue Procedure 95-34.

(D) A Highly Compensated Former Employee for a Plan Year is any former Employee who, with respect to the Employer, had a separation year prior to the Plan Year and who was a Highly Compensated Active Employee for either the Employee's separation year or any Plan Year ending on or after the Employee's 55th birthday. An Employee who performs no service for an Employer during the Plan Year is treated as a former Employee for that Plan Year. Such Employee's separation year is the year in which the Employee last performed service for the Employer.

(E) "5-percent owner" for any year means any Employee who is a 5-percent owner within the meaning of Internal Revenue Code Section 416(i)(l).

(F) "Top-Paid group" means the group consisting of the top 20 percent of the Employer's Employees when ranked on the basis of compensation paid during such year.

(G) For purposes of determining the group of Highly Compensated Employees under this section, "compensation" means "compensation" as defined in Section 9.13(1).

(H) For purposes of determining the group of Highly Compensated Employees but not for purposes of determining Covered Employment, the term "Employer" includes all corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code Section 414(b) or (c); all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code Section 414(m) and all other businesses aggregated with the Employer under Internal Revenue Code Section 414(o).

1.16 "Hour of Covered Employment" means:

(A) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to the Employee for the computation period in which the duties are performed;

(B) 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 with pay. Hours under this subsection (b) will be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and

(C) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under subsection (a) or subsection (b), as the case may be, and under this sub-

section (c). These hours will be credited to the Employee for the computation periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

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

Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Code Sections 414(n) or 414(o).

Service will be determined on the basis of actual hours for which an Employee is paid or entitled to payment.

Solely for purposes of determining whether a Participant is entitled to a Withdrawal Distribution as defined in Section 1.23, an Employee who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) Hours of Service per day of such absence. For purposes of this Section, an absence from work for maternity or paternity reasons means an absence: (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this Section shall be credited (1) in the Plan Year in which the absence begins if the crediting is necessary to prevent a Withdrawal Distribution in that period, or (2) in all other cases, in the following Plan Year.

1.17 "Hour of Service" means each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer in Covered Employment.

1.18 "Industry Employment" means employment or self-employment of a Pensioner at any place in the Commonwealth of Pennsylvania and the remainder of any Standard Metropolitan Statistical Area which falls within the Commonwealth of Pennsylvania, whether or not for a contributing employer, in any Trade or Craft in which the Pensioner was employed at any time under the Plan.

1.19 "Normal Retirement Age" means your 62<sup>nd</sup> birthday.

1.20 "Plan" means the Plan of Benefits to be created herein.

1.21 "Plan Year" shall be May 1 through April 30.

1.22 “Qualified Joint and Survivor Annuity” means an immediate annuity for the life of the Participant, with a survivor annuity for the life of the Participant’s Eligible Spouse which is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Participant’s Eligible Spouse, and which is the amount of benefit which can be purchased with the Participant’s Account.

1.23 “Qualified Pre-Retirement Survivor Annuity” means a survivor annuity for the life of the surviving Eligible Spouse of the Participant which is the actuarial equivalent of the Account of the Participant.

1.24 “Retired,” “Retirement” or “Retiring” shall mean the cessation of Covered Employment and/or Industry Employment with the intention of becoming a Pensioner.

1.25 “Rollover Account” means a separate account maintained for any Participant to which all Rollover Contributions, if any, shall be allocated.

1.26 “Rollover Contribution” means:

(A) amounts transferred to this Plan directly from another qualified plan;

(B) lump-sum distributions received by an Employee from another qualified plan which are eligible for tax-free rollover treatment and which are transferred by the Employee to this Plan within sixty (60) days following his/her receipt thereof;

(C) amounts transferred to this Plan from a conduit individual retirement account, provided that such account has no assets other than assets which were previously distributed to the Employee by another qualified plan; and further provided that such amounts met the applicable requirements of Code Section 408(d)(3) for rollover treatment on transfer to the conduit individual retirement account; and

(D) amounts distributed to an Employee from a conduit individual retirement account meeting the requirements of Subsection (c) above which are transferred by the Employee to this Plan within sixty (60) days of his/her receipt from such account.

1.27 “Trade or Craft” means all work of the type performed by members of the bargaining unit covered by this Plan, and employment as a supervisor of such work.

1.28 “Valuation Date” means the last business day prior to the date of distribution of assets in a Participant’s Account.

1.29 “Withdrawal Distribution” means a distribution where the Participant has ceased Covered Employment and Industry Employment, and where the Plan has received no contributions on behalf of the Participant during a six (6) consecutive month period.

## **SECTION 2: PARTICIPATION AND VESTING**

2.01 Commencement of Participation. Every Employee shall become a Participant upon commencement of work in Covered Employment during a Plan Year.

2.02 Termination of Participation. The participation of a Participant shall cease upon or by:

- (A) His/her Retirement Date and distribution of all benefits;
- (B) Reason of death or Disability and distribution of all benefits; or
- (C) Termination of employment which results in a Withdrawal Distribution.

2.03 Vesting. A Participant shall be one hundred percent (100%) vested in all contributions received and credited to the Participant's Account at all times.

## **SECTION 3: CONTRIBUTIONS AND ALLOCATIONS**

3.01 Employer Contributions.

(A) Each Employer shall make contributions to the Fund monthly, in the amount set forth in the Collective Bargaining Agreement or Participation Agreement applicable to that Employer.

(B) All Employer contributions made on behalf of each Participant shall be allocated to the Participant's Account. Employer contributions shall be credited to an Employee's Account as soon as administratively feasible following receipt of the contributions.

(C) Each Employer shall contribute to the Fund, as required by the Uniformed Services Employment and Reemployment Rights Act, on behalf of any Covered Employee who was last employed by a Covered Employer (Association and non-Association Employers) who paid contributions or was required to pay contributions to the Fund during the twelve (12) months prior to the entry into Uniformed Services of any Covered Employee. If a Covered Employee was employed by more than one Covered Employer (Association and non-Association Employers) who paid contributions or was required to pay contributions to the Fund during the twelve (12) months prior to the entry into Uniformed Services of any Covered Employee, each Covered Employer shall be required to contribute to the Fund on behalf of the Covered Employee. The amount of contributions to be paid by the Covered Employer (Association and Non-Association Employers) shall be determined by dividing the total number of Covered Employers (Association and Non-Association Employers) into the total amount of contributions due the Fund for the Covered Employee, as calculated pursuant to the provisions of the Uniformed Services Em-

ployment and Reemployment Rights Act. During any Plan Year where the Covered Employee has a period of uniformed service and where contributions have been received by the Fund on behalf of the Covered Employee for periods of Covered Employment, the Covered Employer(s) shall be entitled to have credited against its obligation to contribute for the period of uniformed service the amount of contributions received by the Fund for the periods of Covered Employment during the Plan Year in which there is a period of uniformed service.

(D) Each Employer shall contribute to the Fund, as required by the Uniformed Services Employment and Reemployment Rights Act, on behalf of any Covered Employee who was last employed by a Covered Employer (Association and non-Association Employers) who paid contributions or was required to pay contributions to the Fund during the twelve (12) months prior to the entry into Uniformed Services of any Covered Employee and who dies or becomes permanently disabled under the terms of the Fund's Plan of Benefits while in Uniformed Service. If a Covered Employee was employed by more than one Covered Employer (Association and non-Association Employers) who paid contributions or was required to pay contributions to the Fund during the twelve (12) months prior to the entry into Uniformed Services of any Covered Employee, each Covered Employer shall be required to contribute to the Fund on behalf of the Covered Employee. The amount of contributions to be paid by the Covered Employer (Association and Non-Association Employers) shall be determined by dividing the total number of Covered Employers (Association and Non-Association Employers) into the total amount of contributions due the Fund for the Covered Employee, as calculated pursuant to the provisions of the Uniformed Services Employment and Reemployment Rights Act. During any Plan Year where the Covered Employee has a period of uniformed service and where contributions have been received by the Fund on behalf of the Covered Employee for periods of Covered Employment, the Covered Employer(s) shall be entitled to have credited against its obligation to contribute for the period of uniformed service the amount of contributions received by the Fund for the periods of Covered Employment during the Plan Year in which there is a period of uniformed service.

3.02 Participant Employer Contribution Accounts. The Trustees shall establish and maintain or cause to be established and maintained in respect of each Participant an Account showing the Participant's interest under the Plan and in the Fund Assets and all relevant data pertaining thereto. Each Participant shall be furnished with a written statement of the Participant's Account at least annually and upon any distribution to the Participant. In maintaining the Accounts under the Plan, the Trustees can conclusively rely on the valuations of the Fund Assets in accordance with the Plan and the terms of the Trust.

3.03 Participant's Rights to Account. The establishment and maintenance of, or allocations and credits to, the Account of any Participant shall not vest in any Participant any right, title or interest in and to any Fund Assets or benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Plan and in accordance with the terms of the Trust.

3.04 Participant Contributions. No Participant shall be required to make any contributions to the Fund. No Participant shall be permitted to make any contributions to the Fund, other than Rollover Contributions under the provisions of Section 3.05.

3.05 Rollover Contributions.

(A) Any Employee may make a Rollover Contribution to this Plan; provided, however, that the trust from which the funds are to be transferred must permit the transfer to be made, and provided, further, the Board of Trustees is reasonably satisfied that such transfer will not jeopardize the tax exempt status of this Plan or create adverse tax consequences for the Employer. Rollover Contributions shall be made by delivery to the Plan's Contract Administrator for deposit in the Plan. All Rollover Contributions must be in cash.

