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March 25, 2004

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COMMISSION CLERK

Blanca Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Indiantown Gas Company's Response to Staff's Rate Case  
Audit, PSC Docket No. 030954-GU

Dear Ms. Bayo:

Enclosed for filing are the original and seven copies of Indiantown Gas Company's response to the Commission Staff's rate case audit in the above-styled docket. I will sincerely appreciate your confirming receipt of this response by stamping the attached filing copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.


Cordially yours,

  
Robert Scheffel Wright

Enclosures

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
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**Indiantown Gas Company**  
**Response to Staff's Rate Case Audit**  
**Docket No. 030954-GU**  
**March 25, 2004**

**Audit Exception No. 1: Account 376-Mains**

Company Response: The Company agrees with staff's methodology used to determine an appropriate original cost for those facilities placed into service prior to 1970 and in the 1980 Booker Park distribution system. The Company also agrees with the net plant adjustment (\$50,811.35) as computed by staff. However, we do not understand Staff's computation of accumulated depreciation for the facilities. The original 1969 plant has been in-service for over 35 years. The authorized depreciation life for the Company's mains is uniformly less than 35 years. In addition, the depreciation rate applied by staff to both the 1969 and 1980 facilities is 2.3%. The Company's depreciation rates for steel main established in the Company's three most recent Commission-approved Depreciation Studies was 3.1% (1993), 2.3% (1998) and 4.2% (2003). An average of these rates would yield a rate of 3.2%, significantly higher than the 2.3% assumed by staff. It would appear that the 1969 vintage facilities are fully depreciated and that the 1980 facilities depreciation is understated. In fact, it appears that the 1969 facilities have been over-depreciated and should be appropriately adjusted. Staff recommends several accounting entries to record their proposed adjustments. The Company does not currently utilize an "Inter-company Receivable" account. It is unclear how the Company would record the staff proposed adjustment to plant. The Company agrees that adjustments to plant and accumulated depreciation should be made and that corresponding adjustments to Retained Earnings, Rate Base and the 2004 depreciation expense are appropriate. We look forward to working with staff to resolve this issue.

**Audit Exception No. 2: Allocation of Non-Utility Common Plant**

Company Response: The Company strongly disagrees with the application of staff's proposed methodology for allocating common plant assets between utility and non-utility operations. Historically, the Company utilized a method based on gross revenues from each operation to allocate cost between the units. Generally, the gross revenue method produced an allocation of approximately 90% to utility and 10% to non-utility operations. In the Company's view this allocation appropriately apportioned non-direct assigned expenses to each operation. The Company's principal business is the natural gas utility. The propane, appliance sales and service businesses are a small part of the overall business. Over 90% of the Company's net assets are invested in the regulated utility.

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In 2002 it became obvious to the Company that the gross revenue based allocation method would need to be revised. Three major issues affected the Company's decision to revise its allocation method. First, the Caulkins citrus plant sold to Louis Dreyfus Citrus in 2001. Louis Dreyfus transferred the plant from sales service to transportation service in November 2001 and began purchasing gas from a third party supplier. Second, the Company's largest customer, Indiantown Cogeneration, began, in mid-2000, to reduce its therm consumption in reaction to substantial increases in natural gas commodity costs. The cogeneration plant ultimately reduced annual volumes from over 9,000,000 therms in 1999 to approximately 2,500,000 therms in 2003. Third, the Company received authorization in November 2002 to implement its proposed unbundling program and transition out of the gas merchant function. The sale of gas to all customers was transferred to a third party marketer. As a result of these three issues, the Company's gross revenues were significantly reduced. Subtracting the revenues from the sale of natural gas from the gross revenue allocation method resulted in an inappropriate allocation of costs.

The Company changed its internal cost allocation method in 2003 to reflect the difference in net plant between utility and non-utility units. Indiantown Gas is very small company. The Officers are directly involved in the day-to-day operation of the company. Unlike larger organizations, the time spent supervising employees and overseeing field and office activities is necessarily limited. Most of the Company's assets are in the utility. Without question the business and regulatory environments are much more complex for the utility than the propane or appliance businesses. It follows that the Company's Officers have principally been engaged in managing the utility. The Company has, historically, directly charged non-Officer labor and related expenses to either the utility or non-utility units based on the actual labor performed. Most of the work required to operate the propane and appliance businesses are performed by non-Officer employees and are direct charged. Given that the primary costs to be allocated were related to management compensation and common plant, the Company elected to establish an allocation method for 2003 based on the assets they were managing.

The Company's total net plant was compared to non-utility net plant to derive an allocation percentage. The rate case filing applied this methodology to the 2004 projections. The allocation percentage used in the MFRs was 6.2% of total plant to non-utility operations. The staff audit proposes to utilize a three-factor method for allocation purposes. The application of this method would increase the non-utility allocation to 42.93%. The Company believes that such an allocation would significantly over-allocate common plant costs to the non-regulated businesses. The Company has two fundamental concerns with the three-factor method as proposed by staff.

- As noted above, the Company's natural gas gross revenues have been significantly reduced by its transition out of the merchant function. As a result of this transition the Company's administrative costs to manage transportation service have increased, as they have on other LDC systems. The Commission has, on several occasions, affirmed the recovery in rates of the cost increases related to administering transportation service. The Company recognized no administrative cost savings from transitioning to transportation service. It implemented transportation service so that customers could benefit from lower overall fuel costs. Staff's three-factor method uses, as one of the factors, the Company's 2003 margin revenue compared against gross revenue for non-utility operations. Removing three to four million dollars per year in commodity and pipeline capacity billings from the Company's gross utility revenue, through unbundling, has an obvious impact on any comparative revenue percentage to non-utility operations. The relative costs to operate the Company's business units have not substantively changed subsequent to its unbundling of the utility. However, applying the revenue factor as proposed in the staff audit would have a dramatic and inappropriate effect on the historic cost allocations. As an alternative, a commodity and capacity cost imputation could easily be developed for natural gas – i.e., by adding back in the cost of the natural gas that flows through the Company's system -- for the purpose of comparing "gross revenue" for each business unit on an apples-to-apples basis. In the final analysis using a revenue comparison to allocate common plant may not be the best alternative.
- Staff also proposes to include a factor based on a comparison of regulated payroll to unregulated payroll. The Company directly charges field staff payroll costs to the appropriate business unit based on the actual work performed. The cost of the Officers and Office Manager are allocated. The staff auditor received job descriptions for each employee and a specific assessment of the time spent on utility vs. non-utility activities. Staff indicates that the Company's time allocations "do not appear reasonable when looking at direct labor charged to total labor or the amount of revenues generated from non-utility operations". The staff allocation of indirect general and indirect financial hours and costs based on net plant and revenue allocators is problematic in several ways. First, the Company has the same concern about the use of gross revenues in any allocation method as described above. Second, staff makes the assumption that the time spent by the Officers in managing the utility and the non-utility business follows the direct labor charged to the respective units by field employees. As noted above, the Company believes that this assumption is not accurate. The Company's Officers devote most of their time to managing the utility. The utility is a more complicated business and represents the bulk of

the Company's investment. The Officers exercise financial and oversight control of their non-utility businesses, but the assumption that 42.98% of their time should be allocated to non-utility operations is inaccurate. The Company believes that the allocation percentages provided to staff are much more representative of the actual time spent on each business unit.

The third factor proposed by staff is based on a comparison of "gross" plant between the utility and non-utility units. The Company originally proposed the use of a ratio of "net" regulated plant to "net" non-regulated plant in the historic base year as its common plant allocation method. The Company could agree to the use of staff's gross plant ratio in 2003 as an appropriate method of allocating common plant.

**Audit Exception No. 3: Working Capital – Deferred Debits**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 4: Working Capital – Inventory Accounts**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 5: Working Capital – Cash**

Company Response: The Company agrees with staff's recalculation of working capital cash as depicted on staff spreadsheet "Cash In Working Capital".

**Audit Exception No. 6: Working Capital – Accounts Receivable**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 7: Forecasted Revenue for 2004**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 8: Telephone Expenses**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 9: Payroll for Meter Reader**

Company Response: The Company agrees with staff's opinion.

**Audit Exception No. 10: Pension Forecast**

Company Response: The Company included two items in its projected test year expenses related to employee retirement programs. The first expense item was \$7,000 to re-instate funding of the Company's 401K program. The Company made a \$10,000 401K contribution in December 1999. The Company made a \$10,000 contribution in June 2000. The Company made a \$5,000 401K contribution for the 2001 FY in March 2002, as allowed by the plan. The Company suspended its 401K contribution for 2002. The significant reduction in plan contribution in 2001 and the suspension of the contribution in 2002 were as a direct result of reduced revenues from the cogeneration plant. Such a revenue reduction required that the Company reduce a variety of expenses including 401K contributions. The Commission's authorization of interim rate relief has enabled the Company to reinstate its 401K program contributions. By the end of March, 2004 the Company plans to make a \$7,500 total 401K contribution for FY 2003 (\$7,000 utility, \$500 non-utility). Attached is a copy of the Company's 401K plan.

The second expense item is related to the forecast of expenses for the Company's defined benefits pension plan. Attached are copies of the Company's plan documents. In addition, attached is a copy of a letter from the Company's pension administrator detailing the expense increase necessary to adequately fund the pension plan. Although there are no retirements and/or disbursements planned for the next several years, the projected plan obligations dictate the increased contribution level.

#### **Audit Exception No. 11: Clearing and Payroll Allocations**

Company Response: As described in the Company's response to Audit Exception No. 2, there are several concerns with staff's proposed use of the three-factor allocation methodology. The Company believes that the job description and time allocation data provided to staff accurately reflect the time spent by the Officer's on each business unit. The Company agrees with the staff's employee expense allocation for the Office Manager position.

#### **Audit Exception No. 12: Clearing Account Adjustments and Allocations**

Company Response: The Company agrees with staff's specific actual account adjustments. The Company does not agree with the use of staff's three-factor allocation method as described in N0.2 and No. 12, above.

#### **Audit Exception No. 13: Account 923 – Outside Services**

Company Response: Please refer to the Company's response to Item No. 14 of the Staff's Second Data Request.

#### **Audit Exception No. 14: Working Capital – Deferred Debits**

Company Response: The Company agrees with staff's opinion.

**Audit Disclosure No. 1: Land**

Company Response: The Company agrees with staff's opinion.

**Audit Disclosure No. 2: Debt/Equity Ratio**

Company Response: The Company is currently working with staff to determine an appropriate ratio.

**Audit Disclosure No. 3: Long-Term Debt**

Company Response: The Company agrees with staff's opinion related to the financing of the Ford F-250. As noted by staff, the Company's long-term debt forecast included capital improvements for 2004, rate case expenses and operating expenses to the extent revenue shortfalls exists.

**Audit Disclosure No. 4: New payroll Positions and Increases Forecast for 2004.**

Company Response: The Company has no objection to the Staff's Statement of Facts.

**Audit Disclosure No. 5: Payroll Trend Rate**

Company Response: The Company provided payroll increases for non-supervisory employees of approximately 5% in 2003. Payroll increases for supervisory/management employees approximated 0% for 2003. On average, the overall pay increases for 2003 was calculated to be 2.5% (5% for non-supervisory + 0% for supervisory/management divided by 2). For 2004, the Company projects a 5% across-the-board pay increase for all employees. The Company's response to Question No. 20 (b) in Staff's Second Data Request provides a spreadsheet that details salary increases for all employees in 2003.

**Audit Disclosure No. 6: Travel and Entertainment Expenses**

Company Response: The Company's concern with the three-factor allocation method is described above.

**Audit Disclosure No. 7: Retirement of Chief executive Officer**

Company Response: The Company's CEO has not announced her retirement and has no current plans to retire in 2005.

# THE PENSION SOURCE, INC.

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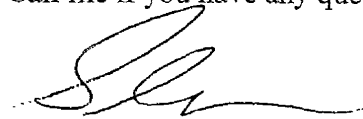
Re: Indiantown Gas Co. Pension Trust

Dear Brian:

The Defined Benefit Plan sponsored by Indiantown Gas Company will require \$18,977.00 funding per year (1,581.00/month) based upon the current funding assumptions and current value of the assets held by the plan.

If the funding requirements are not met a 10% non deductible excise tax penalty will apply to any funding deficiency.

Call me if you have any questions.



Glen Hughes



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**INDIANTOWN GAS 401(K) RETIREMENT TRUST**

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# INDIANTOWN GAS 401(K) RETIREMENT TRUST

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# INDIANTOWN GAS 401(K) RETIREMENT TRUST

THIS AGREEMENT is made this 18th day of November, 2003, by and between Indiantown Gas Company (collectively "the Employer"), and Brian Powers and Colette Powers (collectively "the Trustee").

## PART 1

### ARTICLE 1

#### INTRODUCTION

**1.1.1 Adoption and Title.** The Employer and the Trustee hereby amend, restate, and adopt the Plan and Trust to be known as Indiantown Gas 401(K) Retirement Trust.

**1.1.2 Effective Date.** Except as otherwise specifically provided herein, the provisions of this amended and restated Plan and Trust which was originally effective January 1, 1997 shall be effective as of January 1, 2003, hereinafter known as the "Effective Date." Effective dates pertaining to legislative changes required by the Uruguay Round Agreements Act, Pub. L. 103-465 ("GATT"), the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA"), the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"), the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA 97"), and the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA"), collectively known as "GUST", and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554 ("CRA") are provided herein with those provisions.

**1.1.3 Purpose.** This Plan and Trust is established for the purpose of giving recognition to the contribution made by Employees to the successful conduct of the business of the Employer by providing Eligible Employees with retirement, disability and death benefits in accordance with the Plan.



## ARTICLE 2

### DEFINITION

As used in this Plan and Trust, the following terms shall have the following meanings:

**1.2.1 "Account":** The Non-Elective Account, Elective Account, Matching Account, Qualified Non-Elective Account, Qualified Matching Account, Voluntary Account, Controlled Account, or Segregated Account of a Participant, as the context requires, established and maintained for accounting purposes.

**1.2.2 "Account Balance":** The value of a Participant's Accounts as of a specified date.

**1.2.3 "ACP":** The Average Contribution Percentage determined in accordance with the provisions of Part 2, Article 7.

**1.2.4 "Act":** The Employee Retirement Income Security Act of 1974, as amended from time to time.

**1.2.5 "ADP":** The Actual Deferral Percentage determined in accordance with the provisions of Part 2, Article 7.

**1.2.6 "Alternate Payee":** Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this, or any other plan of the Employer, with respect to such Participant.

**1.2.7 "Anniversary Date":** The first day of the Plan Year.

**1.2.8 "Base Benefit Percentage":** The percentage of average compensation at which Employer derived benefits are accrued with respect to compensation at or below the integration level in a defined benefit plan or target benefit plan.

**1.2.9 "Base Contribution Percentage":** The percentage of Compensation at which Employer derived contributions are made respect to Compensation at or below the Integration Level.

**1.2.10 "Beneficiary":** The person or persons entitled to receive any benefits payable upon or after a Participant's death.

**1.2.11 "Board of Directors":** The board of directors of an incorporated Employer.

**1.2.12 "Break in Service":** The failure of an Employee or Participant to complete more than a specified amount of service during a twelve (12) consecutive month period. A Break in Service for eligibility purposes shall occur if the Employee has less than 500 Hours of Service. A Break in Service for vesting purposes shall occur if the Participant has less than 500 Hours of Service. The determination of whether the Participant has earned a Year of Service (or partial year) or a Break in Service shall be measured on the same computation period, as specified in Section 1.2.28 or 1.2.96, as appropriate.

**1.2.13 "Code":** Internal Revenue Code of 1986, as amended from time to time.

**1.2.14 "Compensation":** Total compensation, which is actually paid to the Participant by the Employer during the applicable twelve (12) consecutive month period and includes all information required to be reported under sections 6041, 6051 and 6052 of the Code (wages, tips, and other compensation as reported on Form W-2). Compensation includes wages, (within the meaning of section 3401(a) of the Code) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written

statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. Such 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 section 3401(a)(2) of the Code).

In the case of a Self-Employed Individual, Compensation means Earned Income during such period; provided, if Compensation is modified so that Non-Highly Compensated Employees receive less than their total Compensation, Compensation for each self-employed individual shall be his Earned Income multiplied by a percentage. Such percentage equals the aggregate compensation recognized for allocation purposes for Non-Highly Compensated Employees divided by the aggregate total compensation actually paid to Non-Highly Compensated Employees.

Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b), and 457(b) of the Code. Section 132(f)(4) elective deferrals are included in Compensation for Plan Years beginning on or after January 1, 2001.

Effective December 12, 1994, a Participant who is in Qualified Military Service shall be credited with Compensation for such period based on the rate of Compensation he would have received had he been in the employment of the Employer, or if such rate is not ascertainable, the average Compensation for the twelve (12) consecutive month period, (or his entire period of employment, if shorter), preceding his Qualified Military Service.

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

For Plan Years beginning on or after January 1, 1994, the annual compensation of each Participant taken into account for determining all allocations 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.

If a determination period consists of fewer than twelve (12) months the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

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

For Plan Years commencing prior to January 1, 1997 the annual compensation taken into account in determining whether the dollar limitation above applies shall include the compensation of the Participant's spouse and any lineal descendants who have not attained age nineteen (19) by the last day of the Plan Year. If the aggregate compensation exceeds such dollar limitation, then the dollar limitation shall be allocated among the Participant, spouse, and such lineal descendants. Each affected individual shall receive the lesser of his compensation (without regard to this Section) or the Taxable Wage Base in effect on the first day of the applicable Plan Year. If the aggregate of the amounts so allocated still exceeds the

dollar limitation, then each affected individual shall receive a pro-rata portion based on such allocation so that the aggregate amount equals the dollar limitation for that Plan Year. If the aggregate of the amounts so allocated is less than the dollar limitation, then each affected individual shall receive an additional amount equal to such difference prorated over his compensation in excess of the Taxable Wage Base for that Plan Year. This Paragraph only applies to Participants who are 5-Percent Owners (as defined in Section 2.5.3(g)(2)) or who are Highly Compensated and receive one of the ten (10) highest compensations for that Plan Year.

**1.2.15 "Compensation Computation Period":** Each Plan Year.

Compensation for a Participant's initial year of participation shall be measured from his Entry Date as a Participant.

**1.2.16 "Contract":** Any policy or other agreement with or without any insurance element issued and not subsequently determined invalid or unenforceable by any Insurer including, but not limited to, life insurance policies, individual or group annuity contracts, and deposit administration contracts.

**1.2.17 "Controlled Account":** An account established and maintained for a Participant with respect to his interest in the Trust Fund over which he is permitted, under the terms of the Plan and the Plan's investment policy, to exercise investment control.

**1.2.18 "Direct Rollover":** A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**1.2.19 "Disability Retirement Date":** The date that a Participant retires due to a medically determinable physical or mental impairment that is expected to last for a continuous period of at least twelve (12) months or result in death and which renders him incapable of performing his duties. Such date is the date the Participant is determined by the Plan Administrator to be disabled.

**1.2.20 "Distributee":** An Employee or former Employee, an Employee's or former Employee's surviving spouse, an Employee's or former Employee's spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relations Order, as defined in section 414(p) of the Code.

**1.2.21 "Early Retirement Age":** The Plan does not provide an Early Retirement Age.

**1.2.22 "Early Retirement Date":** The Plan does not provide an Early Retirement Date.

**1.2.23 "Earned Income":** The net earnings from self-employment in the trade or business with respect to which the Plan is established for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items but, in the case of taxable years beginning after 1989, with regard to the deduction allowed to the taxpayer by section 164(f) of the Code. Net earnings shall be reduced by contributions to a qualified Plan to the extent deductible under section 404 of the Code.

**1.2.24 "Elapsed Time Method":** A method of counting service for purposes of eligibility to participate, vesting, and contribution allocation which does not track actual hours worked by an Employee, but is measured according to the length of time an individual is an Employee of the Employer or a Participant of this Plan, as appropriate. This Plan does not use the Elapsed Time Method, but instead tracks Hours of Service for determining Years of Eligibility Service, Years of Credited Service, and Years of Vesting Service.

**1.2.25 "Elective Account":** An Account established and maintained for a Participant with respect to his Elective Contributions.

**1.2.26 "Elective Contribution":** A contribution to this Plan made by the Employer on behalf of a Participant, in lieu of cash compensation in accordance with a salary reduction or salary deferral agreement.

**1.2.27 "Elective Deferrals":** Contributions made on behalf of a Participant at his election, in lieu of cash compensation, pursuant to a salary reduction agreement or other deferral mechanism. Elective Deferrals shall include Elective Contributions to this Plan and any contributions to any other qualified cash or deferral arrangement described in section 401(k) of the Code, any simplified employee pension cash or deferred arrangement as described in section 408(k)(6) of the Code, any Simple IRA Plan described in section 408(p) of the Code, any eligible deferred compensation plan under section 457 of the Code, any plan described under section 501(c)(18) of the Code, and any plan under section 403(b) of the Code for which an annuity contract is purchased for the Participant, whether or not such plan is maintained by the Employer. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions in accordance with Section 3.1.3.

**1.2.28 "Eligibility Computation Period":** For purposes of determining Years of Eligibility Service and Breaks in Service for purposes of eligibility, the initial Eligibility Computation Period is the twelve (12) consecutive month period beginning with the date on which the Employee first performs an Hour of Service for the Employer and the subsequent Eligibility Computation Periods are each Plan Year commencing with the first Plan Year which commences prior to the first anniversary of the Employee's employment date regardless of whether the Employee is entitled to be credited with 1000 Hours of Service during the initial Eligibility Computation Period. An Employee who is credited with 1000 Hours of Service in both the initial Eligibility Computation Period and the first Plan Year which commences prior to the first anniversary of the Employee's initial Eligibility Computation Period shall be credited with two (2) Years of Service for purposes of eligibility to participate.

**1.2.29 "Eligible Employee":** An Employee, as defined in Section 1.2.32 below, who has met the eligibility requirements set forth in Section 2.1.1, including Leased Employees subject to section 414(n) or (o) of the Code.

**1.2.30 "Eligible Retirement Plan":** An individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. In the case of a surviving spouse, this term refers to an individual retirement account or individual retirement annuity.

**1.2.31 "Eligible Rollover Distribution":** Any distribution of all or a portion of the Participant's Account Balance, but does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under section 401(a)(9) of the Code;

(3) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities);

(4) any other distribution(s) that is (are) reasonably expected to total less than two hundred dollars (\$200) during a year; and,

(5) any hardship distribution described in section 401(k)(2)(B)(i)(IV) of the Code received after December 31, 1999.

**1.2.32 "Employee":** A person who is currently or hereafter employed by the Employer, or by any other employer aggregated under section 414(b), (c), (m) or (o) of the Code and the regulations thereunder, but excluding an employee who is a non-resident alien (within the meaning of section 7701(b)(1)(B) of the Code) deriving no earned income (within the meaning of section 911(d)(2) of the Code)

from the Employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3) of the Code) and employees who are included in the unit of employees covered by a collective bargaining agreement between the Employer and "employee representatives"; provided, that retirement benefits were the subject of good faith negotiations and less than two (2%) percent of the employees of the Employer who are covered pursuant to such agreement are professionals as defined in Treasury regulation §1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization where more than half of its members are employees who are owners, officers, or executives of the employer.

Notwithstanding any other provision of this Plan, individuals who are not classified as Employees of the Employer for purposes of the Employer's payroll system (including, without limitation, individuals employed by temporary help firms, technical help firms, staffing firms, employee leasing firms, professional employer organizations or other staffing firms whether or not deemed to be "common law" employees or "leased employees" within the meaning of section 414(n) or (o) of the Code) are not considered to be Eligible Employees of the Employer and shall not be eligible to participate in the Plan. In the event any such individuals are reclassified as Employees for any purpose, including without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action, or administrative proceeding, such individuals shall notwithstanding such reclassification, remain ineligible for participation hereunder. In addition to and not in derogation of the foregoing, the exclusive means for individuals who are not classified as an Employee of the Employer on the Employer's payroll system to become eligible to participate in this Plan is through an amendment to this Plan, duly executed by the Employer, which specifically renders such individuals eligible for participation hereunder.

The Plan Administrator shall have full and complete discretion to determine eligibility for participation and benefits under this Plan, including, without limitation, the determination of those individuals who are deemed Employees of the Employer (or any controlled group member.) The Plan Administrator's decision shall be final, binding, and conclusive on all parties having or claiming a benefit under this Plan. This Plan is to be construed to exclude, and the Plan Administrator is authorized to exclude, all individuals who are not considered Employees for purposes of the Employer's payroll system.

**1.2.33 "Employer":** The Employer and each affiliated employer that are a party to this Agreement, or any of their respective successors or assigns which adopt the Plan; provided, however, that no mere change in the identity, form or organization of the Employer shall affect its status under the Plan in any manner, and, if the name of the Employer is hereinafter changed, a corresponding change shall be deemed to have been made in the name of the Plan and references herein to the Employer shall be deemed to refer to the Employer as it is then known.

**1.2.34 "Employer Contributions":** Any contribution made by the Employer including Non-Elective Contributions, Qualified Non-Elective Contributions, Matching Contributions, and Qualified Matching Contributions. The term as used in this Plan does not include Elective Contributions made of behalf of a Participant.

**1.2.35 "Entry Date":** The first day of the Plan Year or the date six (6) months thereafter, coincident with or next following satisfaction of the eligibility requirements. Eligibility requirements are defined in Section 2.1.1.

**1.2.36 "Excess Benefit Percentage":** The percentage of average compensation at which Employer derived benefits are accrued with respect to compensation above the integration level in a defined benefit plan or target benefit plan.

**1.2.37 "Excess Contribution Percentage":** The percentage of Compensation at which Employer derived contributions are made with respect to Compensation above the Integration Level.

**1.2.38 "Fiduciary":** The Plan Administrator, the Trustee, and any other person who has discretionary authority or control in the management of the Plan or the disposition of Trust assets.

**1.2.39 "Forfeitures":** The non-vested portion of a Participant's Account Balance that is forfeited on or after his termination of employment in accordance with Section 2.4.9 and may be allocated to other Participants, used to defray the administrative expenses of the Plan, or considered as part of the Employer's contribution if permitted by Section 2.3.8.

**1.2.40 "Gross Benefit Percentage":** The percentage of average compensation at which Employer derived benefits are accrued prior to the application of the offset in a defined benefit plan or target benefit plan.

**1.2.41 "Highly Compensated Employee":**

(a) For Plan Years beginning after December 31, 1996, a Highly Compensated Employee means any Employee who:

(1) was a 5-percent owner (as defined in section 416(i)(1) of the Code) of the Employer at any time during the year or the preceding year; or

(2) for the preceding year had "compensation" from the Employer in excess of \$80,000 (as adjusted by the Secretary of the Treasury pursuant to section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996).

The year for which a determination is being made is called a "determination year" and the preceding twelve (12) month period is called a "look-back year."

For purposes of this Subsection, the term "compensation" means compensation within the meaning of section 415(c)(3) of the Code for the "determination year" or "look-back year." For Plan Years commencing before January 1, 1997 "compensation" for a Participant who is a 5-Percent Owner (as defined in Section 2.5.3(g)(2)) or who receives one of the ten (10) highest compensations for the Plan Year shall include the "compensation" of his spouse, any lineal ascendants and descendants, and the spouses of any lineal ascendants and descendants.

The determination of whether an Employee had "compensation" in excess of \$80,000 (as adjusted by the Secretary of the Treasury), shall be made based on "compensation" paid during the preceding Plan Year.

The Employee data for all plans of the Employer shall be based on the preceding Plan Year. This requirement will not apply to "determination years" beginning with or within the 1997 calendar year, and for "determination years" beginning on or after January 1, 1998, and before January 1, 2000. Satisfaction of this requirement is determined without regard to any non-retirement plans of the Employer.

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

(b) Generally, a former Employee shall be treated as a Highly Compensated Employee if:

(1) the Employee was Highly Compensated Employee when the Employee separated from service; or

(2) the Employee was a Highly Compensated Employee (active) for any Plan Year that ended on or after the Employee's 55th birthday.

The determination of whether a former Employee is a Highly Compensated Employee shall be based on the rules applicable to determining Highly Compensated Employee status as in effect for that "determination year", in accordance with section 1.414(q)-1T, A-7 and A-4 of the temporary Income Tax regulations and Notice 97-45.

The Plan Administrator shall apply rules, as set forth in an administrative policy, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

**1.2.42 "Hour of Service":** An hour for which (a) the Employee is paid, or entitled to payment by the Employer for the performance of duties, (b) the Employee is paid or entitled to payment by the Employer 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, or (c) back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. Hours of Service shall be credited to the Employee under (a), above, for the period in which the duties are performed, under (b), above, in the period in which no duties are performed occurs, beginning with the first Hour of Service to which the payment relates, and under (c), above, for the period to which the award or agreement pertains rather than the period in which the award, agreement or payment is made; provided, however, that Hours of Service shall not be credited under both (a) and (b), above, as the case may be, and under (c) above. Notwithstanding the preceding sentences, (i) no more than five hundred one (501) Hours of Service shall be credited under (b), above, on account of any single continuous period during which the Employee performs no duties whether or not such period occurs in a single computation period, (ii) no Hours of Service shall be credited to the Employee by reason of a payment made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws, and (iii) no Hours of Service shall be credited by reason of a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The determination of Hours of Service for reasons other than the performance of duties and the crediting of Hours of Service to computation periods shall be made in accord with the provisions of Labor regulation sections 2530.200b-2(b) and (c) which are incorporated herein by reference.

Solely for purposes of determining whether an Employee has incurred a Break in Service, as defined in Section 1.2.12, an Employee shall be credited with the number of Hours of Service which would otherwise have been credited to such individual but for the absence or in any case in which such Hours cannot be determined with eight (8) Hours of Service, for any day that the Employee is absent from work by reason of the Employee's pregnancy, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of such child by the Employee, or for purposes of caring for such child for a period beginning immediately following such birth or placement. Such Hours of Service shall be credited only in the computation period in which the absence from work begins if the Employee would be prevented from incurring a Break in Service in such computation period solely because credit is given for such period of absence and, in any other case, in the immediately following computation period. Notwithstanding the foregoing, no credit shall be given for such service unless the Employee furnishes to the Plan Administrator information to establish that the absence from work is for the reasons indicated and the number of days for which there was such an absence.

An Employee shall be credited with Hours of Service equal to the actual hours for which the Employee is paid or entitled to payment.

Service with another business entity that is, along with the Employer, a member of a controlled group of corporations under section 414(b) of the Code, an affiliated service group under section 414(m) of the Code, or trades or businesses under common control as defined in section 414(c) of the Code, or, which is otherwise required to be aggregated with the Employer pursuant to section 414(o) of the Code and the regulations issued thereunder shall be treated as service for the Employer. Hours of Service shall be credited for any individual considered an Employee for purposes of this Plan under section 414(n) or section 414(o) of the Code and the regulations issued thereunder.

Except to the extent inconsistent with regulations issued by the Secretary of the Treasury, service for a predecessor to the Employer, whether as an Employee or self-employed person, may be treated as service for the Employer for purposes of calculating an Employee's Years of Eligibility Service, Years of Vesting Service, or Years of Credited Service, as those terms are defined in Sections 1.2.93, 1.2.96, and 1.2.92. As of the Effective Date of this Plan, there were no such predecessors to the Employer. Any future predecessors and the service being maintained will be listed in Appendix A and attached hereto and be treated as an amendment to this Plan. If the Employer maintains the plan of a predecessor

employer, service with such predecessor shall be treated as service for the Employer.

**1.2.43 "Insurer":** Any insurance company that has issued a Contract to the Plan.

**1.2.44 "Integration Level":** The amount of Compensation at or below which Employer contributions are allocated based on the Base Contribution Percentage. This Plan does not utilize an Integration Level.

**1.2.45 "Investment Manager":** The person, persons, bank or insurance company appointed by the Trustee to manage the investments of the Plan, or if no appointment is made, the Trustee.

**1.2.46 "Joint and Survivor Annuity":** An annuity for the life of the Participant with a survivor annuity for the life of the spouse (or other Beneficiary) which is not less than fifty (50%) percent and not more than one hundred (100%) percent of the amount of the annuity payable during the life of the Participant and which is the amount of benefit which can be purchased with the Participant's vested Account Balances.

**1.2.47 "Leased Employee":** Effective for Plan Years beginning after December 31, 1996, any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (the "leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with section 414(n)(6) of the Code), on a substantially full time basis for a period of at least one (1) year, and such services are performed under the primary direction or control by the recipient; provided that any such person shall not be taken into account:

(a) if such person is covered by a money purchase pension plan providing: (i) a nonintegrated employer contribution rate of at least ten (10%) percent of compensation, as defined in Section 3.1.6(a); (ii) immediate participation; and (iii) full and immediate vesting; and

(b) if Leased Employees do not constitute more than twenty (20%) percent of the workforce of the recipient employer who are not Highly Compensated Employees.

Contributions or allocations provided for 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.

**1.2.48 "Life Insurance Policy":** A life insurance, annuity, or endowment policy or contract owned by the Trust on the life of a Participant, on the life of someone in whom the Participant has an insurable interest, or the joint lives of a Participant and someone in whom the Participant has an insurable interest.

**1.2.49 "Limitation Year":** The Plan Year; provided that all qualified plans maintained by the Employer use the same Limitation Year.

**1.2.50 "Matching Account":** An Account established and maintained for a Participant with respect to his share of Matching Contributions and Forfeitures.

**1.2.51 "Matching Contribution":** A contribution to the Plan by the Employer which matches in whole or in part a Participant's Elective Contribution.

**1.2.52 "Maximum Excess Benefit Percentage":** The largest Excess Benefit Percentage that will satisfy the conditions of Code section 401(l) for a given Base Benefit Percentage. For purposes of Section 2.3.15, the Base Benefit Percentage refers to the one used by the defined benefit plan or plans maintained by the Employer.

**1.2.53 "Maximum Excess Contribution Percentage":** The largest Excess Contribution Percentage that will satisfy the conditions of Code section 401(l) for a given Base Benefit Percentage. For purposes of Section 2.3 15, the Base Benefit Percentage refers to the one used by this Plan.



**1.2.54 "Maximum Offset Benefit Percentage":** The largest Offset Percentage that will satisfy the conditions of Code section 401(l) for a given Gross Benefit Percentage. For purposes of Section 2.3.15, the Gross Benefit Percentage refers to the one used by the defined benefit plan or plans maintained by the Employer.

**1.2.55 "Minimum Top-Heavy Allocation":** The minimum allocation of a Participant for which provision is made in Section 2.6.1.

**1.2.56 "Non-Elective Account":** An Account established and maintained for a Participant with respect to his share of Non-Elective Contributions and Forfeitures.

**1.2.57 "Non-Elective Contribution":** A contribution made by the Employer other than an Elective Contribution, Qualified Non-Elective Contribution, Matching Contribution, or Qualified Matching Contribution.

**1.2.58 "Non-Highly Compensated Employee":** An Employee who is not a Highly Compensated Employee, as that term is defined in Section 1.2.41.

**1.2.59 "Normal Form of Distribution":** Unless otherwise elected by the Participant or his spouse, a Participant's vested Account Balance shall be distributed in a single lump sum payment.

**1.2.60 "Normal Retirement Age":** The date the Employee attains age sixty-five (65) or the fifth (5th) anniversary of his "participation commencement date," if later. For purposes of this Subsection only, a Participant's "participation commencement date" is the first day of the first Plan Year in which the Employee became a Participant.

**1.2.61 "Normal Retirement Date":** The first day of the month coincident with or next following the date Normal Retirement Age is attained.

**1.2.62 "Offset Percentage":** The percentage of final average compensation offset from Employer derived benefits in a defined benefit plan or target benefit plan.

**1.2.63 "Owner-Employee":** An individual who is a sole proprietor or who is a partner owning more than ten (10%) percent of either the capital or profits interest of the partnership.

**1.2.64 "Participant":** Any Eligible Employee who enters the Plan after meeting the requirements of Part 2, Article 1.

**1.2.65 "Plan":** The cash or deferred profit sharing plan for Employees as set forth in this Agreement, together with any amendments or supplements thereto.

**1.2.66 "Plan Administrator":** The person, persons or entity appointed by the Employer to administer the Plan or, if the Employer fails to make such appointment, the Employer.

**1.2.67 "Plan Year":** The calendar year. In the event that a short Plan Year exists, each Employee shall be credited with a Year of Credited Service, a Year of Eligibility Service, or a Year of Vesting Service if he is credited with Hours of Service equal to the Hours of Service required for a full year multiplied by the number of months in the short Plan Year divided by twelve (12).

**1.2.68 "Pre-Retirement Survivor Annuity":** A survivor annuity for the life of the surviving spouse (or other Beneficiary) of the Participant purchasable with an amount equal to at least 50% of the vested Account Balance of the Participant as of the date of the Participant's death, reduced if necessary, to reflect any security interest held by the Plan by reason of an outstanding loan to the Participant for which a valid spousal consent has been obtained.

**1.2.69 "Qualified Domestic Relations Order (QDRO)":** A domestic relations order which

creates or recognizes the existence of an Alternate Payee's right to receive all, or a portion of, the benefits payable under this, or any other plan of the Employer, with respect to a Participant and which has been determined by the Plan Administrator to satisfy the conditions of Code section 414(p).

**1.2.70 "Qualified Joint and Survivor Annuity":** A Joint and Survivor Annuity which is immediately payable and which the Beneficiary is the spouse of the Participant. The percentage of the survivor annuity shall be 50%.

**1.2.71 "Qualified Matching Account":** An Account established and maintained for a Participant with respect to his share of Qualified Matching Contributions.

**1.2.72 "Qualified Matching Contribution":** Matching Contributions that are one hundred (100%) percent vested and non-forfeitable when made, are subject to the distribution restrictions that apply to Elective Deferrals in Section 2.5.8, and which may not be distributed on account of hardship.

**1.2.73 "Qualified Military Service":** Any service in the uniformed services, whether on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive training, full-time National Guard duty, and the period of time a person is absent to determine his fitness to perform any such duty. Uniformed services refers to the Armed Forces, the Army National Guard, the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

**1.2.74 "Qualified Non-Elective Account":** An Account established and maintained for a Participant with respect to his share of Qualified Non-Elective Contributions made on his behalf.

**1.2.75 "Qualified Non-Elective Contribution":** A contribution to this Plan by the Employer which is neither a Matching Contribution nor an Elective Contribution, is one hundred (100%) percent vested and non-forfeitable when made, which a Participant may not elect to have paid in cash, and which may not be distributed from the Plan prior to the termination of employment or death of the Participant, attainment of age 59½ by the Participant, or termination of the Plan without establishment of a successor plan.

**1.2.76 "Qualified Pre-Retirement Survivor Annuity":** A Pre-Retirement Survivor Annuity for which the Beneficiary is the spouse of the Participant and the benefit the Participant would have received is a Qualified Joint and Survivor Annuity (or the actuarial equivalent thereof).

(a) In the case of a Participant who dies after the date on which the Participant attained the earliest retirement age under the Plan on which he could elect to receive retirement benefits, such survivor annuity shall be immediately payable; and

(b) In the case of a Participant who dies on or before such date, such survivor annuity shall be an immediate annuity payable commencing in the month in which the Participant would have attained the earliest retirement age under the Plan.

Any security interest held by the Plan due to an outstanding loan to the Participant, for which a valid spousal consent has been obtained, if necessary, shall be taken into account.

**1.2.77 "Qualifying Employer Real Property":** Real property of the Employer that the Trustee may acquire and hold pursuant to section 407 of the Act.

**1.2.78 "Qualifying Employer Securities":** Securities of the Employer that the Trustee may acquire and hold pursuant to section 407 of the Act.

**1.2.79 "Safe Harbor Profit Sharing Plan":** A plan that does not permit the election of payments in the form of a life annuity (including any variations thereof, such as a joint and survivor annuity or a life annuity guaranteed for a number of years) in Section 2.3.13. On the death of the Participant, the Participant's vested Account Balance will be paid to the Participant's spouse, or, if there is no surviving

spouse or the surviving spouse consents in accordance with Section 2.5.4, to a designated Beneficiary. The Participant's Account Balance must continue to share in the gains and losses of the Trust according to the rules in Part 2, Article 8 until distributed and such distribution shall be within a reasonable period. If a separate accounting is maintained, whether in a Segregated Account or not, for any direct or indirect transfers from a defined benefit plan, money purchase plan, target benefit plan, stock bonus plan, or profit sharing plan subject to section 401(a)(11) and section 417 of the Code, then such amounts shall not be treated as a Safe Harbor Profit Sharing Plan, but any other amounts that satisfies the conditions of a Safe Harbor Profit Sharing Plan may be treated as such. If a separate accounting is not maintained, no Accounts shall constitute a Safe Harbor Profit Sharing Plan.

**1.2.80 "Segregated Account":** An account established and maintained for a Participant representing his interest in a Segregated Fund.

**1.2.81 "Segregated Fund":** Assets held in the name of the Trustee which have been segregated from the other assets of the Trust Fund in accordance with any of the provisions of the Plan.

**1.2.82 "Self-Employed Individual":** An individual who has Earned Income for the taxable year from the trade or business for which the Plan is established or who would have had Earned Income but for the fact that the trade or business had no net profit for the taxable year.

**1.2.83 "Straight Life Annuity":** An annuity payable in equal installments over the life of the Participant that terminates upon the Participant's death.

**1.2.84 "Taxable Wage Base":** The contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the Plan Year.

**1.2.85 "True-Up":** The process of increasing an annual contribution that has been limited on a Compensation Computation Period basis to the amount determined when applying the limits on an annual basis.

**1.2.86 "Trustee":** The persons, corporations, associations or combination of them who shall at the time be acting as such from time to time hereunder.

**1.2.87 "Trust Fund":** All money and property of every kind and character held by the Trustee pursuant to the Plan.

**1.2.88 "Valuation Date":** A date on which the assets of the Trust Fund are valued and Participants' Accounts determined. A Valuation Date exists on the last day of the Plan Year.

**1.2.89 "Voluntary Account":** An Account established and maintained for a Participant with respect to his Voluntary Employee Contributions.

**1.2.90 "Voluntary Contribution Benefit":** The benefit of a Participant payable as a result of his Voluntary Employee Contributions.

**1.2.91 "Voluntary Employee Contributions":** Pre-tax contributions made by a Participant at his discretion, prior to Plan Years beginning in 1987, and after-tax contributions made by a Participant at his discretion.

**1.2.92 "Year(s) of Credited Service":** Subject to any limitations or exclusions under the Plan's allocation formula, a Participant's Years of Credited Service shall be each Plan Year during which the Participant completes 1000 Hours of Service.

**1.2.93 "Year(s) of Eligibility Service":** An Eligibility Computation Period in which the Employee completes 1000 Hours of Service.

**1.2.94 "Year(s) of Participation":** A year in which a Participant earns a Year of Credited

Service.

**1.2.95 "Year of Service":** A year in which an Employee earns a Year of Credited Service, or would have, if the Plan was in existence and he was a Participant in the Plan.

**1.2.96 "Year(s) of Vesting Service":** Each Plan Year during which the Employee completes 1000 Hours of Service.

## PART 2

### ARTICLE 1

#### PARTICIPATION

##### **2.1.1 Eligibility Requirements.**

(a) **Non-Elective Contributions.** Each Employee shall be eligible to participate in the Non-Elective (Profit Sharing) portion of this Plan upon the later of the date the Employee attains age 21 or completes one (1) Year of Eligibility Service, as defined in Section 1.2.93, provided that he is an Employee on such date.

(b) **Elective Contributions.** Each Employee shall be eligible to have the Employer make Elective Contributions on his behalf upon the later of the date the Employee attains age 21 or completes one (1) Year of Eligibility Service, as defined in Section 1.2.93, provided that he is an Employee on such date.

(c) **Matching Contributions.** Each Employee shall be eligible for Matching Contributions upon the later of the date the Employee attains age 21 or completes one (1) Year of Eligibility Service, as defined in Section 1.2.93, provided that he is an Employee on such date.

**2.1.2 Commencement of Participation.** An Employee may have a separate Entry Date, as defined in Section 1.2.35., for each portion of the Plan. An Eligible Employee shall become a Participant in the Plan on the earliest Entry Date.

**2.1.3 Participation upon Reemployment.** A Participant whose employment terminates and who is subsequently reemployed shall reenter the Plan as a Participant immediately on the date of his reemployment. In the event that an Employee completes the eligibility requirements set forth in Section 2.1.1 above, his employment terminates prior to becoming a Participant and he is subsequently reemployed, such Employee shall be deemed to have met the eligibility requirements as of the date of his reemployment and shall become a Participant on the date of his reemployment; provided, however, that if he is reemployed prior to the date he would have become a Participant if his employment had not terminated, he shall become a Participant as of the date he would have become a Participant if his employment had not terminated. Any other Employee whose employment terminates and who is subsequently reemployed shall become a Participant in accordance with the provisions of Sections 2.1.1 and 2.1.2.

**2.1.4 Termination of Participation.** An Employee who becomes a Participant shall remain a Participant until his entire vested and non-forfeitable Account Balance is distributed to him, or his Beneficiary, in the event of his death.

**2.1.5 Plan Administrator's Determination.** In the event any question shall arise as to the eligibility of any person to become a Participant or the commencement of participation, the Plan Administrator shall determine such question and the Plan Administrator's decision shall be conclusive and binding, except to the extent of a claimant's right to appeal the denial of a claim.

**2.1.6 Existing Participants.** An Employee who, on the Effective Date of this Plan, was a Participant under the provisions of the Plan as in effect immediately prior to the Effective Date shall be a Participant on the Effective Date and the provisions of Sections 2.1.1 and 2.1.2, pertaining to participation, shall not be applicable to such Employee. The rights of a Participant whose employment terminated prior to the Effective Date shall be determined under the provisions of the Plan as in effect at the time of such termination.

**2.1.7 Change in Status.** If any Participant continues in the employ of the Employer or an affiliate for which service is required to be taken into account but ceases to be an Eligible Employee by becoming a member of any ineligible class for any reason (such as becoming covered by a collective bargaining agreement unless the collective bargaining agreement otherwise provides), the Participant shall continue to be a Participant until his entire Account Balance is distributed, but the individual shall not be entitled to receive an allocation of contributions or Forfeitures during the period that the Participant is not an Eligible Employee for such reason. Such Participant shall continue to receive credit for Years of Vesting Service completed during the period for purposes of determining his vested and non-forfeitable interest in his Non-Elective Account and Matching Account. In the event that the individual subsequently again becomes a member of an eligible class of employees, the individual shall participate immediately upon the date of such change in status. If such Participant incurs a Break in Service and is subsequently reemployed, eligibility to participate shall be determined in accordance with Section 2.1.3. In the event that an individual who is not a member of an eligible class of employees becomes a member of an eligible class, the individual shall participate immediately if such individual has satisfied the eligibility requirements and would have otherwise previously become a Participant and shall receive credit for Years of Vesting Service completed while in the ineligible class for purposes of determining his vested and non-forfeitable interest in his Non-Elective Account and Matching Account.

**2.1.8 Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to Qualified Military Service, as defined in Section 1.2.73, will be provided in accordance with section 414(u) of the Code.

**2.1.9 One-Time Election Not to Participate.** The Employer does not permit Employees to opt out of the Plan. All Employees who are eligible to participate in the Plan must enter on the next Entry Date as specified in Section 1.2.35.

**2.1.10 Fail Safe Allocations.**

(a) The Plan must satisfy the minimum coverage requirements of section 410(b) of the Code by meeting the ratio percentage test of regulation 1.410(b)-2(b)(2).

The ratio percentage test requires that the Plan's "ratio percentage" is at least seventy (70%) percent for the Plan Year. A Plan's "ratio percentage" equals a fraction, the numerator of which is the percentage of Non-Highly Compensated Employees (rounded to the nearest hundredth of a percentage point) who benefit under the Plan, and the denominator of which is the percentage of Highly Compensated Employees (rounded to the nearest hundredth of a percentage point) who benefit under the Plan. The percentage of Non-Highly Compensated Employees is determined by dividing the number of Non-Highly Compensated Employees who benefit under the Plan by the total number of Non-Highly Compensated Employees of the Employer. The percentage on Highly-Compensated Employees is determined by dividing the number of Highly Compensated Employees who benefit under the Plan by the total number of Highly Compensated Employees of the Employer.

For this purpose, all Employees, as defined in Section 1.2.32, but modified to exclude any Employee who does not meet the age and service conditions, if any, specified in Section 2.1.1, must be taken into account. The exclusions in Section 1.2.29 shall not apply. If the eligibility requirements are more favorable than the maximum permissible eligibility requirements of section 410(a) of the Code, an Employer may elect to treat the Plan as two (2) separate plans for this purpose, one (1) covering those Employees who satisfy such requirements, and one (1) covering those Employees who do not satisfy such requirements (the "otherwise excludable employees" defined in Treasury regulation 1.410(b)-6(b)(3)). An Employer may, if approved by the Secretary of the Treasury, apply this requirement separately with respect to each "separate line of business", as that term is defined in section 414(r) of the Code, but omitting the condition of subsection (2)(A) (specifying that the line of business have 50 or more employees) and subsection (7) (defining separate lines of business as including geographically diverse operating units).

The Employer may aggregate this Plan with another plan or plans of the Employer in determining whether the minimum coverage requirements are met; provided such other plan is aggregated for the purpose of satisfying section 401(a)(4) of the Code and the regulations thereunder. In such event,

the percentages calculated in the previous paragraph will be determined by dividing the Non-Highly Compensated (or Highly Compensated) Employees benefiting under this Plan and the other plan or plans being aggregated by the total number of Non-Highly Compensated (or Highly Compensated) Employees of the Employer.

(b) If the Plan would otherwise fail to satisfy the requirements of section 410(b)(1) of the Code and the regulations thereunder (based on the annual testing method of regulation 1-410(b)-8(4)) because of the failure to benefit a sufficient number or percentage of Participants for the Plan Year, considering all the applicable exclusions of sections 410(b)(3) and (4) of the Code, and the right to receive an allocation of the Non-Elective Contribution or Matching Contribution is conditioned upon membership in a certain Employee classification, employment on the last day of the Plan Year, or the completion of more than 500 Hours of Service, an additional contribution shall be made by the Employer and shall be allocated to the Non-Elective Accounts or Matching Accounts, as applicable, of affected Participants, subject to the following provisions:

(1) Non-Highly Compensated Employees who belong to an Eligible Employee classification, as listed in Section 1.2.29, who have over 500 Hours of Service for the Plan Year shall be given an allocation of the Non-Elective Contribution or Matching Contribution, as follows:

(i) Participants actively employed on the last day of the Plan Year, that have not met the Hours of Service requirement necessary for an allocation, shall be given an allocation for the Plan Year, one at a time, in order of decreasing Hours of Service credited, until the Plan satisfies the ratio percentage test of section 410(b)(1) of the Code. If two or more Participants have the same number of Hours of Service credited during the Plan Year, then the Participant with the lowest Compensation shall receive an allocation first.

