



GUARDIAN®

**DEFINED CONTRIBUTION**

**PROTOTYPE PLAN**

**&**

**TRUST DOCUMENT**

The Guardian Life Insurance Company of America,  
7 Hanover Square, New York, NY 10004  
[www.guardianlife.com](http://www.guardianlife.com)

Business Resource Center for Advanced Markets

**THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA  
DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST**

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**GUARDIAN LIFE INSURANCE COMPANY OF AMERICA  
DEFINED CONTRIBUTION PROTOTYPE PLAN & TRUST**

**ARTICLE I**

**DEFINITIONS**

The following words and terms, as used in this Plan, shall have the meanings set forth below.

1.01 "Account" shall mean the record established and maintained for each Participant to reflect his or her allocable portion of the Investment Fund derived from any Elective Deferrals, any Employer contributions, and any mandatory contributions made by the Participant.

1.02 "Accrued Benefit" shall mean the values of Policies issued on the Participant's life plus the value of his or her Account as defined in **Section 1.01**, determined as of the most recent Valuation Date.

1.03 "Actual Deferral Percentage" or "ADP" shall mean

(a) for a specified group of Participants for a Plan Year, the average of the ratios, calculated separately for each Participant in such group, of

(1) the amount of Employer contributions actually paid over to the Trust on behalf of such Participant for the Plan Year to

(2) the Participant's Compensation for such Plan Year, whether or not the Employee was a Participant for the entire Plan Year.

(b) Employer contributions on behalf of any Participant shall include:

(1) any Elective Deferrals, including Roth 401(k) Elective Deferrals, made pursuant to the Participant's deferral election, including Excess Elective Deferrals of Highly Compensated Employees, but excluding

(A) Excess Elective Deferrals of non-Highly Compensated Employees that arise solely from Elective Deferrals made under the Plan or plans of this Employer, and

(B) Elective Deferrals that are taken into account in the Contribution Percentage test, provided the ADP test is satisfied both with and without exclusion of these Elective Deferrals; and

(2) at the election of the Employer, Qualified Non-elective Contributions and Qualified Matching Contributions. For purposes of computing Actual Deferral Percentages, an Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

1.04 "Actual Retirement Date" shall mean the date the Employee actually retires from employment by the Employer.

1.05 "Adoption Agreement" shall mean the Adoption Agreement executed by the Employer and the Committee named therein, attached hereto, and made a part hereof as more fully set forth therein.

1.06 "Age" shall mean the Employee's Age at his or her last birthday, unless a different election has been made in **Item 3B** of the Adoption Agreement.

1.07 "Anniversary Date" shall mean the Effective Date and the first day of each Plan Year thereafter.

1.08 "Annual Additions" shall be as defined in **Section 9.05(a)**.

1.09 "Average Contribution Percentage" or "ACP" shall mean the average, expressed as a percentage, of the Contribution Percentages of the Eligible Participants in a group.

1.10 "Beneficiary" shall mean any person, estate, trust, or organization entitled to receive a payment under the Plan on the death of a Participant.

1.11 "Break in Service" shall mean a twelve (12) consecutive month period (the computation period) during which the Participant does not complete more than five hundred (500) Hours of Service with the Employer. If the elapsed time rule is selected in **Item 3G** of the Adoption Agreement, the provisions of **Section 2.09** shall supersede any conflicting provision of this **Section 1.11**.

1.12 "Code" shall mean the Internal Revenue Code of 1986 as amended.

1.13 "Committee" shall mean the individual or individuals selected in the Adoption Agreement.

1.14 "Committee Members" shall mean the members of the Committee.

1.15 "Compensation" shall be as defined in **Section 9.05(b)** as limited by the Employer in **Item 4** of the Adoption Agreement. For any Self-Employed Individual covered under the Plan, Compensation shall mean Earned Income. If no election is made in the Adoption Agreement, Compensation shall mean Compensation of the Participant during the Plan Year as defined in **Section 9.05(b)(1)** of the Plan.

(a) Except as provided elsewhere in this Plan, Compensation shall include only that Compensation which is actually paid to the Participant during the applicable period. Except as otherwise set forth in the Plan, the applicable period shall be the period elected by the Employer in **Item 4D** of the Adoption Agreement. If the Employer fails to make an election in

**Item 4D** the applicable period shall be the Plan Year.

(b) Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under **sections 125, 132(f)(4), 402(g)(3), 402(h)(1)(B), 403(b) and 457** of the Code. If amounts not includible in income under **section 125** are included pursuant to **Item 4B** such amounts shall include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage (deemed 125 Compensation). An amount shall be treated as an amount under **section 125** only if the Employer does not collect or request information regarding the Participant's other health coverage as part of the enrollment process for the health plan. If elected by the Employer in **Item 4B** of the Adoption Agreement, for purposes of determining allocation only, gross income shall not include the excluded amounts.

(c) For any Self-Employed Individual covered under the Plan, Compensation means Earned Income.

(d) If the Plan is a target benefit Plan, the following definitions shall apply:

(1) "Covered Compensation" shall mean for a Plan Year the average, without indexing, of the Taxable Wage Bases in effect for each calendar year during the thirty-five (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 will decrease a Participant's stated benefit under the Plan.

In determining a Participant's Covered Compensation for a Plan Year, the Taxable Wage Base in effect for the current Plan Year and any subsequent Plan Year will be 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 year designated by the Employer in **Item 7A6** of the Adoption Agreement.

A Participant's Covered Compensation for a Plan Year before the thirty-five (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 thirty-five (35) year period is the Participant's Covered Compensation for the Plan Year during which the thirty-five (35) year period ends.

(2) "Final Average Compensation" shall mean the average of a Participant's annual Compensation as defined in **Section 1.15(a)** from the Employer for the three (3) consecutive year period ending with or within the Plan Year. If a Participant's entire period of employment with the Employer is less than three (3) consecutive years, Compensation is averaged on an annual basis over the Participant's entire period of employment. Compensation for any year in excess of the Taxable Wage Base in effect at the beginning of such year will not be taken into account. A Participant's Final Average Compensation for a Plan Year is limited to the Participant's Covered Compensation. No increase in Final Average Compensation will decrease a Participant's stated benefit under the Plan.

(3) "Average Annual Compensation" means the average of a Participant's Compensation over the three (3) consecutive Plan Years which produce the highest

average. If the Participant has less than three (3) Years of Service, Compensation is averaged over the Participant's total period of service.

(e) In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the Annual Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed One Hundred Fifty Thousand (\$150,000) Dollars, as adjusted for increases in the cost of living in accordance with **section 401(a)(17)(B)** of the Internal Revenue 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 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 12.

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under **section 401(a)(17)** of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Compensation for any prior determination period is taken into account in determining an Employee's benefit accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

(f) For any Plan Year beginning after December 31, 2001, the Annual Compensation of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Compensation means Compensation during a 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.

(g) For Limitation Years beginning in 2005, payments made within 2 ½ months after severance from employment (within the meaning of **section 401(k)(2)(B)(i)(1)**) will be Compensation within the meaning of **section 415(c)(3)** if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular Compensation for services during the Employee's regular working hours, Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar Compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered Compensation if paid after severance from employment, even if they are paid within 2 ½ months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of 414(u)(1) to the extent these payments do not

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

1.16 "Contribution Percentage" shall mean the ratio, expressed as a percentage, of the Participant's Contribution Percentage Amounts to the Participant's Compensation for the Plan Year, whether or not the Employee was a Participant for the entire Plan Year.

1.17 "Contribution Percentage Amounts" shall mean the sum of the Employee Contributions, Matching Contributions and Qualified Matching Contributions, to the extent not taken into account for purposes of the ADP test, under the Plan on behalf of the Participant for the Plan Year. Such Contribution Percentage Amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions.

If so elected in **Item 7D** of the Adoption Agreement, the Employer may include Qualified Non-elective Contributions in the Contribution Percentage Amounts. The Employer may also elect, in **Item 7D2** of the Adoption Agreement, to use Elective Deferrals in the Contribution Percentage Amounts so long as the ADP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

1.18 "Determination Year" shall mean the Plan Year.

1.19 "Disability" shall mean the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The permanence and degree of such impairment shall be supported by medical evidence, and shall be determined in accordance with the procedure set forth in **Section 5.03**.

1.20 "Disability Date" shall mean the date the Employee incurs a physical or mental condition which, in the judgment of the Committee, based upon medical reports and other evidence satisfactory to the Committee, presumably permanently prevents an Employee from satisfactorily performing his or her usual duties for the Employer or the duties of such other position or job which the Employer makes available to him or her and for which such Employee is qualified by reason of his or her training, education or experience.

1.21 "Distribution Date" shall mean the date distributions can be made of Elective Deferrals, Qualified Matching Contributions, Qualified Non-Elective Contributions, Roth 401(k) Elective Deferrals and income allocable to each. The Distribution Date shall be the earliest of the Participant's death, Disability, severance from employment (separation from service for Plan Years beginning before 2002, attainment of Age fifty-nine and one-half (59 ½), Hardship if such distributions are elected under **Item 8H**, or receipt by the Plan of a Qualified Domestic Relations Order under **section 414(p)** of the Code. The Distribution Date shall also include the date the Plan is terminated provided the Employer does not maintain another defined contribution plan

(other than an employee stock ownership plan under **section 4975(e)(7)** or **409** of the Code, a simplified employee pension under **section 408(k)** of the Code, a SIMPLE IRA plan as defined in **section 408(p)** of the Code, a plan or contract described in **section 403(b)** or a plan described in **section 457(b)** or **(f)** of the Code at any time during the period beginning on the date of Plan termination and ending twelve (12) months after all assets have been distributed from the Plan.

1.22 "Earned Income" shall mean net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Employer to a plan qualified under **section 401(a)** of the Code to the extent deductible under **section 404** of the Code. Net earnings shall be determined with regard to the deduction allowed to the taxpayer by **section 164(f)** of the Code for taxable years beginning after December 31, 1989.

1.23 "Effective Date" shall be as stated in **Item 1** of the Adoption Agreement, except to the extent otherwise set forth in the Plan or Adoption Agreement.

1.24 (a) "Elective Deferrals" shall mean any Employer contribution made to the Plan at the election of the Participant, in lieu of cash Compensation, and shall include contributions made pursuant to a Salary Reduction Agreement. With respect to any taxable year, a Participant's Elective Deferrals are the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in **section 401(k)** of the Code, any simplified employee pension cash or deferred arrangement as described in **section 402(h)(1)(B)** of the Code, any Simple IRA Plan under **section 408(p)**, any eligible deferred compensation plan under **section 457** of the Code, any plan as described under **section 501(c)(18)** of the Code, and any Employer contributions made on behalf of a Participant for the purchase of an annuity Policy under **section 403(b)** of the Code pursuant to a Salary Reduction Agreement. Elective Deferrals shall not include any deferrals properly distributed as Excess Annual Additions.

(b) "Roth 401(k) Elective Deferrals" shall mean, for taxable years beginning on or after January 1, 2006, Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Elective Deferral.

(c) "Catch-Up Contributions" shall mean Elective Deferrals made to the Plan that are in excess of an otherwise applicable plan limit and that are made by Participant's who have reached their fiftieth (50th) birthday by the end of their taxable years. An otherwise applicable Plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-Up Contributions, such as the limits on annual additions, the dollar limitation on Elective Deferrals under **section 402(g)** of the Code (not counting Catch-Up Contributions) and the limit imposed by the ADP test under **section 401(k)(3)** of the Code. Catch-Up Contributions of the Participant for a taxable year may not exceed the lesser of

(1) the dollar limit on Catch-Up Contributions under **section**

**414(v)(2)(B)(i)** for the taxable year, or

(2) when added to other Elective Deferrals, the percentage selected in **Item 7H** of the Adoption Agreement but not less than seventy-five (75%) percent of the Participant's Compensation for the taxable year.

(d) The dollar limit on Catch-Up Contributions under **section 414(v)(2)(B)(i)** is \$1,000 for taxable years beginning in 2002, increasing by \$1,000 for each year thereafter up to \$5,000 for taxable years beginning in 2006 and later years. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under **section 414(v)(2)(C)** of the Code. Any adjustments will be in multiples of \$500.

(e) Catch-Up Contributions are not subject to the limits on Annual Additions, are not counted in the ADP Test and are not counted in determining the minimum allocation under **section 416** of the Code, but Catch-Up Contributions made in prior years are counted in determining whether the Plan is a Top-Heavy Plan.

(f) All provisions in the Plan relating to Catch-Up Contributions are effective after 2001.

1.25 "Eligible Employee" shall mean an Employee who satisfies the requirements set forth in **Item 2** of the Adoption Agreement during a Plan Year. The term "Eligible Employee" shall not include any Employee who is a member of a unit of Employees covered by a collective bargaining agreement with an Employee representative if the Employer and the Employee representative have engaged in good faith bargaining for retirement benefits unless the Employer has elected to include such Employees in **Item 2A** of the Adoption Agreement. The exclusion for collective bargaining unit members described in the preceding sentence shall not apply unless two (2%) percent or less of the Employees of the Employer who are covered pursuant to that agreement are professionals as defined in **section 1.410(b)-9(g)** of proposed Income Tax Regulations. The term "Employee representative" shall not include any organization more than half of whose members are Employees who are owners, officers or executives of the Employer. In addition, the term "Eligible Employee" shall not include Employees who are nonresident aliens within the meaning of **section 7701(b)(1)(B)** of the Code and who receive no earned income from the Employer, within the meaning of **section 911(d)(2)** of the Code, which constitutes income from sources within the United States within the meaning of **section 861(a)(3)** of the Code, unless the Employer has elected to include such Employees in **Item 2A** of the Adoption Agreement.

1.26 "Eligible Participant" shall mean any Employee who is eligible to make an Employee Contribution, or an Elective Deferral, if the Employer takes such contributions into account in the calculation of the Contribution Percentage, or to receive a Matching Contribution, including forfeitures, or a Qualified Matching Contribution. If an Employee Contribution is required as a condition of participation in the Plan, any Employee who would be a Participant in the Plan if such Employee made such a contribution shall be treated as an Eligible Participant on behalf of whom no Employee Contributions are made.

1.27 "Employee" shall mean any Self-Employed Individual, Owner-Employee or any other Employee of an Employer maintaining the Plan, as well as any Employee of any other employer required to be aggregated with an Employer maintaining the Plan under **sections 414(b), (c), (m) or (o)** of the Code. The term "Employee" shall also mean any Leased Employee deemed to be an Employee of any Employer, including employers required to be aggregated with the Employer maintaining the Plan, to the extent provided in **sections 414(n) or (o)** of the Code. The term "Employee" for all purposes under this Plan shall not include any person classified by the Employer as an independent contractor, regardless of any Internal Revenue Service or other governmental agency's final determination classifying such individual as an employee. A submission under the Employee Plans Compliance Resolution System by the Employer shall make such individual an Employee for Plan purposes.

1.28 "Employee Contribution" shall mean any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is maintained under a separate account to which earnings and losses are allocated.

1.29 "Employer" shall mean the Employer or Employers named in the Adoption Agreement, or any successor by merger, purchase or otherwise that assumes the obligations of this Plan. An Employer's adoption of this Plan shall not imply or include its adoption by affiliates, subsidiaries, or any other employer or employers unless such affiliates, subsidiaries, or other employer or employers are named in the Adoption Agreement, in which event the provisions of **Section 15.12** shall apply.

1.30 "Entry Date" shall mean the date specified by the Employer in **Item 3A** of the Adoption Agreement as of which eligible Employees may become Participants.

1.31 "Excess Aggregate Contributions" shall mean, with respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over

(b) The maximum Contribution Percentage Amounts permitted by the Average Contribution Percentage test determined by reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages.

Such determination shall be made after first determining Excess Elective Deferrals pursuant to **Section 1.34** and then determining Excess Contributions pursuant to **Section 1.33**.

1.32 "Excess Amount" shall mean an amount allocated to a Participant's Account from Employer contributions which causes the total Annual Additions to such Account to exceed the amount permitted under **Section 9.01(b)**.

1.33 "Excess Contributions" shall mean, with respect to any Plan Year, the excess of:

(a) The aggregate amount of Employer contributions actually taken into account in computing the ADP of Highly Compensated Employees for such Plan Year, over

(b) The maximum amount of such contributions permitted by the ADP test, determined by reducing contributions made on behalf of Highly Compensated Employees in order of the ADPs, beginning with the highest of such percentages.

1.34 "Excess Elective Deferrals" shall mean those Elective Deferrals that are includible in a Participant's gross income under **section 402(g)** of the Code to the extent such Participant's Elective Deferrals for a taxable year exceed the dollar limitation under **section 402(g)** of the Code. Excess Elective Deferrals shall be treated as Annual Additions under the Plan unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year. Excess Elective Deferrals shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Elective Deferrals is the sum of

(a) income or loss allocable to the Participant's Elective Deferral account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator of which is the Participant's Accrued Benefit attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year; and

(b) ten (10%) percent of the amount determined under **Section 1.34(a)** multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

1.35 "Fully Insured Plan" shall mean a Plan funded exclusively by the purchase of individual insurance Policies.

1.36 "Gender" shall mean that whenever the masculine gender is used, it shall include the feminine gender unless the text indicates the contrary.

1.37 "Hardship" shall mean Hardship as defined in **Section 5.15**.

1.38 "Highly Compensated Active Employee" shall mean any Employee who:

(a) was a 5-percent owner at any time during the year or the preceding year,  
or

(b) for the preceding year had Compensation from the Employer in excess of \$80,000 and, if the Employer so elects, was in the Top-Paid Group for the preceding year. The \$80,000 amount is adjusted at the same time and in the same manner as under **section 415(d)**, except that the base period is the calendar quarter ending September 30, 1996.

For this purpose the applicable year of the Plan for which a determination is being

made is called a Determination Year and the preceding 12-month period is called a Look-Back Year.

A Highly Compensated Former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that Determination Year, in accordance with **section 1.414(q)-1T, A4** of the temporary Income Tax Regulations and Notice 97-75.

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

1.39 "Highly Compensated Employee" shall mean Highly Compensated Active Employees and Highly Compensated Former Employees.

1.40 "Highly Compensated Former Employee" shall mean an Employee who separated from service or was deemed to have separated prior to the Determination Year, performs no service for the Employer during the Determination Year, and was a Highly Compensated Active Employee for either the separation year or any Determination Year ending on or after the Employee's fifty-fifth (55th) birthday. Whether or not an individual is a Highly Compensated Former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that Determination Year, in accordance with section 1.414(q)-1T, A4 of the temporary Income Tax Regulations and Notice 97-45.

1.41 "Hour of Service" shall mean

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

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), layoff, jury duty, military duty or leave of absence. No more than five hundred one (501) Hours of Service shall be credited under this subsection for any single continuous period (whether or not such period occurs in a single computation period). Hours under this subsection shall be calculated and credited pursuant to **sections 2530.200b-2(b) and (c)** of the Department of Labor Regulations which are incorporated herein by this reference; and

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under **Section 1.41(a) or Section 1.41(b)**, as the case may be, and under **Section 1.41(c)**. These Hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(d) Each hour during which an individual is considered an Employee under

**section 414(n)** or **section 414(o)** of the Code and the regulations thereunder.

(e) Solely for purposes of determining whether a Break in Service for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such Hours cannot be determined, eight (8) Hours of Service per day of such absence. For purposes of this **Section 1.41(e)** an absence from work for maternity or paternity reasons means an absence

(1) by reason of the pregnancy of the individual,

(2) by reason of a birth of a child of the individual,

(3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this **Section 1.41(e)** shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or, in all other cases, in the following computation period.