(B) For purposes of determining whether any amount tendered by a Participant or another qualified trust for rollover is a Rollover Contribution, the contributing Participant or, if applicable, the plan administrator or trustee of the multiemployer qualified trust or single employer qualified defined contribution trust, shall establish to the satisfaction of the Plan that the amount tendered is a Rollover Contribution as defined in Section 1.21 and in Code Section 402(c). The Board of Trustees shall have the authority to determine whether or not a contribution or direct transfer tendered by a Participant, another multiemployer qualified trust or a single employer qualified defined contribution trust constitutes a Rollover Contribution eligible for rollover treatment in accordance with the provisions of this Section 3.05. In making such a determination, the Trustees may require reasonable proof or demonstration by the Participant or, if applicable, the plan administrator or trustee of the multiemployer qualified trust or the single employer qualified defined contribution trust, of the eligibility of the proposed contribution or direct transfer for rollover treatment. Should the Plan later determine that the rollover contribution was an invalid rollover contribution, the Plan shall distribute the amount of the invalid rollover contribution, plus earnings attributable to the invalid rollover contribution, to the Participant within a reasonable period of time.

(C) If the Plan accepts such transfer of funds, it shall allocate them to the Rollover Account of the transfer.

(D) Rollover Contributions shall not be considered to be Participant contributions for the purpose of calculating the limitations under Section 4.01.

(E) Distribution of Rollover Contributions/Rollover Accounts shall be governed by the provisions of Section 6. With respect to benefits and distributions provided by this Plan which are funded by Rollover Contributions/Rollover Accounts, any options under the provisions of a plan which is the source of the Rollover Contributions shall not be preserved for such benefits payable under the provisions of this Plan.

## **SECTION 4: LIMITATIONS ON CONTRIBUTIONS AND BENEFITS**

### 4.01 Limitations on Allocations.

#### (A)

(1) If the Participant does not participate in, and has never participated in, another qualified plan maintained by the Employer or a welfare benefit fund, as defined in Code Section 419(e), or an individual medical account, as defined in Code Section 415(l)(2), maintained by the Employer or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer which provides an annual addition as defined in Paragraph (C)(i), the amount of annual additions which may be credited to the Participant's Account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's Account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

(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 administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Compensation for the limitation year.

(4) If, pursuant to Paragraph (A)(3), there is an excess amount, the excess will be disposed of as follows:

(a) Any nondeductible voluntary Employee contributions (plus attributable earnings), to the extent they would reduce the excess amount, will be returned to the Participant;

(b) If after the application of Paragraph (a) an excess amount still exists, any elective deferrals (plus attributable earnings), to the extent they would reduce the excess amount, will be distributed to the participant;

(c) If after the application of Paragraph (b) an excess amount still exists, and the Participant is covered by the Plan at the end of the limitation year, the excess amount in the Participant's Account will be used to

reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next limitation year, and each succeeding limitation year if necessary.

(d) If after the application of Paragraph (b) an excess amount still exists, and the Participant is not covered by the Plan at the end of a limitation year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce Employer contributions for all remaining Participants in the next limitation year, and each succeeding limitation year if necessary.

(e) If a suspense account is in existence at any time during a limitation year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer or Employee contributions may be made to the Plan for that limitation year. Excess amounts may not be distributed to Participants or former Participants.

(B)

(1) This Paragraph (B) applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, 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(l)(2), maintained by the Employer or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer which provides an annual addition as defined in Paragraph (C)(i), during any limitation year. The annual additions which may be credited to a Participant's Account under this Plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's Account under the other plans and welfare benefit funds for the same limitation year. If the annual additions with respect to the Participant under the other defined contribution plans and welfare benefit funds maintained by the Employer are less than the maximum permissible amount and the Employer contribution that would otherwise cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the limitation year.

(2) Prior to determining the Participant's actual Compensation for the limitation year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Paragraph (A)(2).

(3) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Compensation for the limitation year.

(4) If, pursuant to Paragraph (B)(3) or as a result of the allocation of forfeitures, a Participant's annual additions under this Plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

(5) If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of:

(a) the total excess amount allocated as of such date, times

(b) the ratio of (i) the annual additions allocated to the Participant for the limitation year as of such date under this Plan to (ii) the total annual additions allocated to the Participant for the limitation year as of such date under this and all the other qualified defined contribution plans.

(6) Any excess amount attributed to this Plan will be disposed in the manner described in Paragraph (A)(4).

(7) If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan. Annual additions which may be credited to the Participant's Account under this Plan may be credited to the Participant's Account under this Plan for any limitation year will be limited in accordance with Sections (B)(1) through (B)(6), as though the other plan were a master or prototype plan.

(8) If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's defined benefit fraction and defined contribution fraction will not exceed 1.0 in any limitation year. The annual additions which may be credited to the Participant's Account under this Plan for any limitation year are limited as follows: If the Participant's defined benefit fraction and defined contribution fraction would otherwise exceed 1.0, the Participant's accruals under the defined benefit plan will be reduced to the extent necessary to prevent such combined fraction from ex-

ceeding 1.0 before any annual additions to this Plan or any other defined contribution plan maintained by the Employer are reduced. For Plan Years beginning after December 31, 1999, this Paragraph (8) shall not apply, nor shall the definitions of Paragraph 7(c)(3)(5)(8) and (11).

(C) Definitions. For purposes of this Section 4, the following words and terms shall have the meanings indicated:

(1) "Annual additions." Annual additions means the sum of the following credited to a Participant's Account for the limitation year:

(a) Employer contributions;

(b) Employee contributions;

(c) forfeitures;

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

(e) allocations under a simplified employee pension.

For this purpose, any excess amount applied under Paragraphs (A)(4) or (B)(6) in the limitation year to reduce Employer contributions will be considered annual additions for such limitation year.

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

For any self-employed individual Compensation will mean earned income.

For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this Section 4, Compensation for a limitation year is the Compensation actually paid or made available during such limitation year.

Notwithstanding the preceding sentence, Compensation for a Participant in a defined contribution plan who is permanently and totally Disabled (as defined in Code Section 22(e)(3)) is the Compensation such Participant would have received for the limitation year before becoming permanently and totally Disabled; for limitation years beginning before January 1, 1997, but not for limitation years beginning after December 31, 1996, such imputed Compensation for the Disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee (as defined in Code Section 414(q)) and contributions made on behalf of such Participant are nonforfeitable when made.

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this Section, Compensation paid or made available during such limitation years shall include any amounts deferred pursuant to Code Sections 402(e)(3) (with respect to cash or deferred arrangements as defined in Code Section 401(k)(2)), 402(h) (with respect to simplified employee pension plans), section 403(b), 408(p) (with respect to simple retirement accounts), or 457, or contributed to any welfare benefit plans maintained by the Employer through a reduction in the Employee's Compensation which, pursuant to Code Sections 125, 132(f)(4) (for Plan Years beginning after January 1, 2000) or 457, are not included in the gross income of the Employee for the taxable year in which such amounts are contributed.

For limitation years beginning in 2005, payments made within 2½ months after severance from employment (within the meaning of Section 401(k)(2)(B)(i)(I) of the Code) will be compensation within the meaning of Section 415(c)(3) of the Code if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Code) to the extent these payments do not exceed the amounts

the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(3) "Defined benefit fraction." Defined benefit fraction means a fraction, the numerator of which is the sum of the Participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of 125% of the dollar limitation determined for the limitation year under Code Sections 415(b) and (d) or 140% of the highest average compensation, including any adjustments under Code Section 415(b).

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

Notwithstanding the above, in the case of an individual who participates, before January 1, 1983, in any such defined benefit plan which is in existence on or before July 1, 1982 and which has met the requirements of Code Section 415 for all prior years, the dollar limit for purposes of the defined benefit fraction set forth in this Paragraph (C)(3) shall be the greater of (i) \$90,000 or (ii) the applicable dollar limit determined as of the close of the last Plan Year beginning before January 1, 1983, expressed as an annual benefit and determined by reference to the law as it existed immediately prior to the adoption of the Tax Equity and Fiscal Responsibility Act of 1982. However, if the annual benefit computed in accordance with the preceding sentence exceeds \$90,000, no further benefits may be accrued to an individual's benefit under such a defined benefit plan until his annual benefit as determined in the preceding sentence does not exceed the \$90,000 limitation for purposes of the defined benefit fraction of this Paragraph (C)(3), as adjusted for cost of living increases as set forth therein.

(4) "Defined contribution dollar limitation." The defined contribution dollar limitation is \$40,000, as adjusted under Code Section 415(d).

(5) "Defined contribution fraction." Defined contribution fraction means a fraction, the numerator of which is the sum of the annual additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior limitation years

(including the annual additions attributable to the Participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the annual additions attributable to all welfare benefit funds, as defined in Code Section 419(e), individual medical accounts, as defined in Code Section 415(l)(2), maintained by the Employer and simplified employee pensions maintained by the Employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any limitation year is the lesser of 125% of the dollar limitation determined under Code Sections 415(b) and (d) in effect under Code Section 415(c)(1)(A) or 35% of the Participant's compensation for such year.

If the Employee was a Participant as of the end of the first day of the limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over 1.0 times (ii) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Code Section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987.

The annual addition for any limitation year beginning before January 1, 1987, shall not be computed to treat all employee contributions as annual additions.

With respect to each Participant, for years of service ending prior to January 1, 1983, the amount taken into account in the denominator of the defined contribution fraction, as set forth above, may, at the election of the Plan, be an amount equal to the denominator of the defined contribution fraction for the Plan Year ending in 1982, as determined under the law immediately prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, multiplied by the transition fraction described in Code Section 415(e)(7).