(ii) If, after the application of (i), the ratio percentage test is not satisfied, then an allocation shall be given to Participants not employed on the last day of the Plan Year, one at a time, in order of decreasing Hours of Service credited, until the Plan passes the ratio percentage test. If two or more Participants have the same number of Hours of Service credited during the Plan Year, then the Participant with the lowest Compensation shall receive an allocation first.

(2) If the ratio percentage test of section 410(b) of the Code is still not satisfied, then specific Non-Highly Compensated Employees from all Employee classifications (after the application of sections 410(b)(3) and (4) of the Code), who have over 500 Hours of Service shall be given an allocation of the Non-Elective Contribution or Matching Contribution, as follows:

(i) Employees who are actively employed on the last day of the Plan Year and meet the Plan's eligibility requirements (except classification) and the service requirement necessary for an allocation, shall be given an allocation for the Plan Year, one at a time, in order of increasing Compensation for the Plan Year, until the Plan passes the ratio percentage test of section 410(b) of the Code. If two or more Employees have the same Compensation, then the Employee with the most Hours of Service credited shall receive an allocation.

(ii) If, after the application of (i), the ratio percentage test is not satisfied, then an allocation shall be given to Employees who are actively employed on the last day of the Plan Year and meet the Plan's eligibility requirements (except classification), but have not met the service requirement necessary for an allocation, one at a time, in order of decreasing Hours of Service credited, until the Plan passes the ratio percentage test. If two or more Participants have the same number of Hours of Service credited during the Plan Year, then the Participant with the lowest Compensation shall receive an allocation first.

(iii) If, after the application of (i) and (ii), the ratio percentage test is not satisfied, then an allocation shall be given to Employees who meet the Plan's eligibility requirements (except classification), but have not met the service requirement necessary for an allocation, one at a time, in order of decreasing Hours of Service credited, until the Plan passes the ratio percentage test. If two or more Participants have the same number of Hours of Service credited during the Plan Year, then the Participant with the lowest Compensation shall receive an allocation first.

(3) Fail-Safe allocations shall be given to the smallest number of Employees that allows the Plan to satisfy the requirements of Code section 410(b)(1).

(c) Nothing in this Section 2.1.10 shall be construed to imply that an allocation given in a particular Plan Year is an indication that an allocation will be given in a future Plan Year. Employees who are given an allocation in a particular Plan Year who are not members of an Eligible Employee classification will not be considered as members of an Eligible Employee classification in future years and will not be entitled to an allocation, unless they satisfy the eligibility and participation requirements of the Plan or this Section 2.1.10 is invoked in a future year.

(d) Notwithstanding any other provision to the contrary, any allocation required by application of this Section 2.1.10 shall be satisfied by an additional Employer contribution. No Participant shall receive an allocation that is less than the allocation to which he was entitled before application of this Section.



## ARTICLE 2

### CONTRIBUTIONS

**2.2.1 Employer Contributions.** It is the intention of the Employer to continue the Plan and make regular contributions to the Trustee each year. Except as provided in Section 2.2.2, such contributions are irrevocable once transferred to the Trustee.

(a) **Non-Elective Contributions.** The Employer shall make Non-Elective Contributions to the Profit Sharing portion of the Plan each year equal to the sum of the amounts specified by the Employer for the Plan Year for each Employee classification defined in Section 2.3.1(b), such amount not limited to the profits of the Employer.

(b) **Matching Contributions.** The Employer shall make Matching Contributions to the Plan each year in an amount specified by the Employer annually.

(c) **Qualified Non-Elective Contributions and Qualified Matching Contributions.** The Employer may make Qualified Non-Elective Contributions and Qualified Matching Contributions at his discretion.

(d) **Limitation.** The contribution for any Plan Year by the Employer shall not exceed the maximum amount deductible from the Employer's income for such Year for federal income tax purposes under the applicable sections of the Code.

(e) **Time of Contribution.** All contributions by the Employer shall be delivered to the Trustee not later than the date fixed by law for the filing of the Employer's federal income tax return for the Year for which such contribution is made (including any extensions of time granted by the Internal Revenue Service for filing such return).

(f) **Determination of Amount to be Final.** The determination by the Employer as to the amount to be contributed by the Employer hereunder shall be in all respects final, binding, and conclusive on all persons or parties having or claiming any rights under this Agreement or under the Plan and Trust created hereby. Under no circumstances and in no event shall any Participant, Beneficiary, or other person or party have any right to examine the books or records of the Employer.

**2.2.2 Return of Contributions.** Employer Contributions shall be returned to the Employer in the following instances:

(a) If the contribution is made by the Employer by mistake of fact, then the contribution shall be returned within one year after its payment upon the Employer's written request.

(b) Each contribution by the Employer is conditioned on initial qualification of the Plan under the applicable sections of the Code. If the Commissioner of Internal Revenue determines that the Plan is not qualified, then the contribution made incident to the initial qualification by the Employer shall be returned within one year after the date of denial of initial qualification of the Plan; provided that the application for initial qualification is made by the time prescribed by law for filing the Employer's tax return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

(c) Each contribution by the Employer is conditioned upon the deductibility of the contribution under Code section 404. If the deduction for part or all of the contribution is disallowed by the Internal Revenue Service, the contribution, the extent of such disallowance, shall be returned to the Employer within one year after such disallowance.

**2.2.3 Voluntary Employee Contributions.** Voluntary Employee Contributions are not

permitted under this Plan.

**2.2.4 Elective Contributions.** The Employer shall transfer to the Trustee or other custodian any Elective Deferrals made by a Participant. Such transfer shall occur on the earliest date that the Elective Deferrals can be segregated from other assets of the Employer, but not later than the fifteenth (15th) business day of the month following the month in which the Elective Deferrals are withheld from the Participant or otherwise received by the Employer.

## ARTICLE 3

### ALLOCATIONS

#### **2.3.1 Non-Elective Contributions.**

(a) **Eligible Participants.** As of each Valuation Date, the Non-Elective Contribution (including any applicable Forfeitures as specified in 2.3.8) shall be allocated among the Non-Elective Accounts of all Participants during the Plan Year. For those Participants who are disabled, Compensation during the Plan Year shall be determined in accordance with Section 2.3.7.

(b) **Basic Allocation.** Each eligible Participant (as determined in Subsection 2.3.1(a) above) shall receive a dollar amount, such dollar amount based on the Participant's classification. There shall be a separate classification for each Participant identified by the Participant's name. A list of each classification and the associated dollar amount shall be prepared for each Plan year not later than the earlier of the date that the allocation of the Non-Elective Contribution is completed or the time prescribed by law for filing the return for such applicable taxable year (including any extensions), and shall be maintained as part of the administrative records of the Plan.

For any Plan Year in which the Employer intends to rely on Treasury regulation 1.401(a)(4)-8 (cross testing) in satisfying section 401(a)(4) of the Code, each Non-Highly Compensated Employee entitled to an allocation shall receive an allocation equal to the lesser of (a) one-third (1/3) of the highest allocation rate (as a percentage of Compensation) of any Highly Compensated Employee applied to his Compensation, as defined in 1.2.14, or (b) five (5%) of his compensation as defined in Section 3.1.6(a). In the event that the Plan is Top Heavy for a Plan Year, any Non-Highly Compensated Employee eligible for a Minimum Top Heavy Allocation in Section 2.6.1(a) shall instead receive an allocation no less than the amount determined in the aforementioned sentence. The Employer may elect to satisfy this Paragraph in this Plan or another plan of the Employer.

**2.3.2 Elective Contributions.** Each Eligible Employee may elect to have the Employer contribute on his behalf a percentage or dollar amount of his Compensation that would otherwise be immediately payable. Such election shall be effective as of the Entry Date specified in Section 1.2.35.

The Plan Administrator shall determine the manner in which a Participant may elect to have the Employer make Elective Contributions on his behalf. The Plan Administrator must establish reasonable periods during which the Participant may make or modify such an election. Unless otherwise specified, an election may be made or modified during the first and last months of the Plan Year. An election may be revoked at any time. No election may be made retroactively and once made shall stay in effect until modified or revoked. A Participant who does not affirmatively elect to defer part of his Compensation shall be deemed to have made an election not to defer any of his Compensation.

#### **2.3.3 Matching Contributions.**

(a) **Eligible Participants.** As of each Valuation Date, the Matching Contribution (including any applicable Forfeitures as specified in 2.3.8) shall be allocated among the Matching Accounts of all Participants during the Plan Year. For those Participants who are disabled, Compensation during the Plan Year shall be determined in accordance with Section 2.3.7.

(b) **Matching Allocation.** Each eligible Participant (as determined in Subsection (a) above) shall receive an allocation equal to a percentage of the Matching Contribution, such percentage to equal the ratio that the Participant's Elective Contribution for the Plan Year bears to the aggregate Elective Contributions for all Participants for that Plan Year.

#### **2.3.4 Qualified Non-Elective Contributions.**

(a) **Eligible Participants.** Any Qualified Non-Elective Contribution made by the Employer shall be allocated among the Qualified Non-Elective Accounts of all Non-Highly Compensated Employees who are Participants during the Plan Year.

(b) **Allocation.** Each eligible Participant (as determined in Subsection 2.3.4(a) above) shall receive an allocation equal to a percentage of the Qualified Non-Elective Contribution for the Plan Year, such percentage to equal to the ratio that the Participant's Compensation for the Plan Year bears to the aggregate Compensation for all eligible Participants.

(c) **Timing of Allocation.** Any allocation of Qualified Non-Elective Contributions under this Section shall be made and deposited to the Qualified Non-Elective Accounts of all eligible Participants prior to the last day of the Plan Year following the Plan Year for which the ADP Test or ACP Test is being performed.

### **2.3.5 Qualified Matching Contributions.**

(a) **Eligible Participants.** Any Qualified Matching Contribution made by the Employer shall be allocated among the Qualified Matching Accounts of all Non-Highly Compensated Employees who made Elective Contributions during the Plan Year.

(b) **Allocation.** Each eligible Participant (as determined in Subsection 2.3.5(a) above) shall receive an allocation equal to a percentage of the Qualified Matching Contribution for the Plan Year, such percentage to equal to the ratio that the Participant's share of the Matching Contribution for the Plan Year bears to the aggregate shares of the Matching Contribution for all eligible Participants.

(c) **Timing of Allocation.** Any allocation of Qualified Matching Contributions under this Section shall be made and deposited to the Qualified Matching Accounts of all eligible Participants prior to the last day of the Plan Year following the Plan Year for which the ADP Test or ACP Test is being performed.

**2.3.6 Minimum Top Heavy Allocation.** In the event that the Plan is Top-Heavy for the Plan Year, the Non-Elective Contribution shall continue to be allocated in the manner above; provided, if any Participant receives less than his Minimum Top Heavy Allocation, as determined in Section 2.6.1(a), an additional Non-Elective Contribution shall be made and allocated to such Participant.

**2.3.7 Allocations on Behalf of Disabled Participants.** A Participant who is disabled shall share in the Non-Elective Contribution based on his actual Compensation for the period, and if applicable, shall share in the Matching Contribution based on his actual Elective Contribution for the period.

**2.3.8 Forfeiture Allocations.** As of each Valuation Date, Forfeitures that arose from Section 2.4.9 during the Plan Year shall be reallocated. Forfeitures attributable to Non-Elective Contributions shall first be used to restore any Participant's Account Balance that was forfeited and for which the Participant has repaid his vested distribution or has made a valid claim. Any remaining Forfeitures shall be used to supplement the Non-Elective Contribution otherwise payable to the Plan. Participants who are eligible to receive an allocation of the Non-Elective Contribution shall share in the allocation of Forfeitures. Forfeitures shall be allocated to eligible Participants in the same manner that the Non-Elective Contribution was allocated. Forfeitures attributable to Matching Contributions shall first be used to restore any Participant's Account Balance that was forfeited and for which the Participant has repaid his vested distribution or has made a valid claim. Any remaining Forfeitures shall be used to supplement the Matching Contribution otherwise payable to the Plan. Participants who are eligible to receive an allocation of the Matching Contribution shall share in the allocation of Forfeitures. Forfeitures shall be allocated to eligible Participants in the same manner that the Matching Contribution was allocated.

**2.3.9 Restoration of Forfeitures.** If a Participant is entitled to a restoration of his Forfeitures under Section 2.4.9, such amount shall be restored from Forfeitures that would otherwise be reallocated under Section 2.3.8. To the extent that such Forfeitures are insufficient to restore the Participant's Non-

Elective Account (or Matching Account), an additional Non-Elective Contribution (or Matching Contribution) shall be made and specifically allocated to the Participant's Accounts.

**2.3.10 Voluntary Contribution Benefit.** In addition to any other benefit for which provision is made in this Article, a Participant shall be entitled to the balance in his Voluntary Account as of any date with respect to which he commences receiving his Employer Account, or any other date provided herein.

**2.3.11 Distribution Dates.**

(a) **Retirement.** A Participant who terminates employment on or after attaining his Normal Retirement Age, within the meaning of Section 1.2.60, shall be entitled to a distribution of his entire Account Balance as soon as administratively feasible following his actual date of retirement.

(b) **Disability Retirement.** A Participant who terminates employment due to being disabled, shall be entitled to his vested and non-forfeitable Account Balance as soon as administratively feasible after he is no longer eligible to receive an allocation under Section 2.3.7.

(c) **Death.** Subject to any election made by a Participant in accordance with Section 2.5.3(c), and if applicable, the provisions of any Life Insurance Policy, a Beneficiary shall be entitled to a distribution of her portion of the Participant's vested Account Balance as soon as administratively feasible following the Valuation Date after the Participant's death.

(d) **Resignation or Discharge.** A Participant who terminates employment by reason of resignation or discharge prior to his Normal Retirement Date, shall be entitled to a distribution of his vested and non-forfeitable Account Balance as soon as administratively feasible following the next Valuation Date.

(e) **Plan Termination and Partial Termination.** In the event that the Plan terminates, including a termination resulting from a complete discontinuance of contributions, each Participant shall be entitled to his Account Balance as soon as administratively feasible following such termination. In the event of a partial plan termination, each affected Participant shall be entitled to his Account Balance as soon as administratively feasible following the next Valuation Date.

(f) **Rehires.** With the exception to (e), a distribution shall not be made under this Section 2.3.11 to any Participant who is rehired before the date his benefits are distributed.

(g) **Consents.** With the exception to (e), a distribution is contingent upon the consent of the Participant, and if applicable, the Participant's spouse unless the amount of the distribution satisfies 2.3.14 or this Plan is a Safe Harbor Profit Sharing Plan, as defined in Section 1.2.79. A Participant may elect to defer distribution of his vested Account Balance subject to Sections 2.5.1 and 2.5.3.

**2.3.12 Distribution Determination Date.** The value of a Participant's vested Account Balance shall be determined as of the Valuation Date coinciding with or next following the date specified in Section 2.3.11, or such other date elected by the Participant.

If any Participant receives a distribution pursuant to the terms of the Plan as of any date other than a Valuation Date, then such distribution will include earnings credited solely as of the immediately preceding Valuation Date.

Notwithstanding the foregoing, if a Participant's Account Balance, or portion thereof, is invested in Accounts that are valued on a daily basis, the value of his Account Balance, or portion thereof, shall be the value on the actual date of distribution.

**2.3.13 Optional Forms of Payment.** All distributions shall be made in the Normal Form of Distribution specified in Section 1.2.59. Optional forms of payment are not permitted under the Plan.

**2.3.14 Small Amounts.** A Participant's vested Account Balance will not be distributed

without his consent.

**2.3.15 Maximum Permitted Disparity.** The Participant's allocation, as determined in Section 2.3.1(b), is subject to the following limitations:

(a) If a Participant participates in two (2) or more qualified plans of the Employer, including a Simplified Employee Pension Plan under section 408(k) of the Code, his Annual Overall Permitted Disparity Fraction, as defined in this item (a), may not exceed one (1.0). In the case that the Annual Overall Permitted Disparity Fraction does exceed one (1.0) for a Plan Year with regard to any Participant, any required adjustments will be reflected in the other plan or plans of the Employer.

A Participant's Annual Overall Permitted Disparity Fraction is the sum of his Defined Contribution Disparity Fraction and his Defined Benefit Disparity Fraction for a Plan Year. A Participant's Defined Contribution Fraction equals:

$$\frac{\text{The Excess Contribution Percentage less the Base Contribution Percentage}}{\text{The Maximum Excess Contribution Percentage less the Base Contribution Percentage}}$$

A Participant's Defined Benefit Contribution Fraction equals:

$$\frac{\text{The Excess Benefit Percentage less the Base Benefit Percentage}}{\text{The Maximum Excess Benefit Percentage less the Base Benefit Percentage}}$$

or, if applicable,

$$\frac{\text{The Gross Benefit Percentage less the Offset Percentage}}{\text{The Maximum Offset Percentage}}$$

where such terms are defined in Part 1, Article 2. For purposes of determining the Participant's Annual Overall Permitted Disparity Fraction, all Plan Years ending in the same calendar year are treated as the same Plan Year. If a plan maintained by the Employer relies on imputed disparity to satisfy the nondiscrimination tests of Code section 401(a)(4), as permitted by Treasury regulation 1.404(a)(4)-7, then the Participant's Annual Overall Permitted Disparity Fraction is one (1.0) for that Plan Year.

(b) If the Participant benefits or has ever benefited under a defined benefit plan of the Employer, then his Cumulative Disparity Fraction cannot exceed 35. A Participant's Cumulative Disparity Fraction is the sum of his Annual Overall Permitted Disparity Fraction for each Year of Service with the Employer. For each Plan Year in which the Employee is a Participant, his Annual Overall Permitted Disparity Fraction, for this purpose only, is one (1.0), regardless of the plan's benefit or contribution formula.

If a Participant's Cumulative Disparity Fraction equals or exceeds thirty-five (35), the general test of Treasury regulation 1.401(a)(4)-8 shall be performed without imputing permitted disparity for such Participant.

## ARTICLE 4

### VESTING

**2.4.1 Non-Elective Account.** The vested and non-forfeitable interest in a Participant's Non-Elective Account shall be determined by this Section 2.4.1.

(a) Normal or Postponed Retirement. If a Participant terminates employment at or after attaining Normal Retirement Age, he shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Non-Elective Account.

(b) Early Retirement. The Plan does not provide for Early Retirement.

(c) Disability Retirement. If a Participant terminates employment due to being disabled, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Non-Elective Account.

(d) Death. In the event of the death of a Participant, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Non-Elective Account.

(e) Resignation or Discharge. Subject to Section 2.4.6, if a Participant terminates by reason of resignation or discharge prior to his Normal Retirement Age, he shall be vested and have a non-forfeitable interest in a percentage of his Non-Elective Account, determined, unless otherwise specified in Section 2.4.5, by taking into account all of his Years of Vesting Service as of such termination date in accordance with the following schedule, or if applicable, the schedule in Section 2.6.1:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6 or more	100%

In the event that a Participant receives a distribution of a portion of his vested Account Balance in accordance with Section 2.5.8 or another provision of the Plan, and the Participant is less than one hundred (100%) percent vested in his Non-Elective Account, then his vested and non-forfeitable Non-Elective Account at any future time shall equal:

(1) The vesting percentage determined above or in Section 2.6.1 multiplied by his Non-Elective Account, less

(2) His non-vesting percentage multiplied by his actual distribution multiplied by the ratio of his Non-Elective Account at the time of determination, but disregarding any increase attributable to Non-Elective Contributions or Forfeitures after the distribution, over his Non-Elective Account immediately after the distribution.

**2.4.2 Elective Account.** A Participant's Elective Account shall be one hundred (100%) percent vested and non-forfeitable at all times.

**2.4.3 Matching Account.** The vested and non-forfeitable interest in a Participant's Matching Account shall be determined by this Section 2.4.3.

(a) Normal or Postponed Retirement. If a Participant terminates employment at or after

attaining Normal Retirement Age, he shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Matching Account.

(b) Early Retirement. The Plan does not provide for Early Retirement.

(c) Disability Retirement. If a Participant terminates employment due to being disabled, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Matching Account.

(d) Death. In the event of the death of a Participant, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Matching Account.

(e) Resignation or Discharge. Subject to Section 2.4.6, if a Participant terminates by reason of resignation or discharge prior to his Normal Retirement Age, he shall be vested and have a non-forfeitable interest in a percentage of his Matching Account, determined, unless otherwise specified in Section 2.4.5, by taking into account all of his Years of Vesting Service as of such termination date in accordance with the following schedule, or if applicable, the schedule in Section 2.6.1:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6 or more	100%

In the event that a Participant receives a distribution of a portion of his vested Account Balance in accordance with Section 2.5.8 or another provision of the Plan, and the Participant is less than one hundred (100%) percent vested in his Non-Elective Account, then his vested and non-forfeitable Non-Elective Account at any future time shall equal:

- (1) The vesting percentage determined above or in Section 2.6.1 multiplied by his Matching Account, less
- (2) His non-vesting percentage multiplied by his actual distribution multiplied by the ratio of his Matching Account at the time of determination, but disregarding any increase attributable to Matching Contributions or Forfeitures after the distribution, over his Matching Account immediately after the distribution.

**2.4.4 Other Accounts.** A Participant's Qualified Non-Elective Account, Qualified Matching Account, and Voluntary Account shall be one hundred (100%) percent vested and non-forfeitable at all times.

**2.4.5 Service Not Taken into Account.** In determining a Participant's vesting percentage in Section 2.4.1(e) and Section 2.4.3(e) all Years of Vesting Service with the Employer shall be included.

**2.4.6 Reemployment.** In the case of a Participant who has incurred a Break in Service, Years of Vesting Service before such break will not be taken into account until the Participant has completed a Year of Vesting Service after such Break in Service.

In the case of a Participant who has five (5) or more consecutive Breaks in Service, the Participant's pre-break service will count in vesting of the post-break Non-Elective Account (or Matching Account) only if either:

- (a) such Participant had any non-forfeitable interest in his Non-Elective Account (or Matching Account) at the time of his separation from service, or



(b) upon returning to service the number of consecutive Breaks in Service is less than the Participant's Years of Vesting Service before such breaks.

Any Years of Vesting Service not taken into account by reason of such Breaks in Service shall not be taken into account in applying the foregoing to a subsequent period of Breaks in Service.

In the case of a Participant who does not have five (5) consecutive Breaks in Service, the Participant's pre-break service will count in vesting of the post-break Non-Elective Account (or Matching Account).

If a Participant is reemployed before incurring five (5) consecutive Breaks in Service, his post-break service will count in vesting of the pre-break Non-Elective Account (or Matching Account) if the Participant either (a) did not receive a distribution of his vested Non-Elective Account (or Matching Account) before of his reemployment, or (b) he repays such amount pursuant to Section 2.4.9.

**2.4.7 Leave of Absence.** A temporary cessation from active employment with the Employer pursuant to an authorized leave of absence in accordance with the nondiscriminatory policy of the Employer, whether occasioned by illness, military service or any other reason shall not be treated as either a termination of employment or a Break in Service provided that the Employee returns to employment prior to the end of the authorized leave of absence.

**2.4.8 Minimum Distribution.** A Participant shall be entitled to his vested and non-forfeitable Account Balance as determined in Sections 2.4.1, 2.4.2, 2.4.3, and 2.4.4. No other benefits shall be payable from the Plan.

**2.4.9 Forfeitures.** If a Participant terminates service with the Employer, and the Participant receives a distribution of the entire vested portion of his Account Balance, the non-vested portion shall be forfeited. If the value of a Participant's vested Account Balance is zero, the Participant shall be deemed to have received a distribution of such vested Account Balance as of the Valuation Date next following his date of termination.

Non-vested portions shall be recognized as Forfeitures as of the earlier of the last day of the Plan Year in which the Participant's entire vested interest is distributed, or the last day of the Plan Year in which occurs the fifth (5th) consecutive Break in Service from the Plan. Notwithstanding the foregoing, a Participant's non-vested portion of his Non-Elective Account (or Matching Account) shall not be deemed a Forfeiture until the Participant incurs a Break in Service.

If a Participant has less than a one hundred (100%) percent vested and non-forfeitable interest in his Non-Elective Account (or Matching Account), receives a distribution from such Account, and later resumes employment covered under the Plan, his entire Non-Elective Account (or Matching Account) shall be restored to the amount on the date of distribution if the Participant repays to the Plan the full amount of the distribution from such Account. Such repayment must be made within five (5) years of the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs five (5) consecutive Breaks in Service following the date of the distribution, if earlier. A Participant who does not repay his distribution within such period will permanently forfeit the non-vested portion of such Account. In the event of repayment, neither the Trust nor the Employer shall be liable for any federal or state income tax resulting from the distribution and the Participant shall indemnify and hold harmless the Trust and the Employer for and from any such liability.

If a Participant is deemed to receive a distribution pursuant to this Section, and the Participant resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, his Non-Elective Account (or Matching Account) shall be restored to the amount on the date of the deemed distribution upon the reemployment of such Participant. If a Participant's vested Account Balance less than \$5,000 (\$3,500 Plan Years beginning prior to August 6, 1997), it shall be distributed in accordance with Section 2.5.4(a) as of the Valuation Date next following the date it is determined that the Participant or his Beneficiary cannot be located. If a Participant's vested Account Balance equals or exceeds \$5,000 (\$3,500 Plan Years beginning prior to August 6, 1997), it shall remain a

part of the Trust Fund and share in any gains or losses in accordance with Part 2, Article 8.

**2.4.10 Termination of Plan.** In the event that this Plan terminates (including a termination due to a complete discontinuance of contributions by the Employer), each Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in all of his Accounts. In the event of a partial termination of the Plan, each Participant with respect to whom such partial termination has occurred shall be one hundred (100%) percent vested and have a non-forfeitable interest in all of his Accounts.

## ARTICLE 5

### DISTRIBUTIONS

**2.5.1 Immediate Distributions.** A Participant whose employment terminates on account of death, disability, or retirement may elect (or his Beneficiary may elect) to commence distribution of his benefits within a reasonable period after the distribution date specified in Section 2.3.11, or delay the commencement of benefits, subject to the provisions of Sections 2.5.2 and 2.5.3. A Participant whose employment is terminated on account of resignation or discharge before meeting the eligibility requirements of Normal Retirement may elect to commence distribution of his benefits within a reasonable period after the distribution date specified in Section 2.3.11, or delay the commencement, subject to the provisions of Sections 2.5.2 and 2.5.3.

**2.5.2 Deferred Distributions.** Unless the Participant elects otherwise, his vested and non-forfeitable Account Balance shall be dispersed no later than the sixtieth (60th) day after the last day of the Plan Year in which the latest of the following occurs:

- (a) the Participant attains age sixty-five (65) or the Normal Retirement Age, if earlier;
- (b) the Participant reaches his tenth (10th) anniversary of participating in the Plan; or
- (c) the Participant terminates his employment with the Employer.

A Participant who terminates employment before satisfying the age requirement for Normal Retirement but has satisfied any service requirement shall be entitled to a distribution of his benefits in accordance with Section 2.5.1 upon attaining such age.

The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution while the Participant's Account Balance in the Plan is Immediately Distributable, as that term is defined in Section 2.5.3(g)(3). Such notice shall be given to the Participant at least thirty (30), but no more than ninety (90), days before the distribution. A Participant and the Participant's spouse may elect a distribution commencing less than thirty (30) days after the notice is provided to the Participant if the notice clearly indicates that the Participant has at least thirty (30) days to decide whether to consent to the distribution. The failure of a Participant, or the Participant's spouse to consent to a distribution while the benefit is Immediately Distributable shall be deemed an election to defer commencement of benefits under this Section. If the Plan is a Safe Harbor Profit Sharing Plan, as that term is defined in Section 1.2.79, only the Participant need consent to the distribution of an Account Balance that is Immediately Distributable.

**2.5.3 Required Distributions.** All distributions and benefit payments are subject to the minimum distribution requirements, including the minimum distribution incidental benefit requirements, of Code section 401(a)(9), and the regulations thereunder, including the proposed Income Tax regulations 1.401(a)(9)-1 and 1.401(a)(9)-2. The Plan will apply the regulations proposed on January 17, 2001, to distributions made under the Plan for calendar years beginning on or after January 1, 2003, and ending before the first day of the first calendar year beginning after the effective date of any final regulations under Code section 401(a)(9), or such other date as may be specified in guidance published by the Internal Revenue Service. In the event that a provision of this Plan conflicts with such requirements, such requirements shall govern.

(a) **Exempt Participants.** Those Participants who executed a valid "Section 242(b)(2) Election" by December 31, 1983, which has not been revoked or modified, may receive their distributions according to the terms of the election; provided, the spousal consent requirements of Code section 417 are satisfied. A "Section 242(b) Election" is an optional election provided by section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which meets the guidelines of IRS Notice 83-23, 1983-2 C.B. 418. Such election is not valid for any assets rolled over into this Plan, unless such rollover was not at the direction of the Participant. A Participant may

revoke his election at any time, but once revoked it cannot be reinstated and the provisions of Paragraphs (b) and (c) will govern his distributions as if the election had not been made. In the event that such a revocation results in distributions being required for prior years, such distributions must be distributed by the December 31st following the calendar year in which the "Section 242(b)(2) Election" was revoked.

(b) **Required Distributions Before Death.** Each Participant must receive his entire vested Account Balance or commence distribution of his benefits by his Required Beginning Date. In the event that the Participant or his spouse does not consent to a distribution, the Participant shall receive a distribution based solely on his Life Expectancy.

The required distribution is the amount determined by dividing the Participant's Account Balance by the applicable Life Expectancy or Joint Life Expectancy, provided that the distribution does not exceed the Participant's vested Account Balance. For this purpose, a Participant's Account Balance equals the value of his Accounts as of the Valuation Date coincident with or next preceding the December 31 preceding each Distribution Year, adjusted to reflect any contributions or forfeitures allocated to the Participant and any distributions made to the Participant after such Valuation Date and December 31. For the second Distribution Year, the Account Balance may also be adjusted by any distribution made prior to April 1.

The Life Expectancy or Joint Life Expectancy is based on the attained ages of the Participant and/or the Beneficiary as of the December 31 prior to the Participant's or the Beneficiary's first Distribution Year. For the second and subsequent Distribution Years, the Life Expectancies of the Participant and his Beneficiary, if applicable, will be recalculated or not, as selected by the Participant, unless such Beneficiary is not the Participant's spouse in which case the Life Expectancy will not be recalculated. Such election must be made prior to the Required Beginning Date and is irrevocable. If no election is made the Life Expectancies will be recalculated each year. A life expectancy or joint life expectancy, which is not recalculated, is determined by taking the life expectancy or joint life expectancy of the prior year and subtracting one (1.0). A Life Expectancy or Joint Life Expectancy, which is recalculated, is determined each December 31 based on the attained ages at that date. If a Participant or Beneficiary dies before that date his life expectancy is zero. A joint life expectancy in which one life is being recalculated and the other is not will be determined in accordance with the procedure in proposed Treasury Regulation 1.401(a)(9)-1, E-8(b).

Notwithstanding the foregoing, for calendar years beginning on or after January 1, 2003, the Life Expectancy of the Participant (and his Beneficiary if the sole Beneficiary is his spouse) shall be recalculated each year.

(c) **Required Distributions After Death.**

(1) If distribution of the Participant's benefit has begun and the Participant dies before his entire benefit has been distributed to him, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death. If the Participant had commenced payments and died prior to attaining his Required Beginning Date, the rules in Paragraph (2) below apply unless the Participant's benefits were being distributed as an irrevocable annuity under a Contract that meets the requirements of Code section 401(a)(9) and the regulations thereunder and was purchased from an Insurer.

(2) If the Participant dies before benefits have commenced, then his entire interest must be distributed by the December 31 following the fifth (5th) anniversary of his death; provided that the Participant may elect, or may provide that the Beneficiary may elect, to have such benefits paid over the lifetime of the Beneficiary, or a period not to exceed the Life Expectancy of the Beneficiary, in which case benefits must commence by the December 31 of the calendar year following the year of the Participant's death, or if the Beneficiary is the Participant's spouse, the December 31 of the calendar year in which the Participant would have attained age 70½, if living. If the Beneficiary so elects, then the election is irrevocable

and must be made prior to the Required Beginning Date of the Beneficiary or the December 31 following the Participant's fifth (5th) anniversary of his death, if earlier.

(3) If the Beneficiary dies (before or after his benefits commence), any remaining distributions shall continue in the manner designated above prior to death, unless the Beneficiary is the Participant's surviving spouse and distributions have not commenced. In such a case, the surviving spouse's beneficiary must receive the Participant's entire interest by the December 31 following the fifth (5th) anniversary of the surviving spouse's death, or, if so elected by the Participant (or surviving spouse or surviving spouse's beneficiary), over the lifetime of the surviving spouse's beneficiary or a period not to exceed the Life Expectancy of the surviving spouse's beneficiary, in which case benefits must commence by the December 31 of the calendar year following the calendar year of the surviving spouse's death. Such election shall be made on administrative forms provided by the Plan Administrator.

(4) For purposes of this Section, any amount paid to a minor child shall be treated as if it had been paid to the surviving spouse, if such amount shall become payable to the surviving spouse when the child reaches majority.

(d) **Option to Distribute Benefits as an Annuity.** All benefits distributed from this Plan shall be determined in accordance with Sections 2.5.3(b) and (c) above. The Plan does not offer payments in the form of an annuity.

(e) **Asset Transfers.**

(1) If a Participant requests a rollover of his benefits to a qualified plan not maintained by the Employer during his first or subsequent Distribution Year, such rollover shall be reduced by the minimum required distribution for the Distribution Year under Code section 401(a)(9) and the reduction shall be distributed to the Participant by the appropriate date.

(2) If the Plan receives a rollover with respect to a Participant who has reached his Required Beginning Date, the Plan shall distribute the minimum required distribution under Code section 401(a)(9) beginning with the following calendar year. In the event that the beneficiary or method of distribution with respect to the transferred assets differs from the Beneficiary or method of distribution of this Plan, the Plan will segregate the transferred assets and continue to distribute the benefits from the originating plan in accordance with the method of distribution and Life Expectancy of the originating plan.

(f) **Transition Election for Participants Over 70½.** Participants who attained age 70½ prior to 1997, whose distributions commenced, but who did not retire shall continue to receive distributions as if they had reached their Required Beginning Date.

(g) **Definitions.** For this Section 2.5.3, the terms below shall have the following meanings:

(1) **"Distribution Year":** A calendar year for which a minimum distribution is required under Code section 401(a)(9). For distributions prior to a Participant's death, the first Distribution Year is the year immediately preceding his Required Beginning Date and the second Distribution Year is the year containing his Required Beginning Date. For distributions after a Participant's death, the first Distribution Year is the year in which the Participant would have attained 70½ or the calendar year immediately following his death, whichever is appropriate.

(2) **"5-Percent Owner":** A Participant who satisfies the definition of a 5-percent owner within the meaning of section 416(i) of the Code at any time during the Plan Year ending with or within the calendar year.

(3) **"Immediately Distributable":** A benefit is Immediately Distributable if any part of the Account Balance could be distributed to the Participant, (or surviving spouse), before the

Participant attains, (or would have attained if not deceased), the later of his Normal Retirement Age or 62.

(4) **"Joint Life Expectancy":** The joint two life expectancy of a Participant and his Beneficiary determined using Table VI of Treasury Regulation 1.72-9 and based upon their attained ages as of a specified date. If more than one Beneficiary is selected, the Joint Life Expectancy will be determined using the Beneficiary with the oldest age.

(5) **"Life Expectancy":** The life expectancy of a Participant or a Participant's Beneficiary determined using Table V of Treasury Regulation 1.72-9 and based upon the attained age as of a specified date.

(6) **"Required Beginning Date":** The date on which benefits must commence to a Participant or his Beneficiary, determined as follows:

(i) For those Participants who attain age 70½ during 1988 or later, the Required Beginning Date is the April 1 of the calendar year following such year.

(ii) For those Participants who attain age 70½ prior to 1988, the Required Beginning Date is the April 1 of the calendar year following the later of such year or the year in which he retires; provided that if the Participant was a 5-Percent Owner at any time after attaining age 66½, his Required Beginning Date is the April 1 of the calendar year following the later of the year in which he attains age 70½ or becomes a 5-Percent Owner.

(iii) If the Participant's Beneficiary is the Participant's spouse, the Required Beginning date is the December 31 following the later of the year in which the Participant deceased or the year in which the Participant would have attained age 70½ if living.

(iv) If the Participant's Beneficiary is a person, but not the Participant's spouse, or a trust which meets the conditions of proposed Treasury Regulation 1.401(a)(9)-1, the Required Beginning Date is the December 31 following the year in which the Participant deceased.

**2.5.4 Requirement of Annuity Payment.** Except as otherwise provided herein, the vested Account Balance of a married Participant shall be provided in the form of a Qualified Joint and Survivor Annuity, and in the case of a Participant who dies before the Annuity Starting Date and has a surviving spouse, a Qualified Pre-Retirement Survivor Annuity shall be provided to such surviving spouse. Except as otherwise provided herein, the vested Account Balance of an unmarried Participant shall be provided in the form of a Straight Life Annuity. Such Qualified Joint and Survivor Annuity, Qualified Pre-Retirement Survivor Annuity, or Straight Life Annuity shall be the amount that can be purchased through an annuity Contract from an Insurer.

(a) **Exception for Small Vested Account Balances.** If the vested Account Balance is less than \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and the Plan permits an immediate lump sum cash-out, an annuity form and spousal consent, as described in this Section 2.5.4, are not required. In this event, the default method of distribution is a lump sum distribution to the Participant, unless the address of the Participant is unknown, in which case the distribution will be a Direct Rollover, as described in Section 1.2.18. This default Direct Rollover applies only if the terminating Participant fails to request a cash payment, a Direct Rollover to another qualified plan, or an IRA. The Plan Administrator shall select an IRA trustee, custodian, or issuer (the "trustee" that is unrelated to the Employer, shall establish the IRA with that trustee on behalf of the terminating Participant, and make the initial investment choices for the account.

(b) **Election to Waive Annuity Payment.** At any time during the Applicable Election Period, a Participant and his spouse may elect to waive the Qualified Joint and Survivor Annuity form of

benefit or the Qualified Pre-Retirement Survivor Annuity form of benefit (or both) and may revoke any such election. There is no limit to the number of times that an election or a revocation may be made by a Participant.

The Plan Administrator shall provide the Participant with a written explanation of the Qualified Joint and Survivor Annuity which meets the requirements of Code section 417 and the regulations thereunder not more than 90 days nor less than thirty (30) days before the Participant's Annuity Starting Date. The Plan Administrator shall provide the Participant with a written explanation of the Qualified Pre-Retirement Survivor Annuity within the Applicable Period. A Participant who will not attain age thirty-five (35) by the last day of the Plan Year who waives the Qualified Pre-Retirement Survivor Annuity will have such coverage reinstated as of the first day of the Plan Year in which he attains thirty-five (35) until a new waiver is executed. Any new waiver shall independently satisfy the requirements of this Subsection (b).

(c) **Spousal Consent Required.** An election to waive the Qualified Joint and Survivor Annuity form of benefit shall not take effect unless (1) the spouse of the Participant consents in writing to the election, the election designates a Beneficiary or form of benefits which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the Participant without any requirement of further consent by the spouse), the spouse's consent acknowledges the effect of such election, and the consent is witnessed by a Plan representative or a notary public; or (2) it is established to the satisfaction of the Plan Administrator that such consent cannot be obtained because there is no spouse, because the spouse cannot be located, or because of other circumstances permitted by applicable regulations. Any consent by a spouse (or establishment that the consent of a spouse cannot be obtained) shall be effective only with respect to such spouse.

The designation of a Beneficiary other than the spouse of the Participant (with the consent of such spouse) must acknowledge the specific non-spouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights.

A Participant may revoke a prior waiver without the consent of the spouse at any time prior to the commencement of benefits. The number of waivers and revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Subsection (e) below.

(d) **Consent by Surviving Spouse.** If an optional form of payment has not been elected by the Participant prior to death, or, if applicable, by the surviving spouse, then the Participant's vested Account Balance shall be applied toward the purchase of a Qualified Pre-Retirement Survivor Annuity. Such Account Balance shall include all Employer and Employee contributions (including any rollover contributions) and attributable earnings and the proceeds of any insurance Contracts on the Participant's life or the life of someone in which the Participant has an insurable interest. Unless otherwise provided by Section 2.5.3(c), a Qualified Pre-Retirement Survivor Annuity to a surviving spouse shall not commence without the consent of such spouse unless the vested Account Balance is less than \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997).

(e) **Exception if Participant not Married for a Year.** The Plan does not provide a Pre-Retirement Survivor Annuity to a surviving spouse if the Participant and the spouse have been married for less than one (1) year at the time of death. In the event that the Participant and his spouse have been married for less than one (1) year at the Participant's Annuity Starting Date, the Plan shall treat the Participant and his spouse as being married and commence benefits as a Qualified Joint and Survivor Annuity unless the Participant waives such annuity and his spouse consents. If the Participant and his spouse have not been married for at least one (1) year, by reason of the Participant's death or divorce, the spouse is not entitled to any survivor benefits unless requested by the Participant or required by a Qualified Domestic Relations Order.

(f) **Written Explanations.** The Plan Administrator shall provide each Participant within a reasonable period of time before the Annuity Starting Date a written explanation of:

- (1) the terms and conditions of a Qualified Joint and Survivor Annuity;
- (2) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;
- (3) the rights of the Participant's spouse to consent to a Participant's election;
- (4) the right to make and the effect of a revocation of an election; and
- (5) the relative values of the various optional forms of benefit under the Plan.

The Plan Administrator shall provide to each Participant within the applicable period a written explanation of a Qualified Pre-Retirement Survivor Annuity and such other information comparable to the items listed above.

(g) **Definitions.** For this Section 2.5.4, the terms below shall have the following meanings:

(1) **"Annuity Starting Date".** The first day of the first period for which an amount is payable as an annuity, or, if not payable as an annuity, the first day on which the Participant is entitled to such an amount.

(2) **"Applicable Election Period".** The time period in which a Participant may elect to waive a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity.

(i) In the case of a Qualified Joint and Survivor Annuity, the ninety (90) day period ending on the Annuity Starting Date; and

(ii) In the case of a Qualified Pre-Retirement Survivor Annuity, the period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) or the date the Participant severs employment with the Employer, and ends on the earlier of the date the Participant retires or the date of his death.

(3) **"Applicable Period".** The time period in which the Employer must provide an explanation of the Qualified Pre-Retirement Survivor Annuity to the Participant. Such period is whichever one of the following periods ends last:

(i) The period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);

(ii) A reasonable period after the individual becomes a Participant;

(iii) A reasonable period after the Participant severs employment with the Employer;

(iv) A reasonable period after the Plan ceases to fully subsidize the costs of the Qualified Pre-Retirement Survivor Annuity; or

(v) A reasonable period ending after the Participant accrues any vested or non-forfeitable benefits.

For purposes of this Subsection (3), a reasonable period means a two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one year after



that date. If a Participant who severs employment with the Employer is later rehired, the Applicable Period shall be redetermined.

#### **2.5.5 Methods of Distribution.**

(a) **Participants Not Eligible for Qualified Joint and Survivor Annuity.** If this is a Safe Harbor Profit Sharing Plan, or, if the Participant is otherwise ineligible to receive payment of benefits in the form of a Qualified Joint and Survivor Annuity, or if the Participant and his spouse affirmatively elect not to receive a Qualified Joint and Survivor Annuity, the Participant shall receive his benefits in one of the optional forms described in Section 2.3.13, as selected by the Participant, with such spousal consents as may be required by law, or in the case of death, by his Beneficiary.

(b) **Death Benefits.** If a Participant dies entitled to a death benefit, payments shall be made in the form of a survivor annuity unless this Plan is a Safe Harbor Profit Sharing Plan, or unless the Participant, Beneficiary, or executor of his estate elects otherwise, in which case payments shall be made in one of the optional forms set forth in Section 2.3.13.

(c) **Voluntary Contribution Account.** If a Participant is entitled to receive a Voluntary Contribution Benefit, the amount of such benefit, unless otherwise elected, shall be paid in a manner consistent with Section 2.5.2.

#### **2.5.6 Nature of Distributions.**

(a) **Trust Fund.** Except as provided in Subsection (b) with regard to Life Insurance Policies, the distribution of a Participant's vested Account Balance shall consist of cash, property, an annuity policy (if offered by the Plan in Section 2.3.13), or a combination thereof. If a distribution includes property, the property shall be valued at its fair market value as of the date of distribution.

#### **(b) Insurance Policies.**

(1) If the Participant's employment terminates for any reason other than death, the Trustee, at the election of the Participant, shall either (i) surrender the Life Insurance Policy for its available cash value and distribute the proceeds as provided in Subsection (a) above, or (ii) distribute the Life Insurance Policy to the Participant, provided his vested and non-forfeitable Account Balance is at least equal to the policy's cash value.

(2) If the Participant dies, the Beneficiary shall be entitled to the full amount of the policy proceeds.

(3) In the event a Life Insurance Policy on the life of someone other than the Participant is purchased pursuant to this Plan, and such other person shall die, the Participant may withdraw the life insurance proceeds to the extent they exceed the cash value.

#### **2.5.7 Miscellaneous Provisions.**

(a) **Terms of Annuity Contracts.** Any annuity contract distributed from the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or spouse shall comply with the requirements of the Plan.

(b) **Incidental Death Benefits.** For calendar years beginning before January 1, 1989, if the Participant's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least fifty (50%) percent of the amount available for distribution is paid within the life expectancy of the Participant.

(c) **Consents.** No consent is required to distribute a Participant's benefits if the vested and non-forfeitable Account Balance of the Participant is less than \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and the Plan permits immediate lump sum cash-outs. Neither the

consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy section 401(a)(9) or section 415 of the Code. In addition, upon termination of the Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer or any entity within the same controlled group does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code), the Participant's Account Balance in the Plan will, without the Participant's consent, be distributed to the Participant. However, if any entity within the same controlled group as the Employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code), then the Participant's Account Balance will be transferred, without the Participant's consent, to the other Plan if the Participant does not consent to an immediate distribution.

(d) **Zero Benefits.** If the value of the Participant's vested and non-forfeitable interest in the Plan at the time of his termination of employment is zero, the Participant shall be deemed to have received a distribution of such interest.

(e) **Safe Harbor Rules.** If this Plan is a Safe Harbor Plan, as that term is defined in Section 1.2.79, the requirement that a spouse consent to the Participant taking his distribution in a form other than a Qualified Joint and Survivor Annuity shall not apply notwithstanding any other provision of the Plan. This Section (e) shall not be operative with respect to the portion of a Participant's Segregated Account attributable to a direct or indirect transfer from a defined benefit plan, money purchase plan, target benefit plan, stock bonus, or profit sharing plan which is subject to the survivor annuity requirements of section 401(a)(11) and section 417 of the Code.

(f) **Distributions in the Event of Legal Incapacity.** If any person entitled to benefits is declared legally incapacitated by a court of proper jurisdiction, then the Plan Administrator shall direct the Trustee to make payments to the legal guardian or legal representative of the person or his estate.

(g) **Transitional Rules.**

(1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Sections of this Article shall be given the opportunity to elect to have the prior Sections of this Article 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 has at least 10 Years of Vesting Service when he or 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 benefits paid in accordance with Paragraph (4) below.

(3) The respective opportunities to elect (as described 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 such Participants.

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

(i) **Automatic Qualified Joint and Survivor Annuity.** If benefits in the form a life annuity become payable to a married Participant who:

- (A) begins to receive payments under the Plan on or after Normal Retirement Age;
- (B) dies on or after Normal Retirement Age while still working for the Employer;
- (C) begins to receive payments on or after the Qualified Early Retirement Age; or
- (D) 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 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(ii) **Election of early survivor annuity.** 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 that would have been made to the spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of (A) the 90th day before the Participant attains the Qualified Early Retirement Age, or (B) the date on which participation begins, and ends on the date the Participant terminates employment with the Employer.

(iii) **Qualified Early Retirement Age.** For purposes of this Paragraph (4) a Participant's Qualified Early Retirement Age is the later of:

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

**2.5.8 In Service Distributions.** The Plan does not permit distributions while the Participant is employed with the Employer.

**2.5.9 Hardship Withdrawals.** The Plan does not provide for distributions on account of hardship.

## ARTICLE 6

### CONTINGENT TOP HEAVY PROVISIONS

**2.6.1 Top Heavy Requirements.** If the Plan becomes a Top Heavy Plan during any Plan Year beginning after December 31, 1983, the following provisions shall supersede any conflicting provisions in the Plan and apply for such Plan Year:

(a) **Minimum Top Heavy Allocation.** Notwithstanding any other Section of the Plan to the contrary, each Participant who is employed by the Employer on the last day of the Plan Year shall receive an allocation (to be provided solely by Non-Elective Contributions) of not less than three (3%) percent, or the largest "allocation percentage" received by a Key Employee, if less, of the Participant's Annual Compensation, as defined in Section 2.6.2(b). The minimum allocation is determined without regard to any Social Security contribution. The minimum allocation shall be made even though under other provisions of the Plan the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because (1) the Participant fails to complete 1,000 Hours of Service (or any equivalent provided in the Plan), (2) the Participant fails to make mandatory contributions (including elective deferrals to a cash or deferred arrangement described in section 401(k) of the Code) to the Plan, (3) the Participant's Compensation less than a stated amount, or (4) the Plan is integrated with Social Security. The minimum allocation shall not include a Participant's Elective Contributions or his share of Matching Contributions and Qualified Matching Contributions.

The allocation percentage of a Key Employee is determined by dividing his share of Employer Contributions, Elective Contributions, and Forfeitures by his Annual Compensation, as defined in Section 2.6.2(b). For this purpose only, the allocation percentage shall include any elective deferral (within the meaning of section 401(k) of the Code) made by the Employer on behalf of the Key Employee, any matching contribution (within the meaning of section 401(m) of the Code) or any other contribution made by the Employer to any plan that is included in this Plan's Required Aggregation Group or Permissive Aggregation Group.

(b) **Multiple Plans.** The minimum allocation provided above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided that the minimum allocation or benefit requirement applicable to Top Heavy plans will be met in the other plan or plans. In the case where the Employer has another plan or plans, it is intended that the minimum Top Heavy requirements will be met in this Plan.