(f) Hours of Service shall be determined on the basis of the method selected in **Item 3G** of the Adoption Agreement.

(g) Hours of Service will be credited for employment with other members of an affiliated service group under **section 414(m)** of the Code, a controlled group of corporations under **section 414(b)** of the Code, or a group of trades or businesses under common control under **section 414(c)** of the Code, of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to **section 414(o)** of the Code and the regulations thereunder. Hours of Service will also be credited for any individual considered an Employee for purposes of the Plan under **section 414(n)** or **section (o)** of the Code and the regulations thereunder. Hours of Service with an employer will not be credited to an Employee for periods of employment prior to the date such employer was part of an affiliated service group, controlled group of corporations, or a group of trades or businesses under common control with a participating Employer, except to the extent elected in **Item 3H** of the Adoption Agreement.

1.42 "Insured Plan" shall mean a Plan under which life insurance or annuity Policies are to be purchased in accordance with an election made in **Item 13** of the Adoption Agreement.

1.43 "Insurer" shall mean an insurance company licensed to do business in a state.

1.44 "Investment Fund" shall mean the assets of the Trust other than the value of any Policies.

1.45 "Leased Employee" shall mean any person, other than an Employee of the recipient, who, pursuant to an agreement between the recipient and any other person (hereinafter 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 effective for Plan Years beginning after December 31, 1996. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer.

A Leased Employee shall not be considered an Employee of the recipient if: (a) such Employee is covered by a money purchase pension plan providing: (1) a nonintegrated Employer Contribution rate of at least ten (10%) percent of Compensation, as defined in **section 415(c)(3)** of the Internal Revenue Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under **section 125, 132(f)(4), section 402(e)(3), section 402(h)(1)(B), section 403(b) and section 457** of the Internal Revenue Code, (2) immediate participation, and (3) full and immediate vesting; and (b) Leased Employees do not constitute more than twenty (20%) percent of the recipient's non-Highly Compensated workforce.

1.46 "Look-Back Year" shall mean the twelve (12) consecutive month period immediately preceding the Determination Year.

1.47 "Matching Contribution" shall mean an Employer contribution made to this or any other defined contribution plan on behalf of a Participant on account of an Employee contribution by such Participant, or on account of a Participant's Elective Deferral, under a plan maintained by the Employer.

1.48 "Method of Funding" shall mean the method selected in **Item 11** of the Adoption Agreement.

1.49 "Net Profits" shall mean current and accumulated earnings of the Employer before Federal and State taxes and contributions to this and any other qualified plan.

1.50 "Non-Qualified Employer Contribution" shall mean Employer contributions which are not Qualified Employer Contributions.

1.51 "Normal Retirement Age" shall mean the date specified in **Item 5A** of the Adoption Agreement. Under no circumstances shall the Normal Retirement Age exceed any mandatory retirement age imposed on the Employee.

1.52 "Normal Retirement Date" shall mean the date specified in **Item 5B** of the Adoption Agreement.

1.53 "Owner-Employee" shall mean a sole proprietor, or a partner who owns more than ten (10%) percent of either the capital or profits interest of the partnership.

1.54 "Participant" shall mean an Eligible Employee who is not excluded under **Item 2** of the Adoption Agreement and has satisfied and continues to satisfy all the eligibility requirements as stated in **Item 3** of the Adoption Agreement. An individual who has accrued a benefit under the Plan but who ceases to satisfy all of the eligibility requirements under the Plan shall not be considered a Participant. The term "Participant" shall not include any Employee who is a member of a unit of Employees covered by a collective bargaining agreement with an Employee representative if the Employer and the Employee representative have engaged in good faith bargaining for retirement benefits as described in **section 410(b)(3)** of the Code unless the Employer has elected to include such Employees in **Item 2A** of the Adoption Agreement. The exclusion for collective bargaining unit members described in the preceding sentence shall not apply unless two (2%) percent or less of the Employees of the Employer who are covered pursuant to that agreement are professionals as defined in **section 1.410(b)-9(g)** of proposed Income Tax Regulations. The term "Employee representative" shall not include any organization more than half of whose members are Employees who are owners, officers or executives of the Employer. In addition, the term "Participant" shall not include Employees who are nonresident aliens within the meaning of **section 7701(b)(1)(B)** of the Code and who receive no earned income from the Employer, within the meaning of **section 911(d)(2)** of the Code, which constitutes income from sources within the United States within the meaning of **section 861(a)(3)** of the Code, unless the Employer has elected to include such Employees in **Item 2A** of the Adoption Agreement. Finally, the term "Participant" shall not include an Employee who ceases to be an Eligible Employee because he becomes a member of a class of Employees excluded as Eligible Employees in **Item 2** of the Adoption Agreement.

1.55 "Participation Commencement Date" shall mean the first day of the first Plan Year in which the Participant commenced participation in the Plan.

1.56 "Plan" shall mean the provisions of The Guardian Life Insurance Company of America Defined Contribution Prototype Plan and Trust Agreement as set forth herein, as modified by the Adoption Agreement, and as applied to the adopting Employer named therein.

1.57 "Plan Administrator" shall mean the person or persons designated in the Adoption Agreement. If no designation is made, the Plan Administrator shall be the Committee. The Plan Administrator shall be the named Fiduciary and shall have authority to the extent set forth herein to control and manage the operation and administration of the Trust.

1.58 "Plan Year" shall mean the twelve (12) consecutive month period designated by the Employer in **Item 16** of the Adoption Agreement.

1.59 "Policy" shall mean a retirement income, income endowment, whole life or term insurance policy or an annuity policy issued by the Insurer.

1.60 "Qualified Employer Contributions" shall mean either Employer discretionary contributions or Qualified Matching Contributions which are subject to the distribution and nonforfeitability requirements under **section 401(k)** of the Code when made.

1.61 "Qualified Joint and Survivor Annuity" shall mean an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than one-half (½) or greater than the amount of the annuity payable during the joint lives of the Participant and the Spouse. The Joint and Survivor Annuity will be the amount of benefit which can be purchased with the Participant's Accrued Benefit. The percentage of the survivor annuity under the Plan shall be fifty (50%) percent unless a different percentage is elected by the Employer in **Item 22F** of the Adoption Agreement.

1.62 "Qualified Matching Contributions" shall mean Matching Contributions which are subject to the distribution and nonforfeitability requirements under **section 401(k)** of the Code when made.

1.63 "Qualified Non-elective Contributions" shall mean contributions, other than Matching Contributions or Qualified Matching Contributions, made by the Employer and allocated to Participants' accounts that the Participants may not elect to receive in cash until distributed from the Plan, that are nonforfeitable when made, and that are distributable only in accordance with the distribution provisions that are applicable to Elective Deferrals and Qualified Matching Contributions.

1.64 "Retired Participant" shall mean a former Participant who has retired from the employ of the Employer.

1.65 "Salary Reduction Agreement" shall mean a legally binding agreement, on a form prescribed by the Committee, whereby the Participant agrees to reduce his or her annual Compensation during a Plan Year by a percentage he or she selects, subject to the limitations of the Plan and applicable provisions of law. The Committee shall establish such rules for the execution of the Salary Reduction Agreement, including the time and manner of execution of the Agreement, as it, in its sole discretion, shall determine are reasonable and necessary for the proper operation of the Plan, unless the Employer has elected to limit the Committee's discretion by making the appropriate elections in **Item 7G** of the Adoption Agreement.

1.66 "Salary Reduction Contributions Percentage" shall mean the percentage of annual Compensation for a Plan Year selected by a Participant pursuant to the terms of a Salary Reduction Agreement.

1.67 "Self-Employed Individual" shall mean an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established. The term shall also mean an individual who would have had Earned Income but for the fact that the trade or business had no Net Profits for the taxable year.

1.68 "Shareholder-Employee" shall mean an Employee or officer of an electing small business (S Corporation) 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.

1.69 "Sponsor" shall mean Guardian Life Insurance Company of America.

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

1.71 (a) "Top-Heavy Plan" shall mean a Plan which in any Plan Year beginning after December 31, 1983, during which the Plan is intended to qualify under **section 401(a)** of the Code satisfies the following conditions:

(1) At least one Key Employee (as defined in **Section 1.71(b)**) was a Participant in the Plan or was entitled to contributions under the Plan on the Determination Date; and

(2) (A) If the Top-Heavy Ratio for this Plan exceeds sixty (60%) percent and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans; or

(B) If this Plan is part of a Required Aggregation Group of plans, but which is not part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the group of Plans exceeds sixty (60%) percent, or

(C) If this Plan is part of a Required Aggregation Group of plans and part of a Permissive Aggregation Group and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty (60%) percent.

(3) Top-Heavy Ratio:

(A) 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 Dates has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the Accrued Benefits of all Key Employees as of the Determination Dates, including any part of any Accrued Benefit distributed in the one year period ending on the determination date (five (5) year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all Accrued Benefits, including any part of any Accrued Benefit distributed in the one (1) year period ending on the Determination Dates (five (5) year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002), both computed in accordance with **section 416** of the Code and the regulations thereunder. Both the numerator and denominator of the Top-Heavy Ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that Date under **section 416** of the Code and the regulations thereunder.

(B) 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 Dates has or has had any accrued benefits, the Top-Heavy Ratio for any required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of Accrued Benefits under the aggregated defined contribution plan or plans for all Key Employees determined in accordance with (A) above, and the present value of accrued benefits for the aggregated defined benefit plan or plans for all Key Employees as of the Determination Dates, and the denominator of which is the sum of the Accrued Benefits under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (A) above, and the present value of accrued benefits under the defined benefit plan or plans, for all Participants as of the Determination Dates, 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 one (1) year period ending on the Determination Date (five (5) year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002).

(C) For purposes of (A) and (B) 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 who (i) is not a Key Employee but who was a Key Employee in a prior year or (ii) who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the one (1) year period ending on the Determination Date (five (5) year period in determining whether the Plan is Top-Heavy for Plan Years beginning before January 1, 2002) 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, Elective Deferrals and Matching Contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. For purposes of the preceding sentence, Matching Contributions shall be taken into account for years beginning prior to January 1, 2002. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year. The Accrued Benefit of a Participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of **section 411(b)(1)(C)** of the Code.

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

(E) 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 Plan Year containing the determination date or any of the four (4) preceding Plan Years, regardless of whether the plan terminated, and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of **sections 401(a)(4) or 410** of the Code.

(F) **Determination Date:** For any Plan Year subsequent to the first Plan Year, the Determination Date shall be the last day of the preceding Plan Year. For the first Plan Year, the Determination Date shall be the last day of that Year.

(G) **Valuation Date:** The date elected by the Employer in **Item 18B** of the Adoption Agreement as of which account balances or accrued benefits are valued for purposes of calculating the Top-Heavy Ratio.

(H) **Present Value:** Present value shall be based only on the interest and mortality rates specified in **Item 18A** of the Adoption Agreement.

(b) (i) For purposes of this **Section 1.71**, for determinations prior to January 1, 2002, the term "Key Employee" means:

(A) Any Employee or former Employee (including any deceased Employee) who at any time during the five year period ending on the determination date was an officer of the Employer if such individual's Annual Compensation exceeds fifty (50%) percent of the dollar limitation under **section 415(b)(1)(A)** of the Code,

(B) An owner (or considered an owner under **section 318** of the Code) of one of the ten (10) largest interests in the Employer if such individual's Compensation exceeds one hundred (100%) percent of the dollar limitation determined in accordance with **section 415(c)(1)(A)** of the Code,

(C) a 5-percent owner of the Employer, or

(D) a 1-percent owner of the Employer who has an Annual Compensation of more than One Hundred Fifty Thousand (\$150,000) Dollars.

Annual Compensation means Compensation as defined in **Section 1.15**, but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under **section 125, section 132(f)(4), section 402(g)(3), section 402(h), section 403(b) or section 457** of the Code. The determination period is the Plan Year containing the determination date and the four (4) preceding Plan Years. 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.

(ii) For Plan Years beginning after December 31, 2001, the term "Key Employee" means:

(A) Any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date is an officer of the Employer having an Annual Compensation greater than One Hundred Thirty (\$130,000) Dollars (as adjusted under **section 416(i)(1)** of the Code for Plan Years beginning after December 31, 2002);

(B) a 5-percent owner of the Employer; or

(C) a 1-percent owner of the Employer who has an Annual Compensation of more than One Hundred Fifty (\$150,000) dollars.

(c) For purposes of determining ownership interest under **Section 1.71(b) (2), (3) and (4)**, the rules of **section 318** of the Code apply in a manner similar to the way in which they apply for purposes of determining ownership in a corporation. For noncorporate interests, capital or profits interest must be substituted for stock.

(d) The Employer may, by a written election filed with the Trustee(s), elect to have the accrued benefits under any other plan maintained by the Employer taken into account provided the benefits provided under such other plan to its participants are comparable to the benefits provided Participants in this Plan.

(e) The determination as to whether the Plan is a Top-Heavy Plan for a Plan Year must be made each year. However, the Employer may, by a writing to the Trustee(s), determine that the Plan is to be treated as a Top-Heavy Plan for a Plan Year without regard to the tests set forth in this **Section 1.71**.

1.72 "Top-Heavy Year of Participation" means any Year of Participation as defined in **Section 1.77** excluding Years of Participation ending in a Plan Year beginning before January 1, 1984, and Years of Participation beginning in a Plan Year during which the Plan is not a Top-Heavy Plan.

1.73 "Top-Paid Group" shall mean those Employees who are in the group consisting of the top twenty (20%) percent of the Employer's Employees when ranked on the basis of Compensation received from the Employer during the Look-Back Year. For purposes of this definition, Compensation shall mean Compensation as determined under Section 1.15 but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under **section 125, section 132(f)(4), section 402(g)(3), section 402(h), section 403(b) or section 457** of the Code.

1.74 "Trust" shall mean the Trust Agreement and those parts of the Adoption Agreement designating the Trustee. The Trust for each Employer other than those named in the same Adoption Agreement shall be separate and apart from the Trust of any other Employer adopting this prototype.

1.75 "Trustee" or "Trustees" shall mean the person or persons named as Trustee in the Adoption Agreement and their duly appointed successors.

1.76 "Uninsured Plan" shall mean a Plan funded solely by investments other than life insurance or annuity Policies.

1.77 "Year of Participation" shall mean a Plan Year during which a Participant completes one thousand (1000) Hours of Service unless the Employer, in **Item 15E** of the Adoption Agreement elects a different number of Hours of Service. If a Participant completes less than the lesser of one thousand (1000) Hours of Service or the Hours of Service selected in **Item 3D** of the Adoption Agreement during a Plan Year, the Participant shall receive no accrual for such Plan Year, unless the failure of such a Participant to accrue a benefit will cause the Plan to fail to satisfy the coverage rules of **section 410(b)(1)(A)** or **(B)** of the Code. To the extent required to satisfy the requirements of **section 410(b)(1)(A)** or **(B)**, Participants will accrue a benefit for a Plan Year, even if they fail to complete the requisite Hours of Service, starting with the Participant with the highest number of Hours of Service and including each successive Participant with the next highest number of Hours of Service until the requirements of **section 410(b)(1)(A)** or **(B)** are met for the Plan Year.

1.78 "Year of Service" shall mean the twelve (12) consecutive month period (the computation period) during which the Employee completes at least one thousand (1,000) Hours of Service, unless the Employer, in the Adoption Agreement has selected a smaller number of Hours of Service, in which event a Year of Service shall mean the computation period during which the Employee completes such smaller number of Hours of Service. If the Employer has elected in **Item 3G** of the Adoption Agreement to use the Elapsed Time Rule for determining Years of Service for eligibility purposes, the provisions of **Section 2.09** shall be applied to measure Years of Service.

(a) For purposes of eligibility, based on the election made in **Item 3E** of the Adoption Agreement, a Year of Service and Breaks in Service shall be measured over a twelve (12) consecutive month computation period measured from the date the Employee first performs an Hour of Service, and from each anniversary thereof, unless the election in **Item 3E** of the Adoption Agreement requires the succeeding twelve (12) month computation periods to commence with the first Plan Year which commences prior to the first anniversary of the Employee's employment commencement date regardless of whether the Employee is entitled to be credited with one thousand (1,000) Hours of Service during the initial eligibility computation period. An Employee who is credited with one thousand (1,000) 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 will be credited with two (2) Years of Service for purposes of eligibility to participate. The twelve (12) month measuring period in either event shall be the eligibility computation period.

(b) For purposes of vesting determinations, a Year of Service and Breaks in Service shall be measured over the Plan Year unless the election in **Item 15D** of the Adoption Agreement is made. Such measuring period shall be the vesting computation period. In addition, Years of Service shall not be included to the extent elected in **Item 15C** of the Adoption Agreement. For purposes of computing an Employee's right to his or her Accrued Benefit, Years of Service and Breaks in Service shall be measured on the same computation period.

(c) Years of Service prior to termination of employment shall not be credited for any purpose under this Plan if termination of employment occurred prior to the satisfaction of the eligibility requirements selected in **Item 3** of the Adoption Agreement.

(d) Years of Service shall in all cases include periods during which the Employee is on leave of absence with the approval of or at the direction of the Employer by reason of sickness, disability, maternity, death in the family, or for educational purposes or other reasons agreed to by the Employer. Leaves of absence shall also include periods of absence in connection with military service during which the Employee's reemployment rights are legally protected. Leaves of absence shall be granted on a uniform and nondiscriminatory basis. An Employee shall not become a Participant during a leave of absence.

(e) The following Years of Service will be counted for participation and vesting:

(1) Years of Service with a predecessor employer who maintained the Plan.

(2) Years of Service with other members of an affiliated service group as defined in **section 414(m)** of the Code, a controlled group of corporations or other trades or businesses under common control as defined in **sections 414(b)** and **414(c)** of the Code, excluding Years of Service completed prior to the date an employer was part of an affiliated service group, controlled group of corporations or trades or businesses under common control with a participating Employer, except to the extent elected in **Item 3H** of the Adoption Agreement.

(3) Years of Service while a Participant in a predecessor Plan.

(f) If elected in **Item 3F** of the Adoption Agreement Years of Service as a sole proprietor or partner shall be taken into account for all purposes under this Plan. Employees of the Employer, other than a partner, shall be credited with their Years of Service for all purposes under this Plan whether or not the election in **Item 3F** to consider such service is made, to the extent otherwise required under the terms of the Plan.

(g) Military Service - Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with **section 414(u)** of the Internal Revenue Code with regards to reemployments on or after December 12, 1994.

## ARTICLE II

### ELIGIBILITY

2.01 Each present and future Employee shall be eligible to become a Participant pursuant to the provisions selected by the Employer in **Items 2 and 3** of the Adoption Agreement.

(a) If dual entry dates are selected in **Item 3A** of the Adoption Agreement, the Employee will participate on the earliest of the first day of the Plan Year beginning after the date on which the Employee has met the minimum Age and service requirements, six (6) months following the date such requirements are met, or the Entry Date selected in **Item 3A** if neither the first day of the Plan Year nor once during each Plan Year is selected as an option in **Item 3A**.