(6) "Employer." Employer shall mean the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) as modified by Code Section 415(h), or affiliated service groups (as defined in Code Section 414(m)) of

which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code Section 414(o).

(7) "Excess amount." Excess amount means the excess of the Participant's annual additions for the limitation year over the maximum permissible amount.

(8) "Highest average compensation." Highest average compensation means the average compensation for the three consecutive years of service with the Employer that produces the highest average. A year of service with the Employer is the 12-consecutive month period used for measuring Compensation.

(9) "Limitation year." The limitation year is the Plan Year, unless the Employer elects in writing a different 12-consecutive month period. All qualified plans maintained by the Employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(10) "Maximum permissible amount." For limitation years beginning before January 1, 2002, the maximum permissible amount is the maximum annual addition that may be contributed or allocated to a Participant's Account under the Plan for any limitation year which shall not exceed the lesser of:

- (a) the defined contribution dollar limitation, or
- (b) 25% of the Participant's Compensation for the limitation year.

For limitation years beginning on or after January 1, 2002, except for catch-up contributions described in Section 414(v) of the Code, the annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost of living under Section 415(d) of the Code, or
- (b) 100 percent of the Participant's compensation for the limitation year.

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

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

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

(11) “Projected Annual Benefit.” The projected annual benefit means the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or Qualified Joint and Survivor Annuity) to which the Participant would be entitled under the terms of the Plan assuming:

(a) the Participant will continue employment until Normal Retirement Age under the Plan (or current age, if later), and

(b) the Participant's Compensation for the current limitation year and all other relevant factors used to determine benefits under the Plan will remain constant for all future limitation years.

(D) For limitation years beginning on and after July 1, 2007, if annual additions are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System as set forth in Revenue Procedure 2006-1, or any superseding guidance, including but not limited to the preamble of the final Section 415 Regulations.

## **SECTION 5: INVESTMENT, SELF-DIRECTION AND VALUATION OF ACCOUNTS**

5.01 Trustee Designation of Investment Options. The Trustees have been given the authority to designate investment options which shall be available for the investment of Accounts. The Trustees shall, from time to time, designate investment options which shall be available for the investment of Accounts.

5.02 Participant Responsibility for Designation of Investment Options. Each Participant, including for purposes of this Section former Participants, Eligible Spouses, Beneficiaries and Alternate Payees with established Accounts, shall be solely responsible for the selection of the Participant's investment options. The Fund, its Trustees and its service providers are not empowered to advise a Participant as to the manner in which such Participant's Accounts shall be invested. The fact that a particular investment option is available to Participants for investment under the Fund shall not be construed as a recommendation for investment in that investment option. A Participant shall have the right and opportunity to designate the manner in which

the amounts credited and to be credited to such Participant's Account shall be allocated among and invested in the investment options.

5.03 Time and Method of Designation. A designation by a Participant of the allocation of the amounts credited to his/her Account may be made or amended on a daily basis by utilizing a toll-free telephone access or through the use of an internet website designated by the Plan.

5.04 Amount of Designations. A Participant may make designations among some or all of the available investment options, provided that not less than one (1%) percent of the Participant's Accounts shall be designated for each option selected, and further provided that such designations shall equal (but not exceed) one hundred (100%) percent of the Participant's Accounts in the aggregate.

5.05 Account Investments by Trustees. If and to the extent that a Participant fails to designate an allocation for his/her Accounts under this Section, the Trustees shall select one or more of the available investment options to which or among which the undesignated amounts in such Participant's Accounts shall be allocated.

5.06 Rules and Procedures for Designations. The Trustees shall adopt and enforce such rules and procedures as they deem necessary or advisable with respect to all matters relating to the designation of investment alternatives pursuant to the provisions of this Section, provided that all similar situated Participants are treated in a uniform and non-discriminatory manner.

5.07 Trustee Fiduciary Responsibility. The Plan is intended to constitute a Plan described in Section 404(c) of the Employee Retirement Income Security Act, and Title 29, C.F.R. Section 2550.404c-1. If and to the extent that the Accounts of a Participant are invested in accordance with such Participant's allocation designations and instructions under the provisions of this Section, the Trustees shall have no investment responsibility with respect to the Participant's Accounts. No person who is otherwise a fiduciary of the Plan or the Fund shall be liable to the designating Participant or to any other person claiming through such Participant for any losses or damages which are the direct and necessary result of investment instructions given by the Participant.

5.08 Valuation Date. Each Participant's benefit shall be the value of his/her Accounts on the last Valuation Date prior to the distribution of benefits in the Participant's Accounts.

5.09 Assessment of Expenses. A Participant's Accounts shall be assessed quarterly with an expense charge for expenses relating to administration of the Plan, in an amount determined by the Board.

5.10 Qualified Default Investment Alternative. The Account of any Participant who fails to make an investment election pursuant to Section 5.02 shall be invested in a Qualified Default Investment Alternative, as that term is defined under Department of Labor Regulation Section 2550.404c-5, until such Participant makes an election to invest otherwise.

## SECTION 6: BENEFITS AND DISTRIBUTION

6.01 Benefits in General. The benefits provided by this Plan shall be payable to the Participant, Eligible Spouse or Beneficiary(ies) upon the Participant's Retirement, death, Disability or termination of Covered Employment (where the Plan has received no contributions on behalf of the Participant during a six- (6) consecutive-month period). A Participant or other distributee must file an application for benefits before payments will commence. Subject to the foregoing, and subject to the remaining provisions of this Section, benefits payable under Sections 6.02, 6.03, 6.04 or 6.05 shall commence as of the annuity starting date, following approval by the Trustees of a proper application for benefits submitted on a form and in the manner prescribed by the Trustees. The Trustees shall act to approve or disapprove such application not later than the 90<sup>th</sup> day after receipt by the Trustees of such duly completed application for benefits. An application may be withdrawn at any time before the payment of benefits begins.

Upon receipt and approval of an application for benefits as described above (and unless the Participant elects otherwise in writing), the distribution of benefits shall commence no later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

- (A) the Participant attains Normal Retirement Age;
- (B) the 5<sup>th</sup> anniversary of the year in which the Participant's commencement of participation in the Plan occurs; or
- (C) The Participant terminates Covered Employment.

The Participant's election to defer distribution of benefits to a time later than the dates specified in the preceding sentence shall be made by written statement submitted to the Trustees, which statement shall describe the benefit and the date upon which payment is to begin. No Participant shall be permitted under the terms of this Section to elect to defer receipt of a benefit which has the effect of creating a death benefit that is more than incidental within the meaning of Code Section 1.401(a)-14(b)(3) and Rev. Rul. 72-241, nor shall any such election be inconsistent with the provisions of Section 6.10 below.

6.02 Retirement Benefit. A Participant who retires or otherwise leaves Covered Employment after attaining Normal Retirement Age or Early Retirement Age shall be entitled to receive a Retirement benefit funded by the balance in his/her Accounts, which benefit shall be distributed at the time and in the manner provided in this Section. A Participant who has attained Normal Retirement Age or Early Retirement Age may be presumed to have retired or otherwise left Covered Employment for purposes of this Section where there have been no Employer contributions to the Participant's Account for at least sixty (60) days.

6.03 Death Benefit. Upon the death of a Participant prior to such Participant's annuity starting date, all sums credited to the Accounts of the deceased Participant shall be distributed as a death benefit in accordance with the provisions of this Section in full satisfaction of any and

all claims for benefits from the Plan on behalf of the Participant or by or on behalf of persons (including Spouses, heirs and Beneficiaries) claiming through the Participant.

6.04 Disability Benefit. A Participant who has not attained Normal Retirement Age and who leaves Covered Employment as a result of a Disability will be entitled to receive a Disability benefit funded by the balance in his/her Accounts, which benefit shall be distributed at the time and in the manner provided in this Section.

6.05 Withdrawal Benefit. A Participant who leaves Covered Employment for any reason other than at Early Retirement Age, Normal Retirement Age or later, death or Disability, shall be entitled to a Withdrawal Benefit funded by the balance in his/her Accounts, which benefit will be distributed at the time and in the manner provided in this Section. For purposes of determining entitlement to a Withdrawal Benefit, a Participant shall be considered to have left Covered Employment where the Plan has received no contributions on behalf of the Participant during a twelve- (12) consecutive-month period.

6.06 Methods of Distribution. Distributions under Sections 6.02, 6.03, 6.04 and 6.05 to Participants or to the Eligible Spouses or Beneficiaries of Participants as the result of Retirement, death, Disability or termination of Covered Employment shall be made in accordance with the following provisions:

(A) Lifetime Distributions and Optional Forms of Distribution.

(1) Unless an optional form of benefit is selected pursuant to a qualified election and subject to the provisions of Section 6.08, a married Participant's benefits will be paid in the form of a Qualified Joint and Survivor Annuity; an unmarried Participant's benefits will be paid in the form of a lump sum.

(2) An "Annuity" is an immediate level annuity payable for the Participant's life, the actuarial equivalent of which is not less than 100% of the Participant's Account.

(3) An "Annuity," the actuarial equivalence of not less than one hundred (100%) percent of the Participant's Account, payable monthly, for the Participant's life, and upon his/her death seventy-five (75%) percent of the monthly payment to his/her spouse, and thereafter until the death of the spouse, provided that the spouse married to the Participant at the time of his/her death must also have been married to the Participant at the time his/her monthly benefit commenced.

(4) A lump-sum payment of any portion of the Participant's Account.

(5) Specified monthly payments, provided such monthly payments meet distribution requirements of the applicable Sections of the Code and any Regulations thereunder.