(c) **Minimum Vesting Schedule.** If the Plan becomes Top Heavy, the vested and non-forfeitable interest of each Participant in his Non-Elective Account and his Matching Account shall equal the greater of the percentage determined under the vesting schedule specified in Section 2.4.1 or the percentage determined under the following schedule:

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6 or more	100%

The Top Heavy minimum vesting schedule applies to all benefits within the meaning of section 411(a)(7) of the Code, except those attributable to Elective Contributions and Voluntary Employee Contributions, including benefits accrued before the effective date of section 416 of the Code and benefits accrued before the Plan becomes Top Heavy.

No decrease in a Participant's non-forfeitable percentage may occur in the event the Plan's status as Top Heavy changes for any Plan Year. Any minimum benefit required (to the extent required to be non-forfeitable under section 416(b)) may not be forfeited under sections 411(a)(3)(B) or (D) of the Code.

(d) In the event that this Plan covers Employees that are the subject of a bona fide collectively bargained agreement between the Employer and Employee representatives, the requirements of this Section shall continue to apply to such Employees in the same manner as all other Employees.

(e) For Plan Years beginning before January 1, 2000, references in Section 3.1.5, pertaining to combined plan limitations, to "one hundred twenty five (125%) percent" shall be applied by substituting "one hundred (100%) percent" for "one hundred twenty five (125%) percent" therein. Reference in Section 3.1.5(c), pertaining to a special transition rule, to "\$51,875" shall be applied by substituting "\$41,500" for "\$51,875" therein.

Notwithstanding the above, if the Employer provided additional Top Heavy Allocations in this Plan or another defined contribution plan of the Employer (or additional Top Heavy retirement benefits in a defined benefit plan of the Employer), then the substitutions in the aforementioned paragraph will not take place unless the Plan is Super Top Heavy.

**2.6.2 Top Heavy Definitions.** The following terms, as used in this Article 6, shall have the following meaning:

(a) **"Accrued Benefit"**: The benefit accrued for a Participant under a defined benefit plan or plans of the Employer belonging to the Required Aggregation Group or Permissive Aggregation Group, such Accrued Benefit determined as of the Valuation Date, based on the provisions of that plan, except that the accrual rates of more than one plan differ, the Accrued Benefit will be determined using the slowest accrual rate for all plans.

(b) **"Annual Compensation"**: Compensation as defined in Section 3.1.6(a) but measured over the Limitation Year, as specified in Section 1.2.49. Compensation shall not be limited for partial Years of Participation.

(c) **"Determination Date"**: For any Plan year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of the Plan Year.

(d) **"Determination Period"**: The Plan Year containing the Determination Date and the four (4) preceding Plan Years.

(e) **"Key Employee"**: An Employee or former Employee who, at any time during the Determination Period is either:

(1) an officer of the Employer having an Annual Compensation greater than fifty (50%) percent of the amount in effect under section 415(b)(1)(A) of the Code;

(2) an owner (or a person considered an owner under section 318 of the Code) of one of the ten largest interests in the Employer if such individual's Annual Compensation from the Employer is more than the limitation in effect under section 415(c)(1)(A) of the Code;

(3) any person who owns directly or indirectly more than five (5%) percent of the outstanding stock of the Employer or stock possessing more than five (5%) percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer;

(4) any person who owns directly or indirectly more than one (1%) percent of the outstanding stock of the Employer or stock possessing more than one (1%) percent of the

total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer and having an Annual Compensation from the Employer of more than \$150,000; or

(5) any Beneficiary of a Key Employee.

For this purpose, Annual Compensation is defined in Section 2.6.2(b). The determination of who is a Key Employee shall be made in accordance with section 416(i)(1) of the Code and the regulations thereunder.

(f) **"Non-Key Employee"**: An Employee who is not a Key Employee.

(g) **"Permissive Aggregation Group"**: The Required Aggregation Group plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, continues to satisfy the requirements of sections 401(a)(4) and 410 of the Code.

(h) **"Present Value"**: The Present Value of Accrued Benefits referred to in Paragraph (l) below shall be based on the interest rate and mortality table specified in the Employer's defined benefit plan.

(i) **"Required Aggregation Group"**:

(1) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated), together with,

(2) Any other qualified plan of the Employer which enables a plan described in Paragraph (l) below to meet the requirements of sections 401(a)(4) or 410 of the Code.

(j) **"Super Top Heavy"**: For any Plan Year, the Plan is Super Top Heavy if the Plan is Top Heavy and the Top Heavy Ratio exceeds ninety (90%) percent.

(k) **"Top Heavy Plan"**: For any Plan Year beginning after December 31, 1983, the plan is Top Heavy if any of the following conditions exists:

(1) If the Top Heavy Ratio for the Plan exceeds sixty (60%) percent and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(2) If the 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 sixty (60%) percent.

(3) If the 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 sixty (60%) percent.

(l) **"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 five (5) year period ending on the Determination Date(s) has or has had accrued benefits, the Top Heavy Ratio for this Plan alone, for the Required Aggregation Group, or the 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 five (5) year period ending on the Determination Date(s)), and the denominator of which is the sum of the Account Balances of all Employees as of the Determination Date(s) (including any part of any Account

Balance distributed in the five (5) year period ending on the Determination Date(s)), both computed in accordance with section 416 of the Code 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 five (5) year period ending on the Determination Date(s) has or has had any accrued benefits, the Top Heavy Ratio for any Required Aggregation Group or Permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of Account Balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(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 (1) 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 section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top Heavy Ratio are increased for any distribution of an Accrued Benefit made in the five-year period ending on the Determination Date.

(3) For purposes of (1) and (2) above, the value of Account Balances and the Present Value of Accrued Benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (12) month period ending on the Determination Date, except as provided in section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan.

The Account Balances and Accrued Benefits of a Participant (i) who is not a Key Employee but was a Key Employee in a prior year, or (ii) who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the five (5) year period ending on the Determination Date will be disregarded. The calculation of the Top Heavy Ratio and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Code 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 the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or 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 section 411(b)(1)(C) of the Code.

(m) **"Valuation Date"**: The date as of which Account Balances and accrued benefits are valued for purposes of calculating the Top Heavy Ratio. The Valuation Date shall be December 31st of each Plan Year.

## ARTICLE 7

### LIMITATIONS ON CONTRIBUTIONS

**2.7.1 General Limitation on Contributions.** The Actual Deferral Percentage test of Code Section 401(k) (hereinafter the "ADP Test"), described in Section 2.7.2, must be satisfied with respect to Elective Contributions. If the Plan provides Matching Contributions or permits Voluntary Employee Contributions, the Actual Contribution Percentage test of Code section 401(m) (hereinafter the "ACP Test"), described in Section 2.7.3, and the Multiple Use Test of Section 2.7.4 must be satisfied.

#### **2.7.2 Actual Deferral Percentage Test.**

(a) The Actual Deferral Percentage (hereinafter "ADP") for all Highly Compensated Employees for the current Plan Year must not exceed the greater of:

(1) the ADP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 1.25, or

(2) the ADP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 2.0, but not to exceed such ADP plus two (2.0) percentage points.

This Plan cannot be amended to base the ADP test on the ADP for Non-Highly Compensated Employees in the prior Plan Year unless the requirements in Notice 98-1, 1998-3 I.R.B. 42 (or superseding guidance) have been met.

(b) The Employer shall maintain records sufficient to demonstrate satisfaction of the ADP Test, and the amount of Qualified Non-Elective Contributions, if any, used in such test.

(c) Failure of the Plan to satisfy the ADP Test requires that the Employer make a Qualified Non-Elective Contribution to the Plan (as defined in Section 1.2.75) in an amount that is at least sufficient to cause the Plan to pass the ADP Test, the Trustee distribute Elective Contributions to the necessary Highly Compensated Employees as Excess Contributions, or a combination thereof.

#### **2.7.3 Actual Contribution Percentage Test.**

(a) The Actual Contribution Percentage (hereinafter "ACP") for all Highly Compensated Employees for the current Plan Year must not exceed the greater of:

(1) the ACP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 1.25, or

(2) the ACP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 2.0, but not to exceed such ACP plus two (2.0) percentage points.

This Plan cannot be amended to base the ACP Test on the ACP for Non-Highly Compensated Employees in the prior Plan Year unless the requirements in Notice 98-1, 1998-3 I.R.B. 42 (or superseding guidance) have been met.

(b) The Employer shall maintain records sufficient to demonstrate satisfaction of the ACP Test, and the amount of Qualified Matching Contributions or Elective Contributions, if any, used in such test.

(c) Failure of the Plan to pass the ACP Test requires that the Employer make a Qualified Matching Contribution to the Plan (as defined in Section 1.2.72) in an amount that is at least sufficient to cause the Plan to pass the ACP Test, the Trustee to distribute Matching Contributions to



the necessary Highly Compensated Employees as Excess Aggregate Contributions, forfeits any non-vested Matching Contributions as necessary, or a combination thereof.

**2.7.4 Multiple Use Test.** For any Plan Year in which Matching Contributions or Voluntary Employee Contributions are made to the Plan, the sum of the ADP of the Highly Compensated Employees and the ACP of the Highly Compensated Employees shall not exceed the greater of:

(a) the sum of:

the ADP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 1.25, and

the ACP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 2.0, but not to exceed such ACP plus two (2.0) percentage points; or

(b) the sum of:

the ACP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 1.25, and

the ADP for the current Plan Year for all Non-Highly Compensated Employees multiplied by 2.0, but not to exceed such ADP plus two (2.0) percentage points.

(c) Failure of the Plan to pass the Multiple Use Test requires that the Employer make a Qualified Non-Elective Contribution to the plan (as defined in Section 1.2.75) in an amount that is at least sufficient to cause the Plan to pass the Multiple Use Test.

**2.7.5 Multiple Plans.** If the Employer maintains another plan that permits elective contributions within the meaning of Treasury regulation 1.401(k)-1(g)(3), permits employee contributions, provides matching contributions within the meaning of Code section 401(m), or requires employee contributions as a condition of participating in the plan, and that plan covers at least one Highly Compensated Employee who is a Participant in this Plan, then the ADP for Highly Compensated Employees of all such plans shall be aggregated with the ADP of this Plan in applying the ADP Test of Section 2.7.2 and the ACP for Highly Compensated Employees of all such plans shall be aggregated with the ACP of this Plan in applying the ACP Test of Section 2.7.3. In the case of where two or more plans have separate plan years, all plan years ending within the same calendar year shall be aggregated.

If the other plans of the Employer have the same plan year, and base the ADP and ACP for Non-Highly Compensated Employees on the same compensation period (current or prior year), then the ADP and ACP for the Highly Compensated Employees and the ADP and ACP for the Non-Highly Compensated Employees may be determined as if all plans were a single plan maintained by the Employer. If this Plan must be aggregated with another plan of the Employer, or if another plan of the Employer must be aggregated with this Plan, in order to satisfy the requirements of Code section 401(a) or 410(b), then this Plan and the other plan or plans must be aggregated when performing the ADP Test and ACP Test. In this case, the plans must have the same Plan Year and base the ADP and ACP for Non-Highly Compensated Employees on the same compensation. For the purposes of this Subsection, the definition of ACP below shall be modified to include any mandatory employee contributions to a defined benefit plan.

Multiple use of the alternative limitation does not occur if either the ADP or the ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP, respectively, of the Non-Highly Compensated Employees.

**2.7.6 Distribution of Excess Contributions.** Effective for Plan Years beginning after December 31, 1996, the amount of Excess Contributions to be distributed shall be allocated among the Highly Compensated Employees in order of the amount of Elective Contributions made to the Plan for a Plan Year. The amount to be distributed to each Highly Compensated Employee, plus any associated earnings or losses, shall be distributed by the last day of the Plan Year following the Plan Year in which the

Elective Contributions were made. If the distribution occurs more than 2½ months after the last day of the Plan Year in which such contributions were made, the Employer shall be responsible for payment of the 10% excise tax imposed by Code section 4979. No Elective Contributions shall be forfeited under this Section.

The income or loss associated with the Participant's portion of the Excess Contributions to be distributed shall equal the gain or loss of his Elective Account for the Plan Year multiplied by a fraction, the numerator of which is the amount to be distributed from the Elective Account, and the denominator of which is the sum of the Elective Account at the beginning of the Plan Year and any Elective Contributions made during the Plan Year. No gain or loss shall be recognized from the period beginning on the last day of the Plan Year until the date of distribution.

**2.7.7 Distribution of Excess Aggregate Contributions.** Effective for Plan Years beginning after December 31, 1996, the amount of Excess Aggregate Contributions to be distributed shall be allocated among the Highly Compensated Employees in order of the sum of the share of any Matching Contribution plus any Voluntary Employee Contributions made to the Plan for a Plan Year. The amount to be distributed to each Highly Compensated Employee, plus any associated earnings or losses, shall be distributed by the last day of the Plan Year following the Plan Year in which the Matching Contribution was allocated or the Voluntary Employee Contributions were made. If the distribution occurs more than 2½ months after the last day of the Plan Year in which such contributions were made, the Employer shall be responsible for payment of the 10% excise tax imposed by Code section 4979. No Voluntary Employee Contributions shall be forfeited under this Section.

The income or loss associated with the Participant's portion of the Excess Aggregate Contributions to be distributed shall equal the gain or loss of his Voluntary Account for the Plan Year multiplied by a fraction, the numerator of which is the amount to be distributed from the Voluntary Account, and the denominator of which is the sum of the Voluntary Account at the beginning of the Plan Year and any Voluntary Employee Contributions made during the Plan Year. No gain or loss shall be recognized from the period beginning on the last day of the Plan Year until the date of distribution.

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP test, the portion of any Excess Aggregate Contributions to be distributed to an individual Highly Compensated Employee from this Plan shall be a percentage equal to the same percentage that his share of the Matching Contribution and his Voluntary Employee Contributions in this plan bears to the total contributions attributable to such Participant and used determining the ACP.

**2.7.8 Forfeiture of Matching Contribution:** Matching Contributions may be forfeited when:

(a) The Elective Deferral to which the Matching Contribution relates is returned because it was determined to be an Excess Deferral, Excess Contribution or Excess Annual Addition;

(b) The Employee Contribution to which the Matching Contribution relates is returned because it was determined to be either an Excess Aggregate Contribution or Excess Annual Addition.

The requirements of this Section shall be met in whole or in part if the Matching Contribution in question is returned to the Participant as an Excess Aggregate Contribution.

Following the Forfeiture of Matching Contributions pursuant to this Section, the highest rate of Matching Contribution allocated to any Highly Compensated Employee may not exceed the lowest rate of Matching Contribution allocated to any Non-Highly Compensated Employee eligible to receive an allocation of Matching Contributions under this Plan or under all plans in a mandatory or Permissive Aggregation Group. This provision shall not apply in the case of a Non-Highly Compensated Employee whose allocation of Matching Contributions is limited by the application of section 415 of the Code. Allocation of Forfeitures under this Section shall be governed by elections regarding the allocation of the Forfeiture of Matching Contributions.

**2.7.9 Definitions.** The following terms, as used in this Article 7, shall have the following

meanings:

(a) **"Actual Contribution Percentage":** The average of the ratios in the group consisting of Highly Compensated Employees or the group consisting of Non-Highly Compensated Employees, calculated separately for each Participant who is eligible to receive a share of the Matching Contribution (or would be eligible if he made Elective Deferrals) or is eligible to make Voluntary Contributions, where such ratio equals the Participant's aggregate share of the Matching Contribution, Qualified Matching Contributions, and any Voluntary Employee Contributions for the Plan Year divided by his Compensation for the Plan Year. Compensation shall be compensation as defined in Section 1.2.14 for the Plan Year, but for the initial Plan Year, taking into consideration only that compensation actually received from the date the Employee commenced participation in the Plan, or would have commenced participation in the Plan if he had made Elective Contributions or mandatory employee contributions. The ACP for a group shall be expressed to the nearest hundredth of a percentage point. In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP Test, the ACP will be modified in the manner described in Section 2.7.5. If another plan requires employee contributions as a condition of participating in that plan, then the ACP shall include those Participants who choose not to contribute, their ratio being zero (0.00).

Pursuant to section 410(b)(4)(B) of the Code, the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy the age and service requirements under the Elective Contribution portion of the Plan that are less than the greatest minimum age and service requirements permitted under section 410(a) of the Code (known as "Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service requirements permitted under section 410(a) of the Code (known as "Not Otherwise Excludable Employees") as two separate plans; or, for Plan Years beginning after December 31, 1998, the Employer may exclude Otherwise Excludable Employees who are Non-Highly Compensated Employees entirely for purposes of the ACP Test of this Section.

(b) **"Actual Deferral Percentage":** The average of the ratios in the group consisting of Highly Compensated Employees or the group consisting of Non-Highly Compensated Employees, calculated separately for each Participant who is eligible to make an Elective Deferral at any time during the Plan Year, where such ratio equals the Participant's Elective Contributions Qualified Non-Elective Contributions for the Plan Year divided by his Compensation for the Plan Year. Compensation shall be compensation as defined in Section 1.2.14 for the Plan Year, but for the initial Plan Year, taking into consideration only that compensation actually received from the date the Employee commenced participation in the Plan, or would have commenced participation in the Plan if he had made Elective Contributions or mandatory employee contributions. The ADP for a group shall be expressed to the nearest hundredth of a percentage point. In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ADP Test, the ADP will be modified in the manner described in Section 2.7.5. If another plan requires Elective Contributions as a condition of participating in that plan, then the ADP shall include those Participants who choose not to contribute, their ratio being zero (0.00).

Pursuant to section 410(b)(4)(B) of the Code, the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy the age and service requirements under the Elective Contribution portion of the Plan that are less than the greatest minimum age and service requirements permitted under section 410(a) of the Code (known as "Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service requirements permitted under section 410(a) of the Code (known as "Not Otherwise Excludable Employees") as two separate plans; or, for Plan Years beginning after December 31, 1998, the Employer may exclude Otherwise Excludable Employees who are Non-Highly Compensated Employees entirely for purposes of the ADP Test of this Section.

(c) **"Excess Aggregate Contributions":** For a Plan Year, the excess of:

- (1) the aggregate amount of the allocated Matching Contribution, Voluntary Employee

Contributions, and Mandatory Employee Contributions attributable to Highly Compensated Employees over

(2) the maximum amount that can be made by the Highly Compensated Employees for the Plan Year that will satisfy the ACP Test in Section 2.7.3, such amount determined by reducing the contributions of the Highly Compensated Employees in order of their ratios used in calculating the ACP for Highly Compensated Employees.

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ACP Test, the Excess Aggregate Contributions will be modified to include the additional amounts described in Section 2.7.5.

(d) **"Excess Contributions"**: For a Plan Year, the excess of:

(1) the aggregate amount of the Elective Contributions attributable to Highly Compensated Employees over

(2) the maximum amount that can be made by the Highly Compensated Employees for the Plan Year that will satisfy the ADP Test in Section 2.7.3, such amount determined by reducing the contributions of the Highly Compensated Employees in order of their ratios used in calculating the ADP for Highly Compensated Employees.

In the event that the Employer maintains another plan that is aggregated with this Plan for purposes of the ADP Test, the Excess Contributions will be modified to include the additional amounts described in Section 2.7.5.

## ARTICLE 8

### ACCOUNTING

**2.8.1 Accounts.** All income, profits, recoveries, contributions and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held as a commingled Trust Fund, except to the extent such assets are transferred to a Segregated Fund or Controlled Account. For accounting purposes, the Plan Administrator shall establish and maintain certain Accounts for each Participant. A Non-Elective Account shall be established and maintained for each Participant to which his share of Non-Elective Contributions and Forfeitures shall be added. An Elective Account shall be established and maintained for each Participant to which the Elective Contributions made on his behalf shall be added. A Qualified Non-Elective Account shall be established and maintained for each Participant to which his share of Qualified Non-Elective Contributions, if any, shall be added. A Matching Account shall be established and maintained for each Participant to which his share of Matching Contributions and Forfeitures shall be added. A Qualified Matching Account shall be established and maintained for each Participant to which his share of Qualified Matching Contributions, if any, shall be added. If a Participant has made Voluntary Employee Contributions, the Plan Administrator shall establish and maintain a Voluntary Account for the Participant. If, in accordance with any of the provisions of the Plan, assets are either deposited initially or transferred to a Segregated Fund for the benefit of a Participant, the Plan Administrator shall establish and maintain a Segregated Account for the Participant. If a Participant elects to exercise investment control over all or a portion of his Accounts, the Plan Administrator shall establish and maintain a Controlled Account for the Participant.

**2.8.2 Valuation Adjustments.** As of each Valuation Date, each Participant's Accounts shall be adjusted in the following order and manner:

(a) **Distributions.** Any distribution made to or on behalf of a Participant since the last preceding Valuation Date shall be deducted from the Participant's Account from which the distribution was made.

(b) **Insurance Premiums.** Payments made since the last preceding Valuation Date for Life Insurance Policies on the life of a Participant or someone in whom the Participant has an insurable interest (including without limitation payments of premiums and interest on policy loans) shall be deducted from the Account of the Participant from which the payment was made.

(c) **Insurance Dividends.** Dividends or credits received since the last preceding Valuation Date on any Life Insurance Policy on the life of a Participant or someone in whom the Participant has an insurable interest shall be added to the Account of the Participant from which the premiums for such Life Insurance Policy have been paid.

If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the Participant's Account Balance. If this Plan is funded by group annuity contracts or group insurance contracts, premiums or other consideration received by the insurance company must be allocated to Participant's Account under the Plan.

(d) **Contributions.** Each Participant's Account shall be increased by his portion of any Employer Contributions, his Elective Contributions, and any allocated Forfeitures.

(e) **Forfeitures.** If a Participant terminates service with the Employer, is less than one hundred (100%) percent vested, and forfeits the non-vested portion of his Account Balance, his Account Balance and the amount available for distribution shall be reduced by the amount of his Forfeiture.

To the extent that the Plan provides additional allocations from Forfeitures, the Account Balances of those eligible for such an allocation will increase.

(f) **Loans.** The issuance of a loan to a Participant reduces the Account from which it is issued and increases the outstanding loan obligation. Loan repayments, including principal and interest, shall increase the Account to which the repayment is made and decreases the outstanding loan obligation.

(g) **Expenses.** Any expenses earmarked for an individual Participant shall reduce his Account Balance.

(h) **Transfers To or From Segregated Funds.** To the extent that funds are transferred to a Segregated Fund from the general assets of the Trust or from a Segregated Fund to the general assets of the Trust pursuant to any of the provisions of the Plan, the Account from which the funds were transferred shall be decreased and the Account to which the funds were transferred shall be increased for such Participant.

(i) **Transfers Between Controlled Funds.** To the extent that investment transfers are made between Controlled Funds, the Controlled Fund from which a transfer is made will decrease, and the Controlled Fund to which a transfer is made will increase.

(j) **Adjustment to Fair Market Value.** The Trustee shall appraise all moneys, securities, and other property in the Trust Fund, excluding Life Insurance Policies, at the then fair market value for each asset. In determining such value, all income and contributions, if any, received by the Trustee from the Employer or Participants shall be included and all expenses shall be deducted, such amounts being determined under the accounting method of the Trust.

If the total net value so determined by the Trustee exceeds (or is less than) the total amount in the respective Accounts of all Participants, the excess (or deficiency) shall be added to (or deducted from) the respective Accounts of all Participants in the ratio that each such Participant's Account bears to the total amount in all such Accounts.

The Trustee's determination as to valuation of trust assets and charges or credits to the individual Accounts of the respective Participants shall be conclusive and binding on all persons.

**2.8.3 Allocation of Earnings Gains and Losses.** As of each Valuation Date specified in Section 1.2.88, the net income of the Trust Fund recognized since the prior Valuation Date will be allocated among Participant Accounts. Net income is the interest, dividends, net gains or losses from the sale of investments, and unrealized appreciation (depreciation) in Trust assets, less investment expenses of the Trust Fund.

As of each Valuation Date, the net income of the Trust Fund will be allocated pro rata based on the value of each Participant Account Balance as of the preceding Valuation Date plus any adjustments required by Section 2.8.2.

The portion of a Participant's Account held in a Controlled Fund shall not participate in the allocation of earnings of this Section, but instead shall be credited with the actual earnings of such Controlled Fund.

In the event that the Participant's Accounts (or portion thereof) are invested in assets that are valued on a daily basis, his Account Balance shall reflect the daily activity of such assets and the method of allocating earnings described above shall not apply.

**2.8.4 Interim Valuations.** While it is contemplated that the Trust Fund will be valued by the Trustee and allocations made only on the Valuation Date, at any time that the Plan's valuations are not performed on a daily basis, should it be necessary to make distributions under the provisions hereof and the Plan Administrator, in good faith determines that, because of (i) an extraordinary change in general economic conditions, (ii) the occurrence of some casualty materially affecting the value of the Trust Fund or a substantial part thereof, or (iii) a significant fluctuation in the value of the Trust Fund has occurred since

the immediately preceding Valuation Date, the Plan Administrator may, in his sole discretion, to prevent the payee from receiving a substantially greater or lesser amount than what he would be entitled to, based on current values, cause a re-valuation of the Trust Fund to be made and a reallocation of the interests therein as of the date the payee's right of distribution becomes fixed. The Plan Administrator's determination to make such special valuation and the valuation of the Trust Fund as determined by the Trustee shall be conclusive and binding on all persons ever interested hereunder.

**2.8.5 Earnings on Forfeitures.** In the event that a Participant forfeits part of his Account Balance, such Forfeiture shall not be credited with earnings after the date specified in Section 2.4.9.

**2.8.6 Plan Expenses.** Other than general investment expenses incurred by the Trustee in his duties which are charged against the Trust Fund earnings, processing fees of the Plan shall be allocated on a pro rata basis in the same manner as provided in 2.8.3.

## ARTICLE 9

### ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS

**2.9.1 Safe Harbor CODA Rules.** Effective for Plan Years beginning after December 31, 2003, it is intended that the Plan satisfy the "Alternative Methods of Meeting Nondiscrimination Requirements" as described in sections 401(k)(12) or 401(m)(11) of the Code. For each Plan Year the Employer must satisfy the notification requirements, if any, of Sections 2.9.3 and 2.9.4.

To the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

If the Non-Elective Contribution under Section 2.3.1 applies the rules of Permitted Disparity, as defined in section 401(l) of the Code, such application cannot consider the Non-Elective Contribution made under Section 2.9.3. In addition, the Non-Elective Contribution of this Section, for purposes of the "Average Benefit Percentage Test" as described in section 410(b) of the Code, or the nondiscrimination requirements of section 401(a)(4) of the Code, cannot be taken into account when imputing permitted disparity under section 401(l) of the Code.

#### **2.9.2 Definitions.**

(a) "ACP Test Safe Harbor", for purposes of this Article, is the method described in Section 2.9.4. for satisfying the ACP Test under Section 2.7.3 (Limitation on Matching Contributions).

(b) "ACP Test Safe Harbor Matching Contribution", for purposes of this Article, is the Matching Contribution described in Section 2.9.4.

(c) "ADP Test Safe Harbor", for purposes of this Article, is the method described in Section 2.9.3 for satisfying the ADP Test under Section 2.7.2 (Limitation on Deferral Percentage for Highly Compensated Employees).

(d) "ADP Test Safe Harbor Contribution", for purposes of this Article, is the Non-Elective Contribution described in Subsection (a) of Section 2.9.3.

(e) "Compensation", for purposes of this Article, shall include compensation which is actually paid to the Participant by the Employer during the Compensation Computation Period for Elective Contribution as defined in Section 1.2.15. Compensation shall include all information required to be reported under sections 6041, 6051 and 6052 of the Code (wages, tips, and other compensation as reported on Form W-2). Compensation includes wages, (within the meaning of section 3401(a) of the Code) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. Such 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 section 3401(a)(2) of the Code).

In the case of a Self-Employed Individual, Compensation means Earned Income during such period; provided, if Compensation is modified so that Non-Highly Compensated Employees receive less than their total Compensation, Compensation for each self-employed individual shall be his Earned Income multiplied by a percentage. Such percentage equals the aggregate compensation recognized for allocation purposes for Non-Highly Compensated Employees divided by the aggregate total compensation actually paid to Non-Highly Compensated Employees. Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b), and 457(b) of the Code. Section 132(f)(4) elective deferrals are included in Compensation for Plan Years beginning on or after January 1, 2001. Section 132(f)(4) elective



deferrals are included in Compensation for Plan Years beginning on or after January 1, 2001.

(f) "Eligible Employee", for purposes of this Article, means an Employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for a suspension due to a Hardship Distribution described in Section 2.5.8 of the Plan or to statutory limitations, such as sections 402(g) and 415 of the Code. However, Employees who are eligible to make Elective Deferrals under the Plan, but who fail to satisfy the maximum permissible eligibility requirements of section 410(a) of the Code, will not be considered Eligible Employees.

(g) "Matching Contribution", for purposes of this Article, is a contribution to the Plan by the Employer which matches in whole or in part an Elective Contribution on behalf of an Eligible Employee.

(h) "True-Up", for purposes of this Article, is an adjustment to a Matching Contribution which is made for a period of time during the Plan Year, or for the Plan Year as a whole, to adjust the actual rate of Matching Contribution allocated for the Elective Deferrals and Compensation attributable to the period of the True Up.

### **2.9.3 ADP Test Safe Harbor Contribution.**

(a) ADP Test Safe Harbor Contribution: The Employer will contribute for the Plan Year a Non-Elective Contribution to each Eligible Employee equal to 3% of Compensation for the Plan Year. Such Non-Elective Contribution will be allocated annually. The Participant's Account Balance derived from the ADP Test Safe Harbor Contribution is nonforfeitable and may not be distributed earlier than separation from service, death, disability, an event described in Section 2.5.8 (Hardship Distributions), or the attainment of age 59½.

(b) Notice Requirement: At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide to each Eligible Employee a comprehensive notice of the Employee's rights and obligations under the Plan, written in a manner calculated to be understood by the average Eligible Employee. If an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice must be provided no more than 90 days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

(c) Election Periods: In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a deferral election during the 30-day period immediately following receipt of the notice described in Subsection 3(b) of this Section.

(d) The Plan shall be deemed to satisfy the ADP Test of Section 2.7.2 (Limitation on Deferral Percentage for Highly Compensated Employees) using the ADP and ACP of the Non-Highly Compensated for the current Plan Year. However, the Employer may not amend the Plan during the Plan Year to eliminate the Non-Elective Contribution of this Section unless the effective date of such amendment is in the next Plan Year.

### **2.9.4 ACP Test Safe Harbor Matching Contributions.**

(a) The Plan does not provide for an ACP Test Safe Harbor Matching Contribution.

## ARTICLE 10

### SIMPLE 401(k) LIMITATIONS

**2.10.1** The Plan is not intended to be a SIMPLE 401(k) plan under section 401(k)(11) and 401(m)(10) of the Code.

## PART 3

### ARTICLE 1

#### LIMITATIONS

**3.1.1 General Limitations on Annual Additions.** This Section 3.1.1 through Section 3.1.4 apply for all Limitation Years beginning after December 31, 1994. For Limitation Years beginning before January 1, 2000, the additional requirements of Section 3.1.5 also apply if the Employer ever maintained a qualified defined benefit plan.

The Annual Addition otherwise payable to a Participant for a Limitation Year shall not exceed the Maximum Permissible Annual Addition, as determined in Section 3.1.2. If the total allocations to the Participant's Account in a Limitation Year would otherwise produce an Annual Addition in excess of the Maximum Permissible Annual Addition, the allocations shall be reduced in accordance with Section 3.1.3 so that the Annual Addition will equal the Maximum Permissible Annual Addition.

If the Participant is covered under another qualified defined contribution plan, a welfare benefit fund (as defined in section 419(e) of the Code) under which amounts attributable to post-retirement medical benefits are held in separate accounts for key employees (as defined in section 419A(d)(3) of the Code), an individual medical account (as defined in section 415(l)(2) of the Code), or a simplified employee pension (as defined in section 408(k) of the Code) maintained by the Employer, the Annual Addition derived from the allocations of all such plans and this Plan, may not exceed the Maximum Permissible Annual Addition for the Limitation Year. If such Annual Addition does exceed the Maximum Permissible Annual Addition, allocations shall be reduced in accordance with Section 3.1.4 so that the Annual Addition will equal the Maximum Permissible Annual Addition.

#### **3.1.2 Determination of Annual Addition and Maximum Permissible Annual Addition.**

(a) **Annual Addition.** The term "Annual Addition" shall mean the sum of the following amounts credited to a Participant's Accounts for the Limitation Year:

- (1) Employer contributions;
- (2) Employee contributions;
- (3) Forfeitures;
- (4) Amounts allocated after March 31, 1984, to an individual medical account (as defined in section 415(l)(2) of the Code) which is part of a pension or annuity plan maintained by the Employer;
- (5) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, to a welfare benefit fund (as defined in section 419(e) of the Code) maintained by the Employer, to the extent attributable to post-retirement medical benefits held in separate accounts for key employees (as defined in section 419A(d)(3) of the Code); and,
- (6) Allocations under a simplified employee pension (as defined in section 408(k) of the Code.)

For this purpose, excess deferrals (as defined in section 402(g) of the Code) are disregarded to the extent distributed to the Participant. Excess contributions (as defined in section 401(k) of the Code) and excess aggregate contributions (as defined in section 401(m)

of the Code) are not disregarded, even if distributed to the Participant, unless they are held in a suspense account or reallocated in accordance with Section 3.1.3.

(b) **Maximum Permissible Annual Addition.** The term "Maximum Permissible Annual Addition" shall mean, for any Limitation Year, the lesser of the Defined Contribution Dollar Limitation and the Defined Contribution Compensation Limitation, as defined below:

(1) **Defined Contribution Dollar Limitation.** The dollar limit specified in Code section 415(c)(1)(A), automatically adjusted on January 1 each year under Code section 415(d), in such manner as the Secretary of the Treasury shall prescribe. The new limitation will apply to Limitation Years ending with or within the calendar year of the date of the adjustment. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first takes place.

(2) **Defined Contribution Compensation Limitation.** Twenty-five (25%) percent of a Participant's compensation, as defined in Section 3.1.6(a).

Notwithstanding the above, any amounts included in the Participant's Annual Addition attributable to medical benefits (within the meaning of section 419A(f)(2) of the Code) shall not be restricted by the Defined Contribution Compensation Limitation.

(c) **Short Limitation Year.** If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Defined Contribution Dollar Limitation determined above shall be multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12). Any new Limitation Year must begin within the Limitation Year in which the amendment is made.

**3.1.3 Excess Annual Additions.** If, due to the allocation of forfeitures, a reasonable estimation of a Participant's compensation which exceeds his actual compensation, or a miscalculation in a Participant's elective deferrals (within the meaning of section 402(g)(3) of the Code), the Annual Addition for a Participant exceeds his Maximum Permissible Annual Addition for the Limitation Year, the following adjustments shall be made in the following order until the Participant's Annual Addition equals his Maximum Permissible Annual Addition:

(a) Any nondeductible Voluntary Employee Contributions (plus attributable earnings) made by a Participant to the extent they reduce the excess amount shall be returned to the Participant;

(b) Any Elective Contributions (plus attributable earnings) made by a Participant to the extent they reduce the excess amount shall be returned to the Participant;

(c) Any remaining excess shall be held in an unallocated suspense account and used to reduce any Employer Contributions for all Participants for the next Limitation Year, any further surplus to be allocated and reallocated to all Participants subject to the limitation that no Participant receives an Annual Addition in excess of his Maximum Permissible Annual Addition;

(d) If all Participants have Annual Additions equal to their Maximum Permissible Annual Addition for the next Limitation Year, the remaining excess will remain in the suspense account and be used to reduce Employer Contributions for succeeding Limitation Years, allocating and reallocating any surplus each year in the manner described in Paragraph (c).

The determination of a Participant's Annual Addition (without regard to this Section), his Maximum Permissible Annual Addition, and any adjustments listed above shall be determined as soon as administratively feasible after the end of the Limitation Year. Other than those items listed in Paragraphs (a) and (b), no excess amounts may be distributed to Participants or former Participants. Any amount distributed to a Participant, reallocated to other Participants, or held in a suspense account for future Limitation Years shall not be included in a Participant's Annual Addition for the current Limitation Year.

Any suspense account established in accordance with this Section shall not participate in the allocation of the Trust's investment gains and losses.

**3.1.4 Participation in Certain Other Plans.** If a Participant's Annual Addition under this Plan and under other plans of the Employer exceeds the Maximum Permissible Annual Addition for a Limitation Year, such excess shall either be distributed to the Participant, reallocated to other Participants, or held in a suspense account in the same order as Section 3.1.3; provided that in no event will mandatory contributions made to a defined benefit plan of the Employer be distributed or reallocated. In addition, allocations to qualified defined contribution plans shall be adjusted first, followed by adjustments to allocations to a simplified employee pension, followed by adjustments to allocations to an individual medical account, followed by adjustments to allocations to a welfare benefit fund, as those terms are referenced in Section 3.1.1.

In the event that two (2) or more plans of the Employer have Voluntary Employee Contributions or Elective Deferrals, the amounts contributed last shall be distributed first. If two (2) or more plans of the Employer receive Employer Contributions, the amounts allocated last shall be adjusted first. If two (2) or more qualified defined contribution plans of the Employer, including this Plan, allocate contributions on the same date, then the allocations from this Plan shall be adjusted prior to the allocations in the other defined contribution plan(s).

**3.1.5 Combined Plan Limitation.** The combined plan limit under section 415(e) of the Code is repealed for Limitation Years beginning after December 31, 1999. For Limitation Years commencing before January 1, 2000, a Participant's benefits shall be limited by this Section if the Participant ever participated in a defined benefit plan maintained by the Employer.

(a) **Primary Limitation.** The sum of the Defined Benefit Fraction plus the Defined Contribution Fraction, as those terms are defined in this Subsection, shall not exceed 1.0 in any Limitation Year. In the event that the sum exceeds 1.0, the rate of accrual provided in the defined benefit plan will be decreased so that the sum equals 1.0.

(1) **"Defined Benefit Fraction":** For a Limitation Year, a fraction, (i) the numerator of which is the Projected Annual Benefit of the Participant under all the defined benefit plans (whether or not terminated) maintained by the Employer (determined as of the close of the year), and (ii) the denominator of which is the lesser of one hundred twenty five (125%) percent of the Defined Benefit Dollar Limitation determined for the Limitation Year or one hundred forty (140%) percent of the Defined Benefit Compensation Limitation, as those terms are defined in Section 3.1.6.

(2) **"Defined Contribution Fraction":** For a Limitation Year, a fraction (i) the numerator of which is the sum of the Annual Additions to the Participant's Accounts under all qualified defined contribution plans, all qualified defined benefit plans, all welfare benefit funds, all individual medical accounts, and all simplified employee pensions maintained by the Employer (whether or not terminated) for the current and all prior Limitation Years, and (ii) the denominator of which is the sum of the amounts independently determined for the current and each prior Limitation Year which equal the lesser of one hundred twenty five (125%) percent of the Defined Contribution Dollar Limitation for the Limitation Year and thirty five (35%) percent of the Participant's Compensation for such Limitation Year (regardless of whether a defined contribution plan was maintained by the Employer for such Limitation Year).

In the event that the Plan itself, or the Permissive or Required Aggregation Group of which the Plan is a part thereof, is Top Heavy for a Limitation Year, as those terms are defined in Section 2.6.2, the references to "one hundred twenty five (125%) percent" in this Section shall be replaced with "one hundred (100%) percent" in determining a Participant's Defined Benefit Fraction and Defined Contribution Fraction for such Limitation Year.

Notwithstanding the above, if the Employer provided additional Minimum Top Heavy

Allocation (or additional Top Heavy accruals in a defined benefit plan of the Employer), then the substitutions in the aforementioned paragraph will not take place unless the Plan is Super Top Heavy.

(b) **TRA '86 Transition Rules.**

(1) If the Employer maintained one or more defined benefit plans as of May 6, 1986, and the Participant's accrued benefit (actuarially adjusted to an equivalent Straight Life Annuity if such benefit is not expressed as a Straight Life Annuity or Qualified Joint and Survivor Annuity) from all such plans 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 6, 1986, exceeds the Defined Benefit Dollar Limitation for a Limitation Year after December 31, 1986, then the Participant's accrued benefit will be substituted for the Defined Benefit Dollar Limitation in determining the Defined Benefit Fraction for such Limitation Year.

(2) If the Employer maintained one or more defined benefit plans and one or more defined contribution plans as of May 6, 1986, and after the adjustment in (1) above, the sum of the Defined Benefit Fraction and Defined Contribution Fraction exceeds 1.0, as of the last day of the last Limitation Year beginning before January 1, 1987, but computed as if the TRA'86 changes were in effect, then the numerator of the Defined Contribution Fraction will be reduced so that the sum of the Defined Benefit Fraction and the Defined Contribution Fraction equals 1.0. The amount of the reduction shall be permanently offset from the numerator of the Defined Contribution Fraction and equals the product of: (i) the excess of the sum of the fractions over 1.0, times (2) the denominator of the Defined Contribution Fraction. Changes in plan provisions made after May 5, 1986, including a change in Limitation Year, are not reflected in this reduction.

(3) Paragraph (1) only applies if the defined benefit plan met the requirements of Code section 415 for all Limitation Years prior to the Limitation Year in which the TRA '86 Rules became effective. Paragraph (2) only applies if both the defined benefit plan and the defined contribution plan met the requirements of Code section 415 for the last Limitation Year beginning before January 1, 1987.

(c) **TEFRA '82 Transition Rules**

(1) If the Employer maintained a plan on or before July 1, 1982, then at the election of the Plan Administrator, in lieu the denominator of the Defined Contribution Fraction determined in Section 3.1.5(a)(2), the denominator shall equal:

(i) the sum of the amounts independently determined for the current and each prior Limitation Year after the last Limitation Year ending before January 1, 1983 which equal the lesser of one hundred twenty five (125%) percent of the Defined Contribution Dollar Limitation for the Limitation Year and thirty five (35%) percent of the Participant's Compensation for such Limitation Year (regardless of whether a defined contribution plan was maintained by the Employer for such Limitation Year); plus

(ii) the sum of the amounts independently determined for each prior Limitation Year ending with the last Limitation Year which ends before January 1, 1983 which equal the lesser of the Defined Contribution Dollar Limitation for the Limitation Year and twenty five (25%) percent of the Participant's Compensation for such Limitation, all multiplied by the "transition fraction."

Such "transition fraction" is a fraction, the numerator of which is the lesser of \$51,875 or thirty five (35%) percent of the Participant's compensation for the last Limitation Year which ends before January 1, 1983, and, the denominator of which is the lesser of \$41,500 or twenty five (25%) percent of the Participant's compensation for the last Limitation Year which ends before January 1, 1983. In the event that the Plan itself, or the Permissive or Required

Aggregation Group of which the Plan is a part thereof, is Top Heavy for a Limitation Year, as those terms are defined in Section 2.6.2, the reference to "\$51,875" shall be replaced with "\$41,500" in the preceding sentence for such Limitation Year.

(2) If the Employer maintained one or more defined benefit plans as of July 1, 1982, and the Participant's accrued benefit (actuarially adjusted to an equivalent Straight Life Annuity if such benefit is not expressed as a Straight Life Annuity or Qualified Joint and Survivor Annuity) from all such plans as of the close of the last Limitation Year beginning before January 1, 1983, disregarding any changes in the terms and conditions of the plan after July 1, 1982, exceeds the Defined Benefit Dollar Limitation for a Limitation Year beginning after December 31, 1982, then the Participant's accrued benefit will be substituted for the Defined Benefit Dollar Limitation, in determining the Defined Benefit Fraction for such Limitation Year.

(3) If the Employer maintained one or more defined benefit plans and one or more defined contribution plans prior to July 1, 1982, and after the adjustment in (2) above, the sum of the Defined Benefit Fraction and the Defined Contribution Fraction exceeds 1.0, as of the last day of the last Limitation Year beginning before January 1, 1983, but computed as if the TEFRA '82 changes were in effect, then the numerator of the Defined Contribution Fraction will be reduced so that the sum of the Defined Benefit Fraction and the Defined Contribution Fraction equals 1.0. The adjustment in (1) may also be taken into account, if so elected by the Plan Administrator.

**3.1.6 Definitions.** For this Article 1, the terms below have the following meanings:

(a) **Compensation.** Compensation shall have the same meaning as in Section 1.2.14, modified if necessary, to include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b), and 457(b) of the Code.

Notwithstanding any provisions to the contrary, for purposes of applying the limitations of this Article, Compensation for a Limitation Year beginning after December 31, 1991, is the compensation actually paid or made available in gross income during such year without regard to the dollar limitations of Code section 401(a)(17).

For Limitation Years beginning after December 31, 1997, Compensation shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code sections 125 and 457. For Limitation Years beginning after January 1, 2001 Compensation shall also include any elective amount which is not includable in the gross income by reason of Code section 132(f)(4). Compensation for a Participant who is disabled shall reflect only that Compensation received while actively employed.

(b) **Defined Benefit Compensation Limitation.** One hundred (100%) percent of a Participant's highest three (3) year consecutive average compensation, taking into account all Years of Service with the Employer. Compensation for this purpose shall be as defined in Paragraph (a) above.

(c) **Defined Benefit Dollar Limitation.** The dollar limit specified in Code section 415(b)(1)(A), automatically adjusted on January 1 each year under Code section 415(d), in such manner as the Secretary of the Treasury shall prescribe. The new limitation will apply to Limitation Years ending with or within the calendar year of the date of the adjustment. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first takes place.

(d) **Employer.** 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 section 415(h)), all commonly

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

(e) **Projected Annual Benefit.** The annual benefit which the Participant would be entitled under the terms of a defined benefit plan (actuarially adjusted to an equivalent Straight Life Annuity if such benefit is not expressed as a Straight Life Annuity or Qualified Joint and Survivor Annuity), assuming that (1) the Participant will continue employment until Normal Retirement Age (or current age, if later), and (2) 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.

**3.1.7 General Limitations on Elective Deferrals.** In addition to the other restrictions of this Article 1, a Participant may not elect to defer, and the Employer shall not transfer to the Trustee, any Elective Deferral in excess of the dollar limitation of section 402(g) of the Code. Such limitation shall be applied on a calendar year basis regardless of the Plan Year. For purposes of this Article 1, an Excess Elective Deferral is an Elective Deferral in excess of such limitation.

**3.1.8 Distribution of Excess Elective Deferrals.** In the event that the Participant has made Elective Deferrals to this Plan and another plan that produce Excess Elective Deferrals (as defined in Section 3.1.7) for a calendar year, he shall be responsible for notifying the Employer or Plan Administrator on or before the March 1st following such year of the amount of Excess Elective Deferrals to be assigned to this Plan. If the other plan is another plan of the Employer, the Participant is deemed to have notified the Employer that the Excess Elective Deferrals are assigned to the plan that produces the most beneficial result to him.

The amount of Excess Elective Deferrals assigned to this Plan, plus any allocated income and minus any allocated loss, shall be distributed to the Participant no later than the April 15th following the year in which the Excess Elective Deferrals arose. The method used to determine any allocated income and loss shall be the same as the method described in Section 2.8.2, except that no income or loss shall be credited from December 31st to the actual date of distribution.

Any Excess Elective Deferrals distributed on or before April 15th shall be taxable in the year in which they arose. Any Excess Elective Deferrals distributed after April 15th shall be taxable in both the year in which they arose and the year in which they are distributed.

**3.1.9 Controlled Businesses.** If this Plan provides contributions or benefits for one or more Owner-Employees who control both the business for which this Plan is established and one or more other trades or businesses, this Plan must, when looked at as a single plan, satisfy section 401(a) of the Code, and contributions on behalf of any Owner-Employee may be made only with respect to the Earned Income of such Owner-Employee which is derived from the trade or business with respect to which this Plan is established.



## ARTICLE 2

### FIDUCIARIES

**3.2.1 Standard of Conduct.** The duties and responsibilities of the Plan Administrator and the Trustee with respect to the Plan shall be discharged (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (e) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

**3.2.2 Individual Fiduciaries.** At any time that a group of individuals is acting as Plan Administrator or Trustee, the Employer shall determine the number of such persons who shall act in such capacity from time to time. Such persons shall be appointed by the Employer and may or may not be Participants or Employees of the Employer. The Trustee (or Plan Administrator) shall be bound by any action taken by 1 of individuals acting in the capacity of the Trustee (or Plan Administrator).

**3.2.3 Disqualification from Service.** No person shall be permitted to serve as a Fiduciary, custodian, counsel, agent or employee of the Plan or as a consultant to the Plan who has been convicted of any of the criminal offenses specified in the Act.

**3.2.4 Bonding.** Except as otherwise permitted by law, each Fiduciary or person who handles funds or other property or assets of the Plan shall be bonded in accordance with the requirements of the Act.

**3.2.5 Prior Acts.** No Fiduciary shall be liable for any acts occurring prior to the period of time during which the Fiduciary was actually serving in such capacity with respect to the Plan.

**3.2.6 Insurance and Indemnity.** The Employer may purchase or cause the Trustee to purchase and keep current as an authorized expense liability insurance for the Plan, its Fiduciaries, and any other person to whom any financial or other administrative responsibility with respect to the Plan and Trust is allocated or delegated, from and against any and all liabilities, costs and expenses incurred by such persons as a result of any act or omission to act in connection with the performance of the duties, responsibilities and obligations under the Plan and under the Act; provided that any such insurance policy purchased with Plan assets permits subrogation by the Insurer against the Fiduciary in the case of breach by such Fiduciary.

Unless otherwise determined and communicated to affected parties by the Employer, the Employer shall indemnify and hold harmless each such person, other than a corporate trustee, for and from any such liabilities, costs and expenses which are not covered by any such insurance, except to the extent that any such liabilities, costs or expenses are judicially determined to be due to the gross negligence or willful misconduct of such person. No Plan assets may be used for any such indemnification.

**3.2.7 Expenses.** Expenses incurred by the Plan Administrator or the Trustee in the administration of the Plan and the Trust, including fees for legal services rendered, such compensation to the Trustee as may be agreed upon in writing from time to time between the Employer and the Trustee, and all other proper charges and expenses of the Plan Administrator or the Trustee and of their agents and counsel shall be paid by the Employer, or at its election at any time or from time to time, may be charged against the assets of the Trust, but until so paid shall constitute a charge upon the assets of the Trust.

The Trustee shall have the authority to charge the Trust Fund for its compensation and reasonable expenses unless paid or contested by written notice by the Employer within sixty (60) days after

mailing of the written billing by the Trustee. All taxes of any and all kinds whatsoever which may be levied or assessed under existing or future laws upon the assets of the Trust or the income thereof shall be paid from such assets. Notwithstanding the foregoing, no compensation shall be paid to any Employee for services rendered under the Plan and Trust as a Trustee.