(b) If a single entry date is selected in **Item 3A** of the Adoption Agreement, the first year of an Employee's participation will commence on the first day of the Plan Year which is nearest to the date on which he or she completes the eligibility requirements or the date selected in **Item 3A** of the Adoption Agreement if the first day of the Plan Year is not selected in **Item 3A**. However, if a fractional year (less than one (1) Year of Service) is elected, the first year of an Employee's participation will commence on the first day of the Plan Year following completion of the minimum Age and service requirements, but not later than the first day of the first Plan Year preceding the date six (6) months after the date on which the Employee first satisfies those requirements.

(c) If an Employee satisfies the eligibility conditions on the date he or she completes his or her first Hour of Service, the Employee shall enter the Plan on the first day of the first Plan Year following the completion of his or her first Hour of Service unless a different election is made by the Employer in **Item 3A** of the Adoption Agreement. If the first day of such Plan Year is more than six (6) months after the Employee satisfies the eligibility conditions, the Employee shall enter the Plan six (6) months after satisfying the eligibility conditions.

2.02 Each Employee shall be notified by the Committee of the existence of the Plan and of its principal provisions. In addition, each Employee shall be advised of his or her right to participate.

2.03 If the Plan is an Insured Plan, in order to have a Policy issued on his or her life, an eligible Employee must execute the required application form or forms. He or she must make available to the Insurer such information as it may require in connection with the issuance of any Policy within ninety (90) days of the date on which he or she is notified of his or her eligibility.

2.04 If the Plan is an Insured Plan and the Employee fails to perform all required acts for the issuance of a Policy, Employer contributions for his or her benefit will be deposited in the Investment Fund and the death benefits will be the amounts in the Participant's Account. A Policy may be provided for such Participant on a later Anniversary Date when he or she does

comply with the conditions set forth in **Section 2.03**.

2.05 A former Participant who did not have a nonforfeitable right to any portion of the Accrued Benefit derived from Employer contributions at the time of termination from service will be considered a new Employee for eligibility purposes, if the number of consecutive 1-year Breaks in Service equals or exceeds the greater of five (5) or the aggregate number of Years of Service before such Breaks in Service. If such former Participant's Years of Service before termination from service may not be disregarded pursuant to the preceding sentences, such former Participant shall participate in accordance with the provisions of **Section 2.08**.

2.06 All Years of Service with the Employer are counted toward eligibility, except

(a) if the Employer has elected a two (2) Year eligibility requirement in **Item 3C** of the Adoption Agreement, and if an Employee has a 1-year Break in Service before satisfying the Plan's requirement for eligibility, service before such Break in Service will not be taken into account;

(b) in the case of a Participant who does not have any nonforfeitable right to the Accrued Benefit derived from Employer contributions, Years of Service before a period of consecutive 1-year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive 1-year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of Years of Service. Such aggregate number of Years of Service will not include any Years of Service disregarded under the preceding sentence by reason of prior Breaks in Service. If a Participant's Years of Service are disregarded pursuant to this **Section 2.06(b)**, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's Years of Service may not be disregarded pursuant to this **Section 2.06(b)**, such Participant shall continue to participate in the Plan or, if terminated, shall participate immediately upon reemployment.

2.07 In the event a Participant becomes ineligible to participate because he or she is no longer a member of an eligible class of Employees, but has not incurred a Break in Service, such Employee shall participate immediately upon his or her return to an eligible class of Employees. If such Participant incurs a Break in Service, his or her eligibility to participate shall be determined pursuant to the provisions of **Section 2.05**.

In the event an Employee who is not a member of the eligible class of Employees becomes a member of the eligible class, such Employee shall participate immediately if such Employee has satisfied the minimum Age and service requirements and would have previously become a Participant had he or she been in the eligible class.

2.08 In the case of any Participant who has a 1-year Break in Service, Years of Service for eligibility purposes before such Break will not be taken into account until the Participant has completed a Year of Service after returning to employment.

Such Year of Service will be measured by the twelve (12) consecutive month period beginning on an Employee's reemployment commencement date and, if necessary, subsequent

twelve (12) consecutive month periods beginning on anniversaries of the reemployment commencement date, unless in **Item 3E** of the Adoption Agreement the Employer has elected to measure the eligibility computation period by converting to a Plan Year after the first year, in which event Plan Years beginning with the Plan Year which includes the first anniversary of the reemployment commencement date will be used for the purposes of subsequent twelve (12) month measuring periods.

The reemployment commencement date is the first day on which the Employee is credited with an Hour of Service for the performance of duties after the first eligibility computation period in which the Employee incurs a 1-year Break in Service.

If a former Participant completes a Year of Service in accordance with this **Section 2.08**, such Participant's participation will be reinstated as of the reemployment commencement date.

2.09 If the Employer elects in **Item 3G** of the Adoption Agreement to have the elapsed time rule apply for purposes of measuring Years of Service, the following provisions shall apply to the extent elected and Years of Service for vesting, participation and accrual purposes, Breaks in Service, and Hours of Service shall be measured pursuant to the provisions of this **Section 2.09** to the extent the provisions of this **Section 2.09** conflict with any other provision of the Plan.

(a) For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the nonforfeitable interest in the Participant's Accrued Benefit derived from Employer contributions, except for periods of service which may be disregarded on account of the rule of parity described in **Section 2.06**, an Employee will receive credit for the aggregate of all time periods commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any period of severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days. If the service requirement elected in **Item 3C** of the Adoption Agreement is in terms of months of service, an Employee shall be credited with a month of service for any calendar month during which he or she is employed.

(b) For purposes of **Section 2.09**, the following definitions will apply:

(1) The term "Hour of Service" shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

(2) The term "Break in Service" shall mean a period of severance of at least twelve (12) consecutive months.

(3) The term "Period of Severance" shall mean a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged or, if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

(c) In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service.

For purposes of this **Section 2.09(c)**, an absence from work for maternity or paternity reasons means an absence

- (1) by reason of the pregnancy of the individual,
- (2) by reason of the birth of a child of the individual,
- (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
- (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

(d) Each Employee will share in Employer contributions for the period beginning on the date the Employee commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of an eligible class of Employees.

(e) If the Employer is a member of an affiliated service group as defined in **section 414(m)** of the Code, a controlled group of corporations as defined in **section 414(b)** of the Code, or a group of trades or businesses under common control as defined in **section 414(c)** of the Code, or any other entity required to be aggregated with the Employer pursuant to **section 414(o)** of the Code and the regulations thereunder, service will be credited for any employment for any period of time for any other member of such group during the period such other member is part of such group, or for such longer period as is elected in **Item 3H** of the Adoption Agreement. Service will also be credited for any individual required under **section 414(n)** or **section 414(o)** of the Code and the regulations thereunder to be considered an Employee of any Employer aggregated under **sections 414(b), (c) or (m)**.

2.10 Notwithstanding any other provision in the Plan to the contrary, in the event an Employee who was a Participant on the first day of a Plan Year does not accrue a benefit for such Plan Year either because such Employee completed fewer than one thousand (1000) Hours of Service but more than five hundred (500) Hours of Service, or such other service requirement as the Employer may have elected, or because the Employee was not employed on the last day of the Plan Year, and if the Employee's lack of eligibility for an accrual would, but for the provisions of this **Section 2.10**, cause the Plan to fail to satisfy the requirements of **section 410(b)(1)(A)** or **(B)** of the Code, such Employee shall accrue a benefit on the same basis as any other Participant. If more than one Employee is ineligible for an accrual as described, and the Plan will satisfy the requirements of **section 410(b)(1)(A)** or **(B)** of the Code if some but not all of such ineligible Employees are eligible for an accrual, only that number of ineligible Employees necessary to permit the Plan to satisfy the requirements of the cited section shall be eligible for an accrual. The ineligible Employees shall be ranked in accordance with their Hours

of Service for the Plan Year, and the Employees to receive an accrual shall be those with the highest number of Hours of Service. In the event more than one Employee has completed a specific number of Hours of Service, all such Employees shall be eligible for an accrual if any one of them would be so eligible. This provision is intended to prevent the Plan from losing its qualification under **section 401(a)** of the Code merely because it fails to satisfy the minimum coverage rules of **section 410(b)(1)(A)** or **(B)** of the Code, and shall be interpreted accordingly.

## ARTICLE III

### POLICIES

3.01 (a) If the Method of Funding is an Insured Plan, other than a Fully Insured Plan, the benefits shall be provided by a Policy or Policies with an Investment Fund. Such Policies shall be applied for by the Trustee at the direction of the Committee on a nondiscriminatory basis upon applications signed by any one Trustee. Each Policy shall be a contract between the Trustee and the Insurer.

(b) If the Method of Funding is a Fully Insured Plan, the benefits under the Plan shall be provided by the purchase of a Policy or Policies. Such Policies shall be applied for by the Trustee at the direction of the Committee on a nondiscriminatory basis upon applications signed by any one Trustee. Each Policy shall be a contract between the Trustee and the Insurer.

(c) If the Method of Funding is an Uninsured Plan, the benefits under the Plan shall be provided by deposits to an Investment Fund.

3.02 Each Policy shall provide for the following:

(a) The right to name and change the designation of Beneficiaries and to select the settlement option or, in lieu thereof, to purchase a variable annuity, shall be exercised by the Participant and subject to the provisions of **Section 5.06**. The Participant may be required to execute appropriate documents directing the Committee and the Trustee as to such provisions.

(b) All rights, options, and benefits provided by the Policy, or permitted by the Insurer, shall be reserved to the Committee, which shall be responsible for directing the Trustee concerning same. If there is more than one Trustee, at the direction of the Committee any action may be exercised upon signature of any one Trustee. The signature of the Participant shall not be necessary for the exercise of any right except in accordance with the provisions of the Plan.

(c) The Trustee shall apply for and will be the owner of any Policies purchased under the terms of this Plan. The Policies may provide that proceeds will be payable to the Trustees. However, in such event the Trustees shall be required to pay over all proceeds of the Policies to the Participant's designated Beneficiary in accordance with and to the extent required under the distribution provisions of the Plan. A Participant's Spouse will be the designated Beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with **Section 5.06**. Except to the extent elected under **Item 13G** of the profit sharing Plan Adoption Agreement as to key man insurance, under no circumstances shall the Trust retain any part of the proceeds of any life insurance Policy.

3.03 Any dividends or credits earned on insurance contracts will be allocated to the

Accrued Benefit of the Participant for whose benefit the Policy is held.

3.04 All Policies purchased pursuant to the Plan must be purchased in a nondiscriminatory manner. A Policy may contain a variable annuity option and, if such option is part of a Policy, the Participant may elect that all Retirement Benefits shall be paid in the form of a variable annuity. Any annuity Policy distributed from the Plan must be nontransferable. Except to the extent elected by the Employer in **Item 13E** of the Adoption Agreement, no Policy shall be issued on the life of a Participant until the amount available for premium payment will produce a face amount of insurance of at least One Thousand (\$1,000) Dollars.

3.05 Subject to **Section 5.06(b)**, at the Actual Retirement Date of the Participant or, if later, at the Required Beginning Date as defined in **Section 5.09(f)**, the Trustee, at the direction of the Participant, shall convert the entire value of any ordinary life insurance Policy into cash or to provide periodic income so that no portion of such value may be used to continue life insurance protection beyond Actual Retirement Date, or shall distribute the Policy to the Participant, as the Participant shall direct. If the Policy has no cash value, it shall be distributed to the Participant. Notwithstanding the provisions of this Section, distributions must commence to a Participant no later than the date required under **section 401(a)(9)** of the Code, even though a Policy remains as part of his or her Accrued Benefit, and the cash value of the Policy shall be included in determining the minimum amount to be distributed.

3.06 In the event of any conflict between the provisions of the Plan and the terms of any Policy, the Plan provisions shall control. The terms of any annuity Policy purchased and distributed by the Plan to a Participant or Spouse shall comply with the requirements of the Plan. Except as to key man insurance, the Plan shall retain no part of any Policy proceeds.

3.07 Except to the extent elected in **Item 13B** of the Adoption Agreement, the aggregate life insurance premiums for each Participant must be limited as follows:

(a) if ordinary life insurance Policies are used, the aggregate life insurance premiums must be less than one-half ( $\frac{1}{2}$ ) of the aggregate Employer contributions and forfeitures allocated to the Participant's Accrued Benefit at any particular time, without regard to Trust earnings, capital gains and losses; for purposes of this Plan, the term "ordinary life insurance Policies" shall mean Policies with both nondecreasing death benefits and nonincreasing premiums;

(b) if term insurance or universal life insurance Policies are used, the aggregate life insurance premiums must not exceed one-quarter ( $\frac{1}{4}$ ) of the aggregate Employer contributions and forfeitures allocated to the Participant's Accrued Benefit at any particular time, without regard to Trust earnings, capital gains and losses;

(c) if a combination of ordinary life Policies and term or universal Policies is used, the sum of one-half ( $\frac{1}{2}$ ) of the ordinary life insurance premiums and all other life insurance premiums must not exceed one-quarter ( $\frac{1}{4}$ ) of the aggregate Employer contributions and forfeitures allocated to the Participant's Accrued Benefit at any particular time, without regard to Trust earnings, capital gains and losses.

Notwithstanding the foregoing, in a Profit Sharing Plan if elected in **Item 13B** of the Adoption Agreement all amounts held in the Trust for a Participant for more than two (2) years may be used to pay premiums on Policies, and the election set forth in **Item 13B** of the Adoption Agreement shall apply to the cumulative Employer contributions made during the last two (2) years only. If elected in **Item 13B** of the Adoption Agreement, all amounts held in the Trust for a Participant who has completed at least five (5) Years of Participation may be used to pay premiums. If elected in **Item 24C** rollover amounts may be used to pay premiums.

3.08 If the Employer so elects in **Item 13A** of the Adoption Agreement, each Participant may direct the investment of his Accrued Benefit in a life insurance Policy on his or her life, or, if the Plan is a profit sharing Plan, on the life of someone in whom the Participant has an insurable interest. The amount which can be used to pay life insurance premiums shall be measured as set forth in **Section 3.07**. In the event a life insurance Policy on the life of someone other than the Participant is purchased under a profit sharing Plan pursuant to this **Section 3.08**, and such other person shall die, the Participant shall withdraw the life insurance proceeds to the extent they exceed the cash value of the Policy measured immediately prior to the death of such other person.

3.09 If the Employer has elected to permit the purchase of key man insurance in **Item 13G** of the profit sharing Adoption Agreement, to the extent the Committee so directs, the Trustee shall purchase insurance on the life or lives of key Employees of the Employer, whether or not such Employees are Participants in the Plan. Such insurance shall be purchased as an investment of the Trust, and the premium shall be charged to each Participant's Account in the same manner as other expenses of the Trust. The cash value of such Policies shall be an asset of the Trust and, upon the death of such key man, the Policy proceeds shall be treated as a gain on an investment under the Trust.

## ARTICLE IV

### RETIREMENT AND DEATH BENEFITS

4.01 Each Participant shall be entitled to receive his or her Accrued Benefit on his or her Normal Retirement Date.

4.02 If the Plan is or becomes a Top-Heavy Plan in any Plan Year beginning after December 31, 1983, the provisions of **Sections 1.71, 6.08 and 7.01(c)** shall supersede any conflicting provisions in the Plan or Adoption Agreement.

4.03 Benefits under the Plan shall commence, unless the Participant elects otherwise, no later than the sixtieth (60th) day after the latest of the close of the Plan Year in which:

(a) the Participant attained the earlier of Age sixty-five (65) or the Plan's Normal Retirement Age;

(b) occurs the tenth (10th) anniversary of the year in which the Participant commenced participation under the Plan; or

(c) the Participant terminates employment with the Employer.

The failure of a Participant and his or her spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of **Section 5.13** of the Plan shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy the provisions of **Section 4.03**.

4.04 The Participant's benefit shall be paid as provided in this Plan.

4.05 If the Compensation of a Participant has increased or decreased since the last adjustment of the contribution for his benefit, or, if there has been no previous adjustment since his entry into the Plan, the amount of contributions to which he shall be considered entitled shall be increased or reduced in accordance with the formula selected in **Item 7B** of the Adoption Agreement. No increase in insurance benefit shall be provided until the first day of a Plan Year in which such change in Compensation shall be sufficient, upon the application of the formula selected in the Adoption Agreement, to purchase a life insurance policy of at least One Thousand (\$1,000) Dollars, unless the Employer has made a different election in **Item 13D and 13E** of the Adoption Agreement. Unless the Employer has made a different election in **Item 13D and 13E** of the Adoption Agreement, no decrease in insurance benefit shall be effected until the Anniversary Date after which the Compensation of a Participant has decreased for two (2) successive Anniversary Dates since the last adjustment of his insurance benefit unless such Participant's aggregate premium for life insurance exceeds the percent of the contribution for the Participant as limited in **Section 3.07**.

4.06 A Participant shall be entitled to a preretirement death benefit as elected in **Item 12** of the Adoption Agreement.

4.07 Each Participant, subject to the provisions of **Section 5.06**, shall have the right, at any time, to select the Beneficiary or Beneficiaries to receive the benefits payable under the Plan by reason of his or her death. Each Participant shall also have the right, subject to the provisions of **Section 5.06**, to select the mode or method of payment of such benefits to his or her Beneficiary or Beneficiaries. Such designation and election shall be made by an instrument in writing, upon such form or forms as may be provided by the Committee. If the Participant fails to select the mode or method of payments, then each Beneficiary shall select the mode or method of payment of his or her benefit. Subject to the provisions of **Section 5.06**, designation of a Beneficiary or Beneficiaries and the mode or method of payment may be changed by the Participant by delivering written notice thereof to the Committee. The last such designation received by the Committee shall revoke all prior designations.

4.08 If a Participant shall fail to designate a Beneficiary as provided above, or if all of the Beneficiaries so designated shall predecease the Participant, such benefits shall be paid to the person or persons comprising the first surviving class of the following classes:

- (a) The Participant's widow or widower.
- (b) The Participant's children and children of deceased children per stirpes and not per capita.
- (c) The Participant's parents.
- (d) The Participant's brothers and sisters and nephews and nieces who are children of deceased brothers and sisters, per stirpes and not per capita.
- (e) The executors or administrators of such Participant's estate.

4.09 No election shall be made by the Participant or the Committee, the effect of which would be to have all or part of a Participant's Accrued Benefit paid only to his designated Beneficiary after his or her death if such benefit would otherwise have been payable during the Participant's lifetime. However, subject to the Policy provisions, the Committee may select a single sum settlement or any optional settlement, except the interest option, available for payment of Accrued Benefits set forth in the Policy. No election shall be made which provides that such benefits shall be payable over a period which exceeds the period permitted under the provisions of **Sections 5.07** and **5.08**.

## ARTICLE V

### RETIREMENT

5.01 As of his or her Normal Retirement Age, or the Early Retirement Date if selected in **Item 5C** of the Adoption Agreement, a Participant shall be fully vested in his or her Accrued Benefit, and such vesting shall be nonforfeitable. In addition, the Participant's Accrued Benefit derived from Elective Deferrals, Qualified Non-elective Contributions, Employee Contributions, Qualified Matching Contributions and Roth 401(k) Elective Deferrals is nonforfeitable. Separate accounts for Elective Deferrals, Qualified Non-elective Contributions, Employee Contributions, Matching Contributions, and Qualified Matching Contributions will be maintained for each Participant. Each account will be credited with the applicable contributions and earnings thereon. If the Plan provides an Early Retirement Date based on Age and service, and the Employee completes the service requirement and terminates employment before satisfying the Age requirement, the Employee will be permitted to receive his or her Accrued Benefit when the Age requirement is satisfied.