(6) A combination of a lump-sum payment plus specified monthly payments, provided such monthly payments meet distribution requirements of the applicable Sections of the Code and any Regulations thereunder.

(7) A direct rollover as described in Section 6.16.

(8) With respect to any annuity form of distribution required by the provisions of this Section 6.06, the Trustees may provide for the same by purchase and distribution of a single-premium, nontransferable annuity contract underwritten by a duly licensed legal reserve life insurance company, which contract provides for payments in accordance with the form of payment selected or required in accordance with the terms of the Plan.

(B) Distributions on Death.

(1) Unless an effective waiver of spousal benefits has been made pursuant to a qualified election under the provisions of Section 6.12, upon the death of a Participant before the Participant's annuity starting date, such Participant's Accounts will be distributed to the Participant's Eligible Spouse (if any) in the form of a Qualified Pre-Retirement Survivor Annuity commencing within a reasonable time after the Participant's death, subject to the provisions of Section 6.07.

(C) To the extent that benefits are not required to be paid to a deceased Participant's Eligible Spouse under paragraph (1), distribution of such deceased Participant's benefits shall be made in a lump sum to the Beneficiary(ies) then currently identified as such in accordance with the provisions of Section 9.

6.07 Distributions on Death.

(1) Unless an effective waiver of spousal benefits has been made pursuant to a qualified election under the provisions of Section 6.11, upon the death of a Participant before the Participant's annuity starting date, such Participant's Accounts will be distributed to the Participant's Eligible Spouse (if any) in the form of a Qualified Pre-Retirement Survivor Annuity commencing within a reasonable time after the Participant's death, subject to the provisions of Section 6.07.

(2) To the extent that benefits are not required to be paid to a deceased Participant's Eligible Spouse under paragraph (1), distribution of such deceased

Participant's benefits shall be made in a lump sum to the Beneficiary(ies) then currently identified as such in accordance with the provisions of Section 9.

6.08 Rollover Account Distributions. Distributions of Rollover Accounts shall be governed by the provisions of Section 6 with respect to benefits and distributions provided by this Plan. An option under the provisions of a plan which is the source of the Rollover Contributions shall not be preserved for such benefits payable under the provisions of this Plan.

6.09 Restrictions on Immediate Distributions.

(A) If the Participant's Account is immediately distributable, the Participant and the Participant's Eligible Spouse (or where either the Participant or the Eligible Spouse has died, the survivor) must consent to any distribution of such Participant's Account. The consent of the Participant and the Participant's Eligible Spouse shall be obtained in writing within the 180-day period ending on the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The Contract Administrator shall notify the Participant and the Participant's Eligible Spouse of the right to defer any distribution until the Participant's Account is no longer immediately distributable (as described in subparagraph (2) below). Such notification shall include a general description of the material features and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3), and shall be provided no less than 30 days and no more than 180 days prior to the annuity starting date.

(1) Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the Participant's Account is immediately distributable. Furthermore, if payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to the Participant pursuant to Section 6.11 of the Plan, only the Participant need consent to the distribution of the Participant's Account that is immediately distributable. Neither the consent of the Participant nor the Participant's Eligible Spouse shall be required to the extent that a distribution is required to satisfy Code Sections 401(a)(9) or 415. In addition, upon termination of this Plan, if the Plan does not offer an annuity option purchased from a commercial provider, the Participant's Account will, without the Participant's consent, be distributed to the Participant.

(2) The Participant's Account is immediately distributable if any part of the Participant's Account could be distributed to the Participant (or surviving Eligible Spouse) before the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62.

6.10     Installment Distributions.

(A)     If distributions are made in installments rather than a Qualified Joint and Survivor Annuity or a Pre-Retirement Survivor Annuity or lump-sum distribution, then (i) the installments must be over a term not to exceed 20 years, or (ii) the amount of the installment to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire interest by the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and his/her Beneficiary. Life expectancy and joint and last survivor expectancy are computed by the use of the return multiples contained in Treasury Regulations section 1.72-9, Table V and VI or, in the case of payments under a contract issued by an insurance company, by use of the life expectancy tables of the insurance company. For purposes of this computation, a Participant's life expectancy may be recalculated no more frequently than annually, but the life expectancy of a non-Eligible Spouse Beneficiary may not be recalculated. If the Participant's Eligible Spouse is not the Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the Participant.

(B)     Any annuity distributed herefrom must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or Eligible Spouse shall comply with the requirements of this Plan.

6.11     Timing and Modes of Distribution. Subject to Section 6.11, the Qualified Joint and Survivor Annuity or Pre-Retirement Survivor Annuity requirements, the requirements of this Section 6.10 shall apply to any distribution of a Participant's Account and will take precedent over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 6.10 apply to calendar years beginning after December 31, 2002. All distributions required under this Section 6.10 shall be determined and made in accordance with the proposed Regulations under Code Section 401(a)(9).

(A)     Commencement of Benefits. After the Participant has attained the Normal Retirement Age, has died, or has satisfied the requirements for a Withdrawal Distribution, then the first installment, lump-sum payment or direct rollover, as the case may be, shall be made as soon thereafter as administratively feasible. If the distribution is made prior to the time the Participant attains the later of age 62 or the Normal Retirement Age under the Plan, the Participant must consent to the distribution (in the manner described in the following two paragraphs of this Section 6.10). However, in all events, unless the Participant elects otherwise, such distributions shall begin no later than 60 days after the end of the Plan Year in which occurs the latest of the following:

- (1)     the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age;
- (2)     the tenth anniversary of the year in which the Participant commenced participation in the Plan; or

(3) the Termination Date.

(B) Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required beginning date.

(C) Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):

(1) the life of the Participant,

(2) the life of the Participant and a Beneficiary,

(3) a period certain not extending beyond the life expectancy of the Participant, or

(4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a Beneficiary.

(D) Time and Manner of Distribution.

(1) Required Beginning Date. The Participant's entire interest will 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 entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Eligible Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) If the Participant's surviving Eligible Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(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 entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary and the surviving Eligible Spouse dies after the Participant but before distributions to the surviving Eligible Spouse are required to begin, this Paragraph (2), other than Paragraph (2)(a), will apply as if the surviving Eligible Spouse were the Participant.

For purposes of this Paragraph (2) and Paragraph (4), unless Paragraph (2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Paragraph (2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Eligible Spouse under Paragraph (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 Eligible Spouse before the date distributions are required to begin to the surviving Eligible Spouse under section (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 will be made in accordance with Paragraphs (E) and (F) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

(E) 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 will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the Participant's 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 Eligible Spouse, the quotient obtained by dividing the Participant's 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 Eligible Spouse's attained ages as of the Participant's and Eligible Spouse's birthdays in the distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Paragraph (E) beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

(F) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account 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 Eligible Spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Eligible Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Eligible Spouse's age as of the Eligible Spouse's birthday in that year. For distribution calendar years after the year of the surviving Eligible Spouse's death, the remaining life expectancy of the surviving Eligible Spouse is calculated using the age of the surviving Eligible Spouse as of the Eligible Spouse's birthday in the calendar year of the Eligible Spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving Eligible 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 the September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar

year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy 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 will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Paragraph (F)(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 will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Eligible spouse Before Distributions to Surviving Eligible spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary, and the surviving Eligible Spouse dies before distributions are required to begin to the surviving Eligible Spouse under Paragraph (D)(2)(a), this Paragraph (F)(2) will apply as if the surviving Eligible Spouse were the Participant.

(G) Definitions

(1) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving Eligible Spouse) as the Beneficiary of the Participant's interest under the Plan and who 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 Paragraph (D)(2). The required minimum distribution for the Participant's first distri-

bution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Treasury Regulations.

(4) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required Beginning Date: The required beginning date of a Participant is April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

(6) 5-percent owner. A Participant is treated as a 5-percent owner for purposes of this Paragraph (G) if such Participant is a 5-percent owner as defined in Section 416 of the Code at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70½.

Once distributions have begun to a 5-percent owner under this Paragraph (G), they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(H) TEFRA Section 242(b)(2) Elections

(1) Notwithstanding the other requirements of this Section and subject to the requirements of Section 6.11, Joint and Survivor Annuity and Pre-Retirement Survivor Annuity Requirements, distribution on behalf of any employee, including a 5-percent owner, who has made a designation under Section 242(b)(2) 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 the 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 satisfies the requirements in Paragraphs (H)(1)(a) and (e).

(4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the Treasury 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 Treasury 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 Q&A-15, shall apply.

(I) Transition Rules

(1) For plans in existence before 2003, required minimum distributions before 2003 were made pursuant to Paragraph (H), if applicable, and sections (I)(2) through (I)(4) below.

(2) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Section 401(a)(9) of the Code and the proposed Treasury Regulations thereunder published in the Federal Register on July 27, 1987 (the “1987 Proposed Regulations”).

(3) 2001. Required minimum distributions for calendar year 2001 were made in accordance with Section 401(a)(9) of the Code and the 1987 Proposed Treasury Regulations. If distributions were made in 2001 under the 1987 Proposed Treasury Regulations prior to the date in 2001 the Plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

(4) 2002. Required minimum distributions for calendar year 2002 were made in accordance with Section 401(a)(9) of the Code and the 1987 Proposed Treasury Regulations.

(J) Notwithstanding the other provisions of this Section 6.10, a Participant or Participant’s Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s Beneficiary, or for a period of at least 10 years (“Extended 2009 RMDs”), will not receive those distributions for 2009 unless the Participant or Participant’s Beneficiary chooses to receive such distributions. Participants and Participants’ Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, notwithstanding Section 6.15 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered for 2009 RMDs, Extended 2009 RMDs and distributions that would be eligible rollover distributions without regard to Code Section 401 (a)(9)(H), and will be treated as eligible rollover distributions.