**3.2.8 Agents, Accountants and Legal Counsel.** The Plan Administrator shall have authority to employ suitable agents, custodians, investment counsel, accountants, and legal counsel who may, but need not be, legal counsel for the Employer. The Plan Administrator and the Trustee shall be fully protected in acting upon the advice of such persons. The Trustee shall at no time be obliged to institute any legal action or to become a party to any legal action unless the Trustee has been indemnified to the Trustee's satisfaction for any fees, costs and expenses to be incurred in connection therewith.

**3.2.9 Investment Manager.** The Employer may employ as an Investment Manager or managers to manage all or any part of the Trust Fund any (a) investment advisor registered under the Investment Advisors Act of 1940; (b) bank as defined in said Act; or (c) insurance company qualified to perform investment management services in more than one state. Any Investment Manager shall have all powers of the Trustee in the management of such part of the Trust Fund, including the power to acquire or dispose of assets.

In the event an Investment Manager is so appointed, the Trustee shall not be liable for the acts or omissions of such Investment Manager or be under any obligation to invest or otherwise manage that part of the Trust Fund that is subject to the management of the Investment Manager. The Employer shall notify the Trustee in writing of any appointment of an Investment Manager, and shall provide the Trustee with the Investment Manager's written acknowledgment that it is a fiduciary with respect to the Plan.

**3.2.10 Finality of Decisions or Acts.** Except for the right of a Participant or Beneficiary to appeal the denial of a claim, any decision or action of the Plan Administrator or the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Plan Administrator or the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any Fiduciary within the scope of his duties in accordance with the terms of the Plan and Trust, such actions shall be upheld unless determined to have been arbitrary and capricious.

**3.2.11 Certain Custodial Accounts and Contracts.** The term "Trustee" as used herein will also include a person holding the assets of a custodial account, an annuity contract or other contract which is treated as a qualified trust pursuant to section 401(f) of the Code and references to the Trust Fund shall be construed to apply to such custodial account, annuity contract or other contract.

## ARTICLE 3

### PLAN ADMINISTRATOR

**3.3.1 Administration of Plan.** The Employer shall designate a Plan Administrator from time to time. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy in his sole discretion. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of the Plan; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified Plan pursuant to the Code, and shall comply with the terms of the Act. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under the Plan.

(a) The Plan Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

(1) To determine all questions relating to the eligibility of an Employee to participate in the Plan or to remain a Participant in the Plan.

(2) To compute, certify and direct the Trustee with respect to the amount and kind of benefits to which any Participant is entitled.

(3) To authorize and direct the Trustee with respect to all disbursements from the Trust Fund.

(4) To maintain all the necessary records for the administration of the Plan.

(5) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its terms.

(6) To select the Insurer to provide any Life Insurance Policies for any Participant.

(7) To advise the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee might direct its investment accordingly.

(8) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

(9) To instruct the Trustee as to the management, investment and reinvestment of the Trust Fund unless the investment authority has been delegated to the Trustee or an Investment Manager.

(b) The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor, the Secretary of the Treasury, or other governmental authorities.

(c) Whenever it is determined by the Plan Administrator to be in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

(d) The Plan Administrator shall be responsible for procuring bonding for all persons dealing

with the Plan or its assets as may be required by law.

**3.3.2 Disclosure Requirements.** Every Participant covered under the Plan and every Beneficiary receiving benefits under the Plan shall receive from the Plan Administrator a summary plan description, and such other information as may be required by law or by the terms of the Plan.

**3.3.3 Information Generally Available.** The Plan Administrator shall make copies of this Plan and Trust, the summary plan description, latest annual report, Life Insurance Policies, or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of any of the above documents to the respective party.

**3.3.4 Statement of Account Balance.** Upon written request to the Plan Administrator once during any twelve (12) month period, a Participant or Beneficiary shall be furnished with a written statement, based on the latest available information, of his then vested Account Balance and the earliest date upon which the same will become fully vested and non-forfeitable. The statement shall also include a notice to the Participant of any benefits that are forfeitable if the Participant dies before a certain date.

**3.3.5 Explanation of Rollover Treatment.** The Plan Administrator shall, when making a distribution eligible for rollover treatment, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an Eligible Retirement Plan within sixty (60) days after the date on which the recipient received the distribution and, if applicable, the provisions of law pertaining to the tax treatment of lump sum distributions.

## ARTICLE 4

### TRUSTEE

**3.4.1 Acceptance of Trust.** The Trustee, by joining in the execution of the Plan, agrees to act in accordance with the express terms and conditions hereof.

**3.4.2 Trustee Capacity - Co-Trustees.** The Trustee may be a bank, trust company or other corporation possessing trust powers under applicable state or federal law or one or more individuals or any combination thereof. When there are two or more Trustees, they may allocate specific responsibilities, obligations or duties among themselves by their written agreement. An executed copy of such written agreement shall be delivered to and retained by the Plan Administrator.

**3.4.3 Resignation, Removal, and Successors.** Any Trustee may resign at any time by delivering to the Employer a written notice of resignation to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof; the Employer may waive such notice. The Trustee may be removed by the Employer with or without cause, by tendering to the Trustee a written notice of removal to take effect at a date specified therein.

Upon such removal or resignation of a Trustee, the Employer shall either appoint a successor Trustee who shall have the same powers and duties as those conferred upon the resigning or discharged Trustee, or, if a group of individuals is acting as Trustee, determine that a successor shall not be appointed and the number of Trustees shall be reduced by one (1).

**3.4.4 Consultations.** The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, in any case in which the Trustee shall deem such advice necessary. The Trustee shall not be liable for any action taken or omitted in good faith reliance upon the advice of such counsel. With the exception of those powers and duties specifically allocated to the Trustee by the express terms of the Plan, it shall not be the responsibility of the Trustee to interpret the terms of the Plan and the Trustee may request, and is entitled to receive, guidance and written direction from the Plan Administrator on any point requiring construction or interpretation of the Plan documents.

**3.4.5 Rights, Powers and Duties.** The rights, powers, and duties of the Trustee shall be as follows:

(a) The Trustee shall have exclusive authority, discretion, and responsibility for the management and control of the assets of the Trust Fund in accordance with the provisions of the Plan and any amendments, unless limited or expanded by the Employer in another written document. The duties of the Trustee shall be determined solely by the express provisions of the Plan and no other further duties or responsibilities shall be implied. Subject to the terms of this Plan, the Trustee shall be fully protected and shall incur no liability in acting in reliance upon the written instructions or directions of the Employer, the Plan Administrator, a duly designated Investment Manager, or any other named Fiduciary.

(b) The Trustee shall have all powers necessary or convenient for the orderly and efficient performance of its duties, including but not limited to those specified in this Section. The Trustee shall have the power generally to do all acts, whether or not expressly authorized, which the Trustee in the exercise of its Fiduciary responsibility may deem necessary or desirable for the protection of the Trust Fund and the assets thereof.

(c) The Trustee shall have the power to collect and receive any and all monies and other property due the Plan and to give full discharge and release therefore; to settle, compromise or submit to arbitration any claims, debts or damages due to or owing to or from the Trust Fund; to commence or defend suits or legal proceedings wherever, in the Trustee's judgment, any interest of the Trust Fund requires it; and to represent the Trust Fund in all suits or legal proceedings in any

court of law or equity or before any other body or tribunal.

(d) The Trustee shall cause any Life Insurance Policies or assets of the Trust Fund to be registered in its name as Trustee and shall be authorized to exercise any and all ownership rights regarding these assets, subject to the terms of the Plan.

(e) The Trustee may temporarily hold cash balances and shall be entitled to deposit any funds received in a bank account in the name of the Trust Fund in any bank selected by the Trustee, including the banking department of a corporate Trustee, if any, pending disposition of such funds in accordance with the Plan. Any such deposit may be made with or without interest.

(f) The Trustee shall pay the premiums and other charges due and payable at any time on any Life Insurance Policies as directed by the Plan Administrator; provided funds for such payments are then available in the Trust. The Trustee shall be responsible only for such funds and Life Insurance Policies as actually received as Trustee, and shall have no obligation to make payments other than from such funds and cash values of Life Insurance Policies.

(g) If the whole or any part of the Trust Fund shall become liable for the payment of any estate, inheritance, income or other tax which the Trustee shall be required to pay, the Trustee shall have full power and authority to pay such tax out of any monies or other property in its hands for the account of the person whose interest hereunder is so liable. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority, as it shall deem necessary. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on instructions from the Plan Administrator.

(h) The Trustee shall keep a full, accurate and detailed record of all transactions of the Trust that the Employer and the Plan Administrator shall have the right to examine at any time during the Trustee's regular business hours. As of the close of each Plan Year, the Trustee shall furnish the Plan Administrator with a statement of account setting forth all receipts, disbursements and other transactions effected by the Trustee during the year. The Plan Administrator shall promptly notify the Trustee in writing of his approval or disapproval of the account.

The Plan Administrator's failure to disapprove the account within sixty (60) days after receipt shall be considered an approval. Except as otherwise required by law, the approval by the Plan Administrator shall be binding as to all matters embraced in any statement to the same extent as if the account of the Trustee had been settled by judgment or decree of a court of competent jurisdiction under which the Trustee, Employer and all persons having or claiming any interest in the Trust Fund were parties; provided, however, that the Trustee may have its account judicially settled if it so desires.

(i) The Trustee is hereby authorized to execute all necessary receipts and releases to any parties concerned; and shall be under a duty, upon being advised by the Plan Administrator that the proceeds of any Life Insurance Policies are payable, to give reasonable assistance to the Beneficiary in collecting such sums as may appear to be due, and upon payment, transfer such sums to the Beneficiary.

(j) If, at any time, as the result of the death of the Participant there is a dispute as to the person to whom payment or delivery of monies or property should be made by the Trustee, or regarding any action to be taken by the Trustee, the Trustee may postpone such payment, delivery or action, retaining the funds or property involved, until such dispute is resolved in a court of competent jurisdiction or the Trustee shall have been indemnified to its satisfaction or has received written direction from the Plan Administrator.

(k) Anything in this instrument to the contrary notwithstanding, the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become or remain a Participant hereunder, the amount of benefit to which any Participant or Beneficiary shall be entitled hereunder, or the size and type of any Life Insurance

Policy to be purchased from any Insurer for any Participant hereunder; all such responsibilities being vested in the Plan Administrator.

**3.4.6 Rights of Trustee as to Contributions.** The Trustee shall have no duty to require any contribution to be made or to determine whether contributions delivered to the Trustee by the Employer comply with the provisions of this Agreement. The Trustee shall be accountable only for funds actually received by the Trustee.

**3.4.7 Trustee Indemnification.** The Employer shall indemnify and hold harmless the Trustee for and from the assertion or occurrence of any liability to a Participant or Beneficiary for any action taken or omitted by the Trustee pursuant to any written direction to the Trustee from the Employer or the Plan Administrator. Such indemnification obligation of the Employer shall not be applicable to the extent that any such liability is covered by insurance.

**3.4.8 Changes in Trustee Authority.** If a successor Trustee is appointed, neither an Insurer nor any other person who has previously had dealings with the former Trustee shall be chargeable with knowledge of such appointment or such change until furnished with a written notice. Until such notice, the Insurer and any other such party shall be fully protected in relying on any action taken or any signature presented which would have been proper in accordance with the previous information.

**3.4.9 Electromechanical Communications.** Electromechanical communications are permitted between all parties of a transaction, including the Participant.

## ARTICLE 5

### TRUST ASSETS

**3.5.1 Trustee Exclusive Owner.** All assets held by the Trustee shall be owned exclusively by the Trustee and no Participant or Beneficiary shall have any individual ownership. Participants and their Beneficiaries shall share in the assets of the Trust, its net earnings, profits, and losses, only as provided in this Plan.

**3.5.2 Investments.** The Trustee shall invest and reinvest the Trust Fund without distinction between income or principal in one or more of the following ways, as the Trustee shall from time to time determine:

(a) The Trustee may invest the Trust Fund or any portion thereof in obligations issued or guaranteed by the United States of America or of any instrumentalities thereof, or in other bonds, notes, debentures, mortgages, preferred or common stocks, options to buy or sell stocks or other securities, mutual fund shares, limited partnership interests, commodities, or in such other property, real or personal, as the Trustee shall determine.

(b) The Trustee may cause the Trust Fund or any portion thereof to be invested in a common trust fund established and maintained by a national bank or other bank regulated by the Federal Deposit Insurance Corporation ("FDIC"), for the collective investment of fiduciary funds, even though the bank is acting as the Trustee or Investment Manager; provided such common trust fund is a qualified trust under the applicable section of the Code, or corresponding provisions of future federal Internal Revenue laws and is exempt from income tax under the applicable section of the Code. In the event any assets of the Trust Fund are invested in such a common trust fund, the Declaration of Trust creating such common trust fund, as it may be amended from time to time, shall be incorporated into this Plan by reference and made a part hereof.

(c) The Trustee may deposit any portion of the Trust Fund in savings accounts in federally insured banks or savings and loan associations or invest in certificates of deposit issued by any such bank or savings and loan association. The Trustee may retain, without liability for interest, any portion of the Trust Fund in cash balances pending investment thereof or payment of expenses.

(d) The Trustee may buy and sell put and call options, covered or uncovered, engage in spreads, straddles, ratio writing and other forms of options trading, including sales of options against convertible bonds, and sales of Standard & Poor's futures contracts, and trade in and maintain a brokerage account on a cash or margin basis.

(e) The Trustee may invest the Trust Fund or any portion thereof to acquire or hold Qualifying Employer Securities or Real Property, provided that if the Participant's Account is taken into consideration in determining his benefits from a defined benefit plan of the Employer, the portion so invested shall not exceed ten (10%) percent of the fair market value of the assets of the Plan as of the date of such acquisition.

**3.5.3 Administration of Trust Assets.** Subject to the limitations expressly set forth in this Plan, the Trustee shall have the following powers and authority in connection with the administration of the assets of the Trust:

(a) To hold and administer all contributions made by the Employer to the Trust Fund and all income or other property derived therefrom as a single Trust Fund.

(b) To manage, control, sell, convey, exchange, petition, divide, subdivide, improve, repair, grant options, sell upon deferred payments, lease without limit as determined for any purpose, compromise, arbitrate or otherwise settle claims in favor of or against the Trust Fund, institute,



compromise and defend actions and proceedings, and to take any other action necessary or desirable in connection with the administration of the Trust Fund.

(c) To vote any stock, bonds, or other securities of any corporation or other issuer; otherwise consent to or request any action on the part of any such corporation or other issuer; to give general or special proxies or powers of attorney, with or without power of substitution; to participate in any reorganization, recapitalization, consolidation, merger or similar transaction with respect to such securities; to deposit such stocks or other securities in any voting trusts, or with any protective or like committee, or with the Trustee, or with the depositories designated thereby; to exercise any subscription rights and conversion privileges or other options and to make any payments incidental thereto; and generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights, powers and privileges with respect to the stock or other securities or property constituting the Trust Fund as if the Trustee were the absolute owner thereof.

(d) To apply for and procure, at the election of any Participant, Life Insurance Policies on the life of the Participant or someone in whom the Participant has an insurable interest; to exercise whatever rights and privileges may be granted to the Trustee under such Policies, and to cash in, receive and collect such Policies or the proceeds as and when entitled to do so under the provisions thereof;

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

(f) To register any investment held in the Trust by a corporate or institutional Trustee in the Trustee's own name or in the name of a corporate or institutional Trustee's nominee for the benefit of the Plan, or to hold any investment in bearer form, provided that the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

(g) To borrow money for the purposes of the Plan in such amounts and upon such terms and conditions as the Trustee deems appropriate;

(h) To commingle the assets of the Trust Fund with the assets of other similar trusts which are exempt from income tax, whether sponsored by the Employer, an affiliate of the Employer or an unrelated employer, provided that the books and records of the Trustee shall at all times show the portion of the commingled assets which are part of the Trust; and

(i) To do all acts whether or not expressly authorized which the Trustee may deem necessary or proper for the protection of the property held hereunder.

**3.5.4 Segregated Funds.** Unless otherwise determined by the Trustee not to be prudent, the Trustee shall invest and reinvest each Segregated Fund without distinction between income or principal. Such accounts shall be held for the benefit of the Participant for whom such Segregated Fund is established in accordance with the terms of the Plan and the Segregated Account of the Participant shall be credited with any interest earned in connection with such accounts. If the Trustee determines that an alternative investment is appropriate, the Trustee may invest the Segregated Fund in any manner permitted with respect to the Trust Fund and such Segregated Fund shall be credited with the net income or loss or net appreciation or depreciation in value of such investments. No Segregated Fund shall share in any Employer Contributions or Forfeitures, any net income or loss from, or net appreciation or depreciation in value of, any investments of the Trust Fund, or any allocation for which provision is made in this Plan that is not specifically attributable to the Segregated Fund.

**3.5.5 Investment Control.** Each Participant may elect to transfer funds that do not exceed the balances in his Trustee-directed Accounts to a Controlled Account and exercise investment control of those funds by appropriate direction to the Trustee.

To the extent that the balance of the Participant's Account with respect to which a transfer is

to be made includes his share of an Employer Contribution or Elective Contribution that has not been received by the Trustee, such transfer shall not occur until the Trustee receives such contribution. Funds so transferred to a Controlled Account on behalf of the Participant shall thereafter be invested by the Trustee in such bonds, notes, debentures, commodities, mortgages, equipment, trust certificates, investment trust certificates, preferred or common stocks, mutual funds, partnership interests, life insurance policies, including universal life insurance policies, or in such other property, real or personal (other than collectibles), wherever situated, as the Participant shall direct from time to time in writing; provided, however, that the Participant may not direct the Trustee to make loans to himself, nor to make loans to the Employer; and provided further that the Trustee may limit the investment alternatives available to the Participant in a uniform and nondiscriminatory manner.

Upon any such election being made, the amount of such funds to be transferred shall be deducted from his Trustee-directed Account as appropriate and added to a Controlled Account of the Participant. Any such election shall be at the absolute discretion of the individual Participant and shall be binding on the Trustee, unless such transaction is classified as a prohibited transaction under section 406 of the Act or section 4975 of the Code. All dividends and interest thereafter received with respect to such transferred funds, as well as any appreciation or depreciation in his investments, shall be added to or deducted from his Controlled Account.

If a Participant wishes to make such an election to transfer funds from his Trustee-directed Accounts to a Controlled Account as of a date other than a Valuation Date, the Trustee shall make such transfer, provided, the Trustee determines that the nature of the assets in the Trustee-directed Account is such that it is feasible and practical to make such transfer, and as of the date of such transfer, adjustments to Participant's Accounts are made as if such date is a Valuation Date.

As of any Valuation Date, the Participant may elect to have all or any portion of any cash contained in his Controlled Account transferred back to the general assets of the Trust Fund, in which case the Trustee shall again invest such cash as part of the general assets of the Trust Fund. Any such election shall be made by giving notice to the Trustee, in the manner that the Trustee deems necessary, and the notice shall specify the amount of cash to be transferred. The amount of such funds so transferred shall be deducted from the Participant's Controlled Account and added to the appropriate Account of the Participant. Any such election shall be at the absolute discretion of the individual Participant and shall be binding upon the Trustee.

The Trustee shall not have any investment responsibility with respect to a Participant's Controlled Account. In the event that a Participant elects to have any such funds transferred to a Controlled Account and invested in particular securities or assets pursuant to this Section, the Trustee shall not be liable for any loss or damage resulting from the investment decision of the Participant.

**3.5.6 Compliance with Section 404(c) of the Act.** This Plan does not intend to meet the requirements of section 404(c) of the Act.

## ARTICLE 6

### INSURANCE

**3.6.1** The Plan does not provide for the purchase of life insurance.

## ARTICLE 7

### PARTICIPANT LOANS

**3.7.1 Authorization.** Loans are permitted under the Plan. The Trustee shall establish a "participant loan program" in compliance with Internal Revenue regulations and Labor regulation section 2550.408b. The terms of such "participant loan program" shall be in writing and shall constitute part of the Plan. Such terms shall include:

- (a) The identity of the person or positions authorized to administer the Participant loan program;
- (b) A procedure for applying for loans;
- (c) The basis on which loans will be approved or denied;
- (d) Limitations (if any) on the types and amount of loans offered;
- (e) The procedure under the program for determining a reasonable rate of interest;
- (f) The types of collateral which may secure a Participant loan; and
- (g) The events constituting default and the steps that will be taken to preserve Plan assets in the event of default.

**3.7.2 Spousal Consent.** Except in the case of a Safe Harbor Profit Sharing Plan, a Participant must obtain the written consent of his spouse, if any, to the use of the Participant's interest in the Plan as security for a Participant loan within ninety (90) days before the date on which the loan is to be so secured. A new consent must be obtained whenever the amount of the loan is increased or if the loan is renegotiated, extended, renewed or otherwise revised. The consent must be in writing, must acknowledge the effect of such consent, and must be witnessed by a Plan representative or a notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan.

If a valid spousal consent has been obtained, then notwithstanding any other provision of the Plan, the portion of the Participant's vested Account Balance used as a security interest shall be taken into account for purposes of determining the amount of the Account Balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than the entire amount of the Participant's vested Account Balance (determined without regard to the preceding sentence) is payable to the surviving spouse, the Account Balance shall first be reduced by the amount of the security used as repayment of the loan, before applying the percentages in determining the benefits payable to each Beneficiary, including the surviving spouse.

**3.7.3 Limitations.** No loan to any Participant or Beneficiary can be made to the extent that such loan, when added to the outstanding balance of all other loans to the Participant or Beneficiary, would exceed the lesser of (a) fifty thousand dollars (\$50,000.00) (reduced by the excess, if any, of the highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which the loan was made over the outstanding balance of loans from the Plan on the date on which such loan was made) or (b) one-half of the vested and non-forfeitable interest in his Accounts, determined as of the Valuation Date coinciding with or immediately preceding such loan or, ten thousand dollars (\$10,000), if greater. For the purposes hereof, all loans from all plans of the Employer and other members of a group of employers described in sections 414(b), (c), (m) and (o) of the Code shall be aggregated. No Participant loan shall exceed the Participant's vested Account Balance.

Any loan shall by its terms require that repayment (principal and interest) be amortized in level

payments, not less frequently than quarterly, over a period not extending beyond five (5) years from the date of the loan, unless such loan is used to acquire a dwelling unit, which within a reasonable time (determined at the time the loan is made), will be used as the principal residence of the Participant. An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge or assignment with respect to any insurance Contract purchased under the Plan will be treated as a loan under this Section.

All loans must be adequately secured and bear a reasonable interest rate. In the event of a default, foreclosure on the note evidencing the loan and attachment of the security shall not occur until a distributable event occurs.

**3.7.4 Availability.** Loans, if any, must be available to all Participants and Beneficiaries on a reasonably equivalent basis without regard to any individual's race, color, religion, sex, age, or national origin. Loans shall not be made available to Highly Compensated Employees (as defined in Section 1.2.41) in an amount greater than the amount made available to other Employees.

**3.7.5 Prohibitions.** No Loans will be made to any shareholder-employee or Owner-Employee. For purposes of this requirement, a shareholder-employee means an employee or officer of an electing small business (Subchapter S) corporation who owns (or is considered as owning within the meaning of section 318(a)(1) of the Code), on any day during the taxable year of such corporation, more than five (5%) percent of the outstanding stock of the corporation.

**3.7.6 Qualified Military Service.** Effective December 12, 1994, the obligation to repay any loan made to a Participant who is performing service in the uniformed services, is suspended, as permitted under Code section 414(u)(4). Such a suspension of loan repayments shall not trigger a distribution under Code section 72(p) or constitute a loan default.

## ARTICLE 8

### BENEFICIARIES

**3.8.1 Designation of Beneficiaries.** Each Participant shall have the right to designate a Beneficiary or Beneficiaries and contingent or successive Beneficiaries to receive any benefits provided by this Plan which become payable upon the Participant's death. The Beneficiaries may be changed at any time or times by the filing of a new designation with the Plan Administrator, and the most recent designation shall govern. Notwithstanding the foregoing, and subject to the provisions of Section 2.5.4, the Beneficiary shall be the surviving spouse of the Participant, unless such surviving spouse consents in writing to an alternate designation and the terms of such consent acknowledge the effect of such alternate designation and the consent is witnessed by a representative of the Plan or by a notary public. The designation of a Beneficiary other than the spouse of the Participant or an optional form of benefits with the consent of such spouse may not be changed without the consent of such spouse and any consent must acknowledge the specific non-spouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, unless the spouse expressly consents to permitting designations by the Participant without the further consent of the spouse. Notwithstanding the foregoing, a Participant, at any time, may designate his spouse as Beneficiary, and with respect to Accounts providing annuities, may also designate the form of benefit as a Qualified Joint and Survivor Annuity.

**3.8.2 Absence or Death of Beneficiaries.** If a Participant dies without having a Beneficiary designation then in force, or if all of the Beneficiaries designated by a Participant predecease him, his Beneficiary shall be his surviving spouse, or if none, his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select.

Unless otherwise designated by the Participant, if a Participant dies and is survived by some, but not all, of the Beneficiaries designated by him, such surviving Beneficiaries shall be deemed his sole Beneficiaries. In the event that a surviving Beneficiary dies before the complete distribution of the deceased Participant's interest, the estate of such Beneficiary shall be deemed the Beneficiary of the undistributed portion of such interest.

**3.8.3 Surviving Spouse Election.** If the Participant does not elect a life annuity form of distribution, a surviving spouse, who has not consented to an alternate designation under Section 2.5.3(c), above, may elect to have distribution of the Participant's vested Account Balance commence within the 90-day period following the date of the Participant's death. The Account Balance 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 Account Balances for other types of distributions.

## ARTICLE 9

### CLAIMS

**3.9.1 Claim Procedure.** Any Participant or Beneficiary who is entitled to a payment of a benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as furnished by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant or Beneficiary in writing as to the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence and other pertinent information concerning his benefit.

If a claim for benefit is denied by the Plan Administrator, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefits has been denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice indicating the special circumstances and the date by which a final decision is expected to be rendered shall be furnished to the Participant or Beneficiary. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall set forth (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding and conclusive. Benefits under this Plan will be paid only if the Plan Administrator decides in his discretion that the applicant is entitled to them.

**3.9.2 Appeal.** If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The decision of the Employer shall be made within sixty (60) days after the receipt by the Plan Administrator of the notice of appeal, unless special circumstances require an extension of time for processing, in which case a decision of the Employer shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Employer, in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based and shall be promptly furnished to the claimant. Benefits under this Plan granted pursuant to such an appeal will be paid only if the Employer decides in his discretion that the applicant is entitled to them.

## ARTICLE 10

### AMENDMENT AND TERMINATION

**3.10.1 Right to Amend.** The Employer may at any time or times amend the Plan and Trust, in whole or in part. The Employer specifically reserves the right to amend the Plan retroactively.

**3.10.2 Delegation.** Each employer and each affiliated employer that is a party to this Agreement expressly delegates authority to Indiantown Gas Company the right to amend any part of the Plan on its behalf. Indiantown Gas Company shall submit a copy of the amendment to each other employer that has adopted the Plan. Each employer or affiliated employer may revoke such authority to amend the Plan on its behalf by written notice to Indiantown Gas Company of such revocation.

**3.10.3 Manner of Amending.** Each amendment of this Plan shall be made by delivery to the Trustee of a copy of the resolution of the Employer that sets forth such amendment.

**3.10.4 Limitations on Amendments.**

(a) No amendment shall be made to this Plan which shall:

(1) Directly or indirectly operate to give the Employer any interest whatsoever in the assets of the Trust or custodial account or to deprive any Participant or Beneficiary of his vested and non-forfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to purposes other than the exclusive benefit of Participants or their Beneficiaries;

(2) Increase the duties or liabilities of the Trustee without the Trustee's prior written consent; or

(3) Change the vesting schedule under the Plan if the non-forfeitable percentage of the Account Balance derived from Non-Elective Contributions or Matching Contributions (determined as of the later of the date such amendment is adopted or the date such amendment becomes effective) of any Participant is less than such non-forfeitable percentage computed without regard to such amendment.

(b) 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 Account Balance under a particular optional form of benefit if the amendment satisfies the conditions in (1) and (2) below:

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

(2) The amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of (i) the ninetieth (90th) day after the date the Participant receiving the distribution has been furnished a summary of material modifications that satisfies the requirements of Labor regulation 2520.104b-3, or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

(c) If the vesting schedule of the Plan is amended, any Participant as of the later of the date such amendment is adopted or becomes effective, shall be vested and have a non-forfeitable percentage (determined as of such date) of his Employer provided Account Balance not less than the



percentage computed under the Plan without regard to such amendment.

If a Plan amendment changes the vesting schedule, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's non-forfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a top heavy vesting schedule, each Participant who has completed three (3) Years of Vesting Service, (or in the case of Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after 1988, five (5) Years of Vesting Service), may elect within a reasonable period after the adoption of such amendment to have his non-forfeitable percentage computed without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end sixty (60) days after the latest of the date:

(1) the amendment is adopted;

(2) the amendment becomes effective; or

(3) the Employer or Plan Administrator issues the Participant written notice of the amendment.

**3.10.5 Voluntary Termination.** The Employer may terminate the Plan at any time by delivering to the Trustee an instrument in writing that designates such termination. Following termination of the Plan, the Trust will continue until the interest of each Participant has been distributed.

**3.10.6 Involuntary Termination.** The Plan shall terminate if (a) the Employer is dissolved or adjudicated bankrupt or insolvent in appropriate proceedings, or if a general assignment is made by the Employer for the benefit of creditors, or (b) the Employer loses its identity by consolidation or merger into one or more corporations or organizations, unless within ninety (90) days after such consolidation or merger, such corporations or organizations elect to continue the Plan.

**3.10.7 Withdrawal by Employer.** The Employer may withdraw from participation under the Plan without terminating the Trust upon making a transfer of the Trust assets to another Plan, which shall be deemed to constitute an amendment in its entirety of the Trust.

**3.10.8 Powers Pending Final Distribution.** Until final distribution of the assets of the Trust, the Plan Administrator and Trustee shall continue to have all the powers provided under this Plan as are necessary for the orderly administration, liquidation and distribution of the assets of the Trust.

## ARTICLE 11

### PORTABILITY

**3.11.1 Continuance by Successor.** In the event of the dissolution, consolidation, or merger of the Employer, or the sale by the Employer of its assets, the resulting successor person or persons, firm or corporations may continue this Plan by (a) adopting the Plan by appropriate resolution; (b) appointing a new Trustee as though the Trustee (including all members of a group of individuals acting as Trustee) had resigned; and (c) executing a proper agreement with the new Trustee. In such event, each Participant in this Plan shall have an interest in the Plan after the dissolution, consolidation, merger, or sale of assets, at least equal to the interest that he had in the Plan immediately before the dissolution, consolidation, merger, or sale of assets. Any Participants who do not accept a position with such successor within a reasonable time shall be deemed terminated. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger, or sale of assets, such successor does not adopt this Plan, as provided herein, the Plan shall automatically be terminated and deemed an involuntary termination.

**3.11.2 Merger with Other Plan.** In the event of the merger or consolidation with, or transfer of assets or liabilities to, any other deferred compensation plan and trust, each Participant shall have an interest in such which is equal to or greater than the interest which he had in this Plan immediately before such merger, consolidation, or transfer, and if such other Plan thereafter terminates, each Participant shall be entitled to an Account Balance which is equal to or greater than the Account Balance to which he would have been entitled immediately before such merger, consolidation, or transfer if this Plan had then terminated, as adjusted for any investment gains or losses since such merger, consolidation, or transfer.

**3.11.3 Transfer from Other Plans.** The Employer may cause all or any of the assets held in connection with any other plan or trust which is maintained by the Employer for the benefit of its Employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts to be transferred to the Trustee, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose. In general, the rollover contributions may be accepted by the Trustee and held for the benefit of a Participant from any other plan or trust which is maintained by any other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts. However, the Employer reserves the right to permit or deny a rollover, in whole or in part, based on the characteristics of the underlying assets. A rollover contribution may include in-kind assets.

Any such assets so transferred (rolled over) to the Trustee shall be accompanied by written instructions from the employer, or the trustee, custodian or individual holding such assets, setting forth the name of each Participant for whose benefit such assets have been transferred and showing separately the respective contributions by the employer and by the Participant and the current value of the assets attributable thereto. Upon receipt by the Trustee of such assets, the Trustee shall place such assets in a Segregated Fund for the Participant and the Participant shall be deemed to be one hundred (100%) percent vested and have a non-forfeitable interest in any such assets. The Participant will maintain investment control over such assets.

Notwithstanding the above, if the transferor plan is another plan of the Employer and the Employer initiated the transfer or if the Plan is a restated money purchase plan, the Account Balances shall continue to vest according to the schedule in Section 2.4.1. If the transferor plan maintained a vesting schedule that differs from the one specified in Section 2.4.1, such transferred Account Balances shall vest according to the schedule that provides the greatest vesting percentage.

In the event that this Plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, target benefit plan, stock bonus plan, or a profit sharing plan subject to the survivor annuity requirements of Code sections 401(a)(11) and 417, any transferred assets shall remain subject to such requirements and this Plan shall provide such annuity distribution options as the transferor plan. Unless this Plan is also subject to such survivor annuity requirements, the annuity distribution option shall only

apply to those assets that were transferred and any earnings thereon. Furthermore, any such transferred assets and associated earnings shall be distributed to the Participant only if: (a) he terminates employment with the Employer, attains Normal Retirement Age, becomes disabled, or dies, (b) the Plan should subsequently terminate, or (c) the Employer spin-offs the business unit to which the Participant is a member.

**3.11.4 Transfer to Other Plans.** The Trustee, upon written direction by the Employer, shall transfer some or all of the assets held under the Trust to another plan or trust of the Employer or any other employer meeting the requirements of the Code relating to qualified plans and trusts, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose.

In addition, upon the termination of employment of any Participant and receipt by the Plan Administrator of a request in writing, the Participant may request that any distribution from the Trust to which he is entitled shall be transferred to an individual retirement account, an individual retirement annuity, or any other plan or trust which is maintained by some other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts. Upon receipt of any such written request, the Plan Administrator shall cause the Trustee to transfer the assets so directed and, as appropriate, shall direct the Insurer to transfer to the new trustee any applicable insurance policies issued on the Participant.

**3.11.5 Direct Rollover.** With respect to distributions from the Plan made on or after January 1, 1993, and notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. If the entire Eligible Rollover Distribution is less than \$500, but more than \$200, the entire amount may be paid directly to an Eligible Retirement Plan.

## ARTICLE 12

### MISCELLANEOUS

**3.12.1 No Reversion to Employer.** Except as specifically provided in the Plan, no part of the corpus or income of the Trust shall revert to the Employer or be used for, or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**3.12.2 Employer Actions.** Any action by the Employer pursuant to the provisions of the Plan shall be evidenced by appropriate resolution or by written instrument executed by any person authorized by the Employer to take such action.

**3.12.3 Execution of Receipts and Releases.** Any payment to any person eligible to receive benefits under this Plan, in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. The Plan Administrator may require such person, as a condition precedent to such payment, to execute a receipt and release therefore in such form, as he shall determine.

**3.12.4 Rights of Participants Limited.** Neither the creation of this Plan and Trust nor anything contained in this Plan shall be construed as giving any Participant, Beneficiary or Employee any equity or other interest in the assets, business or affairs of the Employer, or the right to complain about any action taken by or about any policy adopted or pursued by, the Employer, or as giving any Employee the right to be retained in the service of the Employer; and all Employees shall remain subject to discharge to the same extent as if the Plan had never been executed. Prior to the time that distributions are made in conformity with the provisions of the Plan, neither the Participants, nor their spouses, Beneficiaries, heirs-at-law, or legal representatives shall receive or be entitled to receive cash or any other thing of current exchangeable value, from either the Employer or the Trustee as a result of the Plan or the Trust.

**3.12.5 Persons Dealing with Trustee Protected.** No person dealing with the Trustee shall be required or entitled to see to the application of any money paid or property delivered to the Trustee, or determine whether the Trustee is acting pursuant to the authorities granted to the Trustee hereunder or to authorizations or directions herein required. The certificate of the Trustee that the Trustee is acting in accordance with the Plan shall protect any person relying thereon.

**3.12.6 Protection of the Insurer.** An Insurer shall not be responsible for the validity of the Plan or Trust and shall have no responsibility for action taken or not taken by the Trustee, for determining the propriety of accepting premium payments or other contributions, for making payments in accordance with the direction of the Trustee, or for the application of such payments. The Insurer shall be fully protected in dealing with any representative of the Employer or any one of a group of individuals acting as Trustee. Until written notice of a change of Trustee has been received by an Insurer at its home office, the Insurer shall be fully protected in dealing with any party acting as Trustee according to the latest information received by the Insurer at its home office.

**3.12.7 No Responsibility for Act of Insurer.** Neither the Employer, the Plan Administrator, or the Trustee shall be responsible for any of the following, nor shall they be liable for instituting action in connection with:

- (a) The validity of policies or policy provisions;
- (b) Failure or refusal by the Insurer to provide benefits under a policy;
- (c) An act by a person which may render a policy invalid or unenforceable; or
- (d) Inability to perform or delay in performing an act, which inability or delay is occasioned by a provision of a policy or a restriction imposed by the Insurer.

**3.12.8 Inalienability.** The right of any Participant or his Beneficiary in any distribution hereunder or to any Account shall not be subject to alienation, assignment or transfer, voluntarily or involuntarily, by operation of law or otherwise, except as may be expressly permitted herein. No Participant shall assign, transfer, or dispose of such right nor shall any such right be subjected to attachment, execution, garnishment, sequestration, or other legal, equitable, or other process. The preceding shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, as defined in section 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

Notwithstanding the above, the foregoing shall not apply to judgments, orders and decrees issued, and settlement agreements entered into, on or after August 5, 1997, which offset the Participant's benefits provided under this Plan if:

(a) the order or requirement to pay arises:

(1) under a judgment of conviction for a crime involving this Plan,

(2) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Act, or

(3) pursuant to a settlement agreement between the Secretary of Labor and the Participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a Fiduciary or any other person,

(b) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan, and

(c) in a case in which the survivor annuity requirements of Code section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a spouse at the time at which the offset is to be made:

(1) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B) of the Code), or an election to waive the right of the spouse to either a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity is in effect in accordance with the requirements of section 417(a) of the Code,

(2) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the Plan in connection with a violation of part 4 of such subtitle, or

(3) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a Qualified Joint and Survivor Annuity or under a Qualified Pre-Retirement Survivor Annuity, where such survivor annuity equals the survivor annuity determined under the Plan assuming that:

(i) the Participant terminated employment on the date of the offset,

(ii) there was no offset,

(iii) benefits commence at the Participant's Normal Retirement Date (or current age if later),

(iv) the Qualified Joint and Survivor Annuity survivor percentage is fifty (50%) percent (even if another percentage is selected in Section 1.2.70), and

(v) the Qualified Pre-Retirement Survivor Annuity is fifty (50%) percent of such Qualified Joint and Survivor Annuity.

In the event a Participant's benefits are attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of the action, the Plan Administrator shall cause any benefits payable to be paid to the court for distribution by the court, as it considers appropriate.

**3.12.9 Qualified Domestic Relations Orders.** The Plan Administrator shall adhere to the terms of any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a Participant and is made pursuant to a state domestic relations law (including a community property law) and which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

Any such domestic relations order must clearly specify the name and last known mailing address of the Participant and the name and mailing address of each Alternate Payee covered by the order, the amount or percentage of the Participant's benefit to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which such order applies.

Any such domestic relations order shall not require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan, to provide increased benefits, or the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

Distributions to an Alternate Payee are permitted on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order, even if the Participant continues to be employed and has not attained the "earliest possible retirement age" pursuant to section 414(p) of the Code.

For this purpose, the "earliest possible retirement age" under the Plan means the earlier of: (a) the date on which the Participant is entitled to a distribution under the Plan, or (b) the later of the date the Participant attains age 50, or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

The payment of benefits to an Alternate Payee before the Participant has separated from service shall be determined as if the Participant had retired, or otherwise terminated employment, on the date on which such payment is to begin under the Qualified Domestic Relations Order, (but taking into account only the benefits actually accrued), and may be paid in any form in which such benefits may be paid under the Plan to the Participant (other than the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his subsequent spouse).

To the extent provided in the Qualified Domestic Relations Order, the former spouse of a Participant shall be treated as a surviving spouse of such Participant for purposes of sections 401(a)(11) and 417 of the Code (and any spouse of the Participant shall not be treated as a spouse of the Participant for such purposes) and if married for at least one (1) year to the Participant, the surviving former spouse shall be treated as meeting the requirements of section 417(d) of the Code.

The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of a domestic relations order by the Plan and the Plan's procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order,

the Plan Administrator shall determine whether such order is a Qualified Domestic Relations Order and shall notify the Participant and each Alternate Payee of such determination. If the Participant or any affected Alternate Payee disagrees with the determinations of the Plan Administrator, the disagreeing party shall be treated as a claimant and the claims procedure of Part 3, Article 9 shall be followed. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts which would have been payable to the Alternate Payee during such period if the order had been determined to be a Qualified Domestic Relations Order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto. If within such eighteen (18) month period it is determined that the order is not a Qualified Domestic Relations Order or the issue as to whether such order is a Qualified Domestic Relations Order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a Qualified Domestic Relations Order, which is made after the close of the eighteen (18) month period, shall be applied prospectively only.

**3.12.10 Authorization to Withhold Taxes.** The Trustee is authorized in accordance with applicable law to withhold from distribution to any payee such sums as may be necessary to cover federal and state taxes which may be due with respect to such distributions.

**3.12.11 Missing Persons.** If the Trustee mails by registered or certified mail, postage prepaid, to the last known address of a Participant or Beneficiary, a notification that the Participant or Beneficiary is entitled to a distribution and if (a) the notification is returned by the post office because the addressee cannot be located at such address and if neither the Employer, the Plan Administrator nor the Trustee shall have any knowledge of the whereabouts of such Participant or Beneficiary within three (3) years from the date such notification was mailed, or (b) within three (3) years after such notification was mailed to such Participant or Beneficiary, he does not respond thereto by informing the Trustee of his whereabouts, the ultimate disposition of the then undistributed vested Account Balance of such Participant (or his Beneficiary) shall be determined in accordance with the then applicable Federal laws, rules and regulations. If any portion of the vested Account Balance is forfeited because the Participant or Beneficiary cannot be found, such portion shall be reinstated if a claim is later made by the Participant or Beneficiary.

**3.12.12 Notices.** Any notice or direction to be given in accordance with the Plan shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting as Trustee, notice to the Trustee may be given by giving notice to any one or more of such individuals.

**3.12.13 Governing Law.** The provisions of this Plan and Trust shall be construed, administered and enforced in accordance with the provisions of the Act and, to the extent applicable, the laws of the state in which the Employer has its principal place of business. All contributions to the Trust shall be deemed to take place in such state.

**3.12.14 Severability of Provisions.** In the event that any provision of this Plan and Trust shall be held to be illegal, invalid or unenforceable for any reason, said illegality, invalidity or unenforceability shall not affect the remaining provisions, but shall be fully severable and the Plan and Trust shall be construed and enforced as if said illegal, invalid or unenforceable provisions had never been inserted herein.

**3.12.15 Gender and Number.** Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender and vice versa.

**3.12.16 Binding Effect.** The Plan and Trust, and all actions and decisions hereunder, shall be binding upon the heirs, executors, administrators, successors and assigns of any and all parties hereto and Participants, present and future.

**3.12.17 Qualification under Internal Revenue Laws.** The Employer intends that the Plan and Trust qualify under the applicable provisions of the Code. Until advised to the contrary, the Trustee may assume that the Plan and Trust are so qualified and are entitled to tax exemption under the Code.



**ARTICLE 13**

**EXECUTION OF AGREEMENT**

**3.13.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and no other counterparts need be produced.

**3.13.2 Acceptance by Trustee.** The Trustee, by joining in the execution of this Agreement, hereby signifies the Trustee's acceptance thereof.

**3.13.3 Execution.** To record the adoption of this Plan and Trust the Employer and each affiliated employer, if any, has caused this Agreement to be executed by its duly qualified officers and the Trustee has executed this Agreement, as of the day and year first above written.

**Employer:**  
Indiantown Gas Company

**Trustee:**

\_\_\_\_\_  
Brian Powers  
President

\_\_\_\_\_  
Brian Powers  
Trustee

\_\_\_\_\_  
Colette Powers  
Trustee

## INDIANTOWN GAS 401(K) RETIREMENT TRUST

### AMENDMENT

#### Article 1.

#### MINIMUM DISTRIBUTION REQUIREMENTS.

### Section 1. General Rules

**1.1. Adoption and Effective Date** For purposes of determining required minimum distributions, Indiantown Gas Company, adopts the following amendment to its Indiantown Gas 401(K) Retirement Trust effective January 1, 2003, for plan years beginning on or after January 1, 2003, unless an earlier effective date is specified.

**1.2. Coordination with Minimum Distribution Requirements** Previously in Effect. If the plan supplement attached to this amendment specifies an effective date of this Article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Article will be determined as follows:

If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Article equals or exceeds the required minimum distributions determined under this Article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee.

If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Article is less than the amount determined under this Article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Article.

**1.3. Precedence.** The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

**1.4. Requirements of Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the Treasury Regulation under section 401(a)(9) of the Internal Revenue Code.

**1.5. TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Article, distributions may be made under a designation made before January 1, 1984, in accordance with section 242 b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

### Section 2. Time and Manner of Distribution.

**2.1. 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.

**2.2. 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 spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement supplement, distributions to the surviving 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 70 1/2, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, 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 spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this Section 2.2, other than Section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this Section 2.2 and Section 4, unless Section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If Section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

**2.3. 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 Sections 3 and 4 of this Article. 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.

## **Section 3. Required Minimum Distributions During Participant's Lifetime.**

**3.1. 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 of the Treasury Regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or

(b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

**3.2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death.

## **Section 4. Required Minimum Distributions After Participant's Death.**

### **4.1. 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:

(1) 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.

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

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

(b) **No Designated Beneficiary.** If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that 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.

### **4.2. Death Before Date Distributions Begin.**

(a) **Participant Survived by Designated Beneficiary.** Except as provided in the adoption agreement, 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 Section 4.1.

(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 Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 2.2(a), this Section 4.2 will apply as if the surviving spouse were the participant.

## **Section 5. Definitions.**

**5.1. Designated beneficiary.** The individual who is designated as the beneficiary under Section 2.5.3 of the Plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code

and section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

**5.2. Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

**5.3. Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury Regulations.

**5.4. 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 balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

**5.5. Required beginning date.** The date specified in Section 2.5.3(g)(6) of the Plan.

## SUPPLEMENT

### Indiantown Gas 401(K) Retirement Trust

#### AMENDMENT MINIMUM DISTRIBUTION REQUIREMENTS.

(Check and complete Section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the section 401(a)(9) Final and Temporary Regulations.)

##### **Section 1. Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.**

Article 1, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after \_\_\_/\_\_\_/\_\_\_\_.

(Check and complete any of the remaining sections if you wish to modify the rules in Sections 2.2 and 4.2 of Article 1 of this Amendment.)

##### **Section 2. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.**

If the participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in Section 2.2 of Article 1 of this Amendment, but the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

This election will apply to:

- All distributions.
- For distributions made on or after : \_\_\_/\_\_\_/\_\_\_\_. (01/01/02 or later)

##### **Section 3. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.**

Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 2.2 and 4.2 of Article 1 of this Amendment applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 2.2 of Article 1 of this Amendment, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this Paragraph, distributions will be made in accordance with Sections 2.2 and 4.2 of Article 1 of this Amendment and, if applicable, the elections in Section 2 above.

**Section 4. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.**

A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

**Employer:**

Indiantown Gas Company

\_\_\_\_\_  
Brian Powers  
President

\_\_\_\_\_  
Date

## **Indiantown Gas 401(K) Retirement Trust**

### **EGTRRA AMENDMENT FOR 401(k) PLANS**

This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001.

This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. Where appropriate, the term "Plan" shall mean plan, trust, adoption agreement and GUST Appendix or snap-off attachment.



**SECTION 1. PLAN LOANS FOR OWNER-EMPLOYEES AND SHAREHOLDER EMPLOYEES**

Not Applicable

Effective for plan loans made after December 31, 2001, Plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

## **SECTION 2. LIMITATIONS ON CONTRIBUTIONS**

This section shall be effective for Limitation Years beginning after December 31, 2001.

### Maximum Annual Additions

Except to the extent permitted under section 12 of this amendment and section 414(v) of the Code, if applicable, the Annual Addition that may be contributed or allocated to a Participant's account under the plan for any Limitation Year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) One hundred (100%) percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the Limitation Year.

### **SECTION 3. INCREASE IN COMPENSATION LIMIT**

The "annual compensation" of each Participant taken into account in determining allocations for any Plan Year 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.

Effective for Plan Years beginning after December 31, 2001

Effective for Plan Years beginning after December 31, 2002

#### **SECTION 4. MODIFICATION OF TOP-HEAVY RULES**

This section shall apply for Plan Years beginning after December 31, 2001.

##### Definition of Key Employee.

"Key Employee" shall mean any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was an officer of the Employer having "annual compensation" greater than \$130,000 (as adjusted under section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having annual compensation of more than \$150,000. For this purpose, "annual compensation" means compensation within the meaning of section 415(c)(3) of the Code. The determination of who is a Key Employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

##### Determination of Top-Heavy Status.

The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under section 416(g)(2) of the Code during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, severance from employment, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account.

##### Minimum Contributions

Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of section 416(c)(2) of the Code and the Plan. The preceding sentence shall apply with respect to matching contributions under this Plan or, if this Plan provides that the minimum contribution requirement shall be met in another plan, such matching contributions shall apply towards the minimum in such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of section 401(m) of the Code.

Employer matching contributions shall not be taken into account for purposes of satisfying the minimum contribution requirements of section 416(c)(2) of the Code. Such minimum contribution requirements shall be satisfied from other Employer contributions.

##### Contributions under Other Plans.

The Employer may provide that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met).

Not Applicable - no other plan or Top-Heavy minimum provided in this Plan.

\_\_\_\_\_  
Name of other plan to which Top-Heavy minimum shall be made

Other: \_\_\_\_\_  
(Must preclude Employer discretion.)

The Top-Heavy requirements of section 416 of the Code and of the Plan shall not apply in any year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.

**SECTION 5. CONTRIBUTIONS**

- Not Applicable - The Plan does not provide Employer matching contributions.
- This section shall apply to Participants with account balances derived from Employer matching contributions and who complete an hour of service under the plan in a plan year beginning after December 31, 2001.
- This section shall apply to all Participants with account balances derived from Employer matching contributions.