5.02 Except to the extent the Employer elects otherwise in **Item 6B** of the Adoption Agreement, a Participant in a Plan which permits Elective Deferrals shall receive the value of his Accrued Benefit upon his Disability Date. The Committee shall take all necessary steps and execute all required documents to make the benefits available upon such Disability Date. The benefit on the Disability Date shall be such amount which can be provided by the value of the Participant's Accrued Benefit.

5.03 If the Employer has elected in **Item 6** of the Adoption Agreement to fully vest a Participant who becomes disabled, and a Participant is disabled so that he or she is no longer able to continue in the service of the Employer in the same capacity, such Participant shall be fully vested in his or her Accrued Benefit. The Committee, upon competent medical evidence, shall be the sole judge of whether the Disability is such as to warrant such earlier vesting. The Disability benefit shall be paid out at the same time and in the same manner as is provided for the payment of benefits to a Participant who terminates employment. Should the Committee refuse to judge a Participant to be disabled, the Participant shall have the right to demand that the Committee request the medical society in the county in which the Participant is employed to designate one of its member physicians to examine such Participant, provided that the Participant pays one-half (1/2) of all fees and expenses of such examination. The report of such physician shall be final and binding on all parties. No Participant shall be entitled to the benefit of this procedure more than once.

If elected by the Employer in **Item 6C** of the Adoption Agreement, contributions will be made to the Plan on behalf of each disabled Participant who is not a Highly Compensated Employee. However, for this purpose the term "disability" shall mean the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The permanence and degree of such

impairment shall be supported by medical evidence. The contribution made by the Employer shall be based on the Compensation each Disabled Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before he or she became Disabled. Such imputed Compensation for the Disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee, and contributions made on behalf of such Participant will be nonforfeitable when made.

5.04 If a Participant shall remain in the employ of the Employer after his or her Normal Retirement Date, no distribution of his or her benefit shall be made unless the appropriate election is made in **Item 22A** of the Adoption Agreement or such distribution is required pursuant to the provisions of **Section 5.07**. If the Employer elects to permit or require a distribution at the Normal Retirement Date, the Participant shall be entitled to a distribution at the Normal Retirement Date in the same fashion as would apply if he or she actually retired on such Date. Contributions and/or allocations shall continue for the Participant's benefit and he or she shall continue as a full Participant under the Plan until his or her actual retirement.

5.05 While payments are being made under any Policy, it shall remain subject to the Plan and in the possession of the Trustee, unless the Committee directs the Trustee, in the Committee's sole discretion, to deliver such Policy or Policies to a Retired Participant together with such endorsements and restrictions including nontransferability as may be necessary to carry out the purposes of the Plan.

5.06 (a) Subject to **Section 5.06(b)**, the Participant may choose any method of distribution of benefits available pursuant to the options selected in **Item 23** of the Adoption Agreement. Each optional form of benefit provided under the Plan must be made available to all Participants on a nondiscriminatory basis. This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under the plan. Note: **Section 411(d)(6)** prevents a plan from being amended to eliminate or restrict optional forms of benefits and any other **section 411(d)(6)** protected benefits" with respect to benefits attributable to service before the amendment, except as expressly provided under **1.411(d)-4** regulations.

(b) The provisions of this **Section 5.06(b)** contain the requirements with reference to joint and survivor annuities and preretirement survivor annuities required by **sections 401(a)(11) and 417** of the Code, and shall take precedence over any conflicting provision in this Plan.

(1) The provisions of this **Section 5.06(b)** shall apply to any Participant who is credited with at least one (1) Hour of Service with the Employer on or after August 23, 1984, and such other Participants as provided in **Section 5.06(b)(7)**.

(2) Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a qualified election within the 90-day period ending on the Annuity Starting Date, a married Participant's Vested Accrued Benefit will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Accrued Benefit will be paid in the form of a life annuity. The Participant may elect to have such annuity

distributed upon attainment of the Earliest Retirement Age under the Plan.

(3) Qualified Preretirement Survivor Annuity.

(A) Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, if a Participant dies before the Annuity Starting Date then the Participant's Vested Accrued Benefit shall be applied toward the purchase of an annuity for the life of the surviving Spouse. The surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. The provisions of this **Section 5.06(b)(3)(A)** shall not apply if the Employer elects in **Item 22D** of the Adoption Agreement to permit the Spouse to elect to receive the value of the Qualified Preretirement Survivor Annuity in a lump sum.

(B) To the extent any part of the Participant's Accrued Benefit is attributable to Employee Contributions, the portion of the Participant's Accrued Benefit attributable to Employee contributions used to purchase a life annuity for the surviving Spouse shall be that percentage of the Accrued Benefit attributable to Employee contributions determined by dividing the Accrued Benefit attributable to Employee contributions by the Participant's Accrued Benefit.

(C) If permitted pursuant to the provisions of **Item 22D** of the Adoption Agreement, the Spouse can elect to receive the Vested Accrued Benefit which would otherwise be used to purchase a life annuity for the Spouse in the form of a lump sum.

(4) Definitions.

(A) Election Period: The period which begins on the first day of the Plan Year in which the Participant attains Age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which Age thirty-five (35) is attained, with respect to the Accrued Benefit as of the date of separation, the election period shall begin on the date of separation. A Participant who will not yet attain Age thirty-five (35) as of the end of any current Plan Year may make a special qualified election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain Age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under **Section 5.06(b)(5)(A)**. Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains Age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this **Section 5.06(b)**.

(B) Earliest Retirement Age: The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(C) Qualified Election: A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified

Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless:

(i) the Participant's Spouse consents in writing to the election;

(ii) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent, or the Spouse expressly permits designations by the Participant without any further spousal consent;

(iii) the Spouse's consent acknowledges the effect of the election; and

(iv) the Spouse's consent is witnessed by a Plan representative or notary public.

Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent, or the Spouse expressly permits designations by the Participant without any further spousal consent. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under **Section 5.06(b)(4)(C)**, or the establishment that the consent of a Spouse may not be obtained, shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under **Section 5.06(b)(4)** shall be valid unless the Participant has received notice as provided in **Section 5.05(b)(5)**.

(D) **Qualified Joint and Survivor Annuity:** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than fifty (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 and which is the amount of benefit which can be purchased with the Participant's Vested Accrued Benefit. The percentage of the survivor annuity under Plan shall be fifty (50%) percent unless a different percentage is elected in **Item 22F** of the Adoption Agreement.

(E) **Spouse (Surviving Spouse):** The Spouse or surviving Spouse of the Participant, provided that a former spouse will be treated as the Spouse or surviving Spouse and a current spouse will not be treated as the Spouse or surviving Spouse to

the extent provided under a qualified domestic relations order as described in **section 414(p)** of the Code.

(F) **Annuity Starting Date:** The first day of the first period for which an amount is paid as an annuity or any other form.

(G) **Vested Accrued Benefit:** The aggregate value of the Participant's Vested Accrued Benefit derived from Employer and Employee contributions, including rollovers, whether vested before or upon death, including the proceeds of insurance Policies, if any, on the Participant's life. The provisions of this **Section 5.06(b)(4)(G)** shall apply to a Participant who is vested in amounts attributable to Employer contributions, Employee Contributions, or both, at the time of death or distribution.

(5) Notice Requirements.

(A) In the case of a Qualified Joint and Survivor Annuity as described in **Section 5.06(b)(2)**, the Committee shall provide each Participant no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date a written explanation of:

(i) the terms and conditions of a Qualified Joint and Survivor Annuity;

(ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;

(iii) the rights of a Participant's Spouse; and

(iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.

(B) In the case of a Qualified Preretirement Survivor Annuity as described in **Section 5.06(b)(3)**, the Committee shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of **Section 5.06(b)(5)(A)** applicable to a Qualified Joint and Survivor Annuity. The applicable period for a Participant is whichever 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 ending after the individual becomes a Participant;

(iii) a reasonable period ending after **Section**

**5.06(b)(5)(C)** ceases to apply to the Participant;

(iv) a reasonable period ending after **Section 5.06(b)** first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service to a Participant who separates from service before attaining Age thirty-five (35).

For purposes of **Section 5.06(b)(5)(B)**, a reasonable period ending after the enumerated events described in **(ii), (iii) and (iv)** is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which he or she attains Age thirty-five (35), notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(C) Notwithstanding the other requirements of this **Section 5.06 (b)(5)**, the respective notices prescribed by this **Section 5.06(b)(5)** need not be given to a Participant if

(i) the Plan fully subsidizes the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and

(ii) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, as the case may be, and does not allow a married Participant to designate a nonspouse Beneficiary.

For purposes of this **Section 5.06(b)(5)(C)**, a Plan fully subsidizes the costs of a benefit if under the Plan no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit. Prior to the time the Plan allows the Participant to waive the Qualified Preretirement Survivor Annuity, the Plan may not charge the Participant for the cost of such benefit by reducing the Participant's benefits under the Plan or by any other method.

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

(6) Safe harbor rules.

(A) This **Section 5.06(b)(6)** shall apply to a Participant in a profit sharing Plan, and to any distribution, made on or after the first day of the first Plan Year beginning after December 31, 1988, from or under a separate account attributable solely to accumulated deductible Employee contributions, as defined in **section 72(o)(5)(B)** of the Code, and maintained on behalf of a Participant in a money purchase pension Plan, including a target benefit Plan, if the Employer so elects in **Item 7** of the Adoption Agreement. In the case of a profit sharing plan, vested Accrued Benefit shall have the same meaning as provided in **Section 5.06(b)(4)(G)**. Profit sharing plans satisfying the conditions set forth in subsections (i) and (ii) below such that the plan is not required to provide a Qualified Joint and Survivor Annuity for the Participant, but that do provide such annuity (even if the annuity is the Normal Form), may replace the Qualified Joint and Survivor Annuity with payments in a single-sum distribution form that is otherwise identical to such annuity in accordance with the requirements under regulations 1.411(d)-4 Q&A 2(e).

If the Employer elects to have this **Section 5.06(b)(6)** apply, the following conditions shall apply to the Plan:

(i) no Participant can elect payments in the form of a life annuity; and

(ii) on the death of a Participant, the Participant's Vested Accrued Benefit will be paid to the Participant's Surviving Spouse, but if there is no Surviving Spouse or if the Surviving Spouse has already consented in a manner conforming to a Qualified Election, then to the Participant's Designated Beneficiary. The surviving Spouse may elect to have distribution of the Vested Accrued Benefit commence within the ninety (90) day period following the date of the Participant's death. The Accrued Benefit shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Accrued Benefits for other types of distributions. This **Section 5.06(b)(6)** shall not be operative with respect to the Participant in a profit sharing Plan if the Plan is a direct or indirect transferee of a defined benefit Plan, money purchase pension Plan, including a target benefit Plan, a 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. In addition, this Section shall not apply unless the Participant's spouse is the Beneficiary of any insurance on the Participant's life purchased by Employer contributions or forfeitures allocated to the Participant's Accrued Benefit. If this Section is operative, then except to the extent otherwise provided in **Section 5.06(b)(7)**, the other provisions of this **Section 5.06(b)** shall be inoperative.

(B) The Participant may waive the spousal death benefit described in this **Section 5.06(b)(6)** at any time provided that no such waiver shall be effective unless it satisfies the conditions described in **Section 5.06(b)(4)(C)**, other than the notification requirement referred to therein, that would apply to the Participant's waiver of the Qualified Preretirement Survivor Annuity.

(C) For purposes of this **Section 5.06(b)(6)**, Vested Accrued Benefit shall mean, in the case of a money purchase pension Plan or a target benefit Plan, the Participant's separate account balance attributable solely to accumulated deductible Employee

contributions within the meaning of **section 72(o)(5)(B)** of the Code. In the case of a profit sharing Plan, Vested Accrued Benefits shall have the same meaning as in **Section 5.06(b)(4)(G)**.

(7) Transitional Rules.

(A) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous provisions of this **Section 5.06(b)** must be given the opportunity to elect to have the prior provisions of this **Section 5.06(b)** apply if such Participant is credited with at least one (1) Hour of Service under this Plan or a predecessor Plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least ten (10) Years of vesting Service when he separated from service.

(B) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one (1) 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 **Section 5.06(b)(7)(D)**.

(C) The respective opportunities to elect, as described in **Sections 5.06(b)(7)(A) or (B)** above, must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(D) Any Participant who has elected pursuant to **Section 5.06(b)(7)(B)** and any Participant who does not elect under **Section 5.06(b)(7)(A)** or who meets the requirements of **Section 5.06(b)(7)(A)** except that such Participant does not have at least ten (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 Joint and Survivor Annuity. If benefits in the form of a life annuity become payable to a married Participant who:

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

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

(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 six (6) months before the Participant attains Qualified Early Retirement Age and end not more than ninety (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 which 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 (1) the ninetieth (90th) day before the Participant attains the Qualified Early Retirement Age, or (2) the date on which participation begins, and ends on the date the Participant terminates employment.

(iii) For purposes of this **Section 5.06(b)(7)(D)**

(a) Qualified Early Retirement Age is the latest of

(I) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(II) the first day of the one hundred twentieth (120th) month beginning before the Participant reaches Normal Retirement Age, or

(III) the date the Participant begins participation.

(b) Qualified Joint and Survivor Annuity is an annuity for the life of the Participant with a survivor annuity for the life of the Spouse as described in **Section 5.06(b)(4)(D)**.

5.07 (a) Subject to **Section 5.06(b)** the requirements of this **Section 5.07** and **Section 5.08** shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this **Section 5.07** and **Section 5.08** apply to calendar years beginning after December 31, 2002.

(b) All distributions required under **Section 5.07** and **Section 5.08** shall be determined and made in accordance with the Income Tax Regulations under **section 401(a)(9)** of the Code and the minimum distribution incidental benefit requirement of **section 401(a)(9)(G)** of the Code.

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

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

- (1) the life of the Participant,
- (2) the joint lives of the Participant and a Designated Beneficiary,
- (3) a period certain not extending beyond the life expectancy of the Participant, or
- (4) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

5.08 (a) **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:

(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in the Adoption Agreement, 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 ½, if later.

(2) 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.

(3) 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.

(4) 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 are required to begin, this **Section 5.08(a)**, other than **Section 5.08(a)(1)**, will apply as if the surviving spouse were the Participant.

For purposes of this **Section 5.08(a)** and **Section 5.08(d)**, unless **Section 5.08(a)(4)** applies, distributions are considered to begin on the Participant's Required Beginning Date. If **Section 5.08(a)(4)** applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under **Section 5.08(a)(1)**. 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**

**5.08(a)(1)**, the date distributions are considered to begin is the date distributions actually commence.

(b) 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 5.08(c)** and **5.08(d)**. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of **section 401(a)(9)** of the Code and the Treasury regulations.

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

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

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

(B) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this **Section 5.08(c)** beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

(1) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

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

subsequent year.

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

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

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. 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 5.08(d)(1)**.

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest 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 5.08(a)(1)**, this **Section 5.08(d)(2)(C)** will apply as if the surviving spouse were the Participant.

(e) Elections with reference to 5-Year Rule.

(1) Election by Participant or Beneficiary to Apply 5-Year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in **Sections 5.08(a)** and **5.08(d)(2)** 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 5.08(a)** 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 5.08(a)** and **5.08(d)(2)** and, if applicable, the elections in **Section 5.08(a)**.

(2) Election by Designated Beneficiary to Revoke 5-Year Rule. A Designated Beneficiary who is receiving payments under the 5-year rule may make a new election at any time until December 31, 2003 to receive payments under the life expectancy rule, 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.

(f) Transition Rules

(1) For Plans in existence before 2003, required minimum distributions before 2003 were made pursuant to **Section 5.10**, if applicable, and **Sections 5.08(f)(2), (3) and (4)**.

(2) 2000 and before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with **section 401(a)(9)** of the Code and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 proposed regulations").

(3) 2001. Required minimum distributions for calendar year 2001 were made in accordance with **section 401(a)(9)** of the Code and the 1987 proposed regulations, unless the Adoption Agreement provided that required minimum distributions for 2001 were made pursuant to proposed regulations under **section 401(a)(9)** published in the Federal Register on January 17, 2001 (the "2001 proposed regulations"). If distributions were made in 2001 under the 1987 proposed regulations prior to the date in 2001 the Plan began operating under the 2001 proposed regulations, the special transition rule in Announcement 2001-82 applied.

(4) 2002. Minimum required distributions for calendar year 2002 were made in accordance with **section 401(a)(9)** and the 1987 proposed regulations unless either subsection (A) or (B) below applies.

(A) The Adoption Agreement provides that minimum required distributions for 2002 were made pursuant to the 2001 proposed regulations.

(B) The Adoption Agreement provides that minimum required

distributions for 2002 were made pursuant to the final and temporary regulations under **section 401(a)(9)** published in the Federal Register on April 17, 2002 (the "2002 final and temporary regulations") which are described in **Sections 5.08(a)** through **(e)** and **Section 5.09**. If distributions were made in 2002 under either the 1987 proposed regulations or the 2001 proposed regulations prior to the date in 2002 the Plan began operating under the 2002 final and temporary regulations, the special transition rule in **Section 1.2** of the model amendment in Revenue Procedure 2002-29 applied.

#### 5.09 Definitions.

(a) Designated Beneficiary. The individual who is designated by the Participant or the Participant's surviving spouse as the Beneficiary under the Plan and is the Designated Beneficiary under **section 401(a)(9)** of the Internal Revenue Code and section 1.401(a)(9)-4, of the Treasury regulations.

(b) 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 5.08(a)**. 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.

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

(d) 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.

(e) Required beginning date. The date specified in the Adoption Agreement.

5.10 Notwithstanding the provisions of **Sections 5.07, 5.08 and 5.09** and subject to the requirements of **Section 5.06(b)**, distribution on behalf of any Employee, including a 5-percent owner, may be made in accordance with all of the following requirements, regardless of when such distribution commences:

(a) The distribution by the Trust is one which would not have disqualified such Trust under **section 401(a)(9)** of the Code as in effect prior to amendment by the Deficit Reduction Act of 1984;

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

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

(d) The Employee had accrued a benefit under the Plan as of December 31, 1983; and

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

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

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

If a designation is revoked, the subsequent distribution must satisfy the requirements of **section 401(a)(9)** of the Code and the regulations thereunder. Any changes in the designation will be considered to be a revocation of the designation. If a designation is revoked subsequent to the date distributions are required to begin, the Trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy **section 401(a)(9)** of the Code and the regulations thereunder, but for the **section 242(b)(2)** election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in **section 1.401(a)(9)-2** of the proposed Income Tax Regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of a Beneficiary not named in the designation under the designation will not be considered to be a revocation of the designation so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly, as, for example, by altering the relevant measuring life. In the case in which an amount is transferred or rolled over from one plan to

another plan, the rules in **Q&A J-2 and Q&A J-3** shall apply.

5.11 Benefits will be paid only as follows:

- (a) on the death of the Participant;
- (b) on the disability of the Participant;
- (c) on the termination of the Participant's employment;
- (d) subject to the provisions of **Item 22**, at or after the Participant's attainment of his or her Early or Normal Retirement Age;
- (e) if the Plan is a profit sharing plan, in accordance with the provisions of **Item 22G**;
- (f) on or after the termination of the Plan; or
- (g) as required pursuant to a qualified domestic relations order permitted under **section 414(p)** of the Code.