6.12 Joint and Survivor Annuity and Pre-Retirement Survivor Annuity Requirements.

(A) The provisions of this Section 6.11 shall apply to any Participant who is credited with at least one Hour of Service with an Employer on or after August 23, 1984, and such other Participants as provided in Paragraph (G).

(B) Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a qualified election within the 180-day period ending on the annuity starting date, a married Participant's Account will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Account will be paid in the form of a life annuity. The Participant may elect to have such annuity distributed upon attainment of the earliest Retirement age under the Plan.

(C) Qualified Optional Survivor Annuity. If a married Participant elects, within the election period pursuant to a qualified election, to waive the Qualified Joint and Survivor Annuity, the Participant may elect a Qualified Optional Survivor Annuity.

(D) Qualified Pre-Retirement Survivor Annuity. Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a Participant dies before the annuity starting date, then the Participant's Account shall be applied toward the purchase of an annuity for the life of the surviving Eligible Spouse. The surviving Eligible Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

(E) Definitions. For purposes of this Section 6.11 and other applicable Sections of the Plan, the following words and terms shall have the meanings indicated:

(1) "Election period." The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age 35 is attained, with respect to the Accrued Benefit as of the date of separation, the election period shall begin on the date of separation.

(2) "Pre-age 35 waiver." A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified 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 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 Paragraph (e)(i). Qualified Pre-Retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of Section 6.11.

(3) "Earliest Retirement age." The earliest date on which, under the Plan, the Participant could elect to receive Retirement benefits.

(4) "Qualified election." A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity shall not be effective unless: (a) the Participant's Eligible Spouse consents in writing to the election; (b) the election designates a specific Beneficiary including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Eligible Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Eligible Spouse's consent acknowledges the effect of the election; and (d) the Eligible Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the 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 Eligible Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no Eligible Spouse or that the Eligible Spouse cannot be located, a waiver will be deemed a qualified election.

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

(5) "Qualified Joint and Survivor Annuity." An immediate annuity for the life of the Participant with a survivor annuity for the life of the Eligible Spouse which is not less than 50% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible Spouse and which is the amount of benefit which can be purchased with the Participant's Account, and is further defined in Section 1.17.

(6) "Qualified Optional Survivor Annuity." An immediate annuity for the life of the Participant with a survivor annuity for the life of the Eligible Spouse which is not less than 75% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible

Spouse and which is the amount of benefit which can be purchased with the Participant's Account, and is further defined in Section 1.17.

(7) "Eligible Spouse (Surviving Spouse)" shall mean an Eligible Spouse who has been married to the Participant for the one-year period ending on the earlier of:

- (a) The day on which payment of a benefit commences, or
- (b) The day the Participant dies.

(i) If an Eligible Spouse was married to the Participant during the one-year period ending on the day the benefit payment commences, the Eligible Spouse need not be married to the Participant at the time of his/her death in order to be eligible.

(ii) If an Eligible Spouse is married to the Participant for less than one year on the day the benefit payment commences, but has been married for at least one year ending on the date the Participant dies, the Eligible Spouse is eligible.

(iii) If a Qualified Domestic Relations Order provides that a former Eligible Spouse is not entitled to a survivor benefit, the Eligible Spouse shall not be eligible.

(iv) If a Qualified Domestic Relations Order provides that a former Eligible Spouse is entitled to a survivor benefit, the provisions of Section 6.11 will not be applicable unless they are consistent with such Order.

(8) "Annuity starting date." The first day of the first period for which an amount is paid as an annuity or any other form.

(F) Notice Requirements.

(1) In the case of a Qualified Joint and Survivor Annuity, the Contract Administrator shall no less than 30 days and no more than 180 days prior to the annuity starting date provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's Eligible Spouse; and (d) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. The written explanation shall comply with the requirements of Treasury Regulation Section 1.417(a)(3)-1.

The annuity starting date for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) to a form of distribution other than a Qualified Joint and Survivor Annuity; (b) the Participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the Participant. The written explanation shall comply with the requirements of Treasury Regulation Section 1.417(a)(3)-1.

(2) In the case of a Qualified Pre-Retirement Survivor Annuity as described in Paragraph (C), the Contract Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Paragraph (E)(1) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period ending after the individual becomes a Participant; (c) a reasonable period ending after Paragraph (E)(3) ceases to apply to the Participant; (d) a reasonable period ending after this Section 6.11 first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

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

(3) Notwithstanding the other requirements of this Paragraph (E), the respective notices prescribed by this Paragraph (E) need not be given to a Participant.

pant if (1) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity, and (b) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity and does not allow a married Participant to designate a non-spouse Beneficiary. For purposes of this Paragraph (E)(3), a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

(G) Safe harbor rules.

(1) This Paragraph (F) shall apply to a Participant in a profit-sharing plan, and to any distribution, made on or after the first day of the first Plan Year beginning after December 31, 1988 from or under a separate account attributable solely to accumulated deductible Employee contributions, as defined in Code Section 72(o)(5)(B) and maintained on behalf of a Participant in a money purchase pension plan, (including a target benefit plan) if the following conditions are satisfied: (a) the Participant does not or cannot elect payments in the form of a life annuity; and (b) on the death of a Participant, the Participant's Account will be paid to the Participant's surviving Eligible Spouse, but if there is no surviving Eligible Spouse, or if the surviving Eligible Spouse has consented in a manner conforming to a qualified election, then to the Participant's designated Beneficiary. The surviving Eligible Spouse may elect to have distribution of the Participant's Account commence within the 180-day period following the date of the Participant's death. The Accrued Benefit shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Accrued Benefits for other types of distributions. This Paragraph (F) shall not be operative with respect to a Participant in a profit-sharing plan if the plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, a target benefit plan, stock bonus, or profit-sharing plan which is subject to the survivor annuity requirements of Code Section 401(a)(11) and Code Section 417. If this Paragraph (F) is operative, then the provisions of this Section 6.11, other than Paragraph (G), shall be inoperative.

(2) The Participant may waive the spousal death benefit described in this Paragraph (F) at any time provided that no such waiver shall be effective unless it satisfies the conditions of Paragraph (D)(4) (other than the notification requirement referred to therein) that would apply to the Participant's waiver of the Qualified Pre-Retirement Survivor Annuity.

(3) The Participant must establish to the satisfaction of the Trustees that a consent to a rejection is not required because:

- (a) the Participant is not married;

(b) the Eligible Spouse whose consent would be required cannot be located; or

(c) consent of the Eligible Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.

(H) Retroactive Annuity Starting Date

(1) A retroactive annuity starting date shall mean an annuity starting date affirmatively elected by a Participant that occurs on or before the date the written explanation required in Paragraph (D)(1) of this Section is provided to the Participant. A Participant cannot elect a retroactive annuity starting date that precedes the date upon which the Participant could have otherwise started receiving benefits under the terms of the Plan in effect as of the retroactive annuity starting date. Future periodic payments with respect to a Participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the Participant had payments actually commenced on the retroactive annuity starting date.

The Participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment, adjusted for interest from the date the missed payment(s) would have been made to the date of the actual make-up payment. Annuity payments that otherwise satisfy the requirements of a Qualified Joint and Survivor Annuity under Paragraph (B)(4) of this Section will not fail to be treated as a Qualified Joint and Survivor Annuity for purposes of Paragraph (B) because a retroactive annuity starting date is elected and a make-up payment is made.

(2) The Participant's Eligible Spouse (including an alternate payee who is treated as a Eligible Spouse under a Qualified Domestic Relation Order as described in Code Section 414(p)), determined as if the date distributions commence were the Participant's annuity starting date, shall consent to the distribution in a manner that would satisfy the requirements of Paragraph (D) of this Section. The Eligible Spousal consent requirement of this Paragraph (E)(2) does not apply if the amount of such Eligible Spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such Eligible Spouse would have been under an optional form of benefit that would satisfy the requirements to be a Qualified Joint and Survivor Annuity under Paragraph (D)(4) of this Section and that has an annuity starting date after the date the explanation required by Paragraph (E) of this Section was provided.

If the Participant's Eligible Spouse as of the retroactive annuity starting date would not be the Participant's Eligible Spouse determined as if the date distri-

butions commence was the Participant's annuity starting date, consent of that former Eligible Spouse is not needed to waive the Qualified Joint and Survivor Annuity with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order as described in Code Section 414(p).

(3) The written explanation required by Paragraph (E) shall be provided no less than 30 days and no more than 180 days (90 days for notices given in Plan years beginning before January 1, 2007) before the date of the first payment of benefits pursuant to the retroactive annuity starting date, and the election to receive the distribution shall be made after the written explanation is provided and on or before the date of the first payment.

(4) When the date the distribution commences is substituted for the annuity starting date for all purposes (including for purposes of determining the applicable interest of the Plan and the applicable mortality table under Section 1.02 of the Plan), the distribution (including interest adjustments) must satisfy the requirements of Section 5.01. However, if the date the distribution commences is 12 months or less from the retroactive annuity starting date and the form of the benefit would have been excepted from Code Section 417(e)(3) if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply Section 5.01 as of the date the distribution commences does not apply. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Section 5.01 with the applicable interest rate and the applicable mortality table determined as of that date.