Vesting schedule.

A Participant's account balance derived from Employer matching contributions shall vest as provided below. If the vesting schedule for Employer matching contributions in Option 3 or 4 below is elected, each Participant who has completed three or more years of service may elect within a reasonable period after the adoption of this amendment to have his nonforfeitable percentage computed without regard to such change. The period during which the election may be made shall commence with the date this amendment is adopted or deemed to be made and shall end on the latest of sixty days after:

- (i) the amendment is adopted;
- (ii) the amendment becomes effective; or
- (iii) the Participant is issued written notice of the amendment by the Employer or plan administrator.

Vesting of Employer Matching Contributions:

- Option 1. A Participant's account balance derived from Employer matching contributions shall be fully and immediately vested.
- Option 2. A Participant's account balance derived from Employer matching contributions shall be nonforfeitable upon the Participant's completion of three years of vesting service.
- Option 3. A Participant's account balance derived from Employer matching contributions shall vest according to the following schedule:

Years of vesting service	Nonforfeitable percentage
2	20
3	40
4	60
5	80
6	100

- Option 4. A Participant's account balance derived from Employer matching contributions shall vest according to the following that must be at least as favorable as Option 3 above:

Years of vesting service	Nonforfeitable percentage
_____	_____
_____	_____
_____	_____
_____	_____

---

Option 5. Not Applicable, use plan vesting schedule which is at least as favorable as Option 3.

## SECTION 6. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

This section shall apply to distributions made after December 31, 2001.

### Modification of Definition of Eligible Retirement Plan.

For purposes of the direct rollover provisions of the plan, an Eligible Retirement Plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

### Modification of Definition of Eligible Rollover Distribution.

Not Applicable - Plan does not permit after-tax employee contributions.

For purposes of the direct rollover provisions of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan 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.

For purposes of the direct rollover provisions of the plan, any amount that is distributed on account of hardship shall not be an Eligible Rollover Distribution and the Distributee may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.



## SECTION 7. ROLLOVERS FROM OTHER PLANS

Not Applicable

In addition to the Participant rollover contributions and/or direct rollovers already accepted by the Plan, effective 01/01/2002 (Enter a date no earlier than January 1, 2002), the Plan will accept:

### Direct Rollovers:

The Plan will accept a direct rollover of an Eligible Rollover Distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.

a qualified plan described in section 401(a) or 403(a) of the Code, including after-tax employee contributions.

an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

### Participant Rollover Contributions from Other Plans:

The plan will accept a Participant contribution of an Eligible Rollover Distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code.

an annuity contract described in section 403(b) of the Code.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

### Participant Rollover Contributions from IRAs:

The Plan: (Choose one.)

will

will not

accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income.

**SECTION 8. ROLLOVERS DISREGARDED IN INVOLUNTARY CASH OUTS**

Not Applicable. No involuntary cash out

The Employer elects to maintain the Plan provision including the Participant's rollover contributions in determining the value of the Participant's non-forfeitable account balance for purposes of the Plan's involuntary cash-out rules.

The Employer elects to exclude a Participant's rollover contributions in determining the value of the Participant's non-forfeitable account balance for purposes of the Plan's involuntary cash-out rules. The value of a Participant's non-forfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. If the value of the Participant's non-forfeitable account balance as so determined is less than the Involuntary Cash Out threshold specified in the Plan, the Trustee shall immediately distribute the Participant's entire non-forfeitable account balance. This election shall apply with respect to distributions made after:

\_\_\_/\_\_\_/\_\_\_ (Enter a date no earlier than December 31, 2001.)

with respect to Participants who separated from service after:

\_\_\_/\_\_\_/\_\_\_ (Enter date. The date may be earlier than December 31, 2001.)

**SECTION 9. REPEAL OF MULTIPLE USE TEST**

The multiple use test described in Treasury Regulation section 1.401(m)-2 shall not apply to the Plan for Plan Years beginning after December 31, 2001.

**SECTION 10. ELECTIVE DEFERRALS - CONTRIBUTION LIMITATION**

No Participant shall be permitted to have elective deferrals made under this Plan, or any other qualified plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for such taxable year, except to the extent permitted under section 12 of this amendment and section 414(v) of the Code, if applicable.

**SECTION 11. MODIFICATION OF TOP-HEAVY RULES**

The Top-Heavy requirements of section 416 of the Code and the Top-Heavy provisions of the Plan shall not apply in any Plan Year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.

## SECTION 12. CATCH-UP CONTRIBUTIONS

All Employees who are eligible to make elective deferrals under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of sections 402(g), 408(p) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason for the making of such catch-up contributions.

Catch-up Contributions: (Choose one.)

shall apply to contributions after 12/31/2001. (Enter December 31, 2001 or a later date.)

shall not apply.

### SECTION 13. SUSPENSION PERIOD FOLLOWING HARDSHIP DISTRIBUTION

- Not Applicable - no Hardship Distributions permitted.
- Not Applicable - maintain existing Hardship Distribution rules. Retains 12 month suspension rule. (May not be selected by Safe Harbor 401(k) plans.)
- A Participant who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and employee contributions under this Plan and all other plans of the Employer for 6 months after receipt of the distribution. A Participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the Employer for the period specified below.

Suspension Period for Hardship Distributions: (Choose one.)

- A Participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this Plan and all other plans of the Employer for 6 months after receipt of the distribution or until January 1, 2002, if later.
- A Participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this Plan and all other plans of the Employer for the period specified in the provisions of the Plan relating to suspension of elective deferrals that were in effect prior to this amendment.

**SECTION 14. DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT**

This section shall not apply.

This section shall apply for distributions and severances from employment occurring after \_\_\_/\_\_\_/\_\_\_\_ (Enter a date no earlier than December 31, 2001.)

New distributable event. A Participant's elective deferrals, qualified non-elective contributions, qualified matching contributions, and earnings attributable to these contributions shall be distributed on account of the Participant's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

Distribution Upon Severance from Employment, shall apply for distributions: (Choose one.)

regardless of when the severance from employment occurred.

for severances from employment occurring after \_\_\_/\_\_\_/\_\_\_\_. (Enter date.)

\* \* \* \* \*

The Employer hereby adopts this as evidenced by the foregoing this 18th day of November, 2003.

**Employer:**  
Indiantown Gas Company

\_\_\_\_\_  
Brian Powers  
President



**RESOLUTION OF  
THE BOARD OF DIRECTORS  
OF  
INDIANTOWN GAS COMPANY**

**Whereas**, the Employer has the power to amend and restate the Plan.

On November 18, 2003 the following resolutions to amend and restate the Indiantown Gas 401(K) Retirement Trust were duly adopted by unanimous consent in lieu of a meeting of the board of directors of Indiantown Gas Company and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of Plan presented to the board of directors is a Cash or Deferred Profit Sharing Plan as authorized under Internal Revenue Code Sections 401(a), 401(k), 402(g), 401(m) and 501(a) and is a restatement intended to meet the requirements of The Uruguay Round Agreements Act ("GATT"), Uniformed Services Employment and Reemployment Rights Act ("USERRA"), Small Business Job Protection Act, ("SBJPA"), The Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA") and the Community Renewal Tax Relief Act of 2000 ("CRA") collectively known as GUST. This restatement shall be effective January 1, 2003;

RESOLVED, that the Indiantown Gas 401(K) Retirement Trust presented to the board of directors is hereby adopted and approved and that the proper officers of the Employer are hereby authorized and directed to execute and deliver to the Plan Administrator one or more counterparts of the Plan and Trust.

RESOLVED, that, for purposes of the limitations on contributions and benefits under the Plan as prescribed by Internal Revenue Code Section 415, the Limitation Year shall be the Plan Year.

RESOLVED, that, prior to the due date (including extensions) of the Employer's federal income tax return for each of its fiscal years hereafter, the Employer shall contribute to the Plan amounts sufficient to meet its obligation under the Cash or Deferred Profit Sharing Plan for each such fiscal year in such amount as the board of directors determine. The Treasurer of the Corporation is empowered and directed to pay such contribution to the Trustee of the Plan in cash or property, in accordance with the terms of the Plan Document and shall notify the Plan Administrator as to which fiscal year said contributions shall be applied.

RESOLVED, that the proper officers of the Employer shall act as soon as possible to notify employees of the Employer of the adoption of the Plan and Trust.

RESOLVED, that the attached amendment to meet the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) presented to the board of directors is hereby approved for adoption;

RESOLVED, that the proper officers of the Employer shall take such actions as are necessary to adopt the EGTRRA amendment.

RESOLVED, that the attached amendment to meet the requirements of the final regulations to section 401(a)(9) of the Internal Revenue Code contained in Revenue Procedure 2002-29 is hereby approved for adoption;

RESOLVED, that the proper officers of the Employer shall take such actions as are necessary to adopt the 401(a)(9) Minimum Distribution Requirements Model Amendment;

The undersigned further certifies that attached hereto as Exhibits A, B and C respectively are true copies of the Indiantown Gas 401(K) Retirement Trust Document, EGTRRA Amendment and 401(a)(9) Minimum Distribution Requirements Model Amendment approved and adopted in the above resolutions.

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Secretary

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Date

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**INDIANTOWN GAS COMPANY PENSION TRUST**

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# INDIANTOWN GAS COMPANY PENSION TRUST

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# INDIANTOWN GAS COMPANY PENSION TRUST

THIS AGREEMENT is made this 18th day of November, 2003, by and between Indiantown Gas Company (collectively "the Employer"), and Brian Powers, and Colette Powers (collectively "the Trustee").

## PART 1

### ARTICLE 1

#### INTRODUCTION

**1.1.1 Adoption and Title.** The Employer and Trustee hereby amend, restate, and adopt the Plan and Trust to be known as Indiantown Gas Company Pension Trust.

**1.1.2 Effective Date.** Except as otherwise specifically provided herein, the provisions of this amended and restated Plan and Trust which was originally effective February 1, 1970 shall be effective as of February 1, 2003, hereinafter known as the "Effective Date." Effective dates pertaining to legislative changes required by the Uruguay Round Table Agreements Act, Pub. L. 103-464 ("GATT"), the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA"), the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"), the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA 97"), and the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA"), collectively known as "GUST", and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554 ("CRA") are provided herein with those provisions.

**1.1.3 Purpose.** This Plan and Trust is established for the purpose of giving recognition to the contribution made by Employees to the successful conduct of the business of the Employer by providing Eligible Employees with pension, disability and death benefits in accordance with the Plan.

## ARTICLE 2

### DEFINITION OF TERMS

**As used in this Plan and Trust, the following terms shall have the following meanings:**

**1.2.1 "Accrued Benefit":** The cumulative benefit determined annually for a Participant in accordance with the provisions of the Plan and Trust, as provided in Section 2.3.1 of the Plan.

**1.2.2 "Act":** The Employee Retirement Income Security Act of 1974, as amended from time to time.

**1.2.3 "Actuarial Equivalence":** A benefit of equivalent value to the benefit which would otherwise have been provided, determined on the basis of the interest rate(s) and mortality table(s) set forth below:

Pre-retirement interest rate: 6.000%

Pre-retirement mortality table: None

Post-retirement interest rate: 5.000%

Post-retirement mortality table: 71 IAM (Individual Annuity Mortality) Table, male rates

Setback (-) / Setforward (+): None

**1.2.4 "Actuary":** An individual or firm of actuaries selected from time to time by the Plan Administrator that meets the standards and qualifications then in effect with the Joint Board for the Enrollment of Actuaries established by the Secretary of Labor and the Secretary of the Treasury pursuant to the Act.

**1.2.5 "Alternate Payee":** Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this, or any other plan of the Employer, with respect to such Participant.

**1.2.6 "Anniversary Date":** The first day of the Plan Year.

**1.2.7 "Average Annual Compensation":** The Average Annual Compensation, as defined in Section 1.2.14, paid by the Employer to a Participant during the highest 5 consecutive years; provided that, if the Participant's entire period of service is less than 5 years, the Participant's Average Annual Compensation shall be determined by averaging (on an annual basis) the Compensation received by the Participant during the Participant's entire period of service with the Employer. If a Participant fails to earn a Year of Credited Service, then such Compensation shall be excluded when determining the Participant's Average Annual Compensation and the Compensation for the year next preceding the earliest year or next following the latest year, whichever gives the highest average, shall be included.

Average Annual Compensation shall include Compensation from the Participant's Entry Date and shall be measured over the calendar year ending with or within the Plan Year. All Compensation shall be included, except Compensation received during the year in which the Plan terminates.

**1.2.8 "Base Benefit Percentage":** The percentage of Average Annual Compensation at which Employer derived benefits are accrued with respect to Compensation at or below the Integration Level.

**1.2.9 "Base Contribution Percentage":** The percentage of Compensation at which Employer derived contributions are made with respect to Compensation at or below the Integration Level in

a Defined Contribution Plan.

**1.2.10 "Beneficiary":** The person or persons entitled to receive any benefits payable upon or after a Participant's death.

**1.2.11 "Board of Directors":** The board of directors of an incorporated Employer.

**1.2.12 "Break in Service":** The failure of an Employee or Participant to complete more than a specified amount of service during a twelve (12) consecutive month period. A Break in Service for eligibility purposes shall occur if the Employee has less than 500 Hours of Service. A Break in Service for vesting purposes shall occur if the Participant has less than 500 Hours of Service. A Break in Service for benefit determination purposes shall occur if the Participant has less than 500 Hours of Service. The determination of whether the Participant has earned a Year of Service (or partial year) or a Break in Service shall be measured on the same computation period, as specified in Section 1.2.27, 1.2.90, or 1.2.94, as appropriate.

**1.2.13 "Code":** The Internal Revenue Code of 1986, as amended from time to time.

**1.2.14 "Compensation":** Total compensation, which is actually paid to the Participant by the Employer during the applicable twelve (12) consecutive month period, as denoted in Section 1.2.7, 2.6.2(b), or 3.1.2(d)(3), as applicable, and includes all information required to be reported under sections 6041, 6051 and 6052 of the Code (wages, tips, and other compensation as reported on Form W-2.) Compensation includes wages, (within the meaning of section 3401(a) of the Code) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. Such 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 section 3401(a)(2) of the Code.)

In the case of a self-employed individual, Compensation means Earned Income during such period; provided, if Compensation is modified so that Non-Highly Compensated Employees receive less than their total Compensation, Compensation for each self-employed individual shall be his Earned Income multiplied by a percentage. Such percentage equals the aggregate compensation recognized for benefit accrual purposes for Non-Highly Compensated Employees divided by the aggregate total compensation actually paid to Non-Highly Compensated Employees. Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under sections 125, 402(e)(3), 402(h)(1)(B), 403(b), and 457(b) of the Code. Section 132(f)(4) elective deferrals are included in Compensation for Plan Years beginning on or after January 1, 2001.

Effective December 12, 1994, a Participant who is in Qualified Military Service shall be credited with Compensation for such period based on the rate of Compensation he would have received had he been in the employment of the Employer, or if such rate is not ascertainable, the average Compensation for the twelve (12) consecutive month period, (or his entire period of employment, if shorter), preceding his Qualified Military Service.

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

For Plan Years beginning on or after January 1, 1994, 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.

If a determination period consists of fewer than twelve (12) months the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

If Compensation for any prior determination period is taken into account in determining a Participant's benefits 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 benefits 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 benefits 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.

For Plan Years commencing prior to January 1, 1997 the annual compensation taken into account in determining whether the dollar limitation above applies shall include the compensation of the Participant's spouse and any lineal descendants who have not attained age nineteen (19) by the last day of the Plan Year. If the aggregate compensation exceeds such dollar limitation, then the dollar limitation shall be allocated among the Participant, spouse, and such lineal descendants. Each affected individual shall receive the lesser of his compensation (without regard to this Section) or the Taxable Wage Base in effect on the first day of the applicable Plan Year. If the aggregate of the amounts so allocated still exceeds the dollar limitation, then each affected individual shall receive a pro-rata portion based on such allocation so that the aggregate amount equals the dollar limitation for that Plan Year. If the aggregate of the amounts so allocated is less than the dollar limitation, then each affected individual shall receive an additional amount equal to such difference prorated over his compensation in excess of the Taxable Wage Base for that Plan Year. This Paragraph only applies to Participants who are 5-Percent Owners (as defined in Section 2.5.3(g)(2)) or who are Highly Compensated and receive one of the ten (10) highest compensations for that Plan Year.

**1.2.15 "Contract":** Any policy or other agreement with or without any insurance element issued and not subsequently determined invalid or unenforceable by any Insurer including, but not limited to, life insurance policies, individual or group annuity contracts, and deposit administration contracts.

**1.2.16 "Covered Compensation":** The average (without indexing) of the Taxable Wage Bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the Participant attains (or will attain) Social Security Retirement Age. No increase in Covered Compensation shall decrease a Participant's Accrued Benefit under the Plan.

In determining a Participant's Covered Compensation for a Plan Year, the Taxable Wage Base for all calendar years beginning after the first day of the Plan Year is assumed to be the same as the Taxable Wage Base in effect as of the beginning of the Plan Year for which the determination is being made. Covered Compensation will be determined based on the tables published by the IRS Commissioner which are rounded to the nearest \$3,000 for the current Plan Year. Covered Compensation for Plan Years beginning prior to 1995 shall be the average (without indexing) of the Taxable Wage Bases for the 35 calendar years ending with the year prior to the calendar year an individual attains Social Security Retirement Age.)

A Participant's Covered Compensation for a Plan Year before the 35-year period ending with the last day of the calendar year in which the Participant attains Social Security Retirement Age is the Taxable Wage Base in effect as of the beginning of the Plan Year. A Participant's Covered Compensation for a Plan Year after such 35-year period is the Participant's Covered Compensation for the Plan Year during which the 35-year period ends.

**1.2.17 "Death Benefit":** The benefit payable upon the death of a Participant, as determined in Section 2.3.6.

**1.2.18 "Direct Rollover":** A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**1.2.19 "Disability Benefit":** The benefit, if any, of a Participant payable upon the termination of employment by the Participant because of total disability, as determined in Section 2.3.5.

**1.2.20 "Disability Retirement Date":** The date that a Participant begins receipt of Disability Benefits. Such date is the date the Participant is determined by the Plan Administrator to be disabled.

**1.2.21 "Distributee":** An Employee or former Employee, an Employee's or former Employee's surviving spouse, an Employee's or former Employee's spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relations Order, as defined in section 414(p) of the Code.

**1.2.22 "Early Retirement Age":** The Plan does not provide an Early Retirement Age.

**1.2.23 "Early Retirement Benefit":** The Plan does not provide benefits due to retirement before Normal Retirement Age. Benefits, if any, are determined in accordance with Section 2.3.7.

**1.2.24 "Early Retirement Date":** The Plan does not provide an Early Retirement Date.

**1.2.25 "Earned Income":** The net earnings from self-employment in the trade or business with respect to which the Plan is established for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items but, in the case of taxable years beginning after 1989, with regard to the deduction allowed to the taxpayer by section 164(f) of the Code. Net earnings shall be reduced by contributions to a qualified plan to the extent deductible under section 404 of the Code.

**1.2.26 "Elapsed Time Method":** A method of counting service for purposes of eligibility to participate, vesting, and accrual of benefits which does not track actual hours worked by an Employee, but is measured according to the length of time an individual is an Employee of the Employer or a Participant of this Plan, as appropriate. This Plan does not use the Elapsed Time Method, but instead tracks Hours of Service for determining Years of Eligibility Service, Years of Credited Service, and Years of Vesting Service.

**1.2.27 "Eligibility Computation Period":** For purposes of determining Years of Service and Breaks in Service for purposes of eligibility, the initial Eligibility Computation Period is the twelve (12) consecutive month period beginning with the date on which the Employee first performs an Hour of Service for the Employer and the subsequent Eligibility Computation Periods are each Plan Year commencing with the first Plan Year which commences prior to the first anniversary of the Employee's employment date regardless of whether the Employee is entitled to be credited with 1000 Hours of Service during the initial Eligibility Computation Period. An Employee who is credited with 1000 Hours of Service in both the initial Eligibility Computation Period and the first Plan Year which commences prior to the first anniversary of the Employee's initial Eligibility Computation Period shall be credited with two (2) Years of Service for purposes of eligibility to participate.

**1.2.28 "Eligible Employee":** An Employee, as defined in Section 1.2.31 below, who has met the eligibility requirements set forth in Section 2.1.1, including Leased Employees subject to section 414(n) or (o) of the Code.

**1.2.29 "Eligible Retirement Plan":** An individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(b) of the Code, or a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. In the case of a surviving spouse, this term refers an individual retirement account or individual retirement annuity.

**1.2.30 "Eligible Rollover Distribution":** Any distribution of all or a portion of the

Participant's Accrued Benefit, but does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under section 401(a)(9) of the Code;

(3) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and,

(4) any other distribution(s) that is (are) reasonably expected to total less than \$200 during a year.

**1.2.31 "Employee":** A person who is currently or hereafter employed by the Employer, or by any other employer aggregated under section 414(b), (c), (m) or (o) of the Code and the regulations thereunder, but excluding an employee who is a non-resident alien (within the meaning of section 7701(b)(1)(B) of the Code) deriving no earned income (within the meaning of section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3) of the Code) and employees who are included in the unit of employees covered by a collective bargaining agreement between the Employer and "employee representatives"; provided, that retirement benefits were the subject of good faith negotiations and less than two (2%) percent of the employees of the Employer who are covered pursuant to such agreement are professionals as defined in Treasury regulation §1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization where more than half of its members are employees who are owners, officers, or executives of the employer.

Notwithstanding any other provision of this Plan, individuals who are not classified as Employees of the Employer for purposes of the Employer's payroll system (including, without limitation, individuals employed by temporary help firms, technical help firms, staffing firms, employee leasing firms, professional employer organizations or other staffing firms whether or not deemed to be "common law" employees or "leased employees" within the meaning of section 414(n) or (o) of the Code) are not considered to be Eligible Employees of the Employer and shall not be eligible to participate in the Plan. In the event any such individuals are reclassified as Employees for any purpose, including without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action, or administrative proceeding, such individuals shall notwithstanding such reclassification, remain ineligible for participation hereunder. In addition to and not in derogation of the foregoing, the exclusive means for individuals who are not classified as an Employee of the Employer on the Employer's payroll system to become eligible to participate in this Plan is through an amendment to this Plan, duly executed by the Employer, which specifically renders such individuals eligible for participation hereunder.

The Plan Administrator shall have full and complete discretion to determine eligibility for participation and benefits under this Plan, including, without limitation, the determination of those individuals who are deemed Employees of the Employer (or any controlled group member.) The Plan Administrator's decision shall be final, binding, and conclusive on all parties having or claiming a benefit under this Plan. This Plan is to be construed to exclude, and the Plan Administrator is authorized to exclude, all individuals who are not considered Employees for purposes of the Employer's payroll system.

**1.2.32 "Employer":** The Employer and each affiliated employer that are party to this Agreement, or, any of their respective successors or assigns which adopt the Plan; provided, however, that no mere change in the identity, form or organization of the Employer shall affect its status under the Plan in any manner, and, if the name of the Employer is hereafter changed, a corresponding change shall be deemed to have been made in the name of the Plan and references herein to the Employer shall be deemed to refer to the Employer as it is then known.

**1.2.33 "Entry Date":** The first day of the Plan Year nearest to the date of satisfying the eligibility requirements. Eligibility requirements are defined in Section 2.1.1.

**1.2.34 "Excess Benefit Percentage":** The percentage of Average Annual Compensation at which Employer derived benefits are accrued with respect to Compensation above the Integration Level.

**1.2.35 "Excess Contribution Percentage":** The percentage of Compensation at which Employer derived contributions are made with respect to Compensation above the Integration Level in a Defined Contribution Plan.

**1.2.36 "Fiduciary":** The Plan Administrator, the Trustee, and any other person who has discretionary authority or control in the management of the Plan or the disposition of Trust assets.

**1.2.37 "Final Average Compensation":** The average of the Participant's annual Compensation, as defined in Section 1.2.14, which does not exceed the Taxable Wage Base in effect at the beginning of each Plan Year, from the Employer, for the three (3) consecutive year period ending with or within the Plan Year; provided that if a Participant terminates employment with the Employer before the last day of a Plan Year, the Compensation for such year shall be included, but only if it is included in the Participant's Average Annual Compensation.; provided that if a Participant's entire period of service for the Employer is less than three (3) consecutive years, the Participant's Final Average Compensation shall be determined by averaging (on an annual basis) the Compensation received by the Participant from the Employer during the Participant's entire period of service for the Employer; and further provided that a Participant's Final Average Compensation may not exceed a Participant's Average Annual Compensation. No increase in Final Average Compensation will decrease a Participant's Accrued Benefit under the Plan.

**1.2.38 "Fractional Rule":** A Participant's Accrued Benefit at any time equals the product of the Normal Retirement Benefit multiplied by a fraction, the numerator of which is the number of Years of Credited Service at such time, and the denominator of which is the number of Years of Credited Service the Participant would have at the later of the year containing the Participant's Normal Retirement Age or the current year.

When determining the Accrued Benefit, the Normal Retirement Benefit is the benefit to which the Participant would be entitled if the Participant continues to earn annually until the later of the year containing the Participant's Normal Retirement Age or the current year, the Participant's current Average Annual Compensation. This rate of compensation is computed on the basis of the Average Annual Compensation taken into account under the Section 1.2.7; provided that if such definition is based on a "career average" or otherwise takes into account more than ten (10) years of Compensation, such Average Annual Compensation shall not be less than the average based on Compensation for the ten (10) years immediately preceding the determination date.

**1.2.39 "Gross Benefit Percentage" :**The percentage of Average Compensation at which Employer derived benefits are accrued prior to the application of the offset.

**1.2.40 "Highly Compensated Employee":**

(a) For Plan Years beginning after December 31, 1996, a Highly Compensated Employee means any Employee who:

(1) was a 5-percent owner (as defined in section 416(i)(1) of the Code) of the Employer at any time during the year or the preceding year; or

(2) for the preceding year had "compensation" from the Employer in excess of \$80,000 (as adjusted by the Secretary of the Treasury pursuant to section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996).

The year for which a determination is being made is called a "determination year" and the



preceding 12-month period is called a "look-back year."

For purposes of this Subsection, the term "compensation" means compensation within the meaning of section 415(c)(3) of the Code for the "determination year" or "look-back year." For Plan Years commencing before January 1, 1997 "compensation" for a Participant who is a 5-Percent Owner (as defined in Section 2.5.3(g)(2)) or who receives one of the ten (10) highest compensations for the Plan Year shall include the "compensation" of his spouse, any lineal ascendants and descendants, and the spouses of any lineal ascendants and descendants.

The determination of whether an Employee had "compensation" in excess of \$80,000 (as adjusted by the Secretary of the Treasury), shall be made based on "compensation" paid during the preceding Plan Year.

The Employee data for all plans of the Employer shall be based on the calendar year beginning with or within the preceding Plan Year. This requirement will not apply to "determination years" beginning with or within the 1997 calendar year, and for "determination years" beginning on or after January 1, 1998 and before January 1, 2000. Satisfaction of this requirement is determined without regard to any non-retirement plans of the Employer.

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

**(b)** Generally, a former Employee shall be treated as a Highly Compensated Employee if:

**(1)** the Employee was Highly Compensated Employee when the Employee separated from service; or

**(2)** the Employee was a Highly Compensated Employee (active) for any Plan Year that ended on or after the Employee's 55th birthday.

The determination of whether a former Employee is a Highly Compensated Employee shall be based on the rules applicable to determining Highly Compensated Employee status as in effect for that "determination year", in accordance with section 1.414(q)-1T, A-7 and A-4 of the temporary Income Tax regulations and Notice 97-45.

The Plan Administrator shall apply rules, as set forth in an administrative policy, so long as such rules are reasonable, nondiscriminatory and uniformly and consistently applied.

**1.2.41 "Hour of Service":** An hour for which (a) the Employee is paid, or entitled to payment by the Employer for the performance of duties, (b) the Employee is paid or entitled to payment by the Employer 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, or (c) back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. Hours of Service shall be credited to the Employee under (a), above, for the period in which the duties are performed, under (b), above, in the period in which no duties are performed occurs, beginning with the first Hour of Service to which the payment relates, and under (c), above, for the period to which the award or agreement pertains rather than the period in which the award, agreement or payment is made; provided, however, that Hours of Service shall not be credited under both (a) and (b), above, as the case may be, and under (c) above. Notwithstanding the preceding sentences, (i) no more than five hundred one (501) Hours of Service shall be credited under (b), above, on account of any single continuous period during which the Employee performs no duties whether or not such period occurs in a single computation period, (ii) no Hours of Service shall be credited to the Employee by reason of a payment made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws, and (iii) no Hours of Service shall be credited by reason of a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The determination of Hours of Service for reasons other than the performance of

duties and the crediting of Hours of Service to computation periods shall be made in accord with the provisions of Labor regulation sections 2530.200b-2(b) and (c) which are incorporated herein by reference.

Solely for purposes of determining whether an Employee has incurred a Break in Service, as defined in Section 1.2.12, an Employee shall be credited with the number of Hours of Service that would otherwise have been credited to such individual but for the absence, or, in any case in which such Hours cannot be determined, with eight (8) Hours of Service, for any day that the Employee is absent from work by reason of the Employee's pregnancy, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of such child by the Employee, or for purposes of caring for such child for a period beginning immediately following such birth or placement. Such Hours of Service shall be credited only in the computation period in which the absence from work begins if the Employee would be prevented from incurring a Break in Service in such computation period solely because credit is given for such period of absence and, in any other case, in the immediately following computation period. Notwithstanding the foregoing, no credit shall be given for such service unless the Employee furnishes to the Plan Administrator information to establish that the absence from work is for the reasons indicated and the number of days for which there was such an absence.

An Employee shall be credited with Hours of Service equal to the actual hours for which the Employee is paid or entitled to payment.

Service with another business entity that is, along with the Employer, a member of a controlled group of corporations under section 414(b) of the Code, an affiliated service group under section 414(m) of the Code, or trades or businesses under common control as defined in section 414(c) of the Code, or, which is otherwise required to be aggregated with the Employer pursuant to section 414(o) of the Code and the regulations issued thereunder shall be treated as service for the Employer. Hours of Service shall be credited for any individual considered an Employee for purposes of this Plan under section 414(n) or section 414(o) of the Code and the regulations issued thereunder.

Except to the extent inconsistent with regulations issued by the Secretary of the Treasury, service for a predecessor to the Employer, whether as an Employee or self-employed person, may be treated as service for the Employer for purposes of calculating an Employee's Years of Eligibility Service, Years of Vesting Service, or Years of Credited Service, as those terms are defined in Sections, 1.2.91, 1.2.94, and 1.2.90. As of the Effective Date of this Plan, there were no such predecessors to the Employer. Any future predecessors and the service being maintained will be listed in Appendix A and attached hereto and be treated as an amendment to this Plan. If the Employer maintains the plan of a predecessor employer, service with such predecessor shall be treated as service for the Employer.

**1.2.42 "Insurer":** Any insurance company that has issued a Contract to the Plan.

**1.2.43 "Integration Level":** The amount of Compensation at or below which Employer derived benefits are accrued based on the Base Benefit Percentage. This Plan does not utilize an Integration Level.

**1.2.44 "Investment Manager":** The person, persons, bank or insurance company appointed by the Employer to manage the investments of the Plan, or if no appointment is made, the Trustee.

**1.2.45 "Joint and Survivor Annuity":** An annuity for the life of the Participant with a survivor annuity for the life of the spouse (or other Beneficiary) which is not less than fifty (50%) percent and not more than one hundred (100%) percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse (or other Beneficiary) and which is the amount of benefit which is the Actuarial Equivalent of the Normal Form of Benefit, or, if greater, any optional form of benefit.

**1.2.46 "Leased Employee":** Any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (the "leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with section 414(n)(6) of the Code), on a substantially full time basis for a period of at least one (1) year, and such services are performed under the primary direction or control by the recipient; provided that any such

person shall not be taken into account:

(a) if such person is covered by a money purchase pension plan providing: (i) a nonintegrated Employer contribution rate of at least ten (10%) percent of compensation, as defined in Section 3.1.2(d)(3); (ii) immediate participation; and (iii) full and immediate vesting; and

(b) if Leased Employees do not constitute more than twenty (20%) percent of the workforce of the recipient employer who are not Highly Compensated Employees.

Contributions or benefits provided for 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.

**1.2.47 "Life Insurance Policy":** A life insurance, annuity, or endowment policy or contract owned by the Trust on the life of a Participant, on the life of someone in whom the Participant has an insurable interest, or the joint lives of a Participant and someone in whom the Participant has an insurable interest.

**1.2.48 "Limitation Year":** The Plan Year; provided that all qualified plans maintained by the Employer use the same Limitation Year.

**1.2.49 "Mandatory Employee Contributions":** After-tax contributions made by the Participant as a condition of participating in the Plan and earning Years of Credited Service for accrual purposes.

**1.2.50 "Maximum Excess Benefit Percentage":** The largest Excess Benefit Percentage that will satisfy the conditions of Code section 401(l) for a given Base Benefit Percentage.

**1.2.51 "Maximum Excess Contribution Percentage":** The largest Excess Contribution Percentage that does not exceed a given Base Contribution Percentage by more than the lesser of the Base Contribution Percentage or 5.7%.

**1.2.52 "Maximum Offset Percentage":** The largest Offset Percentage that will satisfy the conditions of Code section 401(l) for a given Base Benefit Percentage.

**1.2.53 "Minimum Top-Heavy Retirement Benefit":** The minimum benefit of a Participant for which provision is made in Section 2.6.1.

**1.2.54 "Non-Highly Compensated Employee":** An Employee who is not a Highly Compensated Employee, as that term is defined in Section 1.2.40.

**1.2.55 "Normal Form of Benefit":** An annuity for the life of the Participant.

**1.2.56 "Normal Retirement Age":** The date the Employee attains age 65.0.

**1.2.57 "Normal Retirement Benefit":** The benefit of a Participant due upon the termination of employment by the Participant and payable at the Participant's Normal Retirement Date.

**1.2.58 "Normal Retirement Date":** The first day of the month coincident with or next following the date Normal Retirement Age is attained.

**1.2.59 "Offset Percentage":** The percentage of Final Average Compensation offset from Employer derived benefits.

**1.2.60 "133-1/3% Rule" (Unit Credit):** A Participant's Accrued Benefit at any time equals the Normal Retirement Benefit, as defined in Section 2.3.2, based upon the Participant's Compensation and Years of Credited Service at the time of determination, including Years of Credited Service after Normal

Retirement Age. The annual rate at which any individual who is or could be a Participant can accrue such Normal Retirement Benefit for any Plan Year cannot exceed 133-1/3% of the annual rate at which the individual can accrue such benefits for any prior Plan Year.

**1.2.61 "Owner-Employee":** An individual who is a sole proprietor or who is a partner owning more than ten (10%) percent of either the capital or profits interest of a partnership.

**1.2.62 "Participant":** Any Eligible Employee who enters the Plan by meeting the requirements of Part 2, Article 1.

**1.2.63 "Plan":** The defined benefit pension plan for Employees as set forth in this Agreement, together with any amendments or supplements thereto.

**1.2.64 "Plan Administrator":** The person, persons or entity appointed by the Employer to administer the Plan or, if the Employer fails to make such appointment, the Employer.

**1.2.65 "Plan Year":** The twelve (12) consecutive month period commencing February 1st and ending January 31st. In the event that a short Plan Year exists, each Employee shall be credited with a Year of Credited Service, a Year of Eligibility Service, or a Year of Vesting Service if he is credited with Hours of Service equal to the Hours of Service required for a full year multiplied by the number of months in the short Plan Year divided by twelve (12). An Employee shall be credited with a partial year determined in accordance with Section 1.2.90 or 1.2.94 based upon the pro-rata number of Hours of Service required for a full year.

**1.2.66 "Postponed Retirement Benefit":** The benefit of a Participant payable upon the termination of employment by the Participant after his Normal Retirement Date, as determined in Section 2.3.4.

**1.2.67 "Pre-Retirement Survivor Annuity":** A survivor annuity for the life of the surviving spouse (or other Beneficiary) of the Participant determined as a percentage of the benefit the Participant would have received had he retired or otherwise terminated employment with the Employer on the day before his death (or his actual date of termination of employment, if earlier) and selected a Joint and Survivor Annuity to commence as of his date of death or the earliest date that benefits could commence under the Plan, if later.

**1.2.68 "Present Value of Accrued Benefit":** The Actuarial Equivalence of the Accrued Benefit of a Participant on any date payable in a single sum based on the assumptions in Section 1.2.3 and, if applicable, the assumptions in Sections 3.1.2(d)(1) and (2).

**1.2.69 "Primary Insurance Amount" or "PIA":** The old-age insurance benefit under section 202 of the Social Security Act payable to each Participant at his Social Security Retirement Age. PIA shall be determined under the Social Security Act in effect at the time the Participant's termination of employment with the Employer, based on the then Taxable Wage Base, Social Security breakpoints, consumer price index, and other like factors. In determining a Participant's PIA, actual Compensation paid to the Participant by the Employer during all periods of employment shall be used and Compensation earned after the date the Participant terminates employment with the Employer and prior to his Social Security Retirement Age shall be assumed to continue at his current rate of Compensation. Compensation prior to becoming an Employee of the Employer is projected backwards from his date of hire to his 21st birthday assuming a 6% salary scale unless a Participant produces evidence that his actual compensation for such years will produce a lower PIA amount, in which case such actual compensation will be used. Such PIA shall be adjusted as set forth in Sections 2.3.15(d) and (e), if applicable.

**1.2.70 "Qualified Domestic Relations Order (QDRO)":** A domestic relations order which creates or recognizes the existence of an Alternate Payee's right to receive all, or a portion of, the benefits payable under this, or any other plan of the Employer, with respect to a Participant and which has been determined by the Plan Administrator to satisfy the conditions of Code section 414(p).

**1.2.71 "Qualified Joint and Survivor Annuity":** A Joint and Survivor Annuity which is immediately payable and which the Beneficiary is the spouse of the Participant. The percentage of the survivor annuity shall be 50%

If a Participant is not married at the time benefits are payable, a Straight Life Annuity shall be paid in lieu of a Qualified Joint and Survivor Annuity.

**1.2.72 "Qualified Military Service":** Any service in the uniformed services, whether on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive training, full-time National Guard duty, and the period of time a person is absent to determine his fitness to perform any such duty. Uniformed services refers to the Armed Forces, the Army National Guard, the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

**1.2.73 "Qualified Pre-Retirement Survivor Annuity":** A Pre-Retirement Survivor Annuity for which the Beneficiary is the spouse of the Participant and the benefit the Participant would have received is a Qualified Joint and Survivor Annuity (or the actuarial equivalent thereof.)

(a) In the case of a Participant who dies after the date on which the Participant attained the earliest retirement age under the Plan on which he could elect to receive retirement benefits, such survivor annuity shall be immediately payable; and

(b) In the case of a Participant who dies on or before such date, such survivor annuity shall be an immediate annuity payable commencing in the month in which the Participant would have attained the earliest retirement age under the Plan.

In the event that the survivor annuity does not commence as of the Participant's earliest retirement age under the Plan, it shall be actuarially increased (or decreased) to reflect the delayed (or accelerated) commencement date based on the assumptions in Section 1.2.3. Any security interest held by the Plan due to an outstanding loan to the Participant, for which a valid spousal consent has been obtained, if necessary, shall be taken into account.

**1.2.74 "Segregated Account":** An account established and maintained for a Participant representing his interest in a Segregated Fund.

**1.2.75 "Segregated Fund":** Assets held in the name of the Trustee which have been segregated from the Trust Fund in accordance with any of the provisions of the Plan.

**1.2.76 "Self-Employed Individual":** An individual who has Earned Income for the taxable year from the trade or business for which the Plan is established or who would have had Earned Income but for the fact that the trade or business had no net profit for the taxable year.

**1.2.77 "Social Security Retirement Age":** A Participant's Social Security Retirement Age ("SSRA") is based on the Participant's year of birth, as follows:

<u>Year of Birth</u>	<u>SSRA</u>
1937 or earlier	65
1938 through 1954	66
After 1954	67

**1.2.78 "Standard Interest Rate":** An interest rate that equals or exceeds 7.5%, but is not in excess of 8.5%, or such other range as the Commissioner of the Internal Revenue Service may prescribe from time to time.

**1.2.79 "Standard Mortality Table":** A mortality table that is contained in the following: 1984 Unisex Pension Mortality Table (UP '84); 1983 Group Annuity Mortality Table ('83 GAM-male or '83 GAM-female); 1983 Individual Annuity Mortality Table ('83 IAM-male or '83 IAM-female); 1971 Group Annuity

Mortality Table ('71 GAM-male or '71 GAM-female); or 1971 Individual Annuity Mortality Table ('71 IAM-male or '71 IAM-female). Only one table may be selected; thus, if a table consists of male and female rates, only one set may be used. Any other mortality table that the Commissioner of the Internal Revenue Service prescribes shall also be included in the preceding list of mortality tables.

**1.2.80 "Straight Life Annuity":** An annuity payable in equal installments over the life of the Participant that terminates upon the Participant's death.

**1.2.81 "Taxable Wage Base":** The contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the Plan Year.

**1.2.82 "Theoretical Individual Level Premium Reserve":** The reserve at any time, which equals the actuarial accrued liability based on the individual level premium funding method, assuming: (a) that contributions equal to the normal cost have been made on behalf of the Participant from the date Participation commenced to the date of determination; (b) that the benefit amount being funded is the Participant's Normal Retirement Benefit, as determined in Section 2.3.2, assuming that the Participant earns a Year of Credited Service from the date the reserve is being calculated until his Normal Retirement Date and that his Compensation and like factors remain constant; and (c) that any ancillary benefits are disregarded.

**1.2.83 "3% Rule":** A Participant's Accrued Benefit at any time equals three (3%) percent of the Normal Retirement Benefit multiplied by the number of Years of Participation (not in excess of 33-1/3), including Years of Participation after Normal Retirement Age. For purposes of determining the Accrued Benefit, the Normal Retirement Benefit is the benefit to which a Participant would be entitled if participation commenced at the earliest possible date for participation under the Plan and continued until the earlier of age 65 or Normal Retirement Age. The Normal Retirement Benefit to which a Participant would be entitled shall be determined by assuming that the Participant continues to earn the average rate of Compensation earned during the consecutive years of service (not to exceed the lesser of ten (10) years or the number of years used in determining the Participant's Normal Retirement Benefit) for which such Participant's Compensation was the highest.

**1.2.84 "Trust Fund":** All money and property of every kind and character held by the Trustee pursuant to the Plan.

**1.2.85 "Trustee":** The persons, corporations, associations or combination of them who shall at the time be acting as such from time to time hereunder.

**1.2.86 "Vested Retirement Benefit":** The benefit due a Participant upon resignation or discharge.

**1.2.87 "Voluntary Account":** An account established and maintained for a Participant for accounting purposes to which his Voluntary Employee Contributions have been added.

**1.2.88 "Voluntary Contribution Benefit":** The benefit of a Participant payable as a result of his voluntary contributions.

**1.2.89 "Voluntary Employee Contributions":** Pre-tax contributions made by a Participant at his discretion, prior to Plan Years beginning in 1987, and after-tax contributions made by a Participant at his discretion.

**1.2.90 "Year(s) of Credited Service":** Subject to any limitations or exclusions under the Plan's benefit formula, a Participant's Years of Credited Service shall be each Plan Year during which the Participant completes 1000 Hours of Service. Except as otherwise provided, a Participant's Years of Credited Service shall be based solely on years while a Participant. In the event that an Employee commences participation mid-year such that his initial period of participation is less than a twelve (12) month period, he will be given a Year of Credited Service (or partial year) based upon the total Hours of Service performed during the full twelve (12) month period, including those months prior to his Entry Date.

**1.2.91 "Year(s) of Eligibility Service":** An Eligibility Computation Period in which the Employee completes 1000 Hours of Service.

**1.2.92 "Year(s) of Participation":** A year in which a Participant earns a Year of Credited Service.

**1.2.93 "Year of Service":** A year in which an Employee earns a Year of Credited Service, or would have, if the Plan was in existence and he was a Participant in the Plan.

**1.2.94 "Year(s) of Vesting Service":** Each Plan Year during which the Employee completes 1000 Hours of Service.

## PART 2

### ARTICLE 1

#### PARTICIPATION

**2.1.1 Eligibility Requirements.** Each Employee shall be eligible to participate in this Plan upon the later of the date the Employee attains age 21 or completes one (1) Year of Eligibility Service, as defined in Section 1.2.91, provided that he is an Employee on such date.

**2.1.2 Commencement of Participation.** An Eligible Employee shall become a Participant in the Plan on the applicable Entry Date, as defined in Section 1.2.33.

**2.1.3 Participation upon Reemployment.** A Participant whose employment terminates and who is subsequently reemployed shall reenter the Plan as a Participant immediately on the date of his reemployment. In the event that an Employee completes the eligibility requirements set forth in Section 2.1.1 above, his employment terminates prior to becoming a Participant and he is subsequently reemployed, such Employee shall be deemed to have met the eligibility requirements as of the date of his reemployment and shall become a Participant on the date of his reemployment; provided, however, that if he is reemployed prior to the date he would have become a Participant if his employment had not terminated, he shall become a Participant as of the date he would have become a Participant if his employment had not terminated. Any other Employee whose employment terminates and who is subsequently reemployed shall become a Participant in accordance with the provisions of Sections 2.1.1 and 2.1.2.

**2.1.4 Termination of Participation.** An Employee who has become a Participant shall remain a Participant until the entire amount of his vested Accrued Benefit is distributed to him, or his Beneficiary, in the event of his death.

**2.1.5 Plan Administrator's Determination.** In the event any question shall arise as to the eligibility of any person to become a Participant or the commencement of participation, the Plan Administrator shall determine such question and the Plan Administrator's decision shall be conclusive and binding, except to the extent of a claimant's right to appeal the denial of a claim.

**2.1.6 Existing Participants.** An Employee who, on the Effective Date of this Plan, was a Participant under the provisions of the Plan as in effect immediately prior to the Effective Date shall be a Participant on the Effective Date and the provisions of Sections 2.1.1 and 2.1.2, pertaining to participation, shall not be applicable to such Employee. The rights of a Participant whose employment terminated prior to the Effective Date shall be determined under the provisions of the Plan as in effect at the time of such termination.

**2.1.7 Change in Status.** If any Participant continues in the employ of the Employer or an affiliate for which service is required to be taken into account but ceases to be an Employee by becoming a member of any ineligible class for any reason (such as becoming covered by a collective bargaining agreement unless the collective bargaining agreement otherwise provides) the Participant shall continue to be a Participant until the entire amount of his benefit is distributed, but the individual shall not be entitled to accrue benefits during the period that the Participant is not an Employee for such reason. Such Participant shall continue to receive credit for Years of Vesting Service completed during the period for purposes of determining his vested and non-forfeitable interest in his Accrued Benefit. In the event that the individual subsequently again becomes a member of an eligible class of employees, the individual shall participate immediately upon the date of such change in status. If such Participant incurs a Break in Service and is subsequently reemployed, eligibility to participate shall be determined in accordance with Section 2.1.3. In the event that an individual who is not a member of an eligible class of employees becomes a member of an eligible class, the individual shall participate immediately if such individual has satisfied the eligibility



requirements and would have otherwise previously become a Participant and shall receive credit for Years of Vesting Service completed while in the ineligible class for purposes of determining his vested and non-forfeitable interest in his Accrued Benefit.

**2.1.8 Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to Qualified Military Service, as defined in Section 1.2.72, will be provided in accordance with section 414(u) of the Code.

**2.1.9 One-Time Election Not to Participate.** The Employer does not permit Employees to opt out of the Plan. All Employees who are eligible to participate in the Plan must enter on the next Entry Date as specified in Section 1.2.33.

**2.1.10 Fail-Safe Accruals.**

(a) The Plan must satisfy the participation requirements of section 401(a)(26) of the Code, which specifies that the Plan benefit the lesser of:

(1) 50 "employees"; or

(2) forty (40%) percent of all "employees", but not less than two (2), unless there is only one "employee" of the Employer.

For this purpose, the term "employee" shall mean Employee, as defined in Section 1.2.31, but modified to exclude any Employee who does not meet the age and service conditions, if any, specified in Section 2.1.1. The exclusions in Section 1.2.28 shall not apply. Employees who would be Participants, but for the refusal to contribute Mandatory Employee Contributions to the Plan, are considered as benefiting under the Plan. An Employer may, if approved by the Secretary of the Treasury, apply these requirements separately with respect to each "separate line of business", as that term is defined in section 414(r) of the Code, but omitting the condition of subsection (2)(A) (specifying that the line of business have 50 or more employees) and subsection (7) (defining separate lines of business as including geographically diverse operating units.)

Plans that are not Top-Heavy that do not cover any Highly Compensated Employees (and are not aggregated with any other plan of the Employer that covers Highly Compensated Employees for the purposes of Code sections 401(a)(4) and 410(b)), and frozen plans certified by the Plan's Actuary as being underfunded that are insured by the Pension Benefit Guaranty Corporation (or if uninsured are not Top-Heavy), are deemed to satisfy section 401(a)(26) even if the conditions listed above are not met. For purposes of this paragraph, a plan providing only Minimum Top-Heavy Retirement Benefits is considered frozen.

(b) The Plan does not utilize any fail-safe provisions, thus if the Plan would otherwise fail to satisfy section 401(a)(26) of the Code and the regulations thereunder, it must be amended within 9-1/2 months after the end of the Plan Year to bring the Plan into compliance.

(c) The Plan must satisfy the minimum coverage requirements of section 410(b) of the Code by meeting the ratio percentage test of regulation 1.410(b)-2(b)(2).

The ratio percentage test requires that the Plan's "ratio percentage" is at least seventy (70%) percent for the Plan Year. A Plan's "ratio percentage" equals a fraction, the numerator of which is the percentage of Non-Highly Compensated Employees (rounded to the nearest hundredth of a percentage point) who benefit under the Plan, and the denominator of which is the percentage of Highly Compensated Employees (rounded to the nearest hundredth of a percentage point) who benefit under the Plan. The percentage of Non-Highly Compensated Employees is determined by dividing the number of Non-Highly Compensated Employees who benefit under the Plan by the total number of Non-Highly Compensated Employees of the Employer. The percentage on Highly-Compensated Employees is determined by dividing the number of Highly Compensated Employees who benefit under the Plan by the total number of Highly Compensated Employees of the Employer.