5.12 (a) If the Employer so elects in **Item 24** of the Adoption Agreement, an Employee who was a Participant in any other plan qualified under **section 401(a)** of the Internal Revenue Code may request the Committee to direct the Trustee to accept amounts to which he or she is entitled from such other plan from the fiduciary of the other plan, either as a direct transfer from such other Plan or as a rollover from such other Plan or an individual retirement account which consists only of amounts distributed from a plan qualified under **section 401(a)** of the Code. Commencing with Plan Years beginning after December 31, 2001, if a Participant is permitted under the terms of the Plan to roll funds to this Plan from another plan qualified under **section 401(a)** of the Code, the Participant shall also be permitted to roll funds to this Plan from a plan described in **section 403(b)** of the Code, a plan described under **section 457(b)** of the Code if otherwise permitted under the law, and any individual retirement account described in **section 408** of the Code if otherwise permitted under the law. If Participant loans are permitted, the rollover account shall be considered part of the Participant's Accrued Benefit but solely for the purpose of such loans.

Notwithstanding the foregoing, the Plan will accept a rollover contribution to a Roth 401(k) Elective Deferral account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in **section 402A(e)(1)** of the Code and only to the extent the rollover is permitted under the rules of **section 401(c)** of the Code.

Such amounts may be transferred in the form of cash or kind, including any Policies, and shall be the Participant's "rollover account". Before accepting such transfer or rollover, the Committee may require the Employee to furnish satisfactory evidence that the proposed transfer is in fact a transfer or distribution, either directly or indirectly, from a qualified plan. Any amounts which the Committee directs the Trustee to accept shall not be added to the Accrued Benefit of the

Employee but shall be separately accounted for. The Employee shall have a fully vested nonforfeitable interest in the value of the accepted amount as adjusted for gains and losses, and such amounts shall be distributed to the Employee at the same time and in the same manner as his or her Accrued Benefit is distributed, unless the Employer in **Item 22E** of the Adoption Agreement elects to permit earlier distribution. If at any point the Committee determines that the amount transferred or rolled over does not consist in its entirety of amounts previously held in a plan qualified under **section 401(a)** of the Code plus earnings thereon, the Committee shall immediately direct the Trustee to return the interest of the Employee in such amounts to the person or plan from which it was received.

(b) An Employee, prior to satisfying the Plan's eligibility conditions, may arrange a transfer from another plan or make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If an Employee arranges such a transfer or makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan except the Employee may not accrue a benefit under the Plan until such Employee actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee shall distribute such Employee's rollover account to such Employee as if it were attributable to Employer contributions.

(c) If the Employer so elects in **Item 24A** of the Adoption Agreement, a Participant may direct the Trustee as to the investments to be made with his or her rollover account, including the purchase of insurance or annuity Policies. If all or a portion of the Participant's rollover account is invested at the direction of the Participant, to the extent of such direction the account shall consist of the assets in which such investment was directed.

(d) A Participant who is entitled to a distribution under the Plan, may direct the Committee to direct the Trustee to have his or her distribution transferred to the fiduciary of any other plan qualified under **section 401(a)** of the Code in which he or she is a Participant or to an eligible retirement plan.

5.13 (a) (1) This Section applies to distributions made after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this part, 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 an eligible rollover distribution is less than \$500 a distributee may not make the election described in the preceding sentence to rollover a portion of the eligible rollover distribution. For purposes of measuring the \$500 limit set forth in the preceding sentences any amount distributed from a Participant's Roth 401(k) Elective Deferral account shall be treated as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

(2) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) 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;

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

(C) any Hardship distribution;

(D) the portion of any other distribution or distributions that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); and

(E) any other distribution or distributions that are reasonably expected to total less than Two Hundred (\$200) Dollars during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in **section 408(a)** and **(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.

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

(4) In the event of a mandatory distribution made on or after March 28, 2005 in an amount greater than One Thousand (\$1,000) Dollars in accordance with the provisions of the Plan, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with the terms of the Plan, then the Trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. For purposes of determining whether a mandatory distribution is greater than One Thousand (\$1,000) Dollars, the portion of the Participant's distribution attributable to any rollover contribution is included.

(5) An eligible retirement plan is an eligible plan under **section 457(b)** of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this 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, an annuity contract described in **section 403(b)** of the Code, or a qualified plan described in **section 401(a)** of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan

shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in **section 414(p)** of the Code.

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

(7) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in **section 414(p)** of the Code, are distributees with regard to the interest of the spouse or former spouse.

(8) A direct rollover (including an automatic rollover) for distributions from a Participant's Roth 401(k) Elective Deferral account shall not be permitted if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than Two Hundred (\$200) Dollars during a year. In addition, any distribution from a Participant's Roth 401(k) Elective Deferral account is not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than Two Hundred (\$200) Dollars during a year. However, eligible rollover distributions from a Participant's Roth 401(k) Elective Deferrals account are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceeds One Thousand (\$1,000) Dollars for purposes of mandatory distributions from the Plan.

5.14 Elective Deferrals, Qualified Non-elective Contributions and Qualified Matching Contributions, and income allocable to each are not distributable to a Participant or his or her Beneficiary or Beneficiaries, in accordance with such Participant's or Beneficiary or Beneficiaries' election, earlier than

(a) the Participant's Distribution Date; or

(b) for Plan Year beginning before January 1, 2002, the disposition by a corporation to an unrelated corporation of substantially all of the assets, within the meaning of **section 409(d)(2)** of the Code, used in a trade or business of such corporation if such corporation continues to maintain this Plan after the disposition, but only with respect to Employees who continue employment with the corporation acquiring such assets; or

(c) for Plan Years beginning before January 1, 2002, the disposition by a corporation to an unrelated entity of such corporation's interest in a subsidiary, within the meaning of **section 409(d)(3)** of the Code, if such corporation continues to maintain this Plan, but only with respect to Employees who continue employment with such subsidiary.

All distributions that may be made pursuant to one or more of the foregoing distributable events are subject to spousal and Participant consent requirements, if applicable, contained in **sections**

**401(a)(11) and 417** of the Code. Distributions triggered by the termination of the plan or the events described in subsections (b) and (c) above are to be made in a lump sum.

5.15 (a) Distribution of Elective Deferrals and earnings thereon accrued as of December 31, 1988, may be made to a Participant in the event of Hardship. Safe Harbor contributions may not be distributed on account of Hardship. For the purposes of this **Section 5.15**, Hardship is defined as an immediate and heavy financial need of the Employee where such Employee lacks other available resources. Hardship distributions are subject to the spousal consent requirements contained in **sections 401(a)(11) and 417** of the Code.

(b) Special Rules:

(1) The following are the only financial needs considered immediate and heavy: expenses incurred or necessary for medical care, within the meaning of **section 213(d)** of the Code of the Employee, the Employee's Spouse or dependents; the purchase, excluding mortgage payments, of a principal residence for the Employee; payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Employee, the Employee's Spouse, children or dependents; or the need to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence. In addition, for Plan Years beginning after December 31, 2005, Hardship distributions can be made for the payment of funeral or funeral expenses for the Participant's deceased parent, spouse, child or dependent, and to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under **section 165** of the Code (determined without regard to whether the loss exceeds ten (10%) percent of adjusted gross income).

(2) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:

(A) the Employee has obtained all distributions, other than Hardship distributions, and all nontaxable loans under all plans maintained by the Employer;

(B) all plans maintained by the Employer provide that the Employee's Elective Deferrals and Employee Contributions will be suspended for six (6) months (twelve (12) months for Hardship distributions before 2002) after the receipt of the Hardship distribution;

(C) the distribution is not in excess of the amount of an immediate and heavy financial need, including amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution; and

(D) for Hardship distributions before 2002, all plans maintained by the Employer provide that the Employee may not make Elective Deferrals for the Employee's taxable year immediately following the taxable year of the Hardship distribution in excess of the applicable limit under **section 402(g)** of the Code for such taxable year less the amount of such Employee's Elective Deferrals for the taxable year of the Hardship distribution.

(3) The Elective Deferrals and Employee Contributions of an Employee shall be suspended for twelve (12) months after such Employee receives a Hardship distribution. For Hardship distributions on or after 2002, the words "twelve (12) months" in the preceding sentence should be changed to "six (6) months". In addition, as to Hardship distributions made before 2002, an Employee who receives a Hardship distribution may not make Elective Deferrals for his or her taxable year immediately following the taxable year of the Hardship distribution to the extent such Elective Deferral would exceed the difference between the applicable limit under **section 402(g)** of the Code and the Employee's Elective Deferrals for the taxable year of the Hardship distribution.

(4) (A) In profit sharing plan and 401(k) plans only, the portion of a distribution from a qualified plan that is ineligible for rollover treatment because it is a "hardship distribution described in **section 401(k)(2)(B)(i)(IV)**" is the amount described in **section 1.401(k)-1(d)(2)(ii)**.

(B) If another event occurs, such as the Employees' separation from service or attainment of age fifty-nine (59 ½), so that distribution of an amount is permitted, without regard to Hardship, under **section 401(k)(2)(B)** no amount distributed after that event is ineligible for rollover treatment on account of being a hardship distribution described in **section 401(k)(2)(B)(i)(IV)**. This rule applies regardless of whether the qualified plan characterizes the distribution as a hardship distribution described in **section 401(k)(2)(B)(i)(IV)**.

(C) If a portion of a distribution that includes a Hardship distribution is not includible in gross income, the portion of the distribution that is not includible in gross income is first allocated to the Hardship distribution and then any remaining portion not includible in gross income is allocated to the portion of the distribution that is not a Hardship distribution.

(D) A distribution that is described in **section 401(k)(2)(B)(i)(IV)** and that is made as a hardship distribution under the terms of a qualified plan or annuity may be treated as ineligible for rollover even though another event has occurred that could entitle the receipt to a distribution without regard to hardship under **section 401(k)(2)(B)(i)(IV)**.

## ARTICLE VI

### TERMINATION OF EMPLOYMENT

6.01 A Participant shall have a nonforfeitable interest in the Employer's contributions made on his behalf based upon the percentage selected in **Item 15** of the Adoption Agreement. Employee contributions made hereunder and earnings thereon will be nonforfeitable at all times.

6.02 (a) Benefits may be distributed in any form permitted under **Item 23** of the Adoption Agreement subject to the provisions of **Section 5.06**. No distribution may be made of a Participant's Elective Deferrals, Qualified Matching Contributions, Qualified Non-Elective Contributions and income allocable to each until the Participant's Distribution Date.

(b) (1) No distribution of vested benefit shall be made to a Participant prior to his or her death or Normal Retirement Date, whichever occurs first, except to the extent permitted under **Item 22C** of the Adoption Agreement. For purposes of this **Section 6.02(b)**, if the value of an Employee's Vested Accrued Benefit is zero, the Employee shall be deemed to have received a distribution of such Vested Accrued Benefit. A Participant's Vested Accrued Benefit shall not include accumulated deductible Employee contributions within the meaning of **section 72(o)(5)(B)** of the Code for Plan Years beginning prior to January 1, 1989.

(2) If an Employee terminates service, and the value of the Employee's vested Accrued Benefit derived from Employer and Employee Contributions is not greater than Five Thousand (\$5,000) Dollars (or such lesser amount as selected by the Employer in **Item 23E** of the Adoption Agreement), the Employee will receive a distribution of the value of the entire vested portion of such Account Balance and the nonvested portion will be treated as a forfeiture. If an Employee would have received a distribution under the preceding sentence, but for the fact that the Employee's vested Accrued Benefit Exceeded Five (\$5,000) Dollars (or such lesser amount as selected by the Employer in **Item 23E** of the Adoption Agreement) when the Employee terminated service and, if at a later time such Accrued Benefit is reduced such that it is not greater than Five Thousand (\$5,000) Dollars (or such lesser amount as selected by the Employer in **Item 23E** of the Adoption Agreement), the Employee will receive a distribution of such Accrued Benefit and the nonvested portion will be treated as a forfeiture. For purposes of this Section, if the value of an Employee's vested Accrued Benefit is zero, the Employee shall be deemed to have received a distribution of such vested Accrued Benefit. A Participant's vested Accrued Benefit shall not include accumulated deductible Employee Contributions within the meaning of **section 72(o)(5)(B) of the Code** for Plan Years beginning prior to January 1, 1989, and, if elected in **Item 23E** of the Adoption Agreement, the 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 an Employee terminates service, and is eligible to and elects to receive the value of his or her Vested Accrued Benefit, the nonvested portion will be treated as a forfeiture. If the Employee elects to have distributed less than the entire vested portion of his or her Accrued

Benefit derived from Employer contributions, the part of the nonvested portion that will be treated as a forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer contributions and the denominator of which is the total value of the vested Employer derived Accrued Benefit.

(c) If an Employee receives or is deemed to receive a distribution pursuant to this Section and the Employee resumes employment covered under the Plan, the Employee's Employer-derived Accrued Benefit will be restored to the amount on the date of distribution if the Employee repays to the Plan the full amount of the distribution attributable to Employer contributions before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs five (5) consecutive 1-year Breaks in Service following the date of the distribution. If an Employee is deemed to receive a distribution pursuant to this Section, and the Employee resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive 1-year Breaks in Service, upon the reemployment of such Employee, the Employer-derived Accrued Benefit of the Employee will be restored to the amount on the date of such deemed distribution.

(d) If the Employer elects in **Item 22G** of the Adoption Agreement to permit distributions from a profit sharing Plan while the Employee remains an Employee, or if a distribution is otherwise made at a time when a Participant has a nonforfeitable right to less than one hundred (100%) percent of his Accrued Benefit attributable to Employer contributions and the Participant may increase the nonforfeitable percentage in his Accrued Benefit:

(1) a separate account shall be established for the Participant's interest in the Plan as of the time of the distribution; and

(2) at any relevant time the Participant's nonforfeitable portion of the separate account shall be equal to an amount ("X") determined by the formula:

$$X=P(AB + (RxD)) - R \times D$$

For purposes of applying the formula: P is the nonforfeitable percentage at the relevant time; AB is the Participant's Accrued Benefit at the relevant time; D is the amount of the distribution; and R is the ratio of the Accrued Benefit at the relevant time to the Account balance after distribution.

(e) All Accrued Benefits not vested in the terminated Participant shall be held in the Trust and shall be applied as stated in **Section 7.05**.

6.03 The rights of a Participant in the benefit set forth in **Sections 5.02 and 6.01** shall be nonforfeitable, unconditional and legally enforceable against the Plan to the extent of Trust assets.

6.04 A leave of absence shall not be considered a termination of employment, provided the Employee returns to the service of the Employer on or prior to the expiration of such leave of absence. The term "leave of absence" shall mean absence from the employ of the Employer in

accordance with the established leave policy of the Employer. In granting leaves of absence, the Employer shall treat Employees in similar circumstances in a similar manner.

6.05 (a) A former Participant who had a nonforfeitable right to all or a portion of his Accrued Benefit derived from Employer contributions at the time of his termination shall receive credit for Years of Service prior to his Break in Service if he completes a Year of Service after his return to the employ of the Employer.

(b) A former Participant who did not have a nonforfeitable right to any portion of his Accrued Benefit derived from Employer contributions at the time of his termination shall receive credit for Years of Service prior to his Break in Service if:

(1) he completes a Year of Service after his return to the employ of the Employer, and

(2) the number of consecutive 1-year Breaks in Service is less than the greater of five (5) or the aggregate number of Years of Service before such Break.

(c) In the case of a Participant who has five (5) or more consecutive 1-year Breaks in Service all Service after such Breaks in Service will be disregarded for the purpose of vesting in the Employer derived Accrued Benefit that accrued before such Breaks in Service. Such Participant's pre-Break Service will count in vesting the post-Break Employer derived Accrued Benefit only if either:

(1) such Participant has any nonforfeitable interest in the Accrued Benefit attributable to Employer contributions at the time of separation from service; or

(2) upon returning to service the number of consecutive 1-year Breaks in Service is less than the number of Years of Service.

(d) Separate accounts will be maintained for the Participant's pre-Break and post-Break Employer-derived Accrued Benefit. Both accounts will share in the earnings and losses of the Investment Fund.

(e) In the case of a Participant who has incurred a 1-year Break in Service, Years of Service before such Break will not be taken into account until the Participant has completed a Year of Service after such Break in Service.

6.06 No forfeitures will occur solely as a result of an Employee's withdrawal of Employee contributions. Regardless of a Participant's nonforfeitable percentage, a withdrawal of Employee contributions will not result in a forfeiture of the minimum if any, provided under **Section 7.01(c)**.

6.07 The Committee may determine, in its sole discretion, that a benefit is forfeited if a Participant or Beneficiary cannot be found. If a benefit is forfeited because the Participant or Beneficiary cannot be found, such benefit will be reinstated if a claim is made by the Participant

or Beneficiary.

6.08 For any Plan Year in which the Plan is a Top-Heavy Plan, one of the minimum vesting schedules as elected by the Employer in **Item 15A** of the Adoption Agreement will automatically apply to the Plan. The 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 became a Top-Heavy Plan. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as a Top-Heavy Plan changes for any Plan Year. However, this **Section 6.08** does not apply to the Accrued Benefits of any Employee who does not have an Hour of Service after the Plan has initially become a Top-Heavy Plan and such Employee's Accrued Benefit attributable to Employer contributions and forfeitures will be determined without regard to this **Section 6.08**.

## ARTICLE VII

### EMPLOYER CONTRIBUTIONS AND ALLOCATIONS

7.01 (a) Subject to the provisions of **Section 7.01(b)** and **Section 9.01**, the Employer agrees to pay to the Trust annually the amount determined in **Item 7** of the Adoption Agreement. The minimum and maximum annual contribution, if any, shall be as stated in **Item 9** of the Adoption Agreement. If the Plan is a target benefit Plan, Employer contributions shall be determined in accordance with **Section 7.01(g)**. If the Plan is a profit sharing Plan, and the amount set forth as the contribution in **Item 7** is not discretionary, the Employer may contribute in any year an amount in addition to the amount selected in **Item 7**.

(b) (1) Except as set forth in **Section 7.01(c)**, Employer contributions and forfeitures shall be allocated to each Employee's Account based on the allocation formula set forth in **Item 8A** of the Adoption Agreement. Such amounts shall be allocated as of the Allocation Date selected in **Item 8C** of the Adoption Agreement. If no election is made in **Item 8C** of the Adoption Agreement, the allocation shall be made as of the last day of each Plan Year. If the Plan is a profit sharing Plan, and the Employer so elects in **Item 7B** of the Adoption Agreement, contributions must be made out of Net Profits. Contributions to a profit sharing Plan shall be allocated in accordance with **Item 8** of the Adoption Agreement. Forfeitures shall be allocated only to the Employees of the Employer who adopted the Plan, and only to Employees of the Employer by whom the person who forfeited the benefit was employed.

(2) If an age weighted allocation is selected in **Item 8A3**, the total Non-Qualified Employer Contribution will be allocated to each to each eligible Employee such that the equivalent benefit accrual rate for each Participant is identical. The equivalent benefit accrual rate is the annual annuity commencing at the Participant's testing age, expressed as a percentage of the Participant' Compensation as defined in **Item 4A** of the Adoption Agreement which is provided from the allocation of Non-Qualified Employer Contributions and forfeitures for the Plan Year, using standardized actuarial assumptions that satisfy section 1.401(a)(4)-12 of the Income Tax Regulations. The Employee's testing age is the Normal Retirement Age or the Employee's current Age.