In the case of a form of benefit that would have been subject to Code Section 417(e)(3) if distributions had commenced as of the retroactive annuity starting date, the distribution shall be not less than the benefit produced by applying the applicable interest rate under Section 1.02 and the applicable mortality table under Section 1.02 determined as of the date the distribution actually commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Code Section 417(e)(3) with the applicable interest rate and the applicable mortality table determined as of that date.

(I) Transitional Rules.

(1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Paragraphs of this Section 6.11 must be given the opportunity to elect to have the prior provisions of this Section 6.11 apply if such Participant is credited with at least one Hour of Service under this Plan or a predecessor Plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 Years of Service for Vesting when he/she separated from service.

(2) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan or a predecessor Plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his/her benefits paid in accordance with Paragraph (G)(4).

(3) The respective opportunities to elect (as described in Paragraphs (G)(1) and (2) above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(4) Any Participant who has elected pursuant to Paragraph (G)(2) and any Participant who does not elect under Paragraph (G)(1) or who meets the requirements of Paragraph (G)(1) except that such Participant does not have at least 10 Years of Service for Vesting when he/she separates from service, shall have his/her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity.

(a) If benefits in the form of a life annuity become payable to a married Participant who:

(i) begins to receive payments under the Plan on or after Normal Retirement Age; or

(ii) dies on or after Normal Retirement Age while still working for the Employer; or

(iii) begins to receive payments on or after the qualified Early Retirement Age; or

(iv) separates from service on or after attaining Normal Retirement Age (or the qualified Early Retirement Age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits;

then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least 6 months before the Participant attains qualified Early Retirement Age and end not more than 180 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(b) A Participant, who is employed after attaining the qualified Early Retirement Age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the Eligible Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his/her death. Any election under this provision must be in writing and may be changed by the Participant at any time. The election period begins on the later of (1) the 180th day before the Participant attains the qualified Early Retirement Age, or (2) the date on which participation begins, and ends on the date the Participant terminates employment.

(c) For purposes of this Paragraph (G)(4), "qualified Early Retirement Age" is the latest of:

- (i) the earliest date, under the Plan, on which the Participant may elect to receive Retirement benefits,
- (ii) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or
- (iii) the date the Participant begins participation.

6.13 Joint and Survivor Annuity and Pre-Retirement Survivor Annuity Requirements. In the event of the death of a Participant after installment payments have begun, but prior to completion of such payments, the full amount of such unpaid benefits shall continue to be paid in the form of the previously established installments except that the Beneficiary may request that the remaining Account be paid in a lump sum. In the event of the death of the Participant prior to the start of any payment of his/her Account, distributions shall be made in the form and at the time or times selected by the Beneficiary pursuant to Section 6.06.

6.14 Death of Beneficiary. In the event of the death of a Beneficiary (or a contingent Beneficiary, if applicable) prior to the completion of payment of benefits due the Beneficiary from the Plan, the full amount of such unpaid benefits shall at once vest in and become the property of the estate of said Beneficiary. In determining the amount of such unpaid benefits, no adjustment shall be made by reason of any net income, or net loss, of the Trust, or any net appreciation or net depreciation by the Trust's assets subsequent to the beginning of the Plan Year in which such final distribution occurs.

6.15 Qualified Domestic Relations Orders.

(A) Notwithstanding any other provisions of Section 4, any Accrued Benefit of a Participant may be apportioned between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) by providing the alternate payee a percentage or spe-

cific amount of the Participant's Accrued Benefit. The Contract Administrator may direct distributions to an alternate payee pursuant to a qualified domestic relations order as defined in Code Section 414(p)(1)(A) on or after the date on which the Participant attains the earliest retirement age, provided that the Contract Administrator has properly notified the affected Participant and each alternate payee of the order and has determined that the order is a qualified domestic relations order as defined in Code Section 414(p)(1)(A). The alternate payee shall be paid the present value (using the actuarial assumptions contained in the Plan) of his/her specific amount or his/her percentage of the Participant's Accrued Benefit in a lump-sum payment notwithstanding the value of such lump-sum payment unless the domestic relations order specifies a different manner of payment permitted by the Plan; the alternate payee shall not be required to consent to such lump-sum payment. The Board of Trustees shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions thereunder.

(B) Any rights of a former Eligible Spouse, or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Eligible Spouse of the Participant.

(C) The Fund shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Eligible Spouses or other parties in making determinations and, unless such reliance is arbitrary or capricious, the Fund's determinations shall be final and binding and shall discharge the Fund from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Fund shall not be liable for duplicate benefits with respect to the same Participant, or for surviving Eligible Spouse benefits in excess of the actuarial present value of the benefits, determined as of the Effective Date of Benefits of the Participant's pension or, if earlier, the date of the Participant's death.

6.16 Direct Rollovers. Notwithstanding any other provision of the Plan, for distributions made after December 31, 2001 the Contract Administrator shall advise any distributee entitled to receive an eligible rollover distribution, at the same time as the notice required to be given pursuant to Section 4 (or such other time as is permitted by law) of his/her right to elect a direct rollover to an eligible retirement plan, pursuant to the provisions of this Section. To elect a direct rollover the distributee must request in writing to the Contract Administrator that all or a specified portion of the eligible rollover distribution be transferred directly to an eligible retirement plan.

The distributee shall not be entitled to elect a direct rollover pursuant to this Section unless he/she has obtained a waiver of any applicable Qualified Joint and Survivor Annuity, as required pursuant to Section 4.08.

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

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

(B) A “distributee” includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Eligible Spouse and the Employee's (or former Employee's) Eligible Spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Eligible Spouse or former spouse. A distributee also includes the Participant's non-spouse designated Beneficiary. In the case of a non-spouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is established on behalf of the designated Beneficiary and that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(C) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. However, in the case of an “eligible rollover distribution” to the surviving Eligible Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Eligible Spouse, or to an Eligible Spouse or former Eligible Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p). The Contract Administrator may establish reasonable procedures for ascertaining that the eligible retirement plan meets the preceding requirements.

(D) “Eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the por-

tion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

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) an individual retirement account or annuity described in Code Section 408(a) or (b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) or taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest 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.

A Participant or Beneficiary (including a non-Spousal Beneficiary, to the extent permitted under the Plan) may roll over an eligible rollover distribution (as defined in Code Section 402(c)(4)) to a Roth IRA, provided the Participant (or Beneficiary) satisfies the requirements for making a Roth contribution under Code Section 408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code Section 408A(d)(3)(A)).

**6.17 Benefit Distribution Fees.** The Plan may impose uniform administrative fees for the processing and payment of any form of benefit distribution. The administrative fee may vary depending upon the form of benefit distribution.

**6.18 Direct Rollovers on Behalf of Designated Non-Spousal Beneficiaries.** A deceased Participant's designated non-spousal Beneficiary, designated within the meaning of Code Section 401(a)(9)(E), shall be permitted to direct a trustee-to-trustee transfer of any portion of a distribution from this Plan to an individual retirement plan described in Code Section 408(a) or (b) that is established for purposes of receiving the distribution on behalf of the designated non-spousal Beneficiary. The direct trustee-to-trustee rollover must be made to an individual retirement account established on behalf of the designated non-spousal Beneficiary that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). In order to be able to roll over the distribution, the distribution must otherwise satisfy the definition of an eligible rollover distribution (as defined in Code Section 402(c)(4)). In applying this Section, a non-Spouse rollover will be subject to the direct rollover requirements under Code Section 401(a)(31), the rollover notice requirements under Code Section 402(f), and the mandatory withholding requirements under Code Section 3405(c).

6.19 Incompetence or Incapacity of a Pensioner. In the event it is determined that any Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, the Trustees may pay the benefits due to such Participant or Beneficiary to his or her legal guardian, conservator, committee, or other legal representative, or in the absence of any of them, to any relative by blood or marriage who is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. If such a Participant or Beneficiary resides in a residential health care facility, is not mentally competent, and lacks both a legal representative and a relative acting in his or her interest, the Trustees may pay the benefits due to the Participant or Beneficiary to the residential health care facility in which he or she resides and which is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. Payment by the Trustees hereunder to a legal representative, relative or residential health care facility shall operate to discharge the Trustees from any liability to such Participant or Beneficiary or to anyone representing the Participant or Beneficiary's interest. Payments to a legal representative, relative or a residential health care facility hereunder will not be deemed an assignment of benefits; and the relative or residential health care facility must acknowledge in writing that they will apply the amounts paid solely in the interest of the Participant or Beneficiary and that they have no right enforceable against the Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the Fund. No payment will be made hereunder to a governmental or private agency, institution, or facility if the Participant or Beneficiary is not legally required to pay for his or her care and maintenance.

## **SECTION 7: TOP-HEAVY PROVISIONS**

7.01 General Rule. The provisions in this Section 7 shall take precedence over any other provisions in the Plan with which they conflict.

7.02 Definitions. For purposes of this Section 7, the following words and terms shall have the meanings indicated:

(A) "Key Employee." In determining whether the Plan is top-heavy for Plan Years beginning after December 31, 2001, key Employee means any Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the determination date, is an officer of the Employer having an annual compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having an annual compensation of more than \$150,000. In determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002, key employee means any Employee or former Employee (including any deceased Employee) who, at any time during the 5-year period ending on the determination date, is an officer of the Employer having an annual compensation that exceeds 50 percent of the dollar limitation under Section 415(b)(1)(A), an owner (or considered an owner under Section 318) of one of the ten largest interests in the Employer if such individual's compensation exceeds 100 percent of the dollar limitation under Section 415(c)(1)(A), a 5-

percent owner of the Employer, or a 1-percent owner of the Employer who has an annual compensation of more than \$150,000.

The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable Treasury Regulations and other guidance of general applicability issued thereunder.