For this purpose, all "employees", as that term is modified in subsection (a) above, must be taken into account. The Employer may aggregate this Plan with another plan or plans of the Employer in determining whether the minimum coverage requirements are met; provided such other plan is aggregated for the purpose of satisfying section 401(a)(4) of the Code and the regulations thereunder. In such event, the percentages calculated in the previous paragraph will be determined by dividing the Non-Highly Compensated (or Highly Compensated) Employees benefiting under this Plan and the other plan or plans being aggregated by the total number of Non-Highly Compensated (or Highly Compensated) Employees of the Employer.

**(d)** If after the application of Section (b) above, the Plan would otherwise fail to satisfy the requirements of section 410(b)(1) of the Code and the regulations thereunder (based on the annual testing method of regulation 1-410(b)-8(4)) because of the failure to benefit a sufficient number or percentage of Participants for the Plan Year, considering all the applicable exclusions of sections 410(b)(3) and (4) of the Code, and the right to receive a benefit accrual is conditioned upon membership in a certain Employee classification, or the completion of more than 500 Hours of Service, an additional benefit accrual shall be given by the Employer to affected Employees who are members of an eligible classification of Employees subject to the following provisions:

**(1)** Non-Highly Compensated Employees who belong to an eligible Employee classification, as listed in Section 1.2.31, and who have over 500 Hours of Service for the Plan Year, but do not meet the Hours of Service requirement necessary for a benefit accrual, shall be given an accrual for the Plan Year, one at a time, in order of decreasing Hours of Service credited, until the Plan satisfies the ratio percentage test of section 410(b)(1) of the Code. If two or more Employees have the same number of Hours of Service credited during the Plan Year, the Employee with the lowest Compensation shall receive a benefit accrual.

**(2)** If the ratio percentage test of section 410(b) of the Code is still not satisfied, then specific Non-Highly Compensated Employees from all Employee classifications (after the application of sections 410(b)(3) and (4) of the Code) shall be given a benefit accrual, as follows:

**(i)** Non-Highly Compensated Employees who meet the Plan's eligibility requirements (except classification) and benefit accrual requirements shall be given a benefit accrual for the Plan Year, one at a time, in order of increasing Compensation for the Plan Year, until the Plan passes the ratio percentage test of section 410(b)(1) of the Code. If two or more Employees have the same Compensation, then the Employee with the highest most number of Hours of Service credited shall receive a benefit accrual.

**(ii)** If still not passing, then Non-Highly Compensated Employees who meet the Plan's eligibility requirements (except classification), and who have more than 500 Hours of Service, but do not meet the Hours of Service requirement for a benefit accrual, shall be given a benefit accrual for the Plan Year, one at a time, in order of decreasing Hours of Service credited, until the Plan passes the ratio percentage test of section 410(b)(1) of the Code. If two or more Employees have the same number of Hours of Service credited, then the Employee with the least Compensation shall be given a benefit accrual.

**(3)** Fail-Safe benefit accruals shall be given to the smallest number of Employees to allow the Plan to satisfy the requirements of Code section 410(b)(1).

**(e)** Nothing in this Section 2.1.10 shall be construed to imply that a benefit accrual given in a particular Plan Year is an indication that a benefit accrual will be given in a future Plan Year. Employees who are given a benefit accrual in a particular Plan Year who are not members of an Eligible Employee classification will not be considered as members of an Eligible Employee classification in future years and will not be entitled to a benefit accrual, unless they satisfy the eligibility and participation requirements of the Plan or this Section 2.1.10 is invoked in a future year.

## ARTICLE 2

### FUNDING

**2.2.1 Employer Contributions.** It is the intention of the Employer to continue the Plan and make regular contributions to the Trustee each Year in such amounts as are necessary to maintain the Plan on a sound actuarial basis and to meet minimum funding standards as prescribed by any applicable law. Except as provided in Section 2.2.2 or Section 2.5.8, such contributions are irrevocable once transferred to the Trustee.

**2.2.2 Return of Contributions.** Employer contributions shall be returned to the Employer in the following instances:

(a) If the contribution is made by the Employer by mistake of fact, then the contribution shall be returned within one year after its payment upon the Employer's written request.

(b) Each contribution by the Employer is conditioned on initial qualification of the Plan under the applicable sections of the Code. If the Commissioner of Internal Revenue determines that the Plan is not qualified, then the contribution made incident to the initial qualification by the Employer shall be returned within one year after the date of denial of qualification of the Plan; provided that the application for initial qualification is made by the time prescribed by law for filing the Employer's tax return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

(c) Each contribution by the Employer is conditioned upon the deductibility of the contribution under Code section 404. If the deduction for part or all of the contribution is disallowed by the Internal Revenue Service, the contribution, to the extent of such disallowance, shall be returned to the Employer within one year after such disallowance. A nondeductible contribution of less than \$25,000 will be deemed de minimis, and shall be returned to the Employer within one year of the date of the certification of such non-deductibility by the Plan's Actuary, as specified in Revenue Procedure 90-49, 1990-2 C.B. 620.

**2.2.3 Voluntary Employee Contributions.** Employee Contributions are not permitted under this Plan.

**2.2.4 Mandatory Employee Contributions.** Employee Contributions are not required under this Plan.

## ARTICLE 3

### BENEFITS

#### **2.3.1 Accrued Benefits.**

(a) General Rule. A Participant's Accrued Benefit on any date shall be determined using the benefit formula for Normal Retirement Benefits in Section 2.3.2, but based on the Participant's Average Annual Compensation, Years of Credited Service, and like factors at the date of determination; provided, the 133 1/3% Rule, as described in Section 1.2.60, is satisfied.

(b) Minimum Accrued Benefit. In the case of a Top-Heavy Plan, the Accrued Benefit shall not be less than the Minimum Top Heavy Retirement Benefit determined in Section 2.6.1. In addition, the Accrued Benefit shall not be less than any prior Accrued Benefit.

(c) Maximum Accrued Benefit. In no event will the Accrued Benefit exceed the maximum benefit limitations of Section 3.1.1.

(d) Cash-Outs. If a Participant receives a cash-out of his vested Accrued Benefit or Minimum Top Heavy Retirement Benefit, and later becomes a Participant, his Accrued Benefit or Minimum Top Heavy Retirement Benefit determined on a subsequent termination of employment will equal the Accrued Benefit or Minimum Top Heavy Retirement Benefit based on his total Years of Credited Service reduced by the vested Accrued Benefit or Minimum Top Heavy Retirement Benefit previously received by such cash-out.

In addition, a Participant who terminates employment without any vested Accrued Benefits will have his Years of Credited Service reinstated if he returns to the employ of the Employer before incurring five (5) consecutive Breaks in Credited Service. If the Participant does not return within such period, his Years of Credited Service will be forfeited and he will be treated as a new Participant upon his date of rehire.

(e) Prior Distributions. Any Accrued Benefit shall be adjusted for any prior distributions, using, if applicable, the assumptions in Section 1.2.3 and Sections 3.1.2(d)(1) and (2).

(f) Pre-ERISA Accruals. With respect to Plan Years before section 411 of the Code was applicable to the Plan, (as specified in Treasury regulation 1.411(a)-2), a Participant's Accrued Benefit shall not be less than the greater of the Accrued Benefit determined under the provisions then in effect, and one half of the Accrued Benefit that would have accrued if the provisions in (a) above and Section 2.3.2 had been in effect. The excess of the Normal Retirement Benefit over the Participant's Accrued Benefit (attributable to Plan Years before section 411 of the Code was applicable and adjusted as in the prior sentence, if necessary) shall accrue according to the accrual method in (a) above, but recognizing only those Years of Credited Service earned during Plan Years after section 411 of the Code was applicable to the Plan.

**2.3.2 Normal Retirement Benefit.** Upon attaining Normal Retirement Age, a Participant shall be entitled to a Normal Retirement Benefit, as defined below, payable as an annuity in the Normal Form of Benefit, commencing as of the Participant's Normal Retirement Date. In the case of a Top-Heavy Plan, the Normal Retirement Benefit shall not be less than the Minimum Top Heavy Retirement Benefit determined in Section 2.6.1. In addition, such Normal Retirement Benefit shall not be less than the largest Accrued Benefit payable (as an annuity in the Normal Form of Benefit) to a Participant prior to attaining Normal Retirement Age. In no event will the Normal Retirement Benefit exceed the maximum benefit limitations of Section 3.1.1.

A Participant's annual Normal Retirement Benefit equals 2% of the Participant's Average Annual Compensation multiplied by the Participant's Years of Credited Service. For purposes of

determining the Normal Retirement Benefit, no more than 25 Years of Credited Service shall be taken into account. Notwithstanding the above, a Participant who attains Normal Retirement Age shall be entitled to a minimum retirement benefit equal to \$433.00 per year. In no event will a Participant's Normal Retirement Benefit exceed \$2,650.00 per year. The Normal Retirement Benefit determined above shall be rounded to the nearest \$1.00

**2.3.3 Early Retirement Benefit.** The Plan does not provide an Early Retirement Benefit.

**2.3.4 Postponed Retirement Benefit.** If a Participant continues his employment past his Normal Retirement Age, he shall be entitled to a Postponed Retirement Benefit, payable as an annuity in the Normal Form of Benefit, commencing as of the date the Participant actually retires. Such Postponed Retirement Benefit shall equal the greater of the Participant's Normal Retirement Benefit, as determined in Section 2.3.2, based upon Average Annual Compensation, Years of Credited Service, and like factors at such date; or, the Actuarial Equivalent of the Normal Retirement Benefit (determined at Normal Retirement Age), based on the factors listed in Section 1.2.3, at such date. In lieu of a Participant's Normal Retirement Benefit, a Participant may elect to have the lump sum Actuarial Equivalent, based on factors listed in Section 1.2.3, and subject to the restrictions of Sections 2.3.12 (restrictions on lump sum payments), 2.5.3 (minimum required distributions), 2.5.4 (Participant and spousal waivers of annuity payments), and 3.1.1 (maximum benefits under Code section 415.), segregated in accordance with section 414(k) of the Code. The Participant's Segregated 414(k) Account shall be treated as a defined contribution account thereafter for all purposes, and shall be credited with its proportionate share of the gains and losses of the Trust Fund. A Participant's Postponed Retirement Benefit at any future point in time is equal to the value of the Participant's Segregated 414(k) Account and any annuity selected will be determined as if the Segregated 414(k) Account is a defined contribution plan. The Actuarial Equivalent lump sum of any benefits accrued by the Participant after Normal Retirement Date due to additional Years of Credited Service or Compensation may also be segregated and added to the Participant's Segregated 414(k) Account.

When determining the amount that can be segregated in a Participant's Segregated 414(k) Account, the defined benefit limitations of section 415(b) of the Code shall apply. However, upon establishment of the Segregated 414(k) Account, the defined benefit limitations of section 415(b) of the Code shall not thereafter apply to such account.

**2.3.5 Disability Benefit.** If a Participant terminates employment prior to his Normal Retirement Age as a result of a medically determinable physical or mental impairment which may be expected to result in death or to last for a continuous period of not less than twelve (12) months and which renders him incapable of performing his duties, he shall be entitled to a Disability Benefit. The Plan Administrator shall make all determinations in connection with the permanence and degree of such disability in a uniform, nondiscriminatory manner on the basis of medical evidence. Such Disability Benefit shall be equal to the Participant's Accrued Benefit, adjusted in accordance with Section 2.3.3, and payable at his Disability Retirement Date.

**2.3.6 Death Benefits.**

(a) A Participant who dies after the commencement of benefits will be entitled to the death benefits provided by the Normal Form of Benefit or the optional form of benefit selected by the Participant. If such form of benefit does not provide a death benefit, no death benefits are available from the Plan.

(b) The spouse or other Beneficiary of a Participant who dies before the commencement of benefits will be entitled to a Death Benefit equal to the proceeds of any insurance Contracts, purchased in accordance with Part 3, Article 6, on the Participant's life, plus the Present Value of the vested Accrued Benefit, based on the assumptions in Section 1.2.3, subject to a minimum based on the assumptions in Sections 3.1.2(d)(1) and (2).

(c) Notwithstanding the above, the surviving spouse of a Participant who dies on or after attaining his Normal Retirement Age, but before benefits commence, shall not receive a Death Benefit less than the Qualified Pre-Retirement Survivor Annuity, as defined in Section 1.2.73(a)

assuming that the Participant had elected the survivor percentage in Section 1.2.71, unless the spouse had waived such benefits prior to the Participant's death in accordance with Section 2.5.4. The surviving spouse of a Participant who dies before attaining his Normal Retirement Age shall not receive a Death Benefit less than the Qualified Pre-Retirement Survivor Annuity, as defined in Section 1.2.73(b), assuming that the Participant had elected the survivor percentage in Section 1.2.71, unless the spouse had waived such benefits prior to the Participant's death in accordance with Section 2.5.4.

(d) In no event will the total Death Benefit (from all sources including assets of the Trust, insurance policies and annuity contracts) attributable to a Participant exceed the greater of:

(1) the Present Value of the Participant's Accrued Benefit based on the assumptions in Section 1.2.3 or Sections 3.1.2(d)(1) and (2), if greater;

(2) one hundred (100) times the Participant's monthly Normal Retirement Benefit assuming his Compensation and Years of Credited Service continue to Normal Retirement Age or his current age, if later; or

(3) the policy proceeds from any life insurance purchased less any cash values of the policies plus the Participant's Theoretical Individual Level Premium Reserve, as defined in Section 1.2.82.

For purposes of item (3), if whole life policies are purchased, the maximum life insurance is the face amount that can be purchased by premiums equal to 66% of the theoretical contribution determined when determining the Theoretical Individual Level Premium Reserve. If term life or universal life policies are purchased, the maximum life insurance is the face amount that can be purchased by premiums equal to 33% of such theoretical contribution.

For purposes of determining the total Death Benefit, the Present Value of any Pre-Retirement Survivor Annuity distributed in the form of an annuity shall be determined using the assumptions set forth in Section 1.2.3. In the event that policy proceeds exceed the maximum permissible death benefit, such surplus shall not be paid to the Participant's Beneficiary or Beneficiaries, and shall instead become an asset of the Trust.

**2.3.7 Vested Retirement Benefit.** If a Participant terminates his employment by reason of resignation or discharge and at such time he is not entitled to a Normal Retirement Benefit, Early Retirement Benefit, Postponed Retirement Benefit, or Disability Benefit, he shall be entitled to his vested Accrued Benefit based on his Years of Credited Service, Average Annual Compensation, and like factors at his date of termination. Such vested Accrued Benefit shall be payable as of the Participant's Normal Retirement Date, or at the Participant's election, the Actuarial Equivalence, based on the assumptions of Section 1.2.3, of such Accrued Benefit shall be payable at anytime after the Participant terminates employment with the Employer; provided that the conditions in Part 2, Article 5 are met.

**2.3.8 Voluntary Contribution Benefit.** In addition to any other benefit for which provision is made in this Article, a Participant shall be entitled to the balance in his Voluntary Account as of any date with respect to which he commences receiving his Employer provided benefits.

**2.3.9 Mandatory Contribution Benefit.**

(a) If the Plan requires, or has ever required, Mandatory Employee Contributions as a condition of participating in the Plan (or a prior plan), the Accrued Benefit attributable to such Employee Contributions, shall be computed as follows:

(1) Determine the total amount of contributions made by a Participant as a condition of participation in the Plan and, where applicable, any prior plan;

(2) Add to this amount the interest, if any, required by the terms of the Plan or prior plan

to be paid on such contributions up to the ERISA compliance date, as specified in Treasury Regulation 1.411(a)-2;

(3) Add to the resulting sum interest, compounded annually at the rate of five (5%) percent, from the ERISA compliance date or the date the Participant began participation in the Plan or prior plan, whichever is later, to the Participant's attained age or Normal Retirement Age, whichever is later, but not beyond the last day of the last Plan Year beginning before January 1, 1988;

(4) Add to this sum, interest compounded annually at the rate of one hundred twenty (120%) percent of the Federal mid-term rate (as in effect under section 1274 of the Code for the first month of the Plan Year) from the first day of the first Plan Year beginning after December 31, 1987, and ending with the date on which the determination is being made; and

(5) If the Participant has not yet attained Normal Retirement Age, add to this sum, interest compounded annually at the rate specified at Section 3.1.2(d)(1) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains Normal Retirement Age.

(6) The amount in item (4) or (5), as appropriate, shall be converted to the Normal Form of Benefit using the interest rate and mortality table specified in Sections 3.1.2(d)(1) and (2).

The Employer provided accrued benefit in all years shall equal the excess, if any, of the Accrued Benefit over the Employee provided accrued benefit. A Participant shall be one hundred (100%) percent vested in his Employee provided accrued benefit.

(b) A Participant's Accrued Benefit attributable to Plan Years beginning on or after January 1, 1994, shall not be less than sum of:

(1) the Employee provided accrued benefit calculated in accordance with (a)(1) through (6) above, considering only those contributions made by the Participant during Plan Years beginning on or after January 1, 1994; and

(2) 50% of the total Accrued Benefit (Employer and Employee provided benefits) earned in Plan Years beginning on or after January 1, 1994.

(c) This Section 2.3.9, however, shall not apply to the extent that any Mandatory Employee Contributions made to the Plan (or prior plan) have been refunded to the Participant. If the Employer has amended the Plan or specified in Section 2.2.4 that Mandatory Employee Contributions are to provide additional benefits, the Participant (or his Beneficiary) shall be entitled to his Accrued Benefit, as determined in Section 2.3.1, (or Death Benefit, as determined in Section 2.3.6), plus the account balance determined in (a)(4) as of the date of distribution, or if applicable, the Segregated Account containing his Mandatory Employee Contributions.

**2.3.10 Actuarial Assumptions.** Whenever the use of actuarial assumptions is required, the assumptions listed in Section 1.2.3, subject to the assumptions in Sections 3.1.2(d)(1) and (2), if applicable, shall be used.

**2.3.11 Cost of Living Adjustments.** A cost of living adjustment is not provided. Any adjustment to an inactive Participant's benefits will be done on an ad hoc basis in a nondiscriminatory basis.

**2.3.12 Optional Forms of Benefit.** In lieu of the Normal Form of Benefit, as defined in Section 1.2.55, each Participant may select an optional form of benefit payment, which is the Actuarial Equivalence of the Normal Form, based on the assumptions listed in Section 1.2.3. If a Participant, (and his spouse, if applicable), does not select an optional form of benefit, benefits will be in the Qualified Joint and Survivor Annuity form of payment, assuming that the Participant had elected the survivor percentage in Section 1.2.71. Available options are set forth below and are available to all Participants on a

nondiscriminatory basis.

**(a) Life Annuity.** A monthly life annuity payable for the life of the Participant. Upon the Participant's death, no further payments are made. If the Normal Form of Benefit is not a life annuity, then the monthly amount determined above will be actuarially increased.

**(b) Installment Payments.** Payments in equal monthly installments over a fixed period of time, not exceeding the Participant's life expectancy or the joint life and last survivor expectancy of the Participant and his Beneficiary. When the predetermined fixed period of installments ends, no further benefits are payable from the Plan. The monthly installment shall be the greater of:

(1) the Present Value of the vested Accrued Benefit, based on the assumptions in Section 1.2.3, and amortized over the selected time period based on the interest in that Section; and

(2) the Present Value of the vested Accrued Benefit, based on the interest rate and mortality table in Sections 3.1.2(d)(1) and (2), and amortized over the selected time period based on the interest in Section 3.1.2(d)(1).

Installment payments may be for any number of years selected by the Participant; provided such number does not exceed his life expectancy, or the joint and last survivor life expectancy of the Participant and his Beneficiary

**(c) Lump Sum Payment.** A single payment equal to the Actuarial Equivalence of the vested Accrued Benefit based on the assumptions in Section 1.2.3. Upon the receipt of this payment, no further benefits are payable from the Plan. Lump Sum payment shall not be less than the Present Value of the vested Accrued Benefit based on interest rate and mortality table specified in Sections 3.1.2(d)(1) and (2), respectively. All Participants are eligible for a Lump Sum Payment at any time after the Participant's date of termination from employment with the Employer, regardless of the reason.

**2.3.13 Small Amounts.** Benefits will be paid as calculated, regardless of the monthly amount.

**2.3.14 Maximum Permitted Disparity:** The Normal Retirement Benefit determined in Section 2.3.2 is not restricted by the maximum permitted disparity limitations of Code section 401(l).

**2.3.15 Maximum Integration.** The Normal Retirement Benefit determined in Section 2.3.2 is not integrated with Social Security.

**2.3.16 Frozen Accrued Benefits.** The Employer may select a Fresh Start Date at anytime; provided that all Participants of the Plan are included in the Fresh Start Group or the Fresh Start Group does not favor Highly Compensated Employees. In addition, a Fresh Start Date also exists for any 401(a)(17) Participants as of their TRA '86 Fresh Start Date and their OBRA '93 Fresh Start Date, as specified in (d)(1) below. A Fresh Start Date exists or will exist for any group of acquired employees due to a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the group of employees A Fresh Start Date also exists or will exist for any group of Employees with frozen benefits, based on a benefit formula different from Section 2.3.1 or Section 2.3.2, accrued under another plan of the Employer, which transferred its assets and liabilities to this Plan. As of the Effective Date of this Plan, there were no such groups. Any future such groups will be listed in Appendix B and attached hereto and be treated as an amendment to this Plan.

**(a) Determination of Frozen Accrued Benefits.** As of each Fresh Start Date, all Participants in the Fresh Start Group will have their Accrued Benefit, determined as if the Participant terminated employment on such Fresh Start Date, (or the date the Participant actually terminated employment with the Employer, if earlier), determined in accordance with the provisions of the Plan applicable for the Plan Year containing such Fresh Start Date, but without regard to any amendment made to the



Plan after that date other than amendments recognized as effective as of or before the Fresh Start Date under Code section 401(b) or Treasury regulation 1.401(a)(4)-11(g). Such Accrued Benefit will be the Participant's Frozen Accrued Benefit. If the Participant does not have a Fresh Start Date, then his Frozen Accrued Benefit is zero.

If, as of the Participant's latest Fresh Start Date, the amount of a Participant's Frozen Accrued Benefit was limited by the application of section 415 of the Code, the Participant's Frozen Accrued Benefit will be increased for years after the latest Fresh Start Date to the extent permitted under section 415(d)(1) of the Code. In addition, if the Frozen Accrued Benefit of a Participant includes the Minimum Top Heavy Retirement Benefit provided in Section 2.6.1, the Frozen Accrued Benefit will be increased to the extent necessary to comply with the average compensation requirement of Code section 416(c)(1)(D)(i).

If the Plan's Normal Form of Benefit in effect on the Participant's latest Fresh Start Date is not the same as the Normal Form of Benefit after such Fresh Start Date, or the Normal Retirement Age for any Participant on the latest Fresh Start Date is not the same as of the Normal Retirement Age for that Participant after such Fresh Start Date, the Frozen Accrued Benefit will be adjusted to the Actuarial Equivalence of the Normal Form of Benefit after the Participant's latest Fresh Start Date, commencing at the Participant's Normal Retirement Date in effect after the latest Fresh Start Date.

If the Plan provides a new optional form of benefit with respect to a Participant's Frozen Accrued Benefit, such new optional form of benefit will be provided with respect to each Participant's entire Accrued Benefit (i.e. accrued both before and after the Fresh Start Date.) The group of Participants with non-zero Accrued Benefits as of the associated Fresh Start Date must satisfy the minimum coverage requirements of Code section 410(b) (without regard to section 410(b)(6)(C).) The rate of benefit accrual for Plan Years after the latest Fresh Start Date must be meaningful when compared to the rate of benefit accrual for Plan Years before the latest Fresh Start Date.

**(b) Determination of Adjusted Frozen Accrued Benefits**

**(1) Other Than 401(a)17 Participants.** A Participant's Adjusted Frozen Accrued Benefit shall equal his Frozen Accrued Benefit.

**(2) 401(a)(17) Participants.** A 401(a)(17) Participant's Adjusted Frozen Accrued Benefit shall equal his Frozen Accrued Benefit.

**(c) Conditions for applying Fresh Start Adjustments.** This Plan does not apply the Fresh Start adjustments.

**(d) Definitions.** For this Section 2.3.16, the terms below shall have the following meanings:

**(1) "401(a)(17) Participants":** A Participant whose Accrued Benefit is based on Compensation in excess of the compensation limit specified in Code section 401(a)(17) after a legislative or regulatory change, but which met the requirements before the change. A 401(a)(17) Participant may have a TRA '86 Fresh Start Date, an OBRA '93 Fresh Start Date, or both, depending on whether his own Accrued Benefit was affected by the change. There is no TRA '86 Fresh Start Date or OBRA Fresh Start Date for this Plan.

**(2) "Fresh Start Date":** Typically, the last day of the Plan Year preceding a Plan Year for which any amendment to the Plan which directly or indirectly changes the amount of a participant's Normal Retirement Benefit, such as the underlying formula or definition of Compensation. However, in the case of an acquired group of employees due to a stock or asset acquisition, merger or other similar transaction involving a change in the employer of the group of employees, the Fresh Start Date shall be the last date any employee of such group is considered to be employed by the previous employer, and, in the case of Employees with frozen accrued benefits transferred from another plan, the Fresh Start Date is the date the Employees are considered Participants of this Plan.

(3) "Fresh Start Group": A Fresh Start Group consists of all the Participants who have Accrued Benefits as of the Fresh Start Date and have at least one Hour of Service with the Employer after that date. A Fresh Start Group may be less than all Participants in the Plan if the group consists of only section 401(a)(17) Participants, an acquired group of employees due to a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the group of employees, or Employees with frozen accrued benefits, based on a benefit formula different from Section 2.3.1 or Section 2.3.2, from another plan which transferred its assets and liabilities to this Plan.

## ARTICLE 4

### VESTING

**2.4.1 Vesting of Benefits.** The vested and non-forfeitable interest in a Participant's Accrued Benefit shall be determined as hereinafter provided.

(a) **Normal and Postponed Retirement.** If a Participant terminates employment at or after attaining Normal Retirement Age, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Accrued Benefit or his Minimum Top Heavy Retirement Benefit, as the case may be.

(b) **Early Retirement.** The Plan does not provide for Early Retirement.

(c) **Disability Retirement.** If a Participant terminates employment due to being disabled, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Accrued Benefit or his Minimum Top Heavy Retirement Benefit, as the case may be.

(d) **Death.** In the event of the death of a Participant, the Participant shall be one hundred (100%) percent vested and have a non-forfeitable interest in his Accrued Benefit or his Minimum Top Heavy Retirement Benefit, as the case may be.

(e) **Resignation or Discharge.** Subject to Section 2.4.3, if a Participant terminates by reason of resignation or discharge prior to his Normal Retirement Date, he shall be vested and have a non-forfeitable interest in a percentage of his Accrued Benefit, or his Minimum Top Heavy Retirement Benefit, as the case may be, determined, unless otherwise specified in Section 2.4.2, by taking into account all of his Years of Vesting Service as of such termination date in accordance with the following schedule, or if applicable, the schedule in Section 2.6.1(c):

<u>Years of Vesting Service</u>	<u>Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6 or more	100%

**2.4.2 Service Not Taken into Account.** In determining a Participant's vesting percentage in Section 2.4.1(e), all Years of Vesting Service with the Employer shall be included.

**2.4.3 Reemployment.** In the case of a Participant who has incurred a 1-year Break in Service, Years of Vesting Service before such break will not be taken into account until the Participant has completed a Year of Vesting Service after such Break in Service.

In the case of a Participant who has 5 or more consecutive 1-year Breaks in Service, the Participant's pre-break service will count in vesting of the Employer derived Accrued Benefit only if:

(a) such Participant has any non-forfeitable interest in the Accrued Benefit attributable to Employer contributions at the time of the separation from service, or

(b) upon returning to service the number of consecutive 1-year Breaks in Service is less than the Participant's Years of Vesting Service before such breaks.

Any Years of Vesting Service not taken into account by reason of such Breaks in Service shall not be taken into account in applying the foregoing to a subsequent period of Breaks in Service.

If the Plan is considered or ever was considered an insured plan under section 411(b)(1)(F) of the Code, in the case of a Participant who has five (5) or more consecutive Breaks in Service, all Years of Vesting Service after such Breaks in Service shall be disregarded for the purposes of vesting the Employer derived Accrued Benefit that accrued before such breaks, but both pre-break and post-break service shall count for the purposes of vesting the Employer derived Accrued Benefit that accrues after such breaks. In the case of a Participant who does not have five (5) consecutive Breaks in Service, both the pre-break and post-break service shall count in vesting the Employer derived Accrued Benefit.

**2.4.4 Leave of Absence.** A temporary cessation from active employment with the Employer pursuant to an authorized leave of absence in accordance with the nondiscriminatory policy of the Employer, whether occasioned by illness, military service or any other reason shall not be treated as either a termination of employment or a Break in Service; provided that the Employee returns to employment prior to the end of the authorized leave of absence.

**2.4.5 Voluntary Account.** A Participant's Voluntary Account shall be one hundred (100%) percent vested and non-forfeitable at all times.

**2.4.6 Mandatory Employee Contributions.** A Participant's Accrued Benefit derived from Mandatory Employee Contributions shall be one hundred (100%) percent vested and non-forfeitable at all times.

**2.4.7 Forfeitures.** If a Participant terminates service with the Employer, and the Participant receives a distribution of the entire vested portion of his Accrued Benefit, the non-vested portion shall be forfeited. If the Present Value of a Participant's vested Accrued Benefit is zero, the Participant shall be deemed to have received a distribution of such vested Accrued Benefit.

If a Participant receives a distribution and later resumes employment covered under the Plan, the Participant's Employer derived Accrued Benefit which was forfeited as a result of terminating service with the Employer shall be restored (including all optional forms of benefits and subsidies relating to such benefits) to the amount on the date of distribution.

If a Participant is deemed to receive a distribution pursuant to this Section, and the Participant resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, the Employer derived Accrued Benefit on the date of such deemed distribution will be restored upon the reemployment of the Participant.

If a Participant's Accrued Benefit is forfeited, in full or in part, because the Participant or his Beneficiary cannot be found, such Accrued Benefit, or portion thereof, will be reinstated if a claim is made by the Participant or Beneficiary.

**2.4.8 Termination of Plan.** In the event that this Plan terminates, each Participant shall be fully vested in his Accrued Benefit or his Minimum Top-Heavy Retirement Benefit, as the case may be, to the extent that the Plan is then funded. In the event of a partial termination of this Plan, each Participant with respect to whom such partial termination has occurred shall be fully vested in his Accrued Benefit or his Minimum Top-Heavy Retirement Benefit, as the case may be, to the extent that the Plan is then funded.

## ARTICLE 5

### DISTRIBUTIONS

**2.5.1 Immediate Distributions.** A Participant whose employment is terminated on account of death, disability, Early Retirement, Normal Retirement, or Postponed Retirement may elect (or his Beneficiary may elect) to commence benefits within a reasonable period after such termination of employment in accordance with Section 2.3.2, 2.3.3, 2.3.4, 2.3.5, or 2.3.6, as appropriate, or delay the commencement of benefits subject to the provisions of Sections 2.5.2 and 2.5.3. A Participant whose employment is terminated on account of resignation or discharge before meeting the eligibility requirements of Normal Retirement may elect to commence benefits within a reasonable period after such termination of employment in accordance with Section 2.3.7 or delay the commencement of benefits subject to the provisions of Sections 2.5.2 and 2.5.3.

**2.5.2 Deferred Distributions.** Unless Participant elects otherwise, benefit payments will commence no later than the sixtieth (60th) day after the last day of the Plan Year in which the latest of the following occurs:

- (a) the Participant attains age sixty-five (65) or Normal Retirement Age, if earlier;
- (b) the Participant reaches his tenth (10th) anniversary of participating in the Plan; or
- (c) the Participant terminates his employment with the Employer.

A Participant who terminates employment before satisfying the age requirement for Normal Retirement but has satisfied any service requirement shall be entitled to a distribution of his benefit in accordance with Section 2.5.1 upon attaining such age. The failure of a Participant, or the Participant's spouse, to consent to a distribution while the benefit is Immediately Distributable, as such term is defined in Section 2.5.3(g)(3), shall be deemed to be an election to defer commencement of benefits under this Section.

**2.5.3 Required Distributions.** All distributions and benefit payments are subject to the minimum distribution requirements, including the minimum distribution incidental benefit requirements, of Code section 401(a)(9), and the regulations thereunder, including the proposed Income Tax regulations 1.401(a)(9)-1 and 1.401(a)(9)-2. The Plan will apply the regulations proposed on January 17, 2001, (hereinafter the "2001 Proposed Regulations") to distributions under the Plan made on or after January 1, 2001, and before the first day of the first calendar year beginning after the effective date of any final regulations under Code section 401(a)(9), or such other date as may be specified in guidance published by the Internal Revenue Service. If the total amount of required minimum distributions made to a Participant for 2001 prior to January 1, 2001 is equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such Participant for 2001. If the total amount of required minimum distributions made to a Participant for 2001 prior to January 1, 2001 is less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. In the event that a provision of this Plan conflicts with such requirements, such requirements shall govern.

(a) **Exempt Participants.** Those Participants who executed a valid "Section 242(b)(2) Election" by December 31, 1983, which has not been revoked or modified, may receive their distributions according to the terms of the election; provided, the spousal consent requirements of Code section 417 are satisfied. A "Section 242(b) Election" is an optional election provided by section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which meets the guidelines of IRS Notice 83-23, 1983-2 C.B. 418. Such election is not valid for any assets rolled over into this Plan, unless such rollover was not at the direction of the Participant. A Participant may revoke his election

at any time, but once revoked it cannot be reinstated and the provisions of Paragraphs (b) and (c) will govern his distributions as if the election had not been made. In the event that such a revocation results in distributions being required for prior years, such distributions must be distributed by the December 31st following the calendar year in which the "Section 242(b)(2) Election" was revoked.

**(b) Required Distributions Before Death.** Each Participant must receive the Present Value of his vested Accrued Benefits (based on the assumptions in Section 1.2.3, or on the assumptions in Sections 3.1.2(d)(1) and (2) if greater), or, commence benefit payments in the form of an annuity by his Required Beginning Date. In the event that the Participant or his spouse does not consent to a distribution, the Participant will receive a monthly life annuity, payable as a Qualified Joint and Survivor Annuity, assuming the survivor percentage of Section 1.2.71 and his spouse as Beneficiary, or if unmarried, payable as a Straight Life Annuity. Annuity payments from this Plan shall meet the following requirements:

**(1)** The annuity must be made in periodic payments at intervals not exceeding one (1) year;

**(2)** The annuity must either be a life annuity to the Participant, to the Participant and his Beneficiary, or the Participant's Beneficiary, or, a life annuity with a certain period or an annuity certain, such periods not to exceed the Life Expectancy of the Participant, the Joint Life Expectancy of the Participant and his Beneficiary, or the Life Expectancy of the Participant's Beneficiary, as applicable, determined as of December 31 of the calendar year preceding the first Distribution Year;

**(3)** Once benefits commence, the Life Expectancy or Joint Life Expectancy shall not be recalculated in determining any certain period and the certain period shall not be extended for any reason;

**(4)** Life annuities and life annuities with a certain period not exceeding 20 years must distribute one (1.0) payment as of the Required Beginning Date and may distribute subsequent payments as of their scheduled interval dates;

**(5)** Life annuities with a certain period exceeding 20 years or annuities without a life contingency must distribute the annual required amount by the Required Beginning Date and must distribute the annual required amount by each December 31 thereafter; and

**(6)** Annuity payments may not increase except under the following conditions:

**(i)** To recognize a cost of living adjustment, provided such percentage increase is based on a specified and generally recognized index;

**(ii)** To the extent of any payments to provide for survivor coverage upon the Participant's death in which the Beneficiary dies, but only if such Beneficiary's life expectancy was used in determining the amount of the annuity and after such Beneficiary's death payments continue over the life of the Participant;

**(iii)** To provide for cash refunds of Employee Contributions upon the Participant's death;

**(iv)** Due to an increase in the Participant's benefits under the Plan; or

**(v)** Due to an increase that varies according to the investment performance of underlying assets of a variable annuity.

Annuities that commence after December 31, 1988, are subject to the following additional requirements:

(1) The certain period of an annuity without a life contingency cannot exceed the maximum number of years listed below based upon the Participant's attained age in the calendar year preceding the Participant's Required Beginning Date. If the annuity commences prior to attaining age 70, then the maximum certain period is increased by one (1.0) year for each year that the Participant's attained age is less than 70.

<u>Attained Age</u>	<u>Maximum Years in Certain Period</u>	<u>Attained Age</u>	<u>Maximum Years in Certain Period</u>
70	26.2	93	8.8
71	25.3	94	8.3
72	24.4	95	7.8
73	23.5	96	7.3
74	22.7	97	6.9
75	21.8	98	6.5
76	20.9	99	6.1
77	20.1	100	5.7
78	19.2	101	5.3
79	18.4	102	5.0
80	17.6	103	4.7
81	16.8	104	4.4
82	16.0	105	4.1
83	15.3	106	3.8
84	14.5	107	3.6
85	13.8	108	3.3
86	13.1	109	3.1
87	12.4	110	2.8
88	11.8	111	2.6
89	11.1	112	2.4
90	10.5	113	2.2
91	9.9	114	2.0
92	9.4	115 or older	1.8

(2) If the annuity is a Joint and Survivor Annuity, and the Beneficiary is not the Participant's spouse and is younger than the Participant, the maximum survivor percentage that may continue to the Beneficiary, upon the Participant's death, cannot exceed the percentage listed below based upon the difference in their ages. If a Participant has more than one Beneficiary, the youngest Beneficiary's age shall be used for this purpose.

<u>Years Participant Exceeds Beneficiary Age</u>	<u>Maximum Survivor Percentage</u>	<u>Years Participant Exceeds Beneficiary Age</u>	<u>Maximum Survivor Percentage</u>
10 or less	100%	28	62%
11	96%	29	61%
12	93%	30	60%
13	90%	31	59%
14	87%	32	59%
15	84%	33	58%
16	82%	34	57%
17	79%	35	56%
18	77%	36	56%
19	75%	37	55%
20	73%	38	55%
21	72%	39	54%
22	70%	40	54%
23	68%	41	53%
24	67%	42	53%

25	66%	43	53%
26	64%	44 or more	52%
27	63%		

Any additional benefits accruing to the Participant after his Required Beginning Date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. A Participant's Accrued Benefits will be redetermined annually in accordance with Section 2.3.4. For this purpose, any increase in a Participant's vested portion will be considered as an increase in benefits.

If a Contract for an Annuity is purchased from an Insurer, the terms of the Contract must conform to the requirements of this Section 2.5.3(b), regarding the minimum annuity payment. In the event of a conflict between the Contract and this Plan, the Plan provisions will prevail.

**(c) Required Distributions After Death.**

**(1)** If distribution of the Participant's benefits has begun and the Participant dies before his entire benefit has been distributed to him, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used as of the Participant's death. If the Participant had commenced payments and died prior to attaining his Required Beginning Date, the rules in paragraph (2) below apply unless the Participant's benefits were being distributed as an irrevocable annuity that met the conditions in Section 2.5.3(b).

**(2)** If the Participant dies before benefits have commenced, then his entire interest must be distributed by the December 31 following the fifth (5th) anniversary of his death; provided that the Participant may elect, or may provide that the Beneficiary may elect, to have such benefits paid over the lifetime of the Beneficiary, or a period not to exceed the Life Expectancy of the Beneficiary, in which case benefits must commence by the December 31 of the calendar year following the year of the Participant's death, or if the Beneficiary is the Participant's spouse, the December 31 of the calendar year in which the Participant would have attained age 70½, if living. If the Beneficiary so elects, then the election is irrevocable and must be made prior to the Required Beginning Date of the Beneficiary or the December 31 following the Participant's fifth (5th) anniversary of his death, if earlier.

**(3)** If the Beneficiary dies (before or after his benefits commence), any remaining distributions shall continue in the manner designated above prior to death, unless the Beneficiary is the Participant's surviving spouse and distributions have not commenced. In such a case, the surviving spouse's beneficiary must receive the Participant's entire interest by the December 31 following the fifth (5th) anniversary of the surviving spouse's death, or, if so elected by the Participant (or surviving spouse or surviving spouse's beneficiary), over the lifetime of the surviving spouse's beneficiary or a period not to exceed the Life Expectancy of the surviving spouse's beneficiary, in which case benefits must commence by the December 31 of the calendar year following the calendar year of the surviving spouse's death. Such election shall be made on administrative forms provided by the Plan Administrator.

**(4)** For purposes of this Section, any amount paid to a minor child shall be treated as being paid to the surviving spouse, if payments continue to the surviving spouse when the child reaches majority.

**(d) Option to Distribute Benefits as an Individual Account Plan.** In lieu of receiving an annuity as described above in paragraphs (b) or (c), the Participant or his Beneficiary may elect to have his benefits distributed as if this Plan was an individual account plan. The required distribution is the amount determined by dividing the Participant's Present Value of Accrued Benefits, based on the assumptions in Section 1.2.3, by the applicable Life Expectancy or Joint Life Expectancy; provided that the distribution does not exceed the Participant's Present Value of vested Accrued Benefits.



Such Present Value of Accrued Benefits is determined annually in accordance with Section 2.3.4 and adjusted for any payments made after such date and prior to the December 31 preceding each Distribution Year. For the second Distribution Year, the Present Value of Accrued Benefits may also be adjusted for the any distribution made prior to April 1.

The Life Expectancy or Joint Life Expectancy is based on the attained ages of the Participant and/or the Beneficiary as of the December 31 prior to the Participant's or the Beneficiary's first Distribution Year. For the second and subsequent Distribution Years, the Life Expectancies of the Participant and his Beneficiary, if applicable, will be recalculated or not, as selected by the Participant, unless such Beneficiary is not the Participant's spouse in which case the Life Expectancy will not be recalculated. Such election must be made prior to the Required Beginning Date and is irrevocable. If no election is made the Life Expectancies will be recalculated each year. A life expectancy or joint life expectancy, which is not recalculated, is determined by taking the life expectancy or joint life expectancy of the prior year and subtracting one (1.0). A life expectancy or joint life expectancy, which is recalculated, is determined each December 31 based on the attained ages at that date. If a Participant or Beneficiary dies before that date his life expectancy is zero. A joint life expectancy in which one life is being recalculated and the other is not will be determined in accordance with the procedure in proposed Treasury Regulation 1.401(a)(9)-1, E-8(b).

Notwithstanding the foregoing, for calendar years beginning on or after January 1, 2001 the Life Expectancy of the Participant (and his Beneficiary if the sole Beneficiary is his spouse) shall be recalculated each year.

**(e) Asset Transfers.**

(1) If a Participant requests a rollover of his benefits to a qualified plan not maintained by the Employer during his first or subsequent Distribution Year, such rollover shall be reduced by the minimum required distribution for the Distribution Year under Code section 401(a)(9) and the reduction shall be distributed to the Participant by the appropriate date.

(2) If the Plan receives a rollover of with respect to a Participant who has reached his Required Beginning Date, the Plan shall distribute the minimum required distribution under Code section 401(a)(9) beginning with the following calendar year. In the event that the beneficiary or method of distribution with respect to the transferred assets differs from the Beneficiary or method of distribution of this Plan, the Plan will segregate the transferred assets and continue to distribute the benefits from the originating plan in accordance with method of distribution and Life Expectancy of the originating plan.

**(f) Rules for Participants Over Age 70½.**

(1) Participants will have their benefits commence as of the Required Beginning Date specified in Section 2.5.3(g)(6). Participants who elect to delay their Required Beginning Date and defer their benefit payments shall have their Accrued Benefit actuarially increased, based on the assumptions in Section 1.2.3, to reflect the period of time when payments were not made. Any additional accruals earned during this period will also be actuarially increased. Benefits shall be increased from the April 1 following the year in which the Participant attained age 70½ or date of accrual, as appropriate, until the date benefits actually commence. The actuarial increase must occur even if the Participant has had his benefits suspended as permitted under section 203(a)(3)(B) of the Act. However, this increase satisfies Code section 411(b)(1)(H) and may reduce the accrual otherwise required. Additional actuarial increases may be required by Sections 2.3.4 or 2.5.9

(2) Participants who attained age 70½ prior to 1997, who commenced benefit payments but did not retire shall continue to receive benefit payments, adjusted for any additional benefit accruals.

**(g) Definitions.** For this Section 2.5.3, the terms below shall have the following meanings:

(1) "Distribution Year": A calendar year for which a minimum distribution is required under Code section 401(a)(9). For distributions prior to a Participant's death, the first Distribution Year is the year immediately preceding his Required Beginning Date and the second Distribution Year is the year containing his Required Beginning Date. For distributions after a Participant's death, the first Distribution Year is the year in which the Participant would have attained age 70½ or the calendar year immediately following his date of death, whichever is appropriate.

(2) "5-Percent Owner": A Participant who satisfies the definition of a 5-percent owner within the meaning of section 416(h) of the Code at any time during the Plan Year ending with or within the calendar year.

(3) "Immediately Distributable": A benefit is Immediately Distributable if any part of the Accrued Benefit could be distributed to the Participant, (or surviving spouse), before the Participant attains, (or would have attained if not deceased), the later of his Normal Retirement Age or 62.

(4) "Joint Life Expectancy": The joint two life expectancy of a Participant and his Beneficiary determined using Table VI of Treasury Regulation 1.72-9 and based upon their attained ages as of a specified date. If more than one Beneficiary is selected, the joint life expectancy will be determined using the Beneficiary with the oldest age.

(5) "Life Expectancy": The life expectancy of a Participant or a Participant's Beneficiary determined using Table V of Treasury Regulation 1.72-9 and based upon their attained ages as of a specified date.

(6) "Required Beginning Date": The date on which benefits must commence to a Participant or his Beneficiary, determined as follows:

(i) For those Participants who attain age 70½ during 2003 or later, the Required Beginning Date is the April 1 of the calendar year following such year; provided that if the Participant is not a 5 Percent-Owner, as that term is defined in Code section 416, at any time after attaining age 70½, the Participant may elect to defer payments, and delay his Required Beginning Date, until the April 1 of the calendar year following the calendar year of his actual retirement from the Employer. For a Participant who becomes a 5 Percent-Owner after attaining age 70½, the Required Beginning Date is the April 1 of the calendar year following the calendar year containing such date.

(ii) For those Participants who attain age 70½ during 1988 or later, but before 2003, the Required Beginning Date is the April 1 of the calendar year following such year.

(iii) For those Participants who attain age 70½ prior to 1988, the Required Beginning Date is the April 1 of the calendar year following the later of such year or the year in which he retires; provided that if the Participant was a 5 Percent-Owner, as that term is defined in Code section 416, at any time after attaining age 66½, his Required Beginning Date is the April 1 of the calendar year following the later of the year in which he attains age 70½ or becomes a 5 Percent-Owner.

(iv) If the Participant's Beneficiary is the Participant's spouse, the Required Beginning date is the December 31 following the later of the year in which the Participant deceased or the year in which the Participant would have attained age 70½ if living.

(v) If the Participant's Beneficiary is a person, but not the Participant's spouse, or a trust which meets the conditions of proposed Treasury Regulation 1.401(a)(9)-1, the

Required Beginning Date is the December 31 following the year in which the Participant deceased.

**2.5.4 Requirement of Annuity Payment.** Except as otherwise provided herein, the benefit payable to a married Participant shall be provided in the form of a Qualified Joint and Survivor Annuity, and, in the case of a Participant who dies before the Annuity Starting Date and has a surviving spouse, a Qualified Pre-Retirement Survivor Annuity shall be provided to such surviving spouse. Such Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity shall be the Actuarial Equivalent of the Normal Form. Except as otherwise provided herein, the benefit payable to an unmarried Participant shall be provided in the form of a Straight Life Annuity.

**(a) Exception for Small Present Value of Vested Benefits.** If the Present Value of vested Accrued Benefits satisfies the conditions specified in Section 2.3.13, and the Plan permits an immediate lump sum cash-out, an annuity form and spousal consent, as described in this Section 2.5.4, are not required. In this event, the default method of distribution is a lump sum distribution to the Participant, unless the address of the Participant is unknown, in which case the distribution will be a Direct Rollover, as described in Section 1.2.18.

**(b) Election to Waive Annuity Payment.** At any time during the Applicable Election Period, a Participant and his spouse may elect to waive the Qualified Joint and Survivor Annuity form of benefit and the Qualified Pre-Retirement Survivor Annuity form of benefit (or both) and may revoke any such election. There is no limit to the number of times that an election or a revocation may be made by a Participant.

The Plan Administrator shall provide the Participant with a written explanation of the Qualified Joint and Survivor Annuity which meets the requirements of Code section 417 and the regulations thereunder not more than 90 days nor less than 30 days before the Participant's Annuity Starting Date. The Annuity Starting Date for distributions may be less than 30 days from the date the written explanation is provided to the Participant if:

- (1) the information provided clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and to elect a different form of benefit payment (with spousal consent, if applicable);
- (2) the Participant may revoke any such waiver prior to the Annuity Starting Date, or if later, seven (7) days after the receipt of the written explanation; and
- (3) the Annuity Starting Date occurs after the date the explanation was provided to the Participant.

Notwithstanding the above, a Participant who elects the Lump Sum Payment option in Section 2.3.12 shall not receive such payment until seven (7) days after the receipt of the written explanation.

**(c) Spousal Consent Required.** An election to waive the Qualified Joint and Survivor Annuity form of benefit shall not take effect unless (1) the spouse of the Participant consents in writing to the election, the election designates a Beneficiary or a form of benefits which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the Participant without any requirement of further consent by the spouse), the spouse's consent acknowledges the effect of such election, and the consent is witnessed by a Plan representative or a notary public, or (2) it is established to the satisfaction of the Plan Administrator that such consent cannot be obtained because there is no spouse, because the spouse cannot be located, or because of other circumstances permitted by applicable regulations. Any consent by a spouse (or establishment that the consent of a spouse cannot be obtained) shall be effective only with respect to such spouse.

The designation of a Beneficiary other than the spouse of the Participant (with the consent of such spouse) must acknowledge the specific non-spouse Beneficiary, including any class of

Beneficiaries or any contingent Beneficiaries. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights.

A Participant may revoke a prior waiver without the consent of the spouse at any time prior to the commencement of benefits. The number of waivers and revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Subsection (e) below.

**(d) Consent by Surviving Spouse.** Unless otherwise provided by Section 2.5.3(c)(2), a Qualified Pre-Retirement Survivor Annuity to a surviving spouse shall not commence without the consent of such spouse.