(3) If the allocation schedule under **Item 8A4, 8A5, or 8A6** is selected each Eligible Employee of the Employer will constitute a "separate allocation group" for the purpose of allocating contributions. Only a limited number of allocation rates (defined below) is permitted, and the number of allocation rates can not be greater than the maximum allowable number of allocation rates. The maximum allowable number of allocation rates is equal to the sum of the allowable number of allocation rates for Eligible Employees who are non-Highly Compensated Employees (eligible NHCEs) and the allowable number of allocation rates for Eligible Employees who are Highly Compensated Employees (eligible HCEs). The allowable number of allocation rates for eligible HCEs is equal to the number of HCEs, limited to 25. The allowable number of NHCE allocation rates depends on the number of eligible NHCEs, limited to 25.

The allocation will be made as follows: First, the total amount of Non-Qualified Employer Contributions is allocated among the deemed aggregated allocation groups in portions determined by the Employer. A deemed aggregated allocation group consists of all the separate allocation groups that have the same allocation rate. Second, within each deemed aggregated allocation group, the allocated portion is allocated to each Employee in the ratio that such Employee's Compensation, as defined in **Item 4A** of the Adoption Agreement, bears to the total Compensation of all Employees in the group. An allocation rate is the amount of contributions allocated to an Employee for a year, expressed as a percentage of Compensation as defined in **Item 4A** of the Adoption Agreement. The number of eligible NHCEs to which a particular allocation rate applies must reflect a reasonable classification of Employees, and no Employee can be assigned to more than one deemed aggregated allocation group for a Plan Year.

For Plans with only one or two eligible NHCEs, the allowable number of NHCE allocation rates is one. For Plans with three to eight eligible NHCEs the allowable number of NHCE allocation rates cannot exceed two. For Plans with nine to eleven eligible NHCEs the allowable number of NHCE allocation rates cannot exceed three. For Plans with twelve to nineteen NHCEs the allowable number of NHCE allocation rates cannot exceed four. For Plans with twenty to twenty-nine NHCEs the allowable number of NHCE allocation rates cannot exceed five. For Plans with thirty or more NHCEs the number of NHCE allocation rates cannot exceed the number of eligible NHCEs divided by five (rounded down to the next whole number if the result of dividing is not a whole number), but shall not exceed twenty-five.

(c) Except as otherwise provided in **Sections 7.01(c)(4) and (5)**, Employer contributions and forfeitures allocated in a Plan Year in which the Plan is a Top-Heavy Plan on behalf of any Participant who is not a Key Employee shall not be less than the lesser of

(1) three (3%) percent of such Participant's Compensation or

(2) in the case where the Employer has no defined benefit plan which designates this Plan to satisfy the requirements of **section 401** of the Code, the largest percentage of Employer contributions, Elective Deferrals and forfeitures, as a percentage of the Key Employee's Compensation, allocated on behalf of any Key Employee for that Plan Year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of

(A) the Participant's failure to complete one thousand (1,000) Hours of Service (or any equivalent provided in the Plan), or

(B) the Participant's failure to make mandatory Employee contributions to the Plan, or

(C) Compensation less than a stated amount.

(3) For purposes of computing the minimum allocation, Compensation will mean Compensation as defined in **Item 4** of the Adoption Agreement before any exclusions selected under that Item and including amounts not includible in the gross income of the Employee under **sections 125, 132(f)(4), 402(g)(3), 402(h)(1)(B), and 457** of the Code..

(4) The provisions of **Section 7.01(c)** shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

(5) The provisions of this **Section 7.01(c)** 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 in **Item 18C** of the Adoption Agreement that the minimum allocation or benefit requirement applicable to Top-Heavy Plans will be met in the other plan or plans.

(6) The minimum allocation here set forth to the extent required to be nonforfeitable under **section 416(b)** of the Code may not be forfeited under **sections 411(a)(3)(B) or 411(a)(3)(D)** of the Code. Elective Deferrals (and for Plan Years beginning before 2002, Matching Contributions) may not be taken into account for the purpose of satisfying the minimum Top-Heavy contribution requirement.

(d) If the Plan is a profit sharing Plan and does not provide for permitted disparity, Employer contributions for the Plan Year plus any forfeitures shall be allocated in accordance with the election set forth in **Item 8** of the Adoption Agreement. If the Plan is a profit sharing Plan using permitted disparity, Employer contributions for the Plan Year plus any forfeitures will be allocated to Participants' Accounts as follows:

(1) First, the contributions and forfeitures in any Year the Plan is Top-Heavy will be allocated to all Participants in the ratio that each Participant's Compensation as determined under **Section 7.01(c)** bears to all Participants' Compensation, but not in excess of three (3%) percent of such Compensation unless a higher percentage is selected in **Item 18D** of the Adoption Agreement.

(2) Next, in any Year the Plan is Top-Heavy, the remaining contributions and forfeitures will be allocated to each Participant's Account in the ratio that each Participant's Compensation in excess of the Integration Level selected in **Item 8B** of the Adoption Agreement bears to the sum of all Participant's Compensation in excess of the Integration Level, up to three (3%) percent of such excess Compensation or such higher percentage as is selected in **Item 18D** of the Adoption Agreement.

(3) Next, the remaining contributions and forfeitures will be allocated to each Participant's Account in the ratio that the sum of each Participant's total Compensation and Compensation in excess of the Integration Level selected in **Item 8B** of the Adoption Agreement bears to the sum of all Participant's total Compensation and Compensation in excess of the Integration Level, but not in excess of the profit sharing maximum disparity rate, after reduction by the percentage allocated under **Section 7.01(d)(2)**.

(4) Next, any remaining Employer contributions or forfeitures after allocations under **Section 7.01(d)(1) and (d)(2)** will be allocated to each Participant's Account in the ratio that each Participant's total Compensation for the Plan Year bears to all Participants' total Compensation for that Year.

For purposes of this **Section 7.01(d)**, Compensation shall mean Compensation as defined in **Section 7.01(c)(3)**.

(5) The maximum profit sharing disparity rate is equal to the lesser of (A) or (B), reduced by the percentage of Compensation allocated under **Section 7.01(d)(1)**:

(A) 5.7%, or

(B) the applicable percentage determined as set forth below:

(i) If the Integration Level selected in **Item 8B** of the Adoption Agreement is some amount not in excess of the greater of Ten Thousand (\$10,000) Dollars or twenty (20%) percent of the Taxable Wage Base, the applicable percentage is 5.7%;

(ii) If the Integration Level is more than the greater of Ten Thousand (\$10,000) Dollars or twenty (20%) percent of the Taxable Wage Base, but less than eighty (80%) percent of the Taxable Wage Base, the applicable percentage is 4.3%;

(iii) If the Integration Level is more than eighty (80%) percent of the Taxable Wage Base, but less than the Taxable Wage Base, the applicable percentage is 5.4%;

(iv) If the Integration Level is the Taxable Wage Base, the applicable percentage is 5.7%.

(e) If the Plan is a money purchase Plan and does not provide for permitted disparity, Employer contributions for the Plan Year plus any forfeitures shall be allocated in accordance with the election set forth in **Item 8** of the Adoption Agreement. If the Plan is a money purchase Plan using permitted disparity, and a specific percentage of Compensation in excess of the Integration Level for each Participant has not been selected in **Item 7A**, Employer contributions for the Plan Year plus any forfeitures will first be allocated to Participants' Accounts as follows:

(1) First, the contributions and any forfeitures in any Year the Plan is Top-Heavy will be allocated to all Participants in the ratio that each Participant's Compensation as determined under **Section 7.01(c)** bears to all Participants' Compensation, but not in excess of three (3%) percent of such Compensation unless a higher percentage is selected in **Item 18D** of the Adoption Agreement.

(2) Next, the remaining contributions and forfeitures will be allocated to each Participant's Account in accordance with the formula selected in **Item 7** of the Adoption Agreement.

(3) In no event shall the allocation of contributions and forfeitures with reference to Compensation in excess of the Integration Level exceed the money purchase maximum disparity rate.

(4) The maximum money purchase disparity rate is equal to the lesser of (A), (B) or (C), reduced by the percentage of Compensation allocated under **Section 7.01(e)(1)**:

(A) 5.7%,

(B) the base contribution percentage, or

(C) the applicable percentage determined as set forth below:

(i) If the Integration Level selected in **Item 8B** of the Adoption Agreement is some amount not in excess of the greater of Ten Thousand (\$10,000) Dollars or twenty (20%) percent of the Taxable Wage Base, the applicable percentage is 5.7%;

(ii) If the Integration Level is more than the greater of Ten Thousand (\$10,000) Dollars or twenty (20%) percent of the Taxable Wage Base, but less than eighty (80%) percent of the Taxable Wage Base, the applicable percentage is 4.3%;

(iii) If the Integration Level is more than eighty (80%) percent of the Taxable Wage Base, but less than the Taxable Wage Base, the applicable percentage is 5.4%;

(iv) If the Integration Level is the Taxable Wage Base, the applicable percentage is 5.7%.

(f) (1) If the Employer elects in **Item 7A** of the Adoption Agreement to permit Employees to make Elective Deferrals, the amount of Elective Deferrals that may be made for each Participant shall equal the percentage of Compensation equal to the Salary Reduction Contributions Percentage as selected by the Participant in his or her Salary Reduction Agreement. The Employer may elect, in **Item 7C** of the Adoption Agreement, to make Qualified Non-elective Contributions to the Plan on behalf of its Employees. Such contributions shall be allocated as determined pursuant to the election of the Employer in **Item 8A** of the Adoption Agreement. To the extent elections are made pursuant to this **Section 7.01(f)**, contributions and allocations shall be made in accordance with such elections and not in accordance with other provisions of the Plan. Elective Deferrals shall be treated as Employer contributions in this Plan. Notwithstanding the foregoing, for years beginning after December 31, 2005, any allocation formula applied to Qualified Non-Elective Contributions must satisfy the requirements of 1.401(k)-2(a)(6) of the Code.

(2) If the Employer elects in **Item 7A** of the Adoption Agreement to permit Employees to make Elective Deferrals, the provisions of **Section 7.11** shall apply.

(g) (1) If the Plan is a target benefit Plan, for each Plan Year beginning after December 31, 1993, the Employer will contribute for each Participant the annual Employer contribution calculated as set forth in this **Section 7.01(g)**. The annual Employer contribution necessary to fund the stated benefit with respect to a Participant shall be determined each Plan Year as follows:

(A) If the Participant has not yet reached Normal Retirement Age, calculate the present value of the stated benefit determined in **Item 7** of the Adoption Agreement by multiplying the stated benefit by the applicable factor in TABLE I of APPENDIX A if the Participant's attained current Age is less than sixty-five (65), or in TABLE IA of APPENDIX A if the Participant's attained current Age is greater than or equal to sixty-five (65), multiplied by the applicable factor in TABLE III of APPENDIX A. If the Participant is at or beyond Normal Retirement Age, calculate the present value of the stated benefit by multiplying the stated benefit by the factor in TABLE IV of APPENDIX A corresponding to that Normal Retirement Age from the appropriate Table in the APPENDIX to the Adoption Agreement.

(B) Calculate the excess, if any, of the amount determined in **Section 7.01(g)(1)(A)** over the theoretical reserve.

(C) To determine the annual Employer contribution necessary to fund the result determined in **Section 7.01(g)(B)**, amortize the result determined in **Section 7.01(g)** by multiplying it by the applicable factor from TABLE II. For the Plan Year in which the Participant attains Normal Retirement Age and for subsequent Plan Years the applicable factor is 1.0.

(2) For purposes of this **Section 7.01(g)**, the theoretical reserve is determined according to (A) and (B) as follows:

(A) A Participant's theoretical reserve as of the last day of the first Plan Year the Participant participates in the Plan, and as of the last day of the first Plan Year after any Plan Year in which the Plan either did not satisfy the safe harbor set forth in the Income Tax Regulations at **section 1.401(a)(4)-8(b)(3)** or was not a prior safe harbor plan (the "initial theoretical reserve") is zero. In all other cases, in the first Plan Year in which this theoretical reserve provision is adopted or made effective, if later (year 1), the initial theoretical reserve is determined as follows:

(i) Calculate as of the last day of the Plan Year immediately preceding year 1 the present value of the stated benefit, using the actuarial assumptions, the provisions of the Plan, and the Participant's Compensation as of such date. For a Participant who is beyond Normal Retirement Age during year 1, the stated benefit will be determined using the actuarial assumptions, the provisions of the Plan, and the Participant's Compensation as of such date, except that the straight life annuity factor used in that determination will be the factor applicable for the Participant's Normal Retirement Age.

(ii) Calculate as of the last day of the Plan Year

immediately preceding year 1 the present value of future Employer contributions, i.e., the level contributions due each Plan Year using the actuarial assumptions, the provisions of the Plan, and the Participant's Compensation as of such date, beginning with year 1 through the end of the Plan Year in which the Participant attains Normal Retirement Age.

(iii) Subtract the amount determined in **Section 7.01(g)(2)(A)(ii)** from the amount determined in **Section 7.01(g)(2)(A)(i)**.

(B) Accumulate the initial theoretical reserve determined under **Section 7.01(g)(2)** and the Employer contribution for each Plan Year beginning in year 1 up through the last day of the current Plan Year (excluding contributions if any made for the current Plan Year) using the Plan's interest assumptions in effect for each such Year. In any Plan Year following the Plan Year in which the Participant attains Normal Retirement Age, the accumulation is calculated assuming an interest rate of 0%.

For purposes of determining the level of annual Employer contributions necessary to fund the stated benefit, the above calculation shall be determined as of the last day of each Plan Year, on the basis of the Participant's Age on his or her last birthday, using the interest rate elected by the Employer in the Adoption Agreement and in effect on the last day of the prior Plan Year.

(3) If the Plan is a target benefit Plan, each Participant's stated benefit under the Plan shall be equal to the sum of the Participant's current stated benefit and the Participant's frozen accrued stated benefit, if any.

(A) (i) A Participant's frozen accrued stated benefit is determined as of the plan's latest fresh-start date, as selected in **Item 7** of the Adoption Agreement, as if the Participant terminated employment with the Employer as of that date, without regard to any amendment made to the Plan after that date. A Participant's frozen accrued stated benefit is equal to the amount of the current stated benefit in effect on the latest fresh-start date that a Participant has accrued as of that date, assuming that such current stated benefit accrues ratably from the Year in which the Participant first participated in the Plan, or, if later, the preceding fresh-start date under the Plan, through and including the Plan Year in which the Participant attains Normal Retirement Age.

(ii) The amount of the current stated benefit in effect on the latest fresh-start date that a Participant is assumed to have ratably accrued is determined by multiplying the Plan's current stated benefit in effect on that date by a fraction, the numerator of which is the number of years of participation from the later of the Participant's first Year of Participation in the Plan or the preceding fresh-start date, if any, through and including the year that contains the latest fresh-start date, and the denominator of which is the number of Years of Participation from the later of the Participant's first Year of Participation in the Plan or the preceding fresh-start date, if any, through and including the later of the Year in which the Participant attains Normal Retirement Age or the current Plan Year. For purposes of this **Section 7.01(g)(4)(A)(ii)**, only those Years of Participation during which a Participant was eligible to receive a contribution under the Plan will be taken into account.

(iii) If the Plan has had a preceding fresh-start date, each

Participant's frozen accrued stated benefit as of the latest fresh-start date will equal the sum of the amount of the current stated benefit in effect on the latest fresh-start date that a Participant is assumed to have ratably accrued as of that date under **Section 7.01(g)(4)(A)(ii)**, and the frozen accrued stated benefit determined as of the preceding fresh-start date.

(B) If the formula for determining the current stated benefit in effect on the latest fresh-start date was not expressed as a straight life annuity for all Participants and/or the Normal Retirement Age for any Participant on the latest fresh-start date was greater than the Normal Retirement Age for that Participant under the current formula for determining the current stated benefit in effect after the latest fresh-start date, the frozen accrued stated benefit will be converted to an actuarially equivalent straight life annuity commencing at the Participant's Normal Retirement Age under the current formula for determining the current stated benefit in effect after the latest fresh-start date, using the actuarial assumptions in effect under the formula for determining the current stated benefit in effect on the latest fresh-start date.

(C) Notwithstanding the provisions of **Section 7.01(g)(4)(B)**, if in the immediately preceding Plan Year the Plan did not satisfy the safe harbor for target benefit plans set forth in **section 1.401(a)(4)-8(b)(3)** or was not a prior safe harbor plan, the frozen accrued stated benefit for any Participant in the Plan, determined for the next Plan Year during which the requirements of **section 1.401(a)(4)-8(b)(3)** is satisfied until the Year following the next fresh-start date, if any, will be zero.

(D) Prior safe harbor plan means a Plan adopted and in effect on September 19, 1991, that satisfied the applicable nondiscrimination requirements for target benefit Plans on that date and in all prior periods, taking into account no amendments to the Plan after September 19, 1991, other than amendments necessary to satisfy the provisions of **section 401(l)** of the Code.

(E) Fresh-start date means the last day of a Plan Year preceding a Plan Year for which provisions that would affect the amount of the current stated benefit are amended. If applicable, the latest fresh-start date of the Plan will be designated in **Item 7** of the Adoption Agreement.

(4) Each Participant's current stated benefit will be the product of the amount derived from the formula selected in **Item 7** of the Adoption Agreement, and a fraction, the numerator of which is the Participant's number of Years of Participation from the latest fresh-start date, if any, through and including the later of the Year in which the Participant attains Normal Retirement Age or the current Plan Year, and the denominator of which is the Participant's total Years of projected Participation. If the Plan has not had a fresh-start date, such fraction will equal 1.0 for all Participants. In any event, for those Participants who first participated in the Plan after the latest fresh-start date, such fraction will equal 1.0. For purposes of determining the numerator in the fraction above, only those current and prior Years during which a Participant was eligible to receive a contribution under the Plan will be taken into account.

For purposes of determining a Participant's current stated benefit, a

Participant's total Years of projected Participation under the Plan is the sum of the Participant's total number of Years of Participation under the Plan for the years the Plan consecutively satisfies the safe harbor for target benefit Plans set forth in **section 1.401(a)(4)-8(b)(3)** of the Income Tax Regulations or was a prior safe harbor plan, if applicable, projected through the later of the end of the Plan Year in which the Participant attains Normal Retirement Age or the end of the current Plan Year. For purposes of determining a Participant's total Years of projected Participation, only those current and prior Years during which a Participant was eligible to receive a contribution under the Plan will be taken into account.

7.02 If the Plan is an Insured Plan, the Trustee shall pay Policy premiums from the Account of the Participant on whose life the Policy was purchased, or on whose life the Participant directed such purchase. If funds are insufficient, the Committee may direct the Trustee to borrow to pay the premiums, provided that if a loan is made on the Policies, it shall be proportional to the premium providing there is a sufficient cash value.

7.03 If the Plan is an Insured Plan, and there is insufficient cash value to pay the premiums, the deficiency shall be borrowed on the same proportional basis. Any repayment of loans shall also be made on the same proportional basis used in making the loans. The Trustee shall have no duty to pay premiums in excess of the available funds.