(B) “Top-heavy Plan.” For any Plan Year beginning after December 31, 1983, this Plan is top-heavy if any of the following conditions exists:

- (1) If the top-heavy ratio for this Plan exceeds 60% and this Plan is not part of any required aggregation group or permissive aggregation group of plans.
- (2) If this Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60%.
- (3) If this Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(C) “Top-heavy ratio.”

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the one-year period ending on the determination date(s) has or has had accrued benefits, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the Account balances of all key Employees as of the determination date(s) (including any part of any Account balance distributed in the one-year period ending on the determination date(s)) (five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability, and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the one-year period ending on the determination date(s)) (five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability, and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), both computed in accordance with Code Section 416 and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the determination date, but which is required to be taken into account on that date under Code Section 416 and the regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the one-year period ending on the determination date(s) has or has had any accrued benefits, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of all Account balances under the aggregated defined contribution plan or plans for all key Employees, determined in accordance with Paragraph (i) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all key Employees as of the determination date(s), and the denominator of which is the sum of the Account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with Paragraph (i) above, and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the determination date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the one-year period ending on the determination date (five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability, and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

(3) For purposes of Paragraphs (1) and (2) above the value of Account balances and the present value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the determination date, except as provided in Code Section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan. The Account balances and accrued benefits of a Participant (1) who is not a key Employee but who was a key Employee in a prior year, or (2) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the one-year period (five-year period in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of Account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a Participant other than a key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no

such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

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

(E) "Required aggregation group." A group consisting of (1) each qualified plan of the Employer in which at least one key Employee participated at any time during the Plan Year containing determination date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code Sections 401(a)(4) or 410.

(F) "Determination date." The date, for any Plan Year subsequent to the first Plan Year, which is the last day of the preceding Plan Year. For; and in the case of the first year of the Plan, the last day of that year.

7.03 Minimum Contributions. For any Plan Year in which this Plan is determined to be a top-heavy Plan, a minimum Employer contribution shall be made pursuant to this Plan to the Account of each non-key Employee Participant (except those who are separated from service with the Employer at the end of the Plan Year).

For the purposes of this Section 7.03, the minimum Employer contribution provided to each non-key Employee Participant (except those who are separated from service with the Employer at the end of the Plan Year) shall be equal to 3% of such non-key Employee's annual Compensation. If, however, the Employer contribution and any Employee deferrals, under this and any other defined contribution plan required to be included in the permissive or required aggregation group and maintained by the Employer, for any key Employee for such Plan Year is less than 3% of such key Employee's total annual Compensation not in excess of \$200,000 (for Plan Years beginning before 1989), then the Employer contribution to each Participant (except those who are separated from service with the Employer at the end of the Plan Year) shall equal the amount which results from multiplying such Participant's annual Compensation times the highest contribution rate of any key Employee (taking into account both Employer contributions and Employee deferrals) covered by the Plan. In determining the amount of Employer contributions which are needed to satisfy the requirements of this Section, Employee deferrals and employer matching contributions for non-key Employees shall not be taken into account.

Notwithstanding the other provisions of this Section, if the Employer maintains both this Plan and a defined benefit plan, for Employees covered under both plans the minimum Employer contribution or minimum non-integrated benefit for top-heavy purposes shall be one of the following: (i) the minimum non-integrated benefit, as described above, provided under a defined benefit plan, (ii) the minimum non-integrated benefit, as described above, provided under a de-

fined benefit plan, but offset by Employer contributions, as permitted by Treasury Regulation section 1.416-1(e), M-12, (iii) a combination of Employer contributions under the defined contribution plan and benefits under the defined benefit plan which results, under comparability analysis, in the equivalent of a minimum non-integrated benefit, as permitted by Treasury Regulation section 1.416-1(e), M-12, or (iv) the minimum Employer contribution, as described above, increased to 5% (from 3%) of an Employee's annual Compensation.

The minimum allocation required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Sections 411(a)(3)(B) or 411(a)(3)(D).

## **SECTION 8: APPLICATION FOR BENEFITS AND ADJUDICATION OF CLAIMS FOR BENEFITS**

**8.01 Advance Written Application Required.** An application for a Pension shall be made in writing on a form and in the manner prescribed by the Fund in advance of its effective date of benefits.

**8.02 Information Required and Recovery of Overpayments.**

(A) Every claimant for benefits shall furnish to the Fund all information and proof relevant to his or her eligibility for benefits under the Fund. Each Participant, Pensioner, and Beneficiary shall furnish the Fund with all information and proof requested by it for the administration of the Fund. If a Participant, Pensioner, Beneficiary, or other claimant for benefits makes a willfully false statement relevant to his or her claim for benefits, or furnishes fraudulent information or proof relative to his or her claim for benefits, then benefits not vested under the Fund may be suspended or discontinued.

(B) The Fund shall have the right to recover by all legal and equitable means any amounts paid to anyone in error, plus interest on same, and the right to recover by all legal and equitable means any amounts paid to which the recipient was not rightfully entitled under the terms of the Fund, plus interest on same. This right to recovery shall include, but shall not be limited to, the right to adjust future payments actuarially, or otherwise, to recoup such amounts from any future benefits to be paid to or on behalf of the Participant, Pensioner, or Beneficiary, and the right to recoup such amounts from any benefits to be paid to or on behalf of any survivors of the Participant, Pensioner, or Beneficiary. Where benefit payments received by a Pensioner in the form of a Joint and Survivor Annuity are actuarially adjusted to recoup an overpayment, such adjustment shall not extend, and recoupment shall not apply, to benefits paid to the Pensioner's surviving Eligible Spouse.

**8.03 Action of Trustees.** The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties. The Trustees shall have the exclusive right and discretionary authority to construe the terms of the

Plan, to resolve any ambiguities, and to determine any questions which may arise with the Plan's application or administration, including but not limited to determination of eligibility for benefits. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.

**8.04 Notice of Claim Determinations.** A Participant or Beneficiary who applies for benefits under the Plan shall have his/her eligibility for benefits determined by the Contract Administrator. The Participant or Beneficiary may designate an Authorized Representative to act on behalf of the Participant or Beneficiary in pursuing a benefit claim or an appeal of a determination. In order for a designation of an Authorized Representative to be effective, the Participant or Beneficiary must submit to the Contract Administrator a Designation of Authorized Representative form.

The Contract Administrator will make an initial determination within 90 days (45 days in the case of Disability claims) of receipt of the benefits claim form. The Contract Administrator may extend the period for the initial determination for a period not to exceed 90 days (or 30 days, in the case of Disability claims), provided: (1) the Participant or Beneficiary is notified of the extension within the initial 90- or 45-day period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. The Contract Administrator may further extend the period for the initial determination of Disability claims for an additional 30 days, provided: (1) the Participant or Beneficiary is notified of the extension within the first 30-day extension period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. If any extension is necessary because the Participant or Beneficiary submits an incomplete claim to the Contract Administrator, the period for making an initial determination will be suspended from the date that the request for additional information is sent to the Participant or Beneficiary until the earlier of: (a) the date that the Participant or Beneficiary responds to the Contract Administrator, or (b) 90 days (45 days for Disability claims) from the date of the request. The Participant or Beneficiary must submit the additional information requested by the Contract Administrator within 90 days (45 days for Disability claims). If a claim is denied, in whole or in part, the Participant or Beneficiary shall be sent written notice of the denial containing the following information: (1) the specific reason or reasons for the denial of the claim; (2) a specific reference to pertinent plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why the additional material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

**8.05 Appeal to the Board of Trustees.** If the Participant or Beneficiary disagrees with the Contract Administrator's determination, the Participant or Beneficiary must file a written appeal with the Board of Trustees. To file an appeal to the Board of Trustees, the Participant or Beneficiary must send to the Contract Administrator a written statement stating that the Partici-

part wishes to appeal the Contract Administrator's determination. The statement must be filed (postmarked or hand-delivered) within 180 days (60 days for Disability claims) after receipt of the determination. The Participant may submit with the appeal any written comments, documents, records, or other information related to the benefit claim which is the subject of the appeal. An appeal of a determination by the Contract Administrator shall be decided by the Board of Trustees at their next regularly scheduled quarterly meeting that immediately follows the Board's receipt of the Participant or Beneficiary's appeal, unless the appeal is filed within 30 days preceding the date of such regular quarterly meeting. If an appeal is filed within 30 days of a regularly scheduled meeting, the Board's determination shall be made no later than the date of the second regularly scheduled quarterly meeting following the Board's receipt of the appeal. If special circumstances require a further extension of time for processing the appeal, a determination by the Board shall be rendered no later than the third meeting of the Board following the Board's receipt of the appeal. If such an extension of time for review is required because of special circumstances, the Contract Administrator shall notify the Participant or Beneficiary in writing of the required extension prior to the commencement of the extension, describing the special circumstances and the date as of which the appeal determination will be made by the Board. The Contract Administrator shall notify the Participant or Beneficiary of the Board's appeal determination as soon as possible, but no later than five days after the appeal determination is made by the Board.

**8.06 Extension of Time.** The Participant or Beneficiary, Authorized Representative, Contract Administrator, or Board of Trustees may agree, in writing, to extend the times set forth in this Section. Any written agreement to extend the times must be reduced to writing prior to the expiration of the times set forth herein, and must specifically provide for the amount of the agreed-to extension.