**(e) Exception if Participant not is Married for a Year.** The Plan does not provide a Pre-Retirement Survivor Annuity to a surviving spouse if the Participant and the spouse have been married for less than one (1) year at the time of death. In the event that the Participant and his spouse have been married for less than one (1) year at the Participant's Annuity Starting Date, the Plan shall treat the Participant and his spouse as being married and commence benefits as a Qualified Joint and Survivor Annuity unless the Participant waives such annuity and his spouse consents. If the Participant and his spouse have not been married for at least one (1) year, by reason of the Participant's death or divorce, the spouse is not entitled to any survivor benefits unless requested by the Participant or required by a Qualified Domestic Relations Order.

**(f) Written Explanations.** The Plan Administrator shall provide each Participant within a reasonable period of time before the Annuity Starting Date a written explanation of:

- (1) the terms and conditions of a Qualified Joint and Survivor Annuity;
- (2) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;
- (3) the rights of the Participant's spouse to consent to a Participant's election;
- (4) the right to make and the effect of a revocation of an election; and
- (5) the relative values of the various optional forms of benefit under the Plan.

The Plan Administrator shall provide to each Participant within the Applicable Period a written explanation of a Qualified Pre-Retirement Survivor Annuity and such other information comparable to the items listed above.

**(g) Definitions.** For this Section 2.5.4, the terms below shall have the following meanings:

(1) "Annuity Starting Date": The first day of the first period for which an amount is payable as an annuity, or, if not payable as an annuity, the first day on which the Participant is entitled to such an amount.

(2) "Applicable Election Period": The time period in which a Participant may elect to waive a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity.

(i) In the case of a Qualified Joint and Survivor Annuity, the ninety (90) day period ending on the Annuity Starting Date; and

(ii) In the case of a Qualified Pre-Retirement Survivor Annuity, the period which begins on the earlier of the first day of the Plan Year in which the Participant attains age thirty-five (35) or the date the Participant severs employment with the Employer, and

ends on the earlier of the date the Participant retires or the date of his death.

(3) "Applicable Period": The time period in which the Employer must provide an explanation of the Qualified Pre-Retirement Survivor Annuity to the Participant. Such period is whichever one of the following periods ends last:

(i) 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;

(ii) A reasonable period after the individual becomes a Participant;

(iii) A reasonable period after the Participant severs employment with the Employer;

(iv) A reasonable period ending after the Plan ceases to fully subsidize the costs of the Qualified Pre-Retirement Survivor Annuity; or

(v) A reasonable period ending after the Participant accrues any vested or non-forfeitable benefits.

For this Subsection (3), a reasonable period means a two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one year after that date.

#### **2.5.5 Methods of Payment.**

(a) Participants Not Eligible for Qualified Joint and Survivor Annuity. A Participant who is not eligible to receive payment of benefits in the form of a Qualified Joint and Survivor Annuity (or a Participant or surviving spouse who has made an election not to receive a Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity, as the case may be) shall receive his benefit in one of the optional forms described in Section 2.3.12, as selected by the Participant, with such spousal consents as may be required by law, or in the case of death, by his Beneficiary.

(b) Death Benefits. If a Participant dies entitled to a Death Benefit, and payments are not being made as a survivor annuity to his surviving spouse, his benefit shall be paid to his Beneficiary in one or more of the optional forms of payment set forth in Section 2.3.12, as the Participant shall designate on the beneficiary designation form, and in the absence of such a designation, as the executor or administrator of his estate shall direct.

(c) Voluntary Contribution Benefit. If a Participant is entitled to receive a Voluntary Contribution Benefit, the amount of such benefit, unless otherwise elected, shall be paid in a manner consistent with Section 2.5.2.

**2.5.6 Nature of Distribution.** Except as hereinafter provided with regard to Contracts, distribution of a Participant's benefit shall consist of cash, property, an annuity policy, or any combination thereof. If a distribution is made of property, the property shall be valued at its fair market value as of the date of distribution. If the benefit of a Participant is funded, in part, by Contracts, and in the event the amount to which the Participant is entitled equals or exceeds the cash surrender value of such Contracts, the Trustee, when so elected by the Participant, shall assign and transfer to such Participant all such Contracts in such form and with such restrictive endorsements as the Plan Administrator may direct so as to restrict the right of the Participant to surrender, assign, or otherwise realize cash on the Contracts prior to his Normal Retirement Date. If the amount to which the Participant is entitled is less than the cash surrender value of such Contracts the Plan Administrator shall cause the Trustee either to surrender such Contracts or to borrow against the cash surrender value of the Contracts and then to assign and transfer the Contracts to the Participant.

#### **2.5.7 Miscellaneous Provisions.**

(a) Terms of Annuity Contracts. Any annuity contract distributed from the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or spouse shall comply with the requirements of the Plan.

(b) Incidental Death Benefits. For calendar years beginning before January 1, 1989, if the Participant's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least fifty (50%) percent of the Present Value of the amount available for distribution is paid within the life expectancy of the Participant.

(c) Consents. No consent is required to distribute a Participant's benefits if the Present Value of such benefits satisfies the conditions specified in Section 2.3.13 and the Plan permits immediate lump sum cash-outs. Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy section 401(a)(9) or section 415 of the Code.

(d) Zero Benefits. If the Present Value of the Participant's vested and non-forfeitable interest in the Plan at the time of his termination of employment is zero, the Participant shall be deemed to have received a distribution of such interest.

(e) Limitation on Effect of Change in Social Security Benefits. No increase in the benefit levels payable under Title II of the Social Security Act or any increase in the Taxable Wage Base under such Title shall reduce the benefit which a Participant or his beneficiary is then receiving or which a Participant who has terminated employment has any vested interest.

(f) Distributions in the Event of Legal Incapacity. If any person entitled to benefits is declared legally incapacitated by a court of proper jurisdiction, then the Plan Administer shall direct the Trustee to make payments to the legal guardian or legal representative of the person or his estate.

(g) Transitional Rules.

(1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Sections of this Article shall be given the opportunity to elect to have the prior Sections of this Article 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 has at least ten (10) years of vesting service when he or 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 or her benefits paid in accordance with Paragraph (4) below.

(3) The respective opportunities to elect (as described 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 such Participants.

(4) Any Participant who has elected pursuant to paragraph (2) above and any Participant who does not elect under paragraph (1) or who meets the requirements of paragraph (1) except that such Participant does not have at least ten (10) years of vesting service when he or she separates from service, shall have his or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(i) Automatic Qualified Joint and Survivor Annuity. If benefits in the form a life annuity become payable to a married Participant who:

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

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

(C) begins to receive payments on or after the Qualified Early Retirement Age; or

(D) 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 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(ii) Election of early survivor annuity. 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 that would have been made to the spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his or her death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of (A) the 90th day before the Participant attains the Qualified Early Retirement Age, or (B) the date on which participation begins, and ends on the date the Participant terminates employment with the Employer.

(iii) Qualified Early Retirement Age. For purposes of this paragraph (4) a Participant's Qualified Early Retirement Age is the later of:

(A) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(B) the first day of the 120th month beginning before the Participant reaches normal retirement age, or

(C) the date the Participant begins participation.

**2.5.8 Distribution at Plan Termination.** Upon termination of the Plan, except as may otherwise be provided by law, the liability of the Employer to make contributions shall cease, and the Trustee will liquidate the Trust in accordance with directions from the Plan Administrator.

(a) If, as of the date this Plan terminates, the value of the Plan's assets is equal to or greater than the Present Value of all Accrued Benefits (whether or not forfeitable), each Participant shall receive a distribution of assets equal to the Present Value of that Participant's Accrued Benefit; provided that the Participant and his spouse consent, if necessary. If a Participant and his spouse do not consent, the Plan will purchase an annuity Contract which provides for the payment of the Participant's Accrued Benefit at his Normal Retirement Age and other such benefits provided by the Plan. All present values and the value of the Plan's assets will be computed using assumptions satisfying section 4044 of the Act. Any residual assets remaining after the distribution of assets to

Participants shall be used to pay the Plan's liquidation expenses. Upon termination of the Plan, the Plan shall be amended to provide a nondiscriminatory benefit structure (or other allocation formula) to allocate any further residual assets among Participants; provided such allocation does not violate Code section 415.

(b) If, as of the date this Plan terminates, the value of the Plan's assets is less than the Present Value of all Accrued Benefits (whether or not forfeitable), but exceeds the Present Value of all Accrued Benefits for all Participants other than a "majority owner", then each Participant shall receive the Present Value of his Accrued Benefits, or an annuity Contract, and the "majority owner" will receive the balance of the assets provided that the following conditions are satisfied:

- (1) The "majority owner" elects in writing to have his benefit reduced in such a manner;
- (2) The spouse, if any, of the "majority owner" consents in writing to this election;
- (3) The election and the consent occur during the time period beginning with the date the first Notice of Intent to Terminate is issued and ending with the date of the distribution;
- (4) The election does not violate any Qualified Domestic Relations Order; and
- (5) If the Plan is covered by section 4021 of the Act, the Pension Benefit Guaranty Corporation approves of the election.

For purposes of this paragraph, a "majority owner" is someone who owns (or is considered as owning) more than 50% of the outstanding stock or capital or profits interest, as appropriate, of the Employer.

(c) If, as of the date this Plan terminates, the value of the Plan's assets is less than the Present Value of all Accrued Benefits (whether or not forfeitable) and the "majority owner" or his spouse does not consent to a reduction in Plan benefits, or if the value of the Plan's assets is less than the Present Value of all Accrued Benefits of Participants other than the "majority owner", the Plan shall allocate its assets in the following order:

- (1) Benefits accrued for Participants from Employee contributions.
- (2) Benefits for Participants who have been eligible to receive Normal Retirement Benefits for more than three (3) years as of the date of termination of the Plan.
- (3) Benefits for Participants eligible to receive Normal Retirement Benefits as of the date of termination of the Plan.
- (4) Benefits for Participants eligible to receive Early Retirement or Disability Benefits as of the date of termination of the Plan.
- (5) Benefits for Participants that are, (or would be if the Plan was covered by the Pension Benefit Guaranty Corporation), guaranteed.
- (6) All other Benefits.

(d) Notwithstanding the above, if as of the day the Plan terminates, such termination is classified as a distress termination by the Pension Benefit Guaranty Corporation, such allocation of assets shall be approved by the Pension Benefit Guaranty Corporation or all assets and liabilities of the Plan shall be transferred under the control of the Pension Benefit Guaranty Corporation, as that corporation sees fit.

**2.5.9 Suspension of Benefits.** A Participant who terminates employment with the Employer, commences benefit payments, and subsequently returns to work for the Employer shall continue to receive



benefit payments in accordance with the form of payment selected. The Participant's Accrued Benefit shall be determined annually, as specified in Section 2.3.4, and any increase shall be included in subsequent payments.

## ARTICLE 6

### CONTINGENT TOP HEAVY PROVISIONS

**2.6.1 Top Heavy Requirements.** If the Plan becomes a Top Heavy Plan during any Plan Year beginning after December 31, 1983, the following provisions shall supersede any conflicting provisions in the Plan and apply for such Plan Year:

(a) **Minimum Top Heavy Retirement Benefit.** Notwithstanding any other Section of the Plan to the contrary, each Participant who has completed 1,000 Hours of Service during the Plan Year will accrue a benefit (to be provided solely by Employer contributions and expressed as a Straight Life Annuity commencing at Normal Retirement Age) of not less than 2% of the Participant's Highest Average Compensation as defined in this Section. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other provisions of the Plan the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (1) the Participant fails to make mandatory contributions to the Plan, (2) the Participant's Compensation is less than a stated amount, (3) the Participant is not employed on the last day of the Plan Year, or (4) the Plan is integrated with Social Security. A Participant will accrue benefits for all Years of Service except years prior to the adoption of the Plan.

For purposes of computing the Minimum Top Heavy Retirement Benefit, a Participant's Highest Average Compensation will be the highest 5 year consecutive average over the Participant's Years of Participation. For this paragraph only, Compensation shall equal Annual Compensation as defined below in Section 2.6.2(b). Compensation for years in which an Employee is credited with 1000 or more Hours of Service are included in his Highest Average Compensation even though he may not be credited with a full Year of Credited Service or such Compensation is not included in the Average Annual Compensation used in determining his Accrued Benefit. Years in which the Plan was not Top-Heavy are included in the Employee's average.

No additional benefit accruals shall be provided pursuant to this Part 2, Article 6 to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a Straight Life Annuity commencing at Normal Retirement Date that equals or exceeds 20% of the Participant's Highest Average Compensation.

If a form of benefit is other than a Straight Life Annuity, the Participant must receive an amount that is the Actuarial Equivalent, as defined in Section 1.2.3, of the minimum Straight Life Annuity Benefit. If the benefit commences at a date other than at Normal Retirement Date, the Participant must receive at least an amount that is the Actuarial Equivalent of the minimum Straight Life Annuity benefit commencing at Normal Retirement Date.

(b) **Multiple Plans.** The minimum benefit provided above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided that the minimum allocation or benefit requirement applicable to Top-Heavy plans will be met in the other plan or plans. In the case where the Employer has another plan or plans, it is intended that the minimum Top-Heavy requirements will be met in this Plan.

(c) **Minimum Vesting Schedule.** If the Plan becomes Top Heavy, the vested and non-forfeitable interest of each Participant shall equal the percentage determined under the vesting schedule specified in Section 2.4.1.

The Top-Heavy minimum vesting schedule applies to all benefits within the meaning of section 411(a)(7) of the Code, except those attributable to employee contributions, including benefits accrued before the effective date of section 416 of the Code and benefits accrued before the Plan becomes Top-Heavy.

No decrease in a Participant's non-forfeitable percentage may occur in the event the Plan's status as Top-Heavy changes for any Plan Year. Any minimum benefit required (to the extent required to be non-forfeitable under section 416(b)) may not be forfeited under sections 411(a)(3)(B) or (D) of the Code.

(d) In the event that this Plan covers Employees that are the subject of a bona fide collectively bargained agreement between the Employer and Employee representatives, the requirements of this Section shall continue to apply to such Employees in the same manner as all other Employees.

(e) For Plan Years beginning prior to January 1, 2000, references in Section 3.1.8, pertaining to combined plan limitations, to "one hundred twenty five (125%) percent" shall be applied by substituting "one hundred (100%) percent" for "one hundred twenty five (125%) percent" therein. Reference in Section 3.1.8(c), pertaining to the special transition rule, to "\$51,875" shall be applied by substituting "\$41,500" for "\$51,875" therein.

Notwithstanding the above, if the Employer provided additional Top-Heavy Retirement Benefits in this Plan or another defined benefit plan of the Employer (or additional Top-Heavy allocations in a defined contribution plan of the Employer), then the substitutions in the aforementioned paragraph will not take place unless the Plan is Super Top-Heavy.

**2.6.2 Top Heavy Definitions.** The following terms, as used in this Article 6, shall have the following meanings:

(a) "Accrued Benefit": The benefit determined under Section 2.3.1, assuming that the calculation date is the Valuation Date, as defined in Section 2.6.2(m). The Accrued Benefit for another defined benefit plan maintained by the Employer is determined under the provisions of that plan, except that if the accrual rates of more than one plan differ, the Accrued Benefit will be determined using the slowest accrual rate for all plans, including this Plan.

(b) "Annual Compensation": Compensation as defined in Section 3.1.2(d)(3) but measured over the Limitation Year, as specified in Section 1.2.48.

(c) "Determination Date": For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of the Plan Year.

(d) "Determination Period": The Plan Year containing the Determination Date and the four (4) preceding Plan Years.

(e) "Key Employee": An Employee or former employee who, at any time during the Determination Period is either:

(1) an officer of the Employer having an Annual Compensation, as greater than fifty (50%) percent of the amount in effect under section 415(b)(1)(A) of the Code;

(2) an owner (or a person considered an owner under section 318 of the Code) of one of the ten largest interests in the Employer if such individual's Annual Compensation from the Employer is more than the limitation in effect under section 415(c)(1)(A) of the Code;

(3) any person who owns directly or indirectly more than five (5%) percent of the outstanding stock of the Employer or stock possessing more than five (5%) percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer;

(4) any person who owns directly or indirectly more than one (1%) percent of the outstanding stock of the Employer or stock possessing more than one (1%) percent of the

total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer and having an Annual Compensation from the Employer of more than \$150,000; or

(5) any Beneficiary of a Key Employee.

For this purpose, Annual Compensation is that which is defined in Section 2.6.2(b). The determination of who is a Key Employee shall be made in accordance with section 416(i)(1) of the Code and the regulations thereunder.

(f) "Non-Key Employee": An Employee who is not a Key Employee.

(g) "Permissive Aggregation Group": The Required Aggregation Group plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, continues to satisfy the requirements of sections 401(a)(4) and 410 of the Code.

(h) "Present Value": The Present Value of Accrued Benefits referred to in paragraph (l) below shall be based on the interest and mortality rates specified in Section 1.2.3

In the case where more than one defined benefit plan is included in the Required Aggregation Group (or Permissive Aggregation Group), the Present Values shall be determined using the same actuarial assumptions.

(i) "Required Aggregation Group"

(1) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated), together with,

(2) Any other qualified plan of the Employer needed to enable a plan described in (i) to meet the requirements of sections 401(a)(4) or 410 of the Code.

(j) "Super Top-Heavy": For any Plan Year, the Plan is Super Top-Heavy if the Plan is Top-Heavy and the Top-Heavy Ratio exceeds ninety (90%) percent.

(k) "Top-Heavy": For any Plan Year beginning after December 31, 1983, the Plan is Top-Heavy if any of the following conditions exist:

(1) If the Top-Heavy Ratio for the Plan exceeds sixty (60%) percent and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(2) If the 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 sixty (60%) percent.

(3) If the 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 sixty (60%) percent.

(l) "Top-Heavy Ratio":

(1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan, (including any simplified employee pension plan as defined in section 408(k) of the Code), which, during the 5-year period ending on the Determination Date(s) has or has had account balances, the Top-Heavy Ratio for this Plan alone, for the Required Aggregation Group, or the Permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of the Present Value of Accrued

Benefits of all Key Employees as of the Determination Date(s) (including any part of any Accrued Benefit distributed in the 5-year period ending on the Determination Date(s)), and the denominator of which is the sum of the Present Values of Accrued Benefits for all Employees as of the Determination Date(s) (including any part of any Accrued Benefit distributed in the 5-year period ending on the Determination Date(s)), both computed in accordance with section 416 of the Code and the regulations thereunder.

(2) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans, (including any simplified employee pension plan referenced above), which, during the 5-year period ending on the Determination Date(s) has or has had any account balances, the Top-Heavy Ratio for any Required Aggregation Group or Permissive Aggregation Group, as appropriate, is a fraction, the numerator of which is the sum of the Present Values of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees, determined in accordance with (1) above, and the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, as of the Determination Date(s), and the denominator of which is the sum of the Present Values of Accrued Benefits under the aggregated defined benefit plan or plans for all Participants, determined in accordance with (1) above, and the account balances under the aggregated defined contribution plan or plans for all Employees as of the Determination Date(s), all determined in accordance with section 416 of the Code and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the Top-Heavy Ratio are increased for any distribution of an account balance made in the five-year period ending on the Determination Date.

(3) For purposes of (1) and (2) above, the value of account balances and the Present Value of Accrued Benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (12) month period ending on the Determination Date, except as provided in section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan.

The account balances and Accrued Benefits of a Participant (i) who is not a Key Employee but was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the five (5) year period ending on the Determination Date will be disregarded. The calculation of the Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Code 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 the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or 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 section 411(b)(1)(C) of the Code.

(m) "Valuation Date": The date as of which the Present Value of Accrued Benefits and account balances are valued for purposes of calculating the Top-Heavy Ratio. The Valuation Date shall be January 31st of each Plan Year.

## **ARTICLE 7**

### **LIMITATIONS ON EMPLOYEE CONTRIBUTIONS**

**2.7.1** Employee Contributions are not permitted or required under this Plan.

## **ARTICLE 8**

### **FULLY INSURED PLANS**

**2.8.1** It is not intended that this Plan meet the requirements of Code section 412(i) in any past or future Plan Year. As such, this Plan is not considered a Fully Insured Plan and any provisions of this Plan relating to Fully Insured Plans do not apply.

## PART 3

### ARTICLE 1

#### LIMITATIONS

**3.1.1 General Limitations on Benefits.** This Section 3.1.1 through Section 3.1.6 apply for all Limitation Years beginning after December 31, 1994. For Limitation Years beginning before January 1, 2000, the additional requirements of Section 3.1.8 also apply if the Employer ever maintained a qualified plan, a welfare benefit fund (as defined in section 419(e) of the Code) under which amounts attributable to post-retirement medical benefits are held in separate accounts for key employees (as defined in section 419A(d)(3) of the Code), an individual medical account (as defined in section 415(l)(2) of the Code), or a simplified employee pension (as defined in section 408(k) of the Code), that provides an Annual Addition, as defined in Section 3.1.8(d)(1), to Participants.

The Annual Pension Benefit otherwise payable to a Participant at any time shall not exceed the Maximum Permissible Benefit, as determined in Section 3.1.2. If the benefit the Participant would otherwise accrue in a Limitation Year produces an Annual Pension Benefit in excess of the Maximum Permissible Benefit, the rate of accrual will be reduced so that the Annual Pension Benefit will equal the Maximum Permissible Benefit.

If a Participant is, or has ever been, covered under more than one defined benefit plan maintained by the Employer, the sum of the Participant's annual benefits from all such plans, determined as of the same retirement age, may not exceed the Maximum Permissible Benefit. If the sum of the annual benefits does exceed the Maximum Permissible Benefit, the benefits from the plan in which benefits are currently being accrued will be reduced first. In the case where benefits are being accrued under more than one plan, including this Plan, the accruals under this Plan will be reduced prior to the benefits in the other plan(s.)

If a Participant has made voluntary employee contributions or mandatory employee contributions, as defined in section 411(c)(2)(C) of the Code, under the terms of the Plan, the amount of such contributions is treated as an Annual Addition to a qualified defined contribution plan for purposes of this Article 1.

#### **3.1.2 Determination of Annual Pension Benefit and Maximum Permissible Benefit.**

**(a) Annual Pension Benefit.** For purposes of this Article 1, the term "Annual Pension Benefit" shall mean for any Limitation Year, the Accrued Benefit, determined in Section 2.3.1, and any optional form in Section 2.3.12, (aggregated with benefits from other defined benefit plans, if applicable), payable annually in the form of a Straight Life Annuity. Except as provided below, a benefit payable in a form other than a Straight Life Annuity must be adjusted to an actuarially equivalent Straight Life Annuity before applying the limitations of this Article.

The Annual Pension Benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the Employer.

No actuarial adjustment to the benefit is required for (1) the value of a Qualified Joint and Survivor Annuity, (2) the value of benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (3) the value of post-retirement cost-of-living increases made in accordance with section 415(d) of the Code and section 1.415-3(c)(2)(iii) of the Income Tax regulations.

Unless otherwise specified in Section 3.1.3 or Section 3.1.4, for Limitation Years beginning



after December 31, 1994, the actuarially equivalent Straight Life Annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in Section 1.2.3 (or 2.3.3) of the Plan for adjusting benefits in the same form, and the annuity benefit computed using a five (5%) percent interest rate and the Applicable Mortality Table defined in Section 3.1.2(d)(2). For Limitation Years beginning before January 1, 1995, such actuarially equivalent Straight Life Annuity is equal to the greater of the annuity benefit computed using the interest rate in Section 1.2.3 for adjusting benefits in the same form or five (5%) percent and the mortality table in Section 1.2.3.

In determining the actuarially equivalent Straight Life Annuity for a lump sum distribution, a benefit form other than a non-decreasing annuity payable for a period of not less than the life of the Participant (or, in the case of a Qualified Pre-Retirement Survivor Annuity, the life of the surviving spouse), or a benefit form other than one which decreases during the life of the Participant merely because of (1) the death of the survivor annuitant (but only if the resulting annuity is not below fifty (50%) percent of the annual benefit payable before the death of the survivor annuitant), (2) the cessation or reduction of Social Security supplements, or (3) the cessation or reduction of qualified disability payments (as defined in Code section 411(a)(9)), the phrase "the Applicable Interest Rate, as defined in Section 3.1.2(d)(1)", will be substituted for the phrase "a five (5%) percent interest rate" in the first sentence of the preceding paragraph.

**(b) Maximum Permissible Benefit.** For purposes of this Article 1, the term "Maximum Permissible Benefit" shall mean, for any Limitation Year, the lesser of the Defined Benefit Dollar Limitation and 100% or the Defined Benefit Compensation Limitation, as defined below. This amount may be further adjusted in Subsection (c).

**(1) Defined Benefit Dollar Limitation:** The dollar limit specified in Code section 415(b)(1)(A), automatically adjusted on January 1 each year under Code section 415(d), in such manner as the Secretary of the Treasury shall prescribe. The new limitation will apply to Limitation Years ending with or within the calendar year of the date of the adjustment. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first takes effect.

**(2) Defined Benefit Compensation Limitation:** One hundred (100%) percent of a Participant's highest three (3) year consecutive average compensation, taking into account all Years of Service with the Employer. Compensation for this purpose shall be as defined in Section 3.1.2(d)(3) below.

**(8)** In the case of a Participant who has separated from service, the Defined Benefit Compensation Limitation will be automatically adjusted by multiplying such amount by the cost of living adjustment factor prescribed by the Secretary of the Treasury under section 415(d) of the Code. The adjusted compensation amount will apply to Limitation Years ending with or within the calendar year of the date of adjustment.

**(c) Adjustments to the Maximum Permissible Benefit.**

**(1)** If the Participant has less than ten (10) Years of Participation, the Defined Benefit Dollar Limitation described above, shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) as a Participant and the denominator of which is ten (10). A Year of Participation shall only be included if such Year (or part thereof) is used in determining a Participant's Accrued Benefit and the Participant had met the eligibility requirements of this Plan (or another defined benefit plan maintained by the Employer) on at least one day of the Year. A Participant who is permanently and totally disabled within the meaning of section 415(c) of the Code shall be credited with a Year of Participation (or part thereof) with respect to that period. In addition, no Participant may receive credit for a Year of Participation unless the Plan has been established by the last day of such Year. In no event, will more than one Year of Participation be credited for any twelve (12) month period.

(2) If a Participant has less than ten (10) Years of Service with the Employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction, the numerator of which is the number of Years (or part thereof) as an Employee, and the denominator of which is ten (10).

(3) If the benefits of a Participant commence before to the Participant's Social Security Retirement Age, as defined in Section 1.2.77, but on or after age 62, the Defined Benefit Dollar Limitation is reduced by 5/9th of one (1%) percent for each of the first thirty-six (36) months and 5/12th of one (1%) percent for each of the next twenty-four (24) months, (if applicable), by which benefits commence before the month of the Participant's Social Security Retirement Age. If permitted by section 415 of the Code, the reductions in the previous sentence shall not apply and the Defined Benefit Dollar Limitation for any age on or after age 62, (but before his Social Security Retirement Age), shall equal the Defined Benefit Dollar Limitation as of his Social Security Retirement Age.

(4) If the benefits of a Participant commence prior to age 62, the Defined Benefit Dollar Limitation shall be the actuarial equivalence of the Defined Benefit Dollar Limitation at age 62, (as determined in paragraph (3) above), reduced for each month by which benefits commence before the month in which the Participant attains age 62. The actuarial equivalence prior to age 62 is determined as the lesser of (i) the equivalent annual benefit computed using the interest rate and mortality table, as shown in Section 1.2.3, (or other tabular factor found in Section 2.3.3), for early retirement benefits, and, (ii) the equivalent annual benefit computed using a five (5%) percent interest rate and the Applicable Mortality Table as defined in Section 3.1.2(d)(2). Any decrease in the Defined Benefit Dollar Limitation determined in accordance with this provision shall not reflect any mortality decrement if benefits are not be forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(5) If the benefits of a Participant commence after the Participant's Social Security Retirement Age, as defined in Section 1.2.77, the Defined Benefit Dollar Limitation shall be the actuarial equivalence of the Defined Benefit Dollar Limitation beginning at his Social Security Retirement Age, increased for each month by which benefits commence after the month in which the Participant attained Social Security Retirement Age. The actuarial equivalence after Social Security Retirement Age is determined as the lesser of (i) the equivalent annual benefit computed using the interest rate and mortality table, as shown in Section 1.2.3, for delayed retirement benefits, and, (ii) the equivalent annual benefit computed using a five (5%) percent interest rate and the Applicable Mortality Table as defined in Section 3.1.2(d)(2). For these purposes, mortality between a Participant's Social Security Retirement Age and the age at which benefits commence must be ignored.

(6) Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit Limitation if:

(i) the retirement benefits payable for a Plan Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the Employer do not exceed \$1,000 multiplied by the Participant's number of Years of Service or parts thereof (not to exceed 10) with the Employer; and

(ii) the Employer has not at any time maintained a defined contribution plan, a welfare benefit fund, an individual medical account, or simplified employee pension, as those terms are referenced in Section 3.1.1, in which the Participant participated. For this purpose only, employee contributions under a defined benefit plan (whether voluntary or mandatory) are not treated as a defined contribution plan.

(d) Definitions. For this Section 3.1.2, the terms below shall have the following meanings:

(1) "Applicable Interest Rate": The rate of interest on 30-year Treasury securities as specified by the Commissioner. This rate will be determined for each Plan Year, "the stability period", based on the rate in effect two (2) months preceding such stability period, "the look back month." The rate will not change during each stability period.

A Plan amendment that changes the date the Applicable Interest Rate is determined, including an indirect change as a result of a change in Plan Year, will not take effect with respect to any distribution during the one year period commencing on the later of the amendment's effective date or adoption date, if, during such period, and as a result of such amendment, the Participant's distribution would be reduced in violation of section 411(d) of the Code.

(2) "Applicable Mortality Table": The blended 1983 Group Annuity Mortality (GAM) table set forth in IRS Revenue Ruling 95-6, 1995-1 C.B. 80; 1995-4 I.R.B. 22, or any other mortality table specified by the Secretary of the Treasury.

(3) "Compensation": Compensation shall have the same meaning as in Section 1.2.14, modified if necessary, to include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includable in the gross income of the Employee under sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), and 457(b) of the Code.

Notwithstanding any provisions to the contrary, for purposes of applying the limitations of this Article, Compensation for a Limitation Year beginning after December 31, 1991, is the compensation actually paid or made available during such year without regard to the dollar limitations of Code section 401(a)(17).

For Limitation Years beginning after December 31, 1997, Compensation shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code sections 125 and 457. For Limitation Years beginning on or after January 1, 2001 Compensation shall also include any elective amount which is not includable in the gross income by reason of Code section 132(f)(4).

**3.1.3 RPA '94 Old Law Benefits Protected.** This Plan does not determine or protect the RPA '94 Old Law Benefits. All benefits are subject to the rules in Section 3.1.2, and if applicable, Sections 3.1.5, 3.1.6, and 3.1.8.

**3.1.4 RPA '94 Transition Rules.** The Annual Pension Benefit is the greater of:

(a) The annuity benefit actuarially equivalent to the RPA '94 Old Law Benefit based on the greater of the interest rates in Section 1.2.3 (as in effect on December 7, 1994) or five (5%) percent and the mortality table in Section 1.2.3 (as in effect on December 7, 1994), if such determination is made prior to January 31st, 2000, (the "final implementation date"), or, if the determination is made after such date, the annuity benefit based on the greater of the interest rates in Section 1.2.3 (as in effect on the date of determination) or five (5%) percent and the mortality table in Section 1.2.3 (as in effect on the date of determination), plus the portion of the Accrued Benefit in excess of the RPA '94 Old Law Benefit actuarially adjusted in accordance with Section 3.1.2(a);

(b) The total Accrued Benefit, actuarially adjusted in accordance with Section 3.1.2(a); or

(c) The RPA '94 Old Law Benefit.

The Annual Pension Benefit must not exceed the Maximum Permissible Benefit determined in Section 3.1.2)

**3.1.5 TRA '86 Benefits Protected.** In the case of an Employee who was a Participant in one or more defined benefit plans of the Employer as of the first day of the first Limitation Year beginning after

December 31, 1986, the application of the limitations of this Section shall not cause the Maximum Permissible Benefit for such Participant under all such defined benefit plans to be less than the Participant's Tax Reform Act of 1986 (TRA '86) Current Accrued Benefit. The preceding sentence only applies if such defined benefit plans met the requirements of section 415 of the Code for all Limitation Years beginning prior to January 1, 1987.

A Participant's TRA '86 Current Accrued Benefit under the Plan is the Accrued Benefit, determined as if the Participant had separated from service as of the last day of the last Limitation Year commencing prior to January 1, 1987, when expressed as an annual benefit within the meaning of section 415(b)(2) of the Code. In determining the amount of a Participant's TRA '86 Current Accrued Benefit, any change in the terms and conditions of the Plan after May 5, 1986 or any cost of living adjustments occurring after May 5, 1986 shall be disregarded.

**3.1.6 TEFRA '82 Benefits Protected.** In the case of an Employee who was a Participant in one or more defined benefit plans of the Employer as of July 1, 1982, the application of the limitations of this Section shall not cause the Maximum Permissible Benefit for such Participant under all such defined benefit plans to be less than the Participant's Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA '82) Current Accrued Benefit. The preceding sentence only applies if such defined benefit plans met the requirements of section 415 of the Code for all Limitation Years beginning prior to January 1, 1983.

A Participant's TEFRA '82 Current Accrued Benefit under the Plan is the Accrued Benefit, determined as if the Participant had separated from service as of the last day of the last Limitation Year commencing prior to January 1, 1983, when expressed as an annual benefit within the meaning of section 415(b)(2) of the Code. In determining the amount of a Participant's TEFRA '82 Current Accrued Benefit, any change in the terms and conditions of the Plan after July 1, 1982 or any cost of living adjustments occurring after July 1, 1982 shall be disregarded.

**3.1.7 Limitation on Annual Additions.** If the Plan requires Mandatory Employee Contributions or permits Voluntary Employee Contributions, the aggregate of such contributions shall not exceed the Maximum Permissible Annual Addition for each Limitation Year. If the aggregate would otherwise exceed the Maximum Permissible Annual Addition, the amount of Voluntary Employee Contributions that are permitted will be reduced so that the aggregate equals the Maximum Permissible Annual Addition. For purposes of this Article 1, the term "Maximum Permissible Annual Addition" shall mean, for any Limitation Year, the lesser of the Defined Contribution Dollar Limitation and the Defined Contribution Compensation Limitation, as defined below.

**(a) Defined Contribution Dollar Limitation:** The dollar limit specified in Code section 415(c)(1)(A), automatically adjusted on January 1 each year under Code section 415(d), in such manner as the Secretary of the Treasury shall prescribe. The new limitation will apply to Limitation Years ending with or within the calendar year of the date of the adjustment. Unless otherwise provided by law, adjustments for increases in the cost of living shall not be taken into account for any year before the year for which such adjustment first takes place.

**(b) Defined Contribution Compensation Limitation:** Twenty-five (25%) percent of a Participant's compensation, as defined in Section 3.1.2(d)(3) above.

If the Employer also maintains a qualified defined contribution plan, a welfare benefit fund, an individual medical account, or a simplified employee pension, as referenced by Section 3.1.1, the aggregate of any Annual Additions to those plans, any Voluntary Employee Contributions, and any Mandatory Employee Contributions shall not exceed the Maximum Permissible Annual Addition. If the aggregate would otherwise exceed the Maximum Permissible Annual Addition, the amount of Voluntary Employee Contributions in this Plan shall be reduced before the Annual Additions in the other plans. Mandatory Employee Contributions shall not be reduced under this Section unless there are no Voluntary Employee Contributions or other Annual Additions, including those from all other plans of the Employer, to be reduced. Any distribution of Voluntary Employee Contributions shall include any gains attributed thereto.

The limitations in this Section shall be applied before the limitations in Part 2, Article 7.

**3.1.8 Combined Plan Limitation.** The combined plan limit under section 415(e) of the Code is repealed for Limitation Years beginning after December 31, 1999. Benefit increases resulting from this repeal will be provided to all Participants who are credited with at least one Hour of Service in the first Limitation Year beginning after December 31, 1999 and who have an Accrued Benefit under the Plan that was limited on the last day of the last Limitation Year beginning before January 1, 2000. For Limitation Years before January 1, 2000, a Participant's benefits shall be limited by this Section if the Participant ever participated in a defined contribution plan, a welfare benefit fund, an individual medical account, or a simplified employee pension maintained by the Employer, as referenced by Section 3.1.1.

**(a) Primary Limitation.** The sum of the Defined Benefit Fraction plus the Defined Contribution Fraction, as both are defined in this Subsection, shall not exceed 1.0 in any Limitation Year. In the event that the sum exceeds 1.0, the rate of accrual provided in this Plan will be decreased so that the sum equals 1.0.

**(1) "Defined Benefit Fraction":** For a Limitation Year, a fraction, (i) the numerator of which is the Projected Annual Benefit, as defined in Subsection (d)(3), of the Participant under all defined benefit plans (whether or not terminated) maintained by the Employer (determined as of the close of the year), and (ii) the denominator of which is the lesser of one hundred twenty five (125%) percent of the Defined Benefit Dollar Limitation determined for the Limitation Year or one hundred forty (140%) percent of the Defined Benefit Compensation Limitation, as those terms are defined in Sections 3.1.2(b) and (c).

For this Section 3.1.8 only, the Defined Benefit Dollar Limitation shall not be reduced in accordance with Section 3.1.2(c)(1), but instead, for those Participants with less than ten (10) Years of Service with the Employer, shall be multiplied by a fraction, the numerator of which is the number of Years (or part thereof) of Service, and the denominator of which is ten (10.) Such Years of Service shall include years until the Participant attains Normal Retirement Age (but only if the Participant is expected to earn a Year of Credited Service for such year), or the Participant's date of termination, if earlier.

**(2) "Defined Contribution Fraction":** For a Limitation Year, a fraction, (i) the numerator of which is the sum of the Annual Additions, as defined in Subsection (d)(1), to the Participant's accounts under all defined contribution plans, all qualified defined benefit plans, all welfare benefit funds, all individual medical accounts, and all simplified employee pensions maintained by the Employer (whether or not terminated), for the current and all prior Limitation Years, and (ii) the denominator of which is the sum of the amounts independently determined for the current and each prior Limitation Year which equal the lesser of one hundred twenty five (125%) percent of the Defined Contribution Dollar Limitation for the Limitation Year and thirty five (35%) percent of the Participant's Compensation for such Limitation Year (regardless of whether a defined contribution plan was maintained by the Employer for such Limitation Year.)

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) month period, the Defined Contribution Dollar Limitation for such Limitation Year shall be multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12), when determining the amount to be used for such Limitation Year in the numerator of the Defined Contribution Fraction.

In the event that the Plan itself, or the Permissive or Required Aggregation Group of which the Plan is a part thereof, is Top Heavy for a Limitation Year, as those terms are defined in Section 2.6.2, the references to "one hundred twenty five (125%) percent" in this Section shall be replaced with "one hundred (100%) percent" in determining a Participant's Defined Benefit Fraction and Defined Contribution Fraction for such Limitation Year.

Notwithstanding the above, if the Employer provided additional Minimum Top-Heavy

Retirement Benefits (or additional Top-Heavy allocations in a defined contribution plan of the Employer), then the substitutions in the aforementioned paragraph will not take place unless the Plan is Super Top-Heavy.

**(b) TRA '86 Transition Rules.**

**(1)** If the Employer maintained a defined benefit plan as of May 6, 1986, and the Participant's TRA '86 Current Accrued Benefit, as defined in Section 3.1.5, exceeds the Defined Benefit Dollar Limitation, as determined in Sections 3.1.2(b) and (c), for a Limitation Year beginning after December 31, 1986, then the Participant's TRA '86 Current Accrued Benefit will be substituted for the Defined Benefit Dollar Limitation, in determining the Defined Benefit Fraction for such Limitation Year.

**(2)** If the Employer maintained both a defined benefit plan and a defined contribution plan as of May 6, 1986, and after the adjustment in (1) above, the sum of the Defined Benefit Fraction and the Defined Contribution Fraction exceeds 1.0, as of the last day of the last Limitation Year beginning before January 1, 1987, but computed as if the TRA'86 changes were in effect, then the numerator of the Defined Contribution Fraction will be reduced so that the sum of the Defined Benefit Fraction and the Defined Contribution Fraction equals 1.0. The amount of the reduction shall be permanently offset from the numerator of the Defined Contribution Fraction. Changes in the Plan made after May 6, 1986, including a change in Limitation Year, are not reflected in this reduction.

**(3)** Paragraph (1) only applies if the defined benefit plan met the requirements of Code section 415 for all Limitation Years prior to the Limitation Year in which the TRA'86 rules became effective. Paragraph (2) only applies if both the defined benefit plan and the defined contribution plan met the requirements of Code section 415 for the last Limitation Year beginning before January 1, 1987.

**(c) TEFRA '82 Transition Rules.**

**(1)** If the Employer maintained a plan on or before July 1, 1982, then at the election of the Plan Administrator, in lieu the denominator of the Defined Contribution Fraction determined in Section 3.1.8(a), the denominator shall equal:

**(i)** the sum of the amounts independently determined for the current and each prior Limitation Year after the last Limitation Year ending before January 1, 1983 which equal the lesser of one hundred twenty five (125%) percent of the Defined Contribution Dollar Limitation for the Limitation Year and thirty five (35%) percent of the Participant's Compensation for such Limitation Year (regardless of whether a defined contribution plan was maintained by the Employer for such Limitation Year); plus

**(ii)** the sum of the amounts independently determined for each prior Limitation Year ending with the last Limitation Year which ends before January 1, 1983 which equal the lesser of the Defined Contribution Dollar Limitation for the Limitation Year and twenty five (25%) percent of the Participant's Compensation for such Limitation, all multiplied by the "transition fraction."

Such "transition fraction" is a fraction, the numerator of which is the lesser of \$51,875 or thirty five (35%) percent of the Participant's Compensation for the last Limitation Year which ends before January 1, 1983, and, the denominator of which is the lesser of \$41,500 or twenty five (25%) percent of the Participant's Compensation for the last Limitation Year which ends before January 1, 1983. In the event that the that the Plan itself, or the Permissive or Required Aggregation Group of which the Plan is a part thereof, is Top Heavy for a Limitation Year, as those terms are defined in Section 2.6.2, the reference to "\$51,875" shall be replaced with "\$41,500" in the preceding sentence for such Limitation Year.

(2) If the Employer maintained a defined benefit plan as of July 1, 1982, and the Participant's TEFRA '82 Current Accrued Benefit, as defined in Section 3.1.6, exceeds the Defined Benefit Dollar Limitation, as determined in Sections 3.1.2(b) and (c), for a Limitation Year beginning after December 31, 1982, then the Participant's TEFRA '82 Current Accrued Benefit will be substituted for the Defined Benefit Dollar Limitation, in determining the Defined Benefit Fraction for such Limitation Year.

(3) If the Employer had ever maintained a defined benefit plan and a defined contribution plan prior to July 1, 1982, and after the adjustment in (2) above, the sum of the Defined Benefit Fraction and the Defined Contribution Fraction exceeds 1.0, as of the last day of the last Limitation Year beginning before January 1, 1983, but computed as if the TEFRA '82 changes were in effect, then the numerator of the Defined Contribution Fraction will be reduced so that the sum of the Defined Benefit Fraction and the Defined Contribution Fraction equals 1.0. The adjustment in (1) may also be taken into account, if so elected by the Plan Administrator.

(d) Definitions. For this Section 3.1.8, the terms below shall have the following meanings:

(1) "Annual Additions": The sum of the following amounts credited to a Participant's account in any qualified plan maintained by the Employer for the Limitation Year:

(i) employer contributions;

(ii) employee contributions;

(iii) forfeitures;

(iv) amounts allocated after March 31, 1984, to an individual medical account (as defined in section 415(l)(2) of the Code) which is part of a pension or annuity plan maintained by the Employer;

(v) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, to a welfare benefit fund (as defined in section 419(e) of the Code) maintained by the Employer, to the extent attributable to post-retirement medical benefits held in separate accounts for key employees (as defined in section 419A(d)(3) of the Code); and,

(vi) allocations under a simplified employee pension (as defined under section 408(k) of the Code.)

For this purpose, excess deferrals (as defined in section 402(g) of the Code) are disregarded to the extent distributed to the Participant. Excess contributions (as defined in section 401(k) of the Code) and excess aggregate contributions (as defined in section 401(m) of the Code) are not disregarded, even if distributed to the Participant, unless held in a suspense account or reallocated to other participants.

(2) "Employer": For purposes of this Article, "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 section 415(h)), all commonly controlled trades or businesses (as defined in Code section 414(c) as modified by section 415(h)), or affiliate 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 Code section 414(o).

(3) "Projected Annual Benefit": The annual benefit which the Participant would be entitled, determined under the terms of the Plan, and assuming that (i) the Participant will continue employment until Normal Retirement Age (or current age, if later), and (ii) 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.

**3.1.9 Limitations for Certain Participants.** On or after , the pre-termination restrictions in Paragraphs (a) and (b) are effective. Prior to such date, the provisions in Paragraphs (c) through (f) are effective.

**(a) Restrictions.** Benefits distributed to any of the 25 most Highly Compensated active and Highly Compensated former Employees with the greatest Compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Participant under a Straight Life Annuity that is the Actuarial Equivalent of the sum of the Participant's Accrued Benefit, the Participant's other benefits under the Plan (other than a Social Security supplement, within the meaning of Treasury Regulation 1.411(a)-7(c)(4)(ii) ), and the amount the Participant is entitled to receive under a Social Security supplement.

The preceding paragraph shall not apply if:

(i) after payment of the benefit to a Participant as so described (or his Beneficiary), the value of Plan assets equals or exceeds one hundred ten (110%) percent of the value of current liabilities as defined in section 412(l)(7) of the Code;

(ii) the value of the benefits for a Participant described above (or his Beneficiary) is less than one (1%) percent of the value of current liabilities before distribution; or

(iii) the value of the benefits payable under the Plan to a Participant described above (or his Beneficiary) does not exceed \$5,000.

In the event of plan termination, the benefit of any Highly Compensated Employee, as that term is defined in Section 1.2.40, is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the Code.

For these purposes, a benefit includes loans in excess of the amount set forth in section 72(p)(2)(A) of the Code, any periodic income, any withdrawal values payable to a living person, and any death benefits not provided for by insurance on the Participant's life.

**(b) Payment of Restricted Amounts.** A Participant's otherwise restricted benefit may be distributed in full to the affected Participant (or his Beneficiary) if prior to receipt of the restricted amount, the Participant (or his Beneficiary) enters into a written agreement with the Plan Administrator to secure repayment to the Plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the Participant (or his Beneficiary), accumulated with reasonable interest, over the amounts that could have been distributed to the Participant (or his Beneficiary) under the Straight Life Annuity described in Section 1.2.80, accumulated with reasonable interest. The Participant (or his Beneficiary) may secure repayment of the restricted amount upon distribution by: (1) entering into an agreement for promptly depositing in escrow with an acceptable depository property having a fair market value equal to at least one hundred twenty five (125%) percent of the restricted amount, (2) providing a bank letter of credit in an amount equal to at least one hundred (100%) percent of the restricted amount, or (3) posting a bond equal to at least one hundred (100%) percent of the restricted amount. If the Participant (or his Beneficiary) elects to post bond, an insurance company, bonding company, or other surety for federal bonds must furnish the bond.

The escrow arrangement may provide that the Participant (or his Beneficiary) may withdraw amounts in excess of one hundred twenty five (125%) percent of the restricted amount. If the market value of the property in an escrow account falls below one hundred ten (110%) percent of the remaining restricted amount, the Participant (or his Beneficiary) must deposit additional property to bring the value of the property held by the depository up to one hundred twenty five (125%) percent of the restricted amount. The escrow arrangement may provide that the Participant (or his



Beneficiary) has the right to receive any income from the property placed in escrow, subject to the Participant's (or his Beneficiary's) obligation to deposit additional property, as set forth in the preceding sentence.

A surety or bank may release any liability on a bond or letter of credit in excess of one hundred (100%) percent of the restricted amount.

If the Plan Administrator certifies to the depository, surety or bank that the Participant (or his Beneficiary) is no longer obligated to repay any restricted amount, a depository may redeliver to the Participant (or his Beneficiary) any property held under an escrow agreement, and a surety or bank may release any liability on the Participant's (or his Beneficiary's) bond or letter of credit.

**(c) Early Plan Termination.** Employer contributions on behalf of any of the 25 highest paid employees at the time the Plan is established and whose anticipated annual benefit exceeds \$1,500 will be restricted as provided in paragraph (b) upon the occurrence of the following conditions:

**(1)** The Plan is terminated within ten (10) years after its establishment,

**(2)** The benefits of such highest paid employee become payable within ten (10) years after the establishment of the Plan, or

**(3)** If section 412 of the Code (without regard to section 412(h)(2)) does not apply to this Plan, the benefits of such Employee become payable after the Plan has been in effect for ten (10) years, and the full current costs of the Plan for the first ten (10) years have not been funded.

**(d) Limitations.** Employer contributions which may be used for the benefit of an Employee described in Subsection (c) shall not exceed the greater of \$20,000, or 20% of the first \$50,000 of the Employee's Compensation multiplied by the number of years between the date of the establishment of the Plan and:

**(1)** If (c)(1) applies, the date of the termination of the Plan,

**(2)** If (c)(2) applies, the date the benefits become payable, or

**(3)** If (c)(3) applies, the date of the failure to meet the full current costs.

**(e) Amendments.** If the Plan is amended so as to increase the benefit actually payable in the event of the subsequent termination of the Plan, or the subsequent discontinuance of contributions thereunder, then the provisions of the above paragraphs shall be applied to the Plan as so changed as if it were a new plan established on the date of the change. The original group of 25 employees (as described in (c) above) will continue to have the limitations in (d) apply as if the Plan had not been changed. The restrictions relating to the change of plan should apply to benefits or funds for each of the 25 highest paid Employees on the effective date of the change except that such restrictions need not apply with respect to any Employee in this group for whom the normal annual pension or annuity provided by Employer contributions prior to that date and during the ensuing ten (10) years, based on his rate of Compensation on that date, could not exceed \$1,500.

Employer contributions that may be used for the benefit of the new group of 25 employees will be limited to the greater of:

**(1)** The Employer contributions (or fund attributable thereto) which would have been applied to provide the benefits for the Employee if the previous plan had been continued without change;

**(2)** \$20,000; or

(3) The sum of (i) the Employer contributions (or funds attributable thereto) which would have been applied to provide benefits for the Employee under the previous plan if it had been terminated the day before the effective date of change, and (ii) an amount computed by multiplying the number of years for which the current costs of the Plan after that date are met by (A) twenty (20%) percent of his annual Compensation, or (B) \$10,000, whichever is smaller.