7.04 Except as required by law, the Employer shall not be obligated to make any contribution to the Trust.

7.05 If the Plan is a profit sharing Plan, and the Employer so elects in **Item 7B** of the Adoption Agreement, contributions must be made out of Net Profits and forfeitures will be allocated in the same manner as Employer contributions, and shall be allocated only for the benefit of Employees of the Employer who adopted this Plan. If the Plan is a money purchase Plan, unless the Employer elects otherwise in **Item 7B** of the Adoption Agreement, all forfeitures shall be used to reduce Employer contributions in the next Plan Year for the Employer who adopts the Plan. If the Plan is a target benefit Plan, forfeitures must be used to reduce Employer contributions in the next Plan Year. No forfeiture will occur solely as a result of an Employee's withdrawal of his own contributions. If the Plan is a target benefit Plan, the Employer shall not make contributions on behalf of a Participant after the Plan Year in which the Participant attains Normal Retirement Age, except for contributions required under **Section 7.01(c)** of the Plan when the Plan is a Top-Heavy Plan. Forfeitures may not be allocated to a Participant's Roth 401(k) Elective Deferral account and no contribution, other than designated Roth 401(k) Elective Deferrals and rollover contributions described in **section 402A(c)(3)(B)** may be allocated to a Roth 401(k) Elective Deferral account.

7.06 Subject to the provisions of **Section 2.10**, a Participant whose employment is terminated before the end of a Plan Year but after he has completed one thousand (1,000) Hours of Service within such Plan Year shall or shall not share in the Employer's Contribution for such Plan Year as designated in **Item 8** of the Adoption Agreement.

7.07 If the Plan is a target benefit Plan, the annual Employer contributions necessary to fund the target benefit shall be determined under the funding method selected in **Item 7A10** of the Adoption Agreement and the format set forth in APPENDIX A.

7.08 (a) Each Participant's Target Current Projected Benefit under the Plan will be the product of the amount derived from the formula selected in **Item 7** of the Adoption Agreement, and a fraction, the numerator of which is the Participant's number of Years of Participation from the latest fresh-start date, if any, selected in **Item 7** through and including the later of the Plan Year in which the Participant attains Normal Retirement Age or the current Plan Year, and the denominator of which is the Participant's total Years of projected Participation. If this Plan has not had a fresh-start date, such fraction will equal 1.0 for all Participants. In any event, for those Participants who first participated in the Plan after the current fresh-start date, such fraction will equal 1.0. For purposes of determining the numerator in the fraction above, only those current and prior years during which a Participant was eligible to receive a contribution under the Plan will be taken into account.

(b) For purposes of determining a Participant's Target Current Projected Benefit, a Participant's total Years of projected Participation under the Plan is the sum of the Participant's total number of Years of Participation under this Plan for the years this Plan consecutively satisfies the safe harbor for target benefit plans set forth in **section 1.401(a)(4)-8(b)(3)** of the Income Tax Regulations or was a prior safe harbor plan, if applicable, projected through the later of the end of the Plan Year in which the Participant attains Normal Retirement Age or the end of the current Plan Year. For purposes of determining a Participant's total Years of projected Participation, only those current and prior Years during which a Participant was eligible to receive a contribution under the Plan will be taken into account.

(c) For purposes of determining a Participant's total Years of projected Participation, if this Plan is a prior safe harbor plan, the Plan is deemed to satisfy the safe harbor for target benefit plans in Regulations Section 1.401(a)(4)-8(b)(3) and a Participant is treated as benefiting under the Plan in any Plan Year beginning prior to January 1, 1994.

7.09 If an amount is transferred to the Plan from another plan maintained by the Employer in lieu of a reversion to the Employer of such amount, such amount shall be held in a separate account by the Trustees and converted to Plan assets as and when such amounts would have been deductible under **section 404** of the Code if contributed by the Employer. The Employer shall not deduct any contributions made to the Plan after such transfer until the full transferred amount has been converted to Plan assets.

#### 7.10 Overall Permitted Disparity Limits

Annual Overall Permitted Disparity Limit: Notwithstanding the preceding paragraphs, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in **section 408(k)** of the Code, maintained by the Employer that provides for permitted disparity (or imputes disparity), Employer contributions and forfeitures will be allocated to the Account of each Participant who either completes more than five hundred (500) Hours of Service during the Plan Year or who is employed on the last day of the Plan Year in the ratio that such Participant's total Compensation bears to the total Compensation of all Participants.

Cumulative Permitted Disparity Limit: Effective for Plan Years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the Participant for allocation or accrual purposes under this Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's Cumulative Permitted Disparity Limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefitted under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no Cumulative Permitted Disparity Limit.

## ARTICLE VIII

### EMPLOYEE CONTRIBUTION AND MATCHING CONTRIBUTIONS

8.01 (a) (1) If the Employer elects in **Item 7A** of the Adoption Agreement to permit Employees to make Elective Deferrals, each Participant may elect to have the Employer make Elective Deferrals on his or her behalf by executing a Salary Reduction Agreement. The amount of Elective Deferrals that may be made on behalf of a Participant for a Plan Year shall equal the Salary Reduction Contributions Percentage selected by the Participant in the Salary Reduction Agreement. If the Employer elects in **Item 7B** of the Adoption Agreement to make additional contributions to the Plan for its Employees, such contributions may be allocated irrespective of whether or not the Employee has executed a Salary Reduction for such Plan Year or may be allocated only to those Employees who executed a Salary Reduction Agreement. If the contribution is to be allocated irrespective of whether or not the Employee has executed a Salary Reduction Agreement, the Employer shall advise the Trustee at the time the contribution is made as to whether the contribution is to be considered a Qualified Employer Contribution. If the Employer determines to make a contribution only for those Employees who execute a Salary Reduction Agreement, such contribution shall be based on a percentage selected by the Employer in **Item 7C** of the Adoption Agreement of the amount the Employee has elected under the Salary Reduction Agreement, and shall constitute a Matching Contribution.

(2) An election to make Elective Deferrals, other than the automatic election set forth in Item 7B of the Adoption Agreement, shall be effective for the first pay period beginning after five (5) business days from receipt of the election by the Committee unless a later pay period is specified in the election.

(3) If the Employer elects in **Item 7A** of the Adoption Agreement to permit Employees to make Roth 401(k) Elective Deferrals, the provisions of **Section 8.01(k)** shall apply.

(4) No election shall be made under this Plan, or any other plan, contract or arrangement maintained by the Employer, during any calendar year, to cause the Elective Deferrals, including Roth 401(k) Elective Deferrals, to exceed the dollar limitation contained in **section 402(g)** of the Code in effect for the Participant's taxable year beginning in such calendar year. In the case of a Participant who has attained his fiftieth (50th) birthday by the end of the taxable year, and only if the Employer has made the election set forth in **Item 7H** the dollar limitation described in the preceding sentence includes the amount of Elective Deferral that can be Catch-Up Contributions. The dollar limitation set forth in **section 402(g)** of the Code is \$10,500 for taxable years beginning in 2000 and 2001, increasing to \$11,000 for taxable years beginning in 2002 and increasing by \$1,000 for each year thereafter up to \$15,000 for taxable years beginning in 2006 and later years. After 2006, the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under **section 402(g)(4)** of the Code. Any such adjustments will be in multiples of \$500.

(b) The reduction in a Participant's annual Compensation shall be made by the Employer as of each payroll period and upon payment of any bonus, unless the Employer elects to withhold the amounts on another consistent and nondiscriminatory basis.

(c) A Salary Reduction Agreement shall be valid until modified by the Participant. A Participant shall modify a Salary Reduction Agreement by filing a written notice with the Committee that the Salary Reduction Agreement shall be modified. Such modification shall be effective not sooner than thirty (30) days after the notice is delivered. To the extent the Committee does not establish rules to the contrary, a Salary Reduction Agreement must be executed no later than the last day of the Plan Year. No Salary Reduction Agreement shall have retroactive effect. Except to the extent the Employer otherwise elects in **Item 7G** of the Adoption Agreement, the Committee may, in its sole discretion, allow a Participant to change the percentage of Elective Deferrals selected in a Salary Reduction Agreement during a Plan Year provided they treat all Participants similarly situated in a similar manner. In all events, a Participant shall have the right at least once during each calendar year to modify the amount or frequency of his or her Elective Deferrals, or to discontinue such Contributions. The provisions of this subsection shall apply to Roth 401(k) Elective Deferrals as well as other Elective Deferrals.

(d) Notwithstanding the provisions of **Section 8.01(c)**, the Salary Reduction Agreement shall be deemed amended upon notice to the Employer and the Employee from the Committee that a reduction in the Salary Reduction Contributions Percentage selected in the Salary Reduction Agreement is required to prevent

(1) the Elective Deferrals from exceeding the amount set forth in **Section 8.04(b)**; or

(2) the Annual Additions from exceeding the Maximum Annual Additions; or

(3) the sum of the Elective Deferrals and, if applicable, Qualified Employer Contributions, from exceeding an amount which would cause the Plan to violate the discrimination tests set forth in **section 401(k)** of the Code as set forth in **Section 8.04(b)**.

(e) A Participant may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Participant by notifying the Committee on or before the date specified in **Item 7J** of the Adoption Agreement of the amount of the Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Committee of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plans of the Employer.

Notwithstanding any other provision in the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant to whose accounts such Excess Elective Deferrals were assigned for the preceding Year and who claims Excess Elective Deferrals for such taxable year. For years

beginning after 2005, distribution of Excess Elective Deferrals for a year shall be made first from the Participant's Roth 401(k) Elective Deferrals account, to the extent Roth 401(k) Elective Deferrals were made for the year, unless the Participant specifies otherwise.

Excess Elective Deferrals shall be adjusted for income or loss up to the date of distribution. The income or loss allocable to Excess Elective Deferrals is the sum of:

(1) income or loss allocable to the Participant's Elective Deferral account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator of which is the Participant's Accrued Benefit attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year; and

(2) ten (10%) percent of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

(f) Notwithstanding any other provision of the Plan, Excess Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than twelve (12) months after a Plan Year to Participants to whose accounts such Excess Contributions were allocated for such Plan Year, except to the extent such excess Contributions are classified as Catch-up Contributions. To correct:

(1) Calculate the dollar amount of Excess Contributions for each affected Highly Compensated Employee in a manner described in **section 401(k)(8)(B)** and **section 1.401(k)-1(f)(2)**. However, in applying these rules, rather than distributing the amount necessary to reduce the actual deferral ratio (ADR) of each affected Highly Compensated Employee in order of these Employees' ADRS, beginning with the highest ADR, the Plan uses these amounts in step 2.

(2) Determine the total of the dollar amounts calculated in step 1. This total amount in step 2 (total Excess Contributions) should be distributed in accordance with steps 3 and 4.

(3) The Elective Contributions of the Highly Compensated Employee with the highest dollar amount of Elective Contributions are reduced by the amount required to cause that Highly Compensated Employee's Elective Contributions to equal the dollar amount of the Elective Contributions of the Highly Compensated Employee with the next highest dollar amount of Elective Contributions. This amount is then distributed to the Highly Compensated Employee with the highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this step, would equal the total Excess Contributions, the lesser reduction amount is distributed.

(4) If the total amount distributed is less than the total Excess Contributions, step 3 is repeated. If these distributions are made, the cash or deferred

arrangement is treated as meeting the non-discrimination test of **section 401(k)(3)** regardless of whether the ADP, if recalculated after distributions, would satisfy **section 401(k)(3)**.

If such excess amounts are distributed more than two and one-half (2 ½) months after the last day of the Plan Year in which such excess amounts arose, a ten (10%) percent excise tax will be imposed on the employer maintaining the Plan with respect to such amounts.

Excess Contributions shall be treated as Annual Additions under the Plan.

Excess Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Contributions allocated to each Participant is the sum of:

(A) income or loss allocable to the Participant's Elective Deferral account and, if applicable, the Qualified Non-elective Contribution account or the Qualified Matching Contributions account or both for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Contributions for the year and the denominator of which is the Participant's Accrued Benefit attributable to Elective Deferrals and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if any of such contributions are included in the ADP test, without regard to any income or loss occurring during such Plan Year; and

(B) ten (10%) percent of the amount determined under (A) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

Excess Contributions shall be distributed from the Participant's Elective Deferral account and Qualified Matching Contribution account, if applicable, in proportion to the Participant's Elective Deferrals and Qualified Matching Contributions to the extent used in the ADP test for the Plan Year. Excess Contributions shall be distributed from the Participant's Qualified Non-elective Contribution account only to the extent that such Excess Contributions exceed the balance in the Participant's Elective Deferral account and Qualified Matching Contribution account.

(g) (1) Notwithstanding any other provision of the Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than twelve (12) months after a Plan Year to Participants to whose accounts such Excess Aggregate Contributions were allocated for such Plan Year. Excess Aggregate Contributions are allocated to the Highly Compensated Employees with the largest Contribution Percentage Amounts taken into account in calculating the ACP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Contribution Percentage Amounts and continuing in descending order until all the Excess Aggregate Contributions have been allocated. If such Excess Aggregate Contributions are distributed more than 2 ½ months after the last day of the Plan Year in which such excess amounts arose, a 10-percent excise tax will be imposed on the Employer maintaining the Plan with respect to those amounts. Excess Aggregate Contributions shall be treated as

Annual Additions under the Plan even if distributed.

(2) **Determination of Income or Loss:** Excess Aggregate Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Aggregate Contributions allocated to each Participant is the sum of: (1) income or loss allocable to the Participant's Employee Contribution account, Matching Contribution account, Qualified Matching Contribution Account (if any, and if all amounts therein are not used in the ADP test) and, if applicable, Qualified Nonelective Contribution account and Elective Deferral account for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Aggregate Contributions for the year and the denominator is the Participant's account balance(s) attributable to Contribution Percentage Amounts without regard to any income or loss occurring during such Plan Year; and (2) 10 percent of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.

(3) **Forfeitures of Excess Aggregate Contributions:** Forfeitures of Excess Aggregate Contributions may either be reallocated to the accounts of non-highly Compensated Employees or applied to reduce Employer contributions, as elected by the Employer in **Item 7K** of the Adoption Agreement.

(4) **Accounting for Excess Aggregate Contributions:** Excess Aggregate Contributions allocated to a Participant shall be forfeited, if forfeitable or distributed on a pro-rata basis from the Participant's Employee Contribution account, Matching Contribution account, and Qualified Matching Contribution account (and, if applicable, the participant's Qualified Nonelective Contribution account or Elective Deferral account, or both). For Plan Years beginning after 2005, distribution of Elective Deferrals that are Excess Aggregate Contributions shall be made from the Participant's pre-tax Elective Deferral account before the Participant's Roth Elective Deferral account, to the extent pre-tax Elective Deferrals were made for the year, unless the Participant specifies otherwise.

(5) "Excess Aggregate Contributions" shall mean, with respect to any Plan Year, the excess of:

(A) The aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over

(B) The maximum Contribution Percentage Amounts permitted by the ACP test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals pursuant to **Section 1.34** of the Plan and then determining Excess Contributions pursuant to **Section 1.33** of the Plan.

(h) Matching Contributions shall be vested in accordance with the election made in **Item 7C** of the Adoption Agreement. In any event, Matching Contributions shall be fully vested at Normal Retirement Age, upon the complete or partial termination of the Plan, or upon the complete discontinuance of Employer contributions. Forfeitures of Matching Contributions, other than Excess Aggregate Contributions, shall be made in accordance with the election made by the Employer in **Item 7L** of the Adoption Agreement.

(i) If elected by the Employer in **Item 7C** of the Adoption Agreement, the Employer will make Qualified Matching Contributions to the Plan.

(j) If elected by the Employer in **Item 7I** of the Adoption Agreement, an Employee eligible to elect to make Elective Deferrals shall be deemed to have made such an election and the amount set forth in **Item 7I** shall be withheld from the Employee's Compensation. An Employee shall have thirty (30) days after he or she receives written notice of the automatic enrollment to elect not to make Elective Deferrals, or to make a different level of Elective Deferral than the amount selected in **Item 7I**.

(k) If Roth 401(k) Elective Deferrals are permitted under the Plan the following provisions shall apply:

(1) A Participant's Roth 401(k) Elective Deferrals will be deposited in a separate account for such Participant. No contributions other than Roth 401(k) Elective Deferrals and properly attributable earnings will be credited to such separate account and gains, losses and other credits or charges will be allocated on a reasonable and consistent basis to such account.

(2) The Plan will maintain a record of the amount of Roth 401(k) Elective Deferrals in each Participant's separate account.

(3) Distribution of all or any part of a Participant's Roth 401(k) Elective Deferrals account (other than corrective distributions) shall not be included in the Participant's gross income if made after five (5) years and after the Participant's death, disability, or attainment of Age fifty-nine and one-half (59 ½). Earnings on corrective distributions of Roth 401(k) Elective Deferrals are includible in gross income the same as earnings on corrective distributions of pre-tax Elective Deferrals.

(4) A direct rollover of a distribution from a Participant's Roth 401(k) Elective Deferrals account shall only be made to another Roth elective deferral account under an applicable retirement plan described in **section 401(A)(e)(1)** of the Code or to a Roth IRA described in **section 408A** of the Code, and only to the extent the rollover is permitted under the rules of **section 402(c)** of the Code.

8.02 An Employee's eligibility to make Elective Deferrals may not be conditioned upon his or her completion of more than one (1) Year of Service, and shall not be effective earlier than the date the Plan first permitted the cash or deferred option. An Employee's eligibility to receive Matching Contributions, Qualified Matching Contributions or Qualified Non-elective Contributions may be conditioned upon his or her completion of up to two (2) Years of Service. No contributions or benefits, other than Matching Contributions or Qualified Matching Contributions, may be conditioned upon an Employee's Elective Deferrals.

8.03 (a) The Average Contribution Percentage (also known as "ACP") for a Plan Year for Participants who are Highly Compensated Employees for each Plan Year and the prior

year's Average Contribution Percentage for Participants who were non-Highly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

(1) the Average Contribution Percentage for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's Average Contribution Percentage for Participants who were non-Highly Compensated Employees for the prior Plan Year multiplied by 1.25; or

(2) the Average Contribution Percentage for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's Average Contribution Percentage for the Participants who were non-Highly Compensated Employees for the prior Plan Year multiplied by two (2), provided that the Average Contribution Percentage for Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Participants who were non-Highly Compensated Employees in the prior Plan Year by more than two (2) percentage points.

(b) (1) For the first Plan Year, this Plan permits any Participant to make Employee Contributions, provides for Matching Contributions or both, and this is not a successor plan, for purposes of the foregoing tests, the prior year's non-Highly Compensated Employees' ACP shall be three (3%) percent unless the Employer has elected in the Adoption Agreement to use the Plan Year's ACP for these Participants.

(2) A Participant is a Highly Compensated Employee for a particular Plan Year if he or she meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a non-Highly Compensated Employee for a particular Plan Year if he or she does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

(3) If the Employer elects to apply Code **section 410(b)(4)(B)**, the Employer may exclude from consideration all Eligible Employees who have not met the minimum age and service requirements of Code **section 410(a)(1)(A)**.

(c) For purposes of this **Section 8.03**, the Contribution Percentage for any Participant who is a Highly Compensated Employee and who is eligible to have Contribution Percentage Amounts allocated to his or her account under two or more plans described in **section 401(a)** of the Code, or arrangements described in **section 401(k)** of the Code, that are maintained by the Employer, shall be determined as if the total of such Contribution Percentage Amounts was made under each Plan and arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all Contribution Percentage Amounts made during the Plan Year under all such plans and arrangements shall be aggregated. For Plan Years beginning before 2006, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under the Income Tax Regulations issued under **section 401(m)** of the Code.