**8.07 Rights on Appeal to the Board of Trustees.** The Participant or Beneficiary may request a hearing in person before the Board of Trustees. This request must be set forth in the written appeal filed with the Contract Administrator. At the hearing the Participant or Beneficiary may present any evidence, through documents or witnesses, to support the claim for benefits, and may be represented by a lawyer. The Participant or Beneficiary has the right to submit to the Board of Trustees along with the appeal documents, records and other information relating to the claim for benefits. The Participant or Beneficiary has the right, upon request and without charge, to reasonable access to and copies of all documents, records and other information relevant to the claim for benefits. The Participant or Beneficiary will be provided with the names of any medical or vocational experts whose advice was obtained on behalf of the Plan by the Contract Administrator in connection with the initial claim determination, without regard to whether the advice was relied upon in making the initial claim determination. The decision of the Board of Trustees will be based on its own review of the claim, taking into account all comments, documents, records, and other information submitted by the Participant or Beneficiary, without regard to whether such information was submitted or considered in the initial benefit determination and, where appropriate, in consultation with a health care professional who has appropriate training and experience in the field of medicine involved in the claim, and who was not consulted in

connection with the initial benefit determination, and without any deference to the initial claim determination made by the Contract Administrator.

8.08 Consequences of Failure to File an Appeal. If the Participant or Beneficiary fails to seek a review through the Contract Administrator's appeal procedure of any claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim. If the Participant or Beneficiary fails to seek a review by the Board of a claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim to the Board of Trustees. If the Participant or Beneficiary does not exercise their rights under ERISA to seek review of a decision by the Board denying the claim, in whole or in part, the decision of the Board shall be final and binding. No legal action may be commenced or maintained against the Plan more than 6 months after the decision of the Board of Trustees.

## **SECTION 9: DESIGNATION OF BENEFICIARY**

9.01 Designation of Beneficiary. A Participant or Pensioner may designate a person or persons as a Beneficiary or Beneficiaries to receive the Death Benefits, if any, provided in accordance with the Plan, or any benefits due but not yet received by the Pensioner at the time of his or her death, by forwarding such designation to the Contract Administrator in a form acceptable to the Board of Trustees. Designated Beneficiaries other than individual(s) are not acceptable; however, a trust or an estate may be a designated Beneficiary. See also Plan Section 4.08(B) (spousal consent requirement at retirement) and 4.08(D) (preretirement surviving spouse pension) for limitations on beneficiary designations. A Participant or Pensioner shall have the right to change his or her designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Fund unless it is received by the Contract Administrator prior to the time any payments are made to the Beneficiary whose designation is on file with the Contract Administrator. Any benefits due but not yet received by the Pensioner at the time of his or her death, shall be paid to the most recently designated Beneficiary filed with the Contract Administrator. If such designated Beneficiary who has survived the Pensioner or Participant dies, and further payments are due for periods after the death, and if no successor Beneficiary named by the Participant is still then living, such payments shall be made to the designated Beneficiary's survivor(s), as applicable, according to the order listed in Plan Section 8.02.

9.02 No Designated Beneficiary. If a Participant has not designated a Beneficiary or if there is no designated Beneficiary alive at the death of a Participant, any benefits due but not yet received by the Pensioner at the time of his or her death shall be payable to the person listed below in the order listed:

- (A) to the Participant's Spouse;

- (B) if no surviving Spouse, to the Participant's surviving children, divided equally among them;
- (C) if no surviving Spouse or surviving children, to the Participant's surviving parents, divided equally between them;
- (D) if no surviving Spouse or surviving children or surviving parents, to the Participant's surviving siblings, divided equally among them.

If there are no survivors under (A) through (D) above, such benefits will not be paid to anyone, including an estate, and such amounts will be forfeited to the Fund.

This Plan Section 8.02 shall also apply to the survivors of a Beneficiary, if no successor Beneficiary named by the Participant is still living, or to the survivors of a surviving Spouse, and if there were benefits due but not yet received by the Beneficiary or surviving Spouse at the time of his or her death.

## **SECTION 10: MISCELLANEOUS PROVISIONS**

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

**10.02 Non-Assignment of Benefits.**

(A) Each Participant under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his or her Pension, prospective Pension or any other rights or interest under the Plan, and the Board of Trustees shall not recognize or be required to recognize such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such Pension, prospective Pension, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other proceedings to the fullest extent permitted by law.

(B) Notwithstanding the foregoing, Subsection (A) above, shall not preclude:

(1) Benefits from being paid in accordance with the applicable requirements of any "Qualified Domestic Relations Order" as defined by ERISA Section 206(d)(3); and

(2) Any offset of a Participant's benefits as provided under Internal Revenue Code Section 401(a)(13)(C) with respect to:

(a) a judgment of conviction for a crime involving the Plan;

(b) a civil judgment, consent order or decree in an action for breach or alleged breach of fiduciary duty under ERISA involving the Plan; or

(c) a settlement agreement between the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person, which court order, judgment, decree or agreement is issued or entered into on or after August 5, 1997 and specifically requires the Plan to offset against a Participant's benefits.

(3) However, an offset under Internal Revenue Code Section 401(a)(13)(C) against a married Participant's benefits shall be valid only if one of the following conditions is satisfied:

(a) written spousal consent is obtained;

(b) the Eligible Spouse is required by a judgment, order, decree or agreement to pay the Plan an amount; or

(c) a judgment, order, decree or agreement provides that the Eligible Spouse shall receive a survivor annuity, as required by Internal Revenue Code Section 401(a)(11), determined as if the Participant terminated employment on the offset date (with no offset to his or her benefits), to begin on or after Normal Retirement Age, and providing a 50% Qualified Joint and Survivor Annuity and a Qualified Pre-Retirement Survivor Annuity.

(C) A Participant or Beneficiary may authorize in writing the payment of his or her entire monthly Pension benefit to a trust fund. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary at any time. Such authorization shall not be an assignment of benefits to the trust fund so designated, and the trust fund designated shall have no right enforceable against the Plan to any part of the Participant or Beneficiary's Pension benefit. The trust fund must acknowledge in writing that the payment of benefits creates no enforceable right in or to any benefit payment, or portion thereof, from the Plan. The payment will only be made when or after the benefit would otherwise be payable to the Pensioner or Beneficiary.

(D) A Participant or Beneficiary may authorize in writing a deduction from his or her monthly Pension benefit for remittance to a health and welfare trust fund to pay for health and welfare coverage. Such authorization must be strictly voluntary and subject to revocation by the Participant or Beneficiary at any time. Such authorization shall not be an assignment of benefits to the health and welfare fund, and the health and welfare fund must acknowledge in writing that it shall have no right enforceable against the Fund to any part of the Participant's or Beneficiary's Pension benefit or to any other assets of the

Fund. The payment will be made to the health and welfare fund only when the Pension benefit would otherwise be payable to the Participant or Beneficiary. In addition, the health and welfare fund must reimburse the Fund all of its costs for the deduction and transfer. Both the Fund and the health and welfare fund must have the authority to revoke such an arrangement upon reasonable notice to the other.

(E) A Participant or Beneficiary, or his or her legal representative, may authorize in writing the payment of his or her entire monthly pension benefit to a residential health care facility in which he or she resides. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary, or legal representative, at any time. Such authorization shall not be an assignment of benefits to the nursing home or other residential health care facility so designated, and the nursing home or other residential health care facility must acknowledge in writing that it shall have no right enforceable against the Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the Fund. The payment will be made only when the Pension benefit would otherwise be payable to the Participant or Beneficiary.

10.03 Merger, Consolidation or Transfer of Plan. In the case of any merger or consolidation with, or transfer of any assets or liabilities to, any other plan, each Participant in this Plan must be entitled to receive a benefit immediately after the merger, consolidation or transfer, which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer.

10.04 Plan Amendments. No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under Code Section 412(c)(8). For purposes of this paragraph, 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 non-forfeitable percentage (determined as of such date) of such Employee's employer-derived accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his/her Account balance under a particular optional form of benefit if the amendment satisfies the conditions in (A) and (B) below:

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

(B) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the 90<sup>th</sup> day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the Employee Retirement Income Security Act requirements at 29 CFR 2520.104b-3 relating to a summary of material modifications, or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

10.05 Use of Plan Assets. The Plan assets and income therefrom may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

10.06 Authority. The Trustees shall have the sole responsibility and the sole control of the operation and administration of the Plan and shall have the full power, discretion, and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty, discretion and responsibility to:

(A) Resolve and determine all disputes or questions arising under the Plan, including the power and discretion to determine the rights of Pensioners, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;

(B) Adopt such rules of procedure and regulations as in their opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan;

(C) Implement the Plan in accordance with its terms and the rules and regulations adopted as above and with the Trust Agreement;

(D) Determine the eligibility of any Employee as a Participant and the crediting and distribution of the Trust pursuant to the terms of the Plan and the Trust; and

(E) Establish and carry out a funding policy and method consistent with the objectives of the Trust, the Plan, and ERISA pursuant to which the Trustees shall determine the Plan's liquidity and financial needs.

10.07 Profit Sharing Plan. The Fund shall be maintained as a profit sharing plan as defined in Section 401(a)(27) of the Code.

IN WITNESS WHEREOF, the undersigned do hereby set their hands and seals the day and year first above written:

PLUMBERS AND PIPEFITTERS LOCAL No. 520:

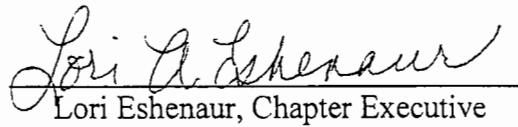
By



Keith Rutherford, Business Manager

MECHANICAL CONTRACTORS ASSOCIATION OF  
CENTRAL PENNSYLVANIA: .

By



Lori Eshenaus  
Lori Eshenaus, Chapter Executive