(f) Repayment. Notwithstanding the above limitations, the following limitations will apply if they would result in a greater amount of Employer contributions to be used for the benefit of the restricted Employee:

(1) In the case of a substantial owner (as defined in section 4022(b)(5) of the Act), a dollar amount which equals the present value of the benefit guaranteed for such Employee under section 4022 of the Act, or if the Plan has not terminated, the present value of the benefit that would be guaranteed if the Plan terminated on the date the benefit commences, determined in accordance with regulations of the Pension Benefit Guaranty Corporation ("PBGC"); and

(2) in the case of the other restricted Employees, a dollar amount which equals the present value of the maximum benefit described in section 4022(b)(3)(B) of the Act (determined on the earlier of the date the Plan terminates or the date benefits commence, and determined in accordance with regulations of PBGC) without regard to any other limitations in section 4022 of the Act.

In the event a lump sum distribution is made to a Participant (or his Beneficiary) who is subject to the above restrictions in an amount in excess of the amount otherwise permitted under this Section, an agreement between the Participant (or his Beneficiary) and the Plan shall be made providing for repayment of any amount of the distribution that is restricted. Except as otherwise permitted by law, repayment shall be secured by property having a fair market value of at least one hundred twenty-five (125%) percent of the amount which would be repayable if the Plan had terminated on the date of distribution of the lump sum. If the fair market value of the property falls below one hundred ten (110%) percent of the amount which would be repayable if the Plan were then terminated, the Employee shall deposit additional property to bring the value of the property to one hundred twenty-five (125%) percent of the amount.

**3.1.10 Controlled Businesses.** If this Plan provides contributions or benefits for one or more Owner-Employees who control both the business for which this Plan is established and one or more other trades or businesses, this Plan must satisfy section 401(a) of the Code as a single plan, and any benefits accrued by an Owner-Employee must be based only on the Earned Income which is derived from the trade or business with respect to which this Plan is established.

## ARTICLE 2

### FIDUCIARIES

**3.2.1 Standard of Conduct.** The duties and responsibilities of the Plan Administrator and the Trustee with respect to the Plan shall be discharged (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (e) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

**3.2.2 Individual Fiduciaries.** At any time that a group of individuals is acting as Plan Administrator or Trustee, the number of such persons who shall act in such capacity from time to time shall be determined by the Employer. Such persons shall be appointed by the Employer and may or may not be Participants or Employees of the Employer. The Trustee (or Plan Administrator) shall be bound by any action taken by 1 of individuals acting in the capacity of the Trustee (or Plan Administrator.)

**3.2.3 Disqualification from Service.** No person shall be permitted to serve as a Fiduciary, custodian, counsel, agent or employee of the Plan or as a consultant to the Plan who has been convicted of any of the criminal offenses specified in the Act.

**3.2.4 Bonding.** Except as otherwise permitted by law, each Fiduciary or person who handles funds or other property or assets of the Plan shall be bonded in accordance with the requirements of the Act.

**3.2.5 Prior Acts.** No Fiduciary shall be liable for any acts occurring prior to the period of time during which the Fiduciary was actually serving in such capacity with respect to the Plan.

**3.2.6 Insurance and Indemnity.** The Employer may purchase or cause the Trustee to purchase and keep current as an authorized expense liability insurance for the Plan, its Fiduciaries, and any other person to whom any financial responsibility with respect to the Plan and Trust is allocated or delegated, from and against any and all liabilities, costs and expenses incurred by such persons as a result of any act or omission to act in connection with the performance of the duties, responsibilities and obligations under the Plan and under the Act; provided that any such insurance policy purchased with Plan assets permits subrogation by the insurer against the Fiduciary in the case of breach by such Fiduciary.

Unless otherwise determined and communicated to affected parties by the Employer, the Employer shall indemnify and hold harmless each such person, other than a corporate trustee, for and from any such liabilities, costs and expenses which are not covered by any such insurance, except to the extent that any such liabilities, costs or expenses are judicially determined to be due to the gross negligence or willful misconduct of such person. No Plan assets may be used for any such indemnification.

**3.2.7 Expenses.** Expenses incurred by the Plan Administrator or the Trustee in the administration of the Plan and Trust, including fees for legal services rendered, such compensation to the Trustee as may be agreed upon in writing from time to time between the Employer and the Trustee, and all other proper charges and expenses of the Plan Administrator or the Trustee and of their agents and counsel shall be paid by the Employer, or at its election at any time or from time to time, may be charged against the assets of the Trust, but until so paid shall constitute a charge upon the assets of the Trust.

The Trustee shall have the authority to charge the Trust Fund for its compensation and reasonable expenses unless paid or contested by written notice by the Employer within sixty (60) days after mailing of the written billing by the Trustee. All taxes of any and all kinds whatsoever which may be levied or

assessed under existing or future laws upon the assets of the Trust or the income thereof shall be paid from such assets. Notwithstanding the foregoing, no compensation shall be paid to any Employee for services rendered under the Plan and Trust as a Trustee.

**3.2.8 Agents, Accountants and Legal Counsel.** The Plan Administrator shall have authority to employ suitable agents, custodians, investment counsel, accountants and legal counsel who may, but need not be, legal counsel for the Employer. The Plan Administrator and the Trustee shall be fully protected in acting upon the advice of such persons. The Trustee shall at no time be obliged to institute any legal action or to become a party to any legal action unless the Trustee has been indemnified to the Trustee's satisfaction for any fees, costs and expenses to be incurred in connection therewith.

**3.2.9 Investment Manager.** The Employer may employ as an Investment Manager or managers to manage all or any part of the Trust Fund any (a) investment advisor registered under the Investment Advisors Act of 1940; (b) bank as defined in said Act; or (c) insurance company qualified to perform investment management services in more than one state. Any Investment Manager shall have all powers of the Trustee in the management of such part of the Trust Fund, including the power to acquire or dispose of assets.

In the event an Investment Manager is so appointed, the Trustee shall not be liable for the acts or omissions of such Investment Manager, or be under any obligation to invest or otherwise manage that part of the Trust Fund that is subject to the management of the Investment Manager. The Employer shall notify the Trustee in writing of any appointment of an Investment Manager, and shall provide the Trustee with the Investment Manager's written acknowledgment that it is a Fiduciary with respect to the Plan.

**3.2.10 Finality of Decisions or Acts.** Except for the right of a Participant or Beneficiary to appeal the denial of a claim, any decision or action of the Plan Administrator or the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Plan Administrator or the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any Fiduciary within the scope of his duties in accordance with the terms of the Plan and Trust, such actions shall be upheld unless determined to have been arbitrary and capricious.

**3.2.11 Certain Custodial Accounts and Contracts.** The term "Trustee" as used herein will also include a person holding the assets of a custodial account, an annuity contract or other contract which is treated as a qualified trust pursuant to section 401(f) of the Code and references to the Trust Fund shall be construed to apply to such custodial account, annuity contract or other contract.

## ARTICLE 3

### PLAN ADMINISTRATOR

**3.3.1 Administration of Plan.** The Employer shall designate a Plan Administrator from time to time. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy in his sole discretion. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of the Plan; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified Plan pursuant to the Code, and shall comply with the terms of the Act. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under the Plan.

(a) The Plan Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

(1) To determine all questions relating to the eligibility of an Employee to participate in the Plan or to remain a Participant in the Plan.

(2) To compute, certify, and direct the Trustee with respect to the amount and kind of benefits to which any Participant is entitled.

(3) To authorize and direct the Trustee with respect to all disbursements from the Trust Fund.

(4) To maintain all the necessary records for the administration of the Plan.

(5) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its terms.

(6) To select the Insurer to provide any life insurance policies for any Participant.

(7) To advise the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee might direct its investment accordingly.

(8) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

(9) To instruct the Trustee as to the management, investment, and reinvestment of the Trust Fund unless the investment authority has been delegated to the Trustee or an Investment Manager.

(b) The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor, the Secretary of the Treasury, or other governmental authorities.

(c) Whenever it is determined by the Plan Administrator to be in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

(d) The Plan Administrator shall be responsible for procuring bonding for all persons dealing with the Plan or its assets, as may be required by law.

(e) In the event this Plan is required to file reports or pay premiums to the Pension Benefit Guaranty Corporation, the Plan Administrator shall have the duty to prepare and make such filings, to pay any premiums required, whether for basic or contingent liability coverage, and shall be charged with the responsibility of notifying all necessary parties of such events and under such circumstances as may be required by law.

**3.3.2 Disclosure Requirements.** Every Participant covered under the Plan and every Beneficiary receiving benefits under the Plan shall receive from the Plan Administrator a summary plan description, and such other information as may be required by law or by the terms of the Plan.

**3.3.3 Information Generally Available.** The Plan Administrator shall make copies of this Plan and Trust, the summary plan description, latest annual report, life insurance policies, or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of any of the above documents to the respective party.

**3.3.4 Statement of Accrued Benefit.** Upon written request to the Plan Administrator once during any twelve (12) month period, a Participant or Beneficiary shall be furnished with a written statement, based on the latest available information, of his then vested Accrued Benefit and the earliest date upon which the same will become fully vested and non-forfeitable. The statement shall also include a notice to the Participant of any benefits that are forfeitable if the Participant dies before a certain date.

**3.3.5 Explanation of Rollover Treatment.** The Plan Administrator shall, when making a distribution eligible for rollover treatment, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an Eligible Retirement Plan (as defined in Section 1.2.29) within sixty (60) days after the date on which the recipient received the distribution and, if applicable, the provisions of law pertaining to the tax treatment of lump sum distributions.

## ARTICLE 4

### TRUSTEE

**3.4.1 Acceptance of Trust.** The Trustee, by joining in the execution of the Plan, agrees to act in accordance with the express terms and conditions hereof.

**3.4.2 Trustee Capacity - Co-Trustees.** The Trustee may be a bank, trust company or other corporation possessing trust powers under applicable state or federal law, or, one or more individuals or any combination thereof. When there are two or more Trustees, they may allocate specific responsibilities, obligations or duties among themselves by their written agreement. An executed copy of such written agreement shall be delivered to and retained by the Plan Administrator.

**3.4.3 Resignation, Removal, and Successors.** Any Trustee may resign at any time by delivering to the Employer a written notice of resignation to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof; the Employer may waive such notice. The Trustee may be removed by the Employer with or without cause, by tendering to the Trustee a written notice of removal to take effect at a date specified therein.

Upon such removal or resignation of a Trustee, the Employer shall either appoint a successor Trustee who shall have the same powers and duties as those conferred upon the resigning or discharged Trustee, or, if a group of individuals is acting as Trustee, determine that a successor shall not be appointed and the number of Trustees shall be reduced by one (1).

**3.4.4 Consultations.** The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, in any case in which the Trustee shall deem such advice necessary. The Trustee shall not be liable for any action taken or omitted in good faith reliance upon the advice of such counsel. With the exception of those powers and duties specifically allocated to the Trustee by the express terms of the Plan, it shall not be the responsibility of the Trustee to interpret the terms of the Plan and the Trustee may request, and is entitled to receive, guidance and written direction from the Plan Administrator on any point requiring construction or interpretation of the Plan documents.

**3.4.5 Rights, Powers and Duties.** The rights, powers, and duties of the Trustee shall be as follows:

(a) The Trustee shall be responsible for the safekeeping of the assets of the Trust Fund in accordance with the provisions of the Plan and any amendments hereto. The duties of the Trustee shall be determined solely by express provisions under the Plan and no other further duties or responsibilities shall be implied. Subject to the terms of this Plan, the Trustee shall be fully protected and shall incur no liability in acting in reliance upon the written instructions or directions of the Employer, the Plan Administrator, a duly designated Investment Manager, or any other named Fiduciary.

(b) The Trustee shall have all powers necessary or convenient for the orderly and efficient performance of its duties, including but not limited to those specified in this Section. The Trustee shall have the power generally to do all acts, whether or not expressly authorized, which the Trustee in the exercise of its Fiduciary responsibility may deem necessary or desirable for the protection of the Trust Fund and the assets thereof.

(c) The Trustee shall have the power to collect and receive any and all monies and other property due the Plan and to give full discharge and release therefore; to settle, compromise or submit to arbitration any claims, debts or damages due to or owing to or from the Trust Fund; to commence or defend suits or legal proceedings wherever, in the Trustee's judgment, any interest of the Trust Fund requires it; and to represent the Trust Fund in all suits or legal proceedings in any court of law or equity or before any other body or tribunal.

(d) The Trustee shall cause any life insurance policies or assets of the Trust Fund to be registered in its name as Trustee and shall be authorized to exercise any and all ownership rights regarding these assets, subject to the terms of the Plan.

(e) The Trustee may temporarily hold cash balances and shall be entitled to deposit any funds received in a bank account in the name of the Trust Fund in any bank selected by the Trustee, including the banking department of a corporate Trustee, if any, pending disposition of such funds in accordance with the Plan. Any such deposit may be made with or without interest.

(f) The Trustee shall pay the premiums and other charges due and payable at any time on any life insurance policies as directed by the Plan Administrator; provided funds for such payments are then available in the Trust. The Trustee shall be responsible only for such funds and life insurance policies as actually received as Trustee, and shall have no obligation to make payments other than from such funds and cash values of life insurance policies.

(g) If the whole or any part of the Trust Fund shall become liable for the payment of any estate, inheritance, income or other tax which the Trustee shall be required to pay, the Trustee shall have full power and authority to pay such tax out of any monies or other property in its hands for the account of the person whose interest hereunder is so liable. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority, as it shall deem necessary. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on instructions from the Plan Administrator.

(h) The Trustee shall keep a full, accurate, and detailed record of all transactions of the Trust that the Employer and the Plan Administrator shall have the right to examine at any time during the Trustee's regular business hours. As of the close of each Plan Year, the Trustee shall furnish the Plan Administrator with a statement of account setting forth all receipts, disbursements, and other transactions effected by the Trustee during the year. The Plan Administrator shall promptly notify the Trustee in writing of his approval or disapproval of the account.

The Plan Administrator's failure to disapprove the account within sixty (60) days after receipt shall be considered an approval. Except as otherwise required by law, the approval by the Plan Administrator shall be binding as to all matters embraced in any statement to the same extent as if the account of the Trustee had been settled by judgment or decree of a court of competent jurisdiction under which the Trustee, Employer and all persons having or claiming any interest in the Trust Fund were parties; provided, however, that the Trustee may have its account judicially settled if it so desires.

(i) The Trustee is hereby authorized to execute all necessary receipts and releases to any parties concerned; and shall be under a duty, upon being advised by the Plan Administrator that the proceeds of any life insurance policies are payable, to give reasonable assistance to the designated Beneficiary in collecting such sums as may appear to be due.

(j) If, at any time, as the result of the death of the Participant there is a dispute as to the person to whom payment or delivery of monies or property should be made by the Trustee, or regarding any action to be taken by the Trustee, the Trustee may postpone such payment, delivery or action, retaining the funds or property involved, until such dispute is resolved in a court of competent jurisdiction or the Trustee is indemnified to its satisfaction or has received written direction from the Plan Administrator.

(k) Anything in this instrument to the contrary notwithstanding, the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become or remain a Participant hereunder, the amount of benefit to which any Participant or Beneficiary shall be entitled hereunder, or the size and type of any Life Insurance Policy to be purchased from any Insurer for any Participant hereunder; all such responsibilities being vested in the Plan Administrator.



**3.4.6 Trustee Indemnification.** The Employer shall indemnify and hold harmless the Trustee for and from the assertion or occurrence of any liability to a Participant or Beneficiary for any action taken or omitted by the Trustee pursuant to any written direction to the Trustee from the Employer or the Plan Administrator. Such indemnification obligation of the Employer shall not be applicable to the extent that any such liability is covered by insurance.

**3.4.7 Changes in Trustee Authority.** If a successor Trustee is appointed, neither an Insurer nor any other person who has previously had dealings with the former Trustee shall be chargeable with knowledge of such appointment or such change until furnished with a written notice. Until such notice, the Insurer and any other such party shall be fully protected in relying on any action taken or any signature presented which would have been proper in accordance with the previous information.

**3.4.8 Electromechanical Communications.** Electromechanical communications are permitted between all parties of a transaction, including the Participant.

## ARTICLE 5

### TRUST ASSETS

**3.5.1 Trustee Exclusive Owner.** All assets held by the Trustee, whether in the Trust Fund or Segregated Funds, shall be owned exclusively by the Trustee and no Participant or Beneficiary shall have any individual ownership. Participants and their Beneficiaries shall share in the assets of the Trust, its net earnings, profits, and losses, only as provided in this Plan.

**3.5.2 Investments.** The Trustee shall invest and reinvest the Trust Fund, without distinction between income and principal, in one or more of the following ways, as the Trustee shall from time to time determine:

(a) The Trustee may invest the Trust Fund or any portion thereof in obligations issued or guaranteed by the United States of America or of any instrumentalities thereof, or in other bonds, notes, debentures, mortgages, preferred or common stocks, options to buy or sell stocks or other securities, mutual fund shares, limited partnership interests, commodities, or in such other property, real or personal, as the Trustee shall determine.

(b) The Trustee may cause the Trust Fund or any portion thereof to be invested in a common trust fund established and maintained by a national or other bank regulated by the Federal Deposit Insurance Corporation ("FDIC") for the collective investment of fiduciary funds, even though the bank is acting as the Trustee or Investment Manager; provided, such common trust fund is a qualified trust under the applicable section of the Code, or corresponding provisions of future federal Internal Revenue laws and is exempt from income tax under the applicable section of the Code. In the event any assets of the Trust Fund are invested in such a common trust fund, the Declaration of Trust creating such common trust fund, as it may be amended from time to time, shall be incorporated into this Plan by reference and made a part hereof.

(c) The Trustee may deposit any portion of the Trust Fund in savings accounts in federally insured banks or savings and loan associations or invest in certificates of deposit issued by any such bank or savings and loan association. The Trustee may retain, without liability for interest, any portion of the Trust Fund in cash balances pending investment thereof or payment of expenses.

(d) The Trustee may buy and sell put and call options, covered or uncovered, engage in spreads, straddles, ratio writing and other forms of options trading, including sales of options against convertible bonds, and sales of Standard & Poor's futures contracts, and trade in and maintain a brokerage account on a cash or margin basis.

**3.5.3 Administration of Trust Assets.** Subject to the limitations expressly set forth in this Plan, the Trustee shall have the following powers and authority in connection with the administration of the assets of the Trust:

(a) to hold and administer all contributions made by the Employer to the Trust Fund and all income or other property derived therefrom as a single Trust Fund;

(b) to manage, control, sell, convey, exchange, petition, divide, subdivide, improve, repair, grant options, sell upon deferred payments, lease without limit as determined for any purpose, compromise, arbitrate or otherwise settle claims in favor of or against the Trust Fund, institute, compromise and defend actions and proceedings, and to take any other action necessary or desirable in connection with the administration of the Trust Fund;

(c) to vote any stock, bonds, or other securities of any corporation or other issuer; otherwise consent to or request any action on the part of any such corporation or other issuer; to give general or special proxies or powers of attorney, with or without power of substitution; to participate in any

reorganization, recapitalization, consolidation, merger or similar transaction with respect to such securities; to deposit such stocks or other securities in any voting trusts, or with any protective or like committee, or with the Trustee, or with the depositories designated thereby; to exercise any subscription rights and conversion privileges or other options and to make any payments incidental thereto; and generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights, powers and privileges with respect to the stock or other securities or property constituting the Trust Fund as if the Trustee were the absolute owner thereof;

(d) to apply for and procure life insurance policies on the life of the Participant, to exercise whatever rights and privileges may be granted to the Trustee under such Policies, and to cash in, receive and collect such Policies or the proceeds, as and when entitled to do so under the provisions thereof;

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

(f) to register any investment held in the Trust by a corporate or institutional Trustee in the Trustee's own name or in the name of a corporate or institutional Trustee's nominee for the benefit of the Plan, or to hold any investment in bearer form, provided that the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

(g) to borrow money for the purposes of the Plan in such amounts and upon such terms and conditions as the Trustee deems appropriate;

(h) to commingle the assets of the Trust Fund with the assets of other similar trusts which are exempt from income tax, whether sponsored by the Employer, an affiliate of the Employer or an unrelated employer, provided that the books and records of the Trustee shall at all times show the portion of the commingled assets which are part of the Trust; and

(i) to do all acts whether or not expressly authorized which the Trustee may deem necessary or proper for the protection of the property held hereunder.

**3.5.4 Segregated Funds.** Unless otherwise determined by the Trustee not to be prudent, the Trustee shall invest and reinvest each Segregated Fund without distinction between income and principal in one or more appropriately identified interest bearing accounts or certificates of deposit in the name of the Trustee and subject solely to the dominion of the Trustee in a banking institution (which may or may not be the Trustee, if the Trustee is a banking institution), or savings and loan association. Any such account or certificate shall bear interest at a rate not less than the rate of interest currently being paid upon regular savings accounts by a banking corporation regulated by the Federal Deposit Insurance Corporation ("FDIC") and situated in the community in which the Employer has its principal business location. Such accounts shall be held for the benefit of the Participant for whom such Segregated Fund is established in accordance with the terms of the Plan and the Segregated Account of the Participant shall be credited with any interest earned in connection with such accounts.

If the Trustee determines that an alternative investment is appropriate, the Trustee may invest the Segregated Fund in any manner permitted with respect to the Trust Fund and such Segregated Fund shall be credited with the net income or loss or net appreciation or depreciation in value of such investments. No Segregated Fund shall share in any Employer contributions or forfeitures, any net income or loss from, or net appreciation or depreciation in value of, any investments of the Trust Fund, or any allocation for which provision is made in this Plan that is not specifically attributable to the Segregated Fund.

**ARTICLE 6**  
**INSURANCE**

**3.6.1** The Plan does not provide for the purchase of life insurance.

## **ARTICLE 7**

### **LOANS**

**3.7.1** Loans are not permitted under the Plan.

## ARTICLE 8

### BENEFICIARIES

**3.8.1 Designation of Beneficiaries.** Each Participant shall have the right to designate a Beneficiary or Beneficiaries and contingent or successive Beneficiaries to receive any benefits provided by this Plan which become payable upon the Participant's death. The Beneficiaries may be changed at any time or times by the filing of a new designation with the Plan Administrator, and the most recent designation shall govern. Notwithstanding the foregoing, and subject to the provisions of Section 2.5.4, the Beneficiary with respect to the Qualified Pre-Retirement Survivor Annuity shall be the surviving spouse of the Participant, unless the spouse consents in writing to an alternate Beneficiary, the terms of such consent acknowledge the effect of such alternate Beneficiary, and the consent is witnessed by a representative of the Plan or by a notary public. The designation of a Beneficiary other than the spouse of the Participant or an optional form of benefits with the consent of such spouse may not be changed without the consent of such spouse and any consent must acknowledge the specific non-spouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, unless the spouse expressly consents to permitting designations by the Participant without the further consent of the spouse. Notwithstanding the foregoing, a Participant, at any time, may designate his spouse as Beneficiary with the form of benefit a Qualified Joint and Survivor Annuity.

**3.8.2 Absence or Death of Beneficiaries.** If a Participant dies without having a beneficiary designation in force, or if all of the Beneficiaries designated by a Participant predecease him, his Beneficiary shall be his surviving spouse, or if none, his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select.

Unless otherwise designated by the Participant, if a Participant dies and is survived by some, but not all, of the Beneficiaries designated by him, such surviving Beneficiaries shall be deemed his sole Beneficiaries. In the event that a surviving Beneficiary dies before the complete distribution of the deceased Participant's interest, the estate of such Beneficiary shall be deemed the Beneficiary of the undistributed portion of such interest.

## ARTICLE 9

### CLAIMS

**3.9.1 Claim Procedure.** Any Participant or Beneficiary who is entitled to payment of a benefit for which provision is made in this Plan, shall file a written claim with the Plan Administrator on such forms as furnished by the Plan Administrator, and shall furnish such evidence of entitlement to benefits as the Plan Administrator may reasonably require. The Plan Administrator shall notify the Participant or Beneficiary in writing as to the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If a claim for benefit is denied by the Plan Administrator, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefit has been denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice indicating the special circumstances and the date by which a final decision is expected shall be furnished to the Participant or Beneficiary. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall set forth (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding and conclusive. Benefits under this Plan will be paid only if the Plan Administrator decides in his discretion that the applicant is entitled to them.

**3.9.2 Appeal.** If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The decision of the Employer shall be made within sixty (60) days after the receipt by the Plan Administrator of the notice of appeal, unless special circumstances require an extension of time for processing, in which case a decision of the Employer shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Employer, in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based and shall be promptly furnished to the claimant. Benefits under this Plan granted pursuant to such an appeal will be paid only if the Employer decides in his discretion that the applicant is entitled to them.

## ARTICLE 10

### AMENDMENT AND TERMINATION

**3.10.1 Right to Amend.** The Employer may at any time or times amend the Plan and Trust, in whole or in part. The Employer specifically reserves the right to amend the Plan retroactively.

**3.10.2 Delegation.** Each employer and each affiliated employer that is a party to this Agreement expressly delegates authority to Indiantown Gas Company the right to amend any part of the Plan on its behalf. Indiantown Gas Company shall submit a copy of the amendment to each other employer that has adopted the Plan. Each employer or affiliated employer may revoke such authority to amend the Plan on its behalf by written notice to Indiantown Gas Company of such revocation.

**3.10.3 Manner of Amending.** Each amendment of this Plan shall be made by delivery to the Trustee of a copy of the resolution of the Employer that sets forth such amendment.

**3.10.4 Limitations on Amendments.**

(a) No amendment shall be made to this Plan that:

(1) Directly or indirectly operates to give the Employer any interest whatsoever in the assets of the Trust or custodial account or to deprive any Participant or Beneficiary of his vested and non-forfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to purposes other than the exclusive benefit of Participants or their Beneficiaries;

(2) Increases the duties or liabilities of the Trustee without the Trustee's prior written consent;

(3) Changes the vesting schedule under the Plan if the non-forfeitable percentage of the Accrued Benefit derived from Employer contributions (determined as of the later of the date such amendment is adopted or the date such amendment becomes effective) of any Participant is less than such non-forfeitable percentage computed without regard to such amendment; or

(4) Reduces the Accrued Benefit of a Participant within the meaning of section 411(d)(6) of the Code, except to the extent permitted under section 412(c)(8) of the Code.

(b) An amendment, which has the effect of decreasing a Participant's Accrued Benefit or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment, other than that permitted under Treasury regulation 1.411(d)(4)-4(b)(2)(ii), shall be treated as reducing an Accrued Benefit. For purposes of this Section, a change in the actuarial basis of determining optional or Early Retirement Benefits shall be considered an amendment to the Plan.

In addition, a Plan amendment that has the effect of eliminating or reducing an Early Retirement Benefit or a retirement type subsidy with respect to benefits attributable to service before the amendment shall be treated as reducing Accrued Benefits. The preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. A retirement type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a Social Security supplement, or a death benefit (including life insurance).

(c) If the vesting schedule of a Plan is amended, any Participant as of the later of the date such amendment is adopted or becomes effective, shall be vested and have a non-forfeitable percentage (determined as of such date) of his Employer provided Accrued Benefit not less than the



percentage computed under the Plan without regard to such amendment.

If a Plan amendment changes the vesting schedule, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's non-forfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Participant who has completed three (3) Years of Vesting Service, (or in the case of Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after 1988, five (5) Years of Vesting Service), may elect within a reasonable period after the adoption of such amendment to have his non-forfeitable percentage computed without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end sixty (60) days after the latest of the date:

(1) the amendment is adopted;

(2) the amendment becomes effective; or

(3) the Employer or Plan Administrator issues the Participant written notice of the amendment.

**3.10.5 Voluntary Termination.** The Employer may terminate the Plan at any time by delivering to the Trustee an instrument in writing that designates such termination. Following termination of the Plan, the Trust will continue until the interest of each Participant has been distributed.

**3.10.6 Involuntary Termination.** The Plan shall terminate if (a) the Employer is dissolved or adjudicated bankrupt or insolvent in appropriate proceedings, or if a general assignment is made by the Employer for the benefit of creditors, or (b) the Employer loses its identity by consolidation or merger into one or more corporations or organizations, unless within ninety (90) days after such consolidation or merger, such corporations or organizations elect to continue the Plan.

**3.10.7 Withdrawal by Employer.** The Employer may withdraw from participation under the Plan without terminating the Trust upon making a transfer of the Trust assets to another Plan, which shall be deemed to constitute an amendment in its entirety of the Trust.

**3.10.8 Powers Pending Final Distribution.** Until final distribution of the assets of the Trust, the Plan Administrator and Trustee shall continue to have all the powers provided under this Plan as are necessary for the orderly administration, liquidation and distribution of the assets of the Trust.

## ARTICLE 11

### PORTABILITY

**3.11.1 Continuance by Successor.** In the event of the dissolution, consolidation or merger of the Employer, or the sale by the Employer of its assets, the resulting successor person or persons, firm or corporations may continue this Plan by (a) adopting the Plan by appropriate resolution; (b) appointing a new Trustee as though the Trustee (including all members of a group of individuals acting as Trustee) had resigned; and (c) executing a proper agreement with the new Trustee. In such event, each Participant in this Plan shall have an interest in the Plan after the dissolution, consolidation, merger, or sale of assets, at least equal to the interest that he had in the Plan immediately before the dissolution, consolidation, merger, or sale of assets. Any Participants who do not accept a position with such successor within a reasonable time shall be deemed terminated. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger, or sale of assets, such successor does not adopt this Plan, as provided herein, the Plan shall automatically be terminated and deemed an involuntary termination.

**3.11.2 Merger with Other Plan.** In the event of the merger or consolidation with, or transfer of assets or liabilities to, any other deferred compensation plan and trust, each Participant shall have an interest in such other plan which is equal to or greater than the interest which he had in this Plan immediately before such merger, consolidation or transfer, and if such other plan thereafter terminates, each Participant shall be entitled to an Accrued Benefit which is equal to or greater than the Accrued Benefit to which he would have been entitled immediately before such merger, consolidation or transfer if this Plan had then been terminated.

**3.11.3 Transfers from Other Plans.** The Employer may cause all or any of the assets held in connection with any other plan or trust maintained by the Employer for the benefit of its Employees, that satisfies the applicable requirements of the Code relating to qualified plans and trusts, to be transferred to the Trustee, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose. In general, rollover contributions may be accepted by the Trustee and held for the benefit of a Participant from any other plan or trust which is maintained by any other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts. However, the Employer reserves the right to permit or deny a rollover, in whole or in part, based on the characteristics of the underlying assets. A rollover contribution may include in-kind assets. Any such assets so transferred to the Trustee shall be accompanied by written instructions from the employer, or the trustee, custodian or individual holding such assets, setting forth the name of each Participant for whose benefit such assets have been transferred and showing separately the respective contributions by the employer and by the Participant and the current value of the assets attributable thereto. Upon receipt by the Trustee of such assets, the Trustee shall place such assets in a Segregated Fund for the Participant and the Participant shall be deemed one hundred (100%) percent vested and have a non-forfeitable interest in any such assets.

**3.11.4 Transfer to Other Plans.** The Trustee, upon written direction by the Employer, shall transfer some or all of the assets held under the Trust to another plan or trust of the Employer or any other employer meeting the requirements of the Code relating to qualified plans and trusts, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose.

In addition, upon the termination of employment of any Participant and receipt by the Plan Administrator of a request in writing, the Participant may request that any distribution from the Trust to which he is entitled shall be transferred to an individual retirement account, an individual retirement annuity, or any other plan or trust which is maintained by some other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts. Upon receipt of any such written request, the Plan Administrator shall cause the Trustee to transfer the assets so directed and, as appropriate, shall direct the Insurer to transfer to the new trustee any applicable insurance policies issued by it.

**3.11.5 Direct Rollover.** With respect to distributions from the Plan made on or after January 1, 1993, and notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

## ARTICLE 12

### MISCELLANEOUS

**3.12.1 No Reversion to Employer.** Except as specifically provided in the Plan, under no circumstances shall any funds contributed hereunder at any time revert to, or be used or enjoyed by, the Employer prior to satisfaction of all fixed and contingent liabilities under the Plan, nor shall any such funds or assets of the Trust or custodial account, if any, at any time be used other than for the exclusive benefit of Participants and their Beneficiaries.

If Plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of Plan benefits (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) will be paid to the Trust or custodial account.

If upon Plan termination all Plan liabilities are satisfied, any excess assets arising from erroneous actuarial computation will be allocated to the Participants according to Section 2.5.8.

**3.12.2 Employer Actions.** Any action by the Employer pursuant to the provisions of the Plan shall be evidenced by appropriate resolution or by written instrument executed by any person authorized by the Employer to take such action.

**3.12.3 Execution of Receipts and Releases.** Any payment to any person eligible to receive benefits under this Plan, in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. The Plan Administrator may require such person, as a condition precedent to such payment, to execute a receipt and release therefore in such form, as he shall determine.

**3.12.4 Rights of Participants Limited.** Neither the creation of this Plan and Trust nor anything contained in this Plan shall be construed as giving any Participant, Beneficiary or Employee any equity or other interest in the assets, business or affairs of the Employer, or the right to complain about any action taken by or about any policy adopted or pursued by, the Employer, or as giving any Employee the right to be retained in the service of the Employer; and all Employees shall remain subject to discharge to the same extent as if the Plan had never been executed. Prior to the time that distributions are made in conformity with the provisions of the Plan, neither the Participants, nor their spouses, Beneficiaries, heirs-at-law, or legal representatives shall receive or be entitled to receive cash or any other thing of current exchangeable value, from either the Employer or the Trustee as a result of the Plan or the Trust.

**3.12.5 Persons Dealing with Trustee Protected.** No person dealing with the Trustee shall be required or entitled to see to the application of any money paid or property delivered to the Trustee, or determine whether the Trustee is acting pursuant to the authorities granted to the Trustee hereunder or to authorizations or directions herein required. The certificate of the Trustee that the Trustee is acting in accordance with the Plan shall protect any person relying thereon.

**3.12.6 Protection of the Insurer.** An Insurer shall not be responsible for the validity of the Plan or Trust and shall have no responsibility for action taken or not taken by the Trustee, for determining the propriety of accepting premium payments or other contributions, for making payments in accordance with the direction of the Trustee, or for the application of such payments. The Insurer shall be fully protected in dealing with any representative of the Employer or any one of a group of individuals acting as Trustee. Until written notice of a change of Trustee has been received by an Insurer at its home office, the Insurer shall be fully protected in dealing with any party acting as Trustee according to the latest information received by the Insurer at its home office.

**3.12.7 No Responsibility for Act of Insurer.** Neither the Employer, the Plan Administrator, nor the Trustee shall be responsible for any of the following, nor shall they be liable for instituting action in connection with:

- (a) The validity of policies or policy provisions;
- (b) Failure or refusal by the Insurer to provide benefits under a policy;
- (c) An act by a person which may render a policy invalid or unenforceable; or
- (d) Inability to perform or delay in performing an act, which inability or delay is occasioned by a provision of a policy or a restriction imposed by the Insurer.

**3.12.8 Inalienability.** The right of any Participant or his Beneficiary in any distribution hereunder shall not be subject to alienation, assignment or transfer, voluntarily or involuntarily, by operation of law or otherwise, except as may be expressly permitted herein. No Participant shall assign, transfer, or dispose of such right nor shall any such right be subjected to attachment, execution, garnishment, sequestration, or other legal, equitable, or other process. The preceding shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, as defined in section 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

Notwithstanding the above, the foregoing shall not apply to judgments, orders and decrees issued, and settlement agreements entered into, on or after August 5, 1997, which offset the Participant's benefits provided under this Plan if:

- (a) the order or requirement to pay arises:
  - (1) under a judgment of conviction for a crime involving this Plan,
  - (2) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Act, or
  - (3) pursuant to a settlement agreement between the Secretary of Labor or the Pension Benefit Guaranty Corporation and the Participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a Fiduciary or any other person;
- (b) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan; and
- (c) in a case in which the survivor annuity requirements of Code section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a spouse at the time at which the offset is to be made:
  - (1) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B) of the Code), or an election to waive the right of the spouse to either a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity is in effect in accordance with the requirements of section 417(a) of the Code,
  - (2) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the Plan in connection with a violation of part 4 of such subtitle, or
  - (3) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a Qualified Joint and Survivor Annuity or under a Qualified Pre-Retirement Survivor Annuity, where such survivor annuity equals the survivor annuity determined under the Plan assuming that:

- (i) the Participant terminated employment on the date of the offset,
- (ii) there was no offset,
- (iii) benefits commence at the Participant's Normal Retirement Date (or current age if later),
- (iv) the Qualified Joint and Survivor Annuity survivor percentage is fifty (50%) percent (even if another percentage is selected in Section 1.2.45), and
- (v) the Qualified Pre-Retirement Survivor Annuity is fifty (50%) percent of such Qualified Joint and Survivor Annuity.

In the event a Participant's benefits are attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of the action, the Plan Administrator shall cause any benefits payable to be paid to the court for distribution by the court, as it considers appropriate.

**3.12.9 Domestic Relations Orders.** The Plan Administrator shall adhere to the terms of any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a Participant and is made pursuant to a state domestic relations law (including a community property law) and which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

Any such domestic relations order must clearly specify the name and last known mailing address of the Participant and the name and mailing address of each Alternate Payee covered by the order, the amount or percentage of the Participant's Accrued Benefit to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which such order applies.

Any such domestic relations order shall not require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan, to provide increased benefits (determined on the basis of actuarial value) or the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

Distributions to an Alternate Payee are permitted on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order, even if the Participant continues to be employed and has not attained the "earliest possible retirement age" pursuant to section 414(p) of the Code.

For this purposes, the "earliest possible retirement age" under the Plan means the earlier of: (a) the date on which the Participant is entitled to a distribution under the Plan, or (b) the later of the date the Participant attains age 50, or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

The payment of benefits to an Alternate Payee before the Participant has separated from service shall be determined as if the Participant had retired, or otherwise terminated employment, on the date on which such payment is to begin under the Qualified Domestic Relations Order, (but taking into account only the Present Value of the benefits actually accrued and not taking into account the Present Value of any Employer subsidy for Early Retirement), and may be paid in any form in which such benefits may be paid under the Plan to the Participant (other than the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his or her subsequent spouse). The interest rate assumption used in

determining the Present Value shall be five (5%) percent.

To the extent provided in the Qualified Domestic Relations Order, the former spouse of a Participant shall be treated as a surviving spouse of such Participant for purposes of sections 401(a)(11) and 417 of the Code (and any spouse of the Participant shall not be treated as a spouse of the Participant for such purposes) and if married for at least one (1) year, the surviving former spouse shall be treated as meeting the requirements of section 417(d) of the Code.

The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of a domestic relations order by the Plan and the Plan's procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order, the Plan Administrator shall determine whether such order is a Qualified Domestic Relations Order and shall notify the Participant and each Alternate Payee of such determination. If the Participant or any affected Alternate Payee disagrees with the determinations of the Plan Administrator, the disagreeing party shall be treated as a claimant and the claims procedure of Part 3, Article 9 shall be followed. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts which would have been payable to the Alternate Payee during such period if the order had been determined to be a Qualified Domestic Relations Order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto. If within such eighteen (18) month period it is determined that the order is not a Qualified Domestic Relations Order or the issue as to whether such order is a Qualified Domestic Relations Order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a Qualified Domestic Relations Order, that is made after the close of the eighteen (18) month period, shall be applied prospectively only.

**3.12.10 Authorization to Withhold Taxes.** The Trustee is authorized in accordance with applicable law to withhold from distribution to any payee such sums as may be necessary to cover federal and state taxes which may be due with respect to such distributions.

**3.12.11 Missing Persons.** If the Trustee mails by registered or certified mail, postage prepaid, to the last known address of a Participant or Beneficiary, a notification that the Participant or Beneficiary is entitled to a distribution and if (a) the notification is returned by the post office because the addressee cannot be located at such address and if neither the Employer, the Plan Administrator nor the Trustee shall have any knowledge of the whereabouts of such Participant or Beneficiary within three (3) years from the date such notification was mailed, or (b) within three (3) years after such notification was mailed to such Participant or Beneficiary, he does not respond thereto by informing the Trustee of his whereabouts, the ultimate disposition of the then undistributed Accrued Benefit, of such Participant (or his Beneficiary) shall be determined in accordance with the then applicable Federal laws, rules and regulations. If any portion of the Accrued Benefit is forfeited because the Participant or Beneficiary cannot be found, such portion shall be reinstated if a claim is later made by the Participant or Beneficiary.

**3.12.12 Notices.** Any notice or direction to be given in accordance with the Plan shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting as Trustee, notice to the Trustee may be given by giving notice to any one or more of such individuals.

**3.12.13 Governing Law.** The provisions of this Plan and Trust shall be construed, administered and enforced in accordance with the provisions of the Act and, to the extent applicable, the

laws of the state in which the Employer has its principal place of business. All contributions to the Trust shall be deemed to take place in such state.

**3.12.14 Severability of Provisions.** In the event that any provision of this Plan and Trust shall be held to be illegal, invalid or unenforceable for any reason, said illegality, invalidity or unenforceability shall not affect the remaining provisions, but shall be fully severable and the Plan shall be construed and enforced as if said illegal, invalid or unenforceable provisions had never been inserted herein.

**3.12.15 Gender and Number.** Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender and vice versa.

**3.12.16 Binding Effect.** The Plan and Trust, and all actions and decisions hereunder, shall be binding upon the heirs, executors, administrators, successors and assigns of any and all parties hereto and Participants, present and future.

**3.12.17 Qualification under Internal Revenue Laws.** The Employer intends that the Plan and Trust qualify under the applicable provisions of the Code. Until advised to the contrary, the Trustee may assume that the Plan and Trust are so qualified and entitled to tax exemption under the Code.



## ARTICLE 13

### EXECUTION OF AGREEMENT

**3.13.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and no other counterpart need be produced.

**3.13.2 Acceptance by Trustee.** The Trustee, by joining in the execution of this Agreement, hereby signifies the Trustee's acceptance thereof.

**3.13.3 Execution.** To record the adoption of this Plan and Trust the Employer and each affiliated employer, if any, has caused this Agreement to be executed by its duly qualified officers and the Trustee has executed this Agreement, as of the day and year first above written.

**Employer:**  
Indiantown Gas Company

**Trustee:**

\_\_\_\_\_  
Brian Powers  
President

\_\_\_\_\_  
Brian Powers  
Trustee

\_\_\_\_\_  
Colette Powers  
Trustee

## **Indiantown Gas Company Pension Trust**

### **EGTRRA PLAN AMENDMENT FOR DB PLANS**

This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001.

This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. Where appropriate, the term "Plan" shall mean plan, trust, adoption agreement and GUST Appendix or snap-off attachment.

**SECTION 1. PLAN LOANS FOR OWNER-EMPLOYEES AND SHAREHOLDER EMPLOYEES**

Not Applicable

Effective for plan loans made after December 31, 2001, Plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

## SECTION 2. LIMITATIONS ON BENEFITS

This section shall be effective for Limitation Years ending after 12/31/2001. (Enter date on or after December 31, 2001.)

### Definition of Defined Benefit Dollar Limitation.

The "defined benefit dollar limitation" shall be \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to Limitation Years ending with or within the calendar year for which the adjustment applies.

### Modification to Definition of Maximum Permissible Benefit

For purposes of determining a Participant's "maximum permissible benefit," the Defined Benefit Dollar Limitation above shall be adjusted for commencement of benefits before the attainment of 62 or after the attainment of 65.

If benefits commence before the Participant attains age 62, the Defined Benefit Dollar Limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation at age 62. The actuarial equivalent annual benefit at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan used in determining early retirement benefits, and (ii) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a five (5%) percent interest rate and the applicable mortality table as defined in the Plan. Any decrease in the Defined Benefit Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

If benefits commence after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant is an annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation at age 65. The actuarial equivalent annual benefit at an age after age 65 is determined as the lesser of (i) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan used in determining delayed retirement benefits, and (ii) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a five (5%) percent interest rate assumption and the applicable mortality table as defined in the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

### Affected Participants.

Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to: (Select one)

all current and former Participants (with benefits limited by section 415(b)) who have an accrued benefit under the Plan immediately prior to the effective date of this section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)).

only Participants who have at least one Hour of Service on or after the first day of the

first Limitation Year ending after the date specified above.

### SECTION 3. INCREASE IN COMPENSATION LIMIT

The "annual compensation" of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17) 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.

For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for determination periods beginning before January 1, 2002 shall be: (Choose one.)

\$200,000

\$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

#### SECTION 4. MODIFICATION OF TOP-HEAVY RULES

This section shall apply for Plan Years beginning after December 31, 2001.

##### Definition of Key Employee.

"Key Employee" shall mean any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes The Determination Date was an officer of the Employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of section 415(c)(3) of the Code. The determination of who is a Key Employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

Determination of Top-Heavy Status. The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under section 416(g)(2) of the Code during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, severance from employment, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account.

##### Contributions under Other Plans.

The Employer may provide that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.)

Not Applicable - no other plan or Top-Heavy minimum provided in this Plan

\_\_\_\_\_  
Name of other plan to which Top-Heavy minimum shall be made

Other: \_\_\_\_\_  
(Must preclude Employer discretion.)

##### Minimum benefits.

For purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Code and the Plan, in determining Years of Credited Service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of section 410(b) of the Code) no Key Employee or former Key Employee.

## SECTION 5. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

This section shall apply to distributions made after December 31, 2001.

Modification of Definition of Eligible Retirement Plan.

For purposes of the direct rollover provisions of the Plan, an Eligible Retirement Plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

Modification of Definition of Eligible Rollover Distribution.

Not Applicable - Plan does not permit after-tax employee contributions.

For purposes of the direct rollover provisions of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.



**SECTION 6. ROLLOVERS FROM OTHER PLANS**

Not Applicable

In addition to the Participant rollover contributions and/or direct rollovers already accepted by the Plan, effective 01/01/2002 (Enter a date no earlier than January 1, 2002), the Plan will accept:

Direct Rollovers:

The Plan will accept a direct rollover of an Eligible Rollover Distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code.

an annuity contract described in section 403(b) of the Code.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant Rollover Contributions from Other Plans:

The Plan will accept a Participant contribution of an Eligible Rollover Distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code.

an annuity contract described in section 403(b) of the Code.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant Rollover Contributions from IRAs:

The Plan: (Choose one.)

will

will not

accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

**SECTION 7. ROLLOVERS DISREGARDED IN INVOLUNTARY CASH OUTS**

Not Applicable. No involuntary cash out

The Employer elects to maintain the Plan provision including the Participant's rollover contributions in determining the value of the Participant's non-forfeitable Accrued Benefit for purposes of the Plan's involuntary cash-out rules.

The Employer elects to exclude a Participant's rollover contributions in determining the value of the Participant's non-forfeitable Accrued Benefit for purposes of the Plan's involuntary cash-out rules. The value of a Participant's non-forfeitable Accrued Benefit shall be determined without regard to that portion of the Accrued Benefit that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. If the value of the Participant's non-forfeitable Accrued Benefit as so determined is less than the Involuntary Cash Out threshold specified in the Plan, the Trustee shall immediately distribute the Participant's entire non-forfeitable Accrued Benefit. This election shall apply with respect to distributions made after:

\_\_\_/\_\_\_/\_\_\_ (Enter a date no earlier than December 31, 2001.)

with respect to Participants who separated from service after:

\_\_\_/\_\_\_/\_\_\_ (Enter date. The date may be earlier than December 31, 2001.)

**SECTION 8. REPEAL OF MULTIPLE USE TEST**

The multiple use test described in Treasury Regulation 1.401(m)-2 shall not apply to the Plan for Plan Years beginning after December 31, 2001.

\* \* \* \* \*

The Employer hereby adopts this as evidenced by the foregoing this 18th day of November, 2003.

**Employer:**  
Indiantown Gas Company

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Brian Powers  
President

**RESOLUTION OF  
THE BOARD OF DIRECTORS  
OF  
INDIANTOWN GAS COMPANY**

**Whereas**, the Employer has the power to amend and restate the Plan.

On November 18, 2003 the following resolutions to amend and restate the Indiantown Gas Company Pension Trust were duly adopted by unanimous consent in lieu of a meeting of the board of directors of Indiantown Gas Company and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of Plan presented to the board of directors is a Defined Benefit Plan as authorized under Internal Revenue Code Sections 401(a) and 501(a) and is a restatement intended to meet the requirements of The Uruguay Round Agreements Act ("GATT"), Uniformed Services Employment and Reemployment Rights Act ("USERRA"), Small Business Job Protection Act, ("SBJPA"), The Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA") and the Community Renewal Tax Relief Act of 2000 ("CRA") collectively known as GUST. This restatement shall be effective February 1, 2003;

RESOLVED, that the Indiantown Gas Company Pension Trust presented to the board of directors is hereby adopted and approved and that the proper officers of the Employer are hereby authorized and directed to execute and deliver to the Plan Administrator one or more counterparts of the Plan and Trust.

RESOLVED, that, for purposes of the limitations on contributions and benefits under the Plan as prescribed by Internal Revenue Code Section 415, the Limitation Year shall be the Plan Year.

RESOLVED, that, prior to the due date (including extensions) of the Employer's federal income tax return for each of its fiscal years hereafter, the Employer shall contribute to the Plan amounts sufficient to meet its obligation under the Defined Benefit Plan for each such fiscal year in such amount as the board of directors determine. The Treasurer of the Corporation is empowered and directed to pay such contribution to the Trustee of the Plan in cash or property, in accordance with the terms of the Plan Document and shall notify the Plan Administrator as to which fiscal year said contributions shall be applied.

RESOLVED, that the proper officers of the Employer shall act as soon as possible to notify employees of the Employer of the adoption of the Plan and Trust.

RESOLVED, that the attached amendment to meet the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) presented to the board of directors is hereby approved for adoption;

RESOLVED, that the proper officers of the Employer shall take such actions as are necessary to adopt the EGTRRA amendment.

RESOLVED, that the attached amendment to meet the requirements of the proposed regulations to section 401(a)(9) of the Internal Revenue Code contained in Internal Revenue Service Announcement 2001-82 is hereby approved for adoption;

RESOLVED, that the proper officers of the Employer shall take such actions as are necessary to adopt the proposed regulations to section 401(a)(9) of the Internal Revenue Code contained in Internal Revenue Service Announcement 2001-82;

The undersigned further certifies that attached hereto as Exhibits A, B and C respectively are true copies of the Indiantown Gas Company Pension Trust Document, EGTRRA Amendment and the proposed regulations to section 401(a)(9) of the Internal Revenue Code contained in Internal Revenue Service Announcement 2001-82 approved and adopted in the above resolutions.

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Secretary

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Date