(d) In the event that this Plan satisfies the requirements of **sections 401(m), 401(a)(4) or 410(b)** of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of **sections 401(m), 401(a)(4) or 410(b)** of the Code only if aggregated with this Plan, then **Section 8.03** shall be applied by determining the Contribution Percentage of Employees as if all such plans were a single plan. Any adjustments to the non-Highly Compensated Employee ACP for the prior year will be made in accordance with Notice 98-1 and any superseding guidance, unless the Employer has elected in the Adoption Agreement to use the Current Year testing method. Plans may be aggregated in order to satisfy

**section 401(m)** of the Code only if they have the same Plan Year and use the same ACP testing method. For purposes of determining whether a Plan satisfies the ACP test all Employee and Matching Contributions that are made under two or more plans that are aggregated for purposes of **section 401(a)(4) and 410(b)** (other than **section 410(b)(2)(A)(ii)**) are to be treated as made under a single plan, and if two or more plans are permissively aggregated for purposes of **section 401(m)**, the aggregated plans must also satisfy **section 401(a)(4) and 410(b)** as though they were a single plan.

In calculating the ACP for purposes of **section 401(m)**, the actual contribution ratio of a Highly Compensated Employee will be determined by treating all plans subject to **section 401(m)** under which the Highly Compensated Employee is eligible (other than those that may not be permissively aggregated) as a single plan.

(e) For purposes of determining the Contribution Percentage of an Employee who is a 5-percent owner or one of the ten (10) most highly paid Highly Compensated Employees, the Contribution Percentage Amounts and Compensation of such Employee shall include the Contribution Percentage Amounts and Compensation for the Plan Year.

(f) For purposes of determining the Contribution Percentage test, Employee Contributions are considered to have been made in the Plan Year in which contributed to the Trust. Matching Contributions and Qualified Non-elective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the day after the close of the Plan Year.

(g) The Employer shall maintain records sufficient to demonstrate satisfaction of the ACP test and the amount of Qualified Non-elective Contributions or Qualified Matching Contributions, or both, used in such test.

(h) The determination and treatment of the Contribution Percentage of any Employee shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(i) The Employer may elect to make Qualified Non-elective Contributions under the Plan on behalf of Employees to the extent elected in **Item 7C** of the Adoption Agreement. In addition, in lieu of distributing Excess Contributions or Excess Aggregate Contributions, and to the extent elected by the Employer in **Item 7C** of the Adoption Agreement, the Employer may make Qualified Non-elective Contributions on behalf of not Highly Compensated Employees that are sufficient to satisfy either the ADP test or the ACP test, or both, pursuant to Income Tax Regulations. Such Contributions can only be made for a Plan Year to which the prior year testing method does not apply.

8.04 (a) No Participant shall be permitted to make Elective Deferrals 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 at the beginning of such taxable year.

(b) The Actual Deferral Percentage for a Plan Year for Participants who are Highly Compensated Employees for each Plan Year and the prior year's ADP for Participants who were non-highly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

(1) the ADP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's ADP for Participants

who were non-Highly Compensated Employees for the prior Plan Year multiplied by 1.25; or

(2) the ADP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year's ADP for Participants who were non-Highly Compensated Employees for the prior Plan Year multiplied by 2.0, provided that the ADP for Participants who are Highly Compensated Employees does not exceed the ADP for Participants who were non-Highly Compensated Employees in the prior Plan Year by more than two (2) percentage points.

(3) For the first Plan Year the Plan permits any Participant to make Elective Deferrals and this is not a successor plan, for purposes of the foregoing tests, the prior year's non-Highly Compensated Employees' ADP shall be three (3%) percent, unless the Employer has elected in the Adoption Agreement to use the Plan Year's ADP for these Participants.

(4) If elected by the Employer in the Adoption Agreement, the ADP tests in 1 and 2, above, will be applied by comparing the current Plan Year's ADP for Participants who are Highly Compensated Employees with the current Plan Year's ADP for Participants who are non-Highly Compensated Employees. Once made, this election can only be undone if the plan meets the requirements for changing to Prior Year Testing set forth in regulations under **section 401(k)** and 401(m) of the Internal Revenue Code.

(5) If the Employer elects to apply Code **section 410(b)(4)(B)** for purposes of Code **section 401(k)(3)(A)(II)**, the Employer may exclude from consideration all Eligible Employees who have not met the minimum age and service requirements of Code **section 410(a)(1)(A)**.

(6) Special Rules:

(A) A Participant is a Highly Compensated Employee for a particular Plan Year if he or she meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a non-Highly Compensated Employee for a particular Plan Year if he or she does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

(B) The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if treated as Employer contributions for purposes of the ADP test, allocated to his or her accounts under two or more arrangements described in **section 401(k)** of the Code, that are maintained by the Employer, shall be determined as if such Elective Deferrals and, if applicable, such Qualified Non-elective Contributions, Qualified Matching Contributions, or both, were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. For Plan Years beginning before 2006 all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under the Income Tax Regulations issued under **section 401(k)** of the Code.

(C) In the event that this Plan satisfies the requirements of **sections 401(k), 401(a)(4), or 410(b)** of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if

aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. Any adjustments to the non-Highly Compensated Employee ADP for the prior year will be made in accordance with regulations issued under **section 401(k)** and **401(m)** of the Code, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy **section 401(k)** of the Code only if they have the same Plan Year and use the same ADP testing method. For purposes of determining whether a Plan satisfies the ADP test all Elective Contributions that are made under two or more plans that are aggregated for purposes of **section 401(a)(4) or 410(b)**(other than **section 410(b)(2)(A)(ii)**) are to be treated as made under a single plan and if two or more plans are permissively aggregated for purposes of **section 401(k)** the aggregated plans must also satisfy **sections 401(a)(4) and 410(b)** as though they were a single plan.

In calculating the ADP for purposes of **section 401(k)**, the actual deferral ratio of a Highly Compensated Employee will be determined by treating all cash or deferred arrangements under which the Highly Compensated Employee is eligible (other than those that may not be permissively aggregated) as a single arrangement.

(D) For purposes of determining the ADP of a Participant who is a 5-percent owner or one of the ten (10) most highly paid Highly Compensated Employees, the Elective Deferrals and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test.

(E) For purposes of determining the ADP test, Elective Deferrals, Qualified Non-elective Contributions and Qualified Matching Contributions must be made before the last day of the twelve (12) month period immediately following the Plan Year to which contributions relate.

(F) The Employer shall maintain records sufficient to demonstrate satisfaction of the ADP test and the amount of Qualified Non-elective Contributions or Qualified Matching Contributions, or both, used in such test.

(G) The determination and treatment of the ADP amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

#### 8.05 (a) Rules of Application.

(1) If the Employer has elected in the Adoption Agreement to have the 401(k) Safe Harbor Provisions apply, then the provisions of this **Section 8.05** shall apply for the Plan Year and any provisions relating to the ADP test described in **section 401(k)(3)** or the ACP test described in **section 401(m)(2)** do not apply.

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

#### (b) Definitions.

(1) "Compensation" means, for purposes of this **Section 8.05**, Compensation as defined in **Section 1.15**, including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under **section 125**, **section 132(f)(4)**, **section 402(g)(3)**, **section 402(h)**, **section 403(b)** or **section 457** of the Code.

(2) "Eligible Employee" means for purposes of the 401(k) Safe Harbor Provisions, any Employee who is entitled to make Elective Deferrals under the terms of the Plan.

(3) "Year" means the calendar year.

(c) Contributions.

(1) Salary Reduction Contribution - Each Eligible Employee may make a salary reduction election to have his or her Compensation reduced for the Year in any amount selected by the Employee subject to the limitation in this Subsection. The Employer will make a Salary Reduction Contribution to the Plan, as an Elective Deferral, in the amount by which the Employee's Compensation has been reduced. The total salary reduction contribution for the Year cannot exceed the limitations of **section 402(g)** for any Employee. To the extent permitted by law, this amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS.

(2) (A) Matching Contributions - Each Year, the Employer will contribute a Matching Contribution to the Plan on behalf of each Employee who makes a salary reduction election under this Subsection. The amount of the Matching Contribution will be equal to the Employee's salary reduction contribution up to a limit of three (3%) percent of the Employee's Compensation for the full year plus fifty (50%) percent of the next two (2%) percent of the Employee's Compensation.

(B) Matching Contributions - Each Year, the Employer will contribute a Matching Contribution to the Plan on behalf of each Employee as set forth in the second option under **Item 7F1a**.

(3) Non-elective Contribution - For any Year, instead of a Matching Contribution, the Employer may elect to contribute a Non-elective Contribution of three (3%) percent of Compensation for the full Year for each Eligible Employee.

(4) If the Employer makes the election in **Item 7F1c** of the Adoption Agreement, the Safe Harbor Contribution shall be made to the Plan named in the Adoption Agreement.

(d) Election and Notice Requirements.

(1) Election Period - In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a salary reduction election during a reasonable period immediately preceding each January 1. For the Year an Employee becomes eligible to make salary reduction contributions under the 401(k) Safe Harbor Provisions, the reasonable election period requirement of this subsection is deemed satisfied if the Employee may make or modify a salary reduction election during a reasonable period that includes either the date the Employee becomes eligible or the day before. Each Employee may terminate a salary reduction election at any time during the Year.

(2) Notice Requirements - The Employer will notify each Eligible Employee prior to the reasonable election period described in subsection (d)(1) that he or she can make a salary reduction election or modify a prior election during that period. The notification described in the preceding sentence will indicate whether the Employer will provide a four (4%) percent Matching Contribution described in subsection (c)(2) or a three (3%) percent Non-elective contribution described in subsection (c)(3).

All benefits attributable to contributions described in subsection (c) are nonforfeitable as of the beginning of the Year the 401(k) Safe Harbor Provisions apply.

The plan is not treated as a Top-Heavy plan under **section 416** for any Year for which the 3% Non-Elective Contribution applies.

The ADP and ACP tests described in **Sections 8.03** and **8.04** of the Plan are treated as satisfied for any Year for which this Section applies.

8.06 All amounts which are contributed by the Employer to the Trust shall be irrevocable contributions to this Trust, except under the circumstances set forth in **Section 15.08**.

8.07 (a) Except with respect to a Plan qualifying as a cash or deferred arrangement under **section 401(k)** of the Code, beginning with the Plan Year as of which this Prototype is adopted by an Employer, no nondeductible Employee contributions or Employer contributions matching such nondeductible Employee contributions which are allocated to a separate account can be made. Employee contributions for Plan Years beginning after December 31, 1986, together with any matching contributions as defined in **section 401(m)** of the Code, will be limited so as to meet the nondiscrimination test of **section 401(m) as defined in Section 8.03(a)**.

(b) Employee contributions made hereunder, as adjusted for investment experience, shall be nonforfeitable at all times.

(c) A separate account shall be maintained by the Trustee for the nondeductible voluntary Employee contributions of each Participant made prior to the date **Section 8.07(a)** first applies. The assets of the Trust will be valued annually at fair market value as of the last day of the Plan Year. On such date, the earnings and losses of the Trust attributable to the accumulated nondeductible voluntary contributions will be allocated to each Participant's nondeductible voluntary contributions account in the ratio that such account balance bears to all such account balances. Alternatively, if elected in **Item 14C** of the Adoption Agreement, where directed by the Participant for whom a separate account is maintained, the Trustee may make whatever investment is requested, including the purchase of insurance or annuity Policies. If all or a portion of the Participant's separate account is invested at the direction of the Participant, to the extent of such direction the account shall consist of the assets in which such investment was directed. Any withdrawal of nondeductible contributions shall be subject to the consent of the Participant's spouse as provided in **Section 5.06**.

8.08 The Plan will not accept deductible Employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate account which will be nonforfeitable at all times. The assets of the Trust will be valued annually at fair market value as of the last day of the Plan Year. On such date, the earnings and losses of the Trust attributable to the accumulated deductible voluntary contributions will be allocated to each Participant's deductible voluntary contributions account in the ratio that such account balance bears to all such account balances. No part of the deductible voluntary contributions account will be used to purchased life insurance.

8.09 General rule.

(a) Qualified Nonelective Contributions cannot be taken into account for a Plan Year for a Non-Highly Compensated Employee to the extent such contributions exceed the product of that Non-Highly Compensated Employee's Compensation and the greater of 5% or two times the Plan's representative contribution rate.

(b) Any Qualified Non-Elective Contribution taken into account under an ACP test under section 1.401(m)-2(a)(6) (including the determination of the representative contribution rate for purposes of section 1.401(m)-2(a)(6)(v)(B)), is not permitted to be taken into account for purposes of this Article.

(c) Any Qualified Non-Elective Contributions taken into account under any ADP test under section 1.401(k)-2(a)(6) (including the determination of the representative contribution rate for purposes of section 1.401(k)-2(a)(6)(iv)(B) is not permitted to be taken into account for purposes of this Section 8.09 (including the determination of the representative contribution rate for purposes of this Section 8.09).

(d) Representative contribution rate - For purposes of this **Section 8.09**, the Plan's representative contribution rate is the lowest applicable contribution rate of any eligible Non-Highly Compensated Employee among a group of eligible Non-Highly Compensated Employees that consists of half of all eligible Non-Highly Compensated Employees for the Plan Year (or, if greater, the lowest applicable contribution rate of any eligible Non-Highly Compensated Employee in the group of all eligible Non-Highly Compensated Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year).

(e) Applicable contribution rate - For purposes of this Section 8.09 the applicable contribution rate for an eligible Non-Highly Compensated Employee is the sum of the Qualified Matching Contributions taken into account under this Article for the eligible Non-Highly Compensated Employee for the Plan Year and the Qualified Nonelective Contributions made for the eligible Non-Highly Compensated Employee for the Plan Year, divided by the eligible Non-Highly Compensated Employee's Compensation for the same period.

(f) Special rule for prevailing wage contributions - Notwithstanding the other provisions of this Article Qualified Nonelective Contributions that are made in connection with an Employer's obligation to pay prevailing wages under the Davis-Bacon Act or similar legislation can be taken into account for a Plan Year for a Non-Highly Compensated Employee to the extent such contributions do not exceed ten (10%) percent of that Non-Highly Compensated Employee's Compensation.

## ARTICLE IX

### LIMITATIONS ON ALLOCATIONS

9.01 If the Participant does not participate in, and has never participated in another qualified plan or a simplified employee pension, as defined in **section 408(k)** of the Code, maintained by the Employer or a welfare benefit fund, as defined in **section 419(e)** of the Code maintained by the Employer, or an individual medical account, as defined in **section 415(1)(2)** of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Accrued Benefit for any Limitation Year will not exceed the lesser of the Maximum Annual Additions or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's Accrued Benefit would cause the Annual Additions for the Limitation Year to exceed the Maximum Annual Additions, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Annual Additions.

(a) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Annual Additions for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(b) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Annual Additions for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(c) If, pursuant to **Section 9.01(b)** or as a result of the allocation of forfeitures, there is an Excess Amount the excess will be disposed of as follows:

(1) any nondeductible voluntary Employee contributions, (plus attributable earnings), to the extent they would reduce the Excess Amount, will be returned to the Participant;

(2) If after the application of **Section 9.01(c)(1)** an excess amount still exists, any Elective Deferrals (plus attributable earnings), to the extent they would reduce the excess amount, will be distributed to the Participant.

(3) if, after the application of **Section 9.01(c)(2)**, an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(4) if after the application of **Section 9.01(c)(2) and (c)(3)** an Excess Amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

(5) if a suspense account is in existence at any time during a

Limitation Year pursuant to this **Section 9.01**, it will not participate in the allocation of the Trust's investment gains or losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants.

9.02 This **Section 9.02** applies if, in addition to this Plan, the Participant is covered under another qualified master or prototype defined contribution plan maintained by the Employer or a welfare benefit fund, as defined in **section 419(e)** of the Code, maintained by the Employer, or a simplified employee pension, as defined in **section 408(k)** of the Code, maintained by the Employer or an individual medical account, as defined in **section 415(l)(2)** of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. Except as otherwise provided in **Item 25** of the Adoption Agreement, the Annual Additions which may be credited to a Participant's Accrued Benefit under this Plan for any such Limitation Year will not exceed the Maximum Annual Additions reduced by the Annual Additions credited to a Participant's account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Annual Additions and the Employer contribution that would otherwise be contributed or allocated to the Participant's Accrued Benefit under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Annual Additions. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Annual Additions, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(a) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Annual Additions for a Participant in the manner described in **Section 9.01(a)**.

(b) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Annual Additions for the Limitation year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(c) If, pursuant to **Section 9.02(b)** or as a result of the allocation of forfeitures a Participant's Annual Addition under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first followed by annual additions to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

(d) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,

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

(2) the ratio of

(A) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to

(B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified master or prototype defined contribution plans.

(e) Any Excess Amount attributed to this Plan will be disposed in the manner described in **Section 9.01 (c)**.

9.03 If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan, Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with **Section 9.02** as though the other plan was a master or prototype plan unless the Employer provides other limitations in **Item 25** of the Adoption Agreement.

9.04 If the Employer maintains or at any time maintained, a qualified defined benefit plan other than a Paired Plan covering any Participant in this Plan, the sum of the Participant's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with **Item 25** of the Adoption Agreement. This Section does not apply for Limitation Years beginning on or after January 1, 2000.

#### 9.05 Definitions.

(a) Annual Additions: The sum of the following amounts credited to a Participant's Account for the Limitation Year:

- (1) Employer contributions;
- (2) forfeitures; and
- (3) Employee contributions; and
- (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 or a simplified employee pension, as defined in **section 408(k)** of the Code, maintained by the Employer are treated as Annual Additions to a defined contribution Plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a Key Employee, as defined in **section 419A(d)(3)** of the Code, under a welfare benefit fund, as defined in **section 419(e)** of the Code, maintained by the Employer are treated as Annual Additions to a defined contribution Plan.

For this purpose, any Excess Amount applied under **Sections 9.01(c) or 9.02(e)** in the Limitation Year to reduce Employer contributions will be considered Annual Additions for such Limitation Year.

(b) Compensation: As elected by the Employer in **Item 4A** of the Adoption Agreement, Compensation shall mean one of the following:

- (1) Information required to be reported under **sections 6041, 6051 and 6052** of the Code, which under current law is reported in the box on form W-2 labeled "Wages, Tips and Other Compensation". Compensation is defined as wages as defined in **section**

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

(2) **Section 3401(a)** wages. Compensation is defined as wages within the meaning of **section 3401(a)** of the Code for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in **section 3401(a)(2)**.

(3) **415 safe harbor Compensation**. Compensation is defined as a Participant's Earned Income, wages, salaries, and fees for professional services, and other amounts received (without regard for whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements or other expense allowances under a nonaccountable plan as described in **section 1.62-2(c)** of the Income Tax Regulations) and excluding the following:

(A) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a Simplified Employee Pension Plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(B) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

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

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

For any Self-Employed Individual, Compensation will mean earned income.

For Limitation Years beginning after December 31, 1991, Compensation for any Limitation Year is the Compensation actually paid or includible in gross income during such Limitation Year.

Notwithstanding the preceding sentence, if the Employer so elects in **Item 6C** of the Adoption Agreement, Compensation for a Participant in a defined contribution Plan who is permanently and totally disabled (as defined in **section 22(e)(3)** of the Code) is the Compensation such Participant would have received for the Limitation Year if the Participant was paid at the rate of Compensation paid immediately before becoming permanently and totally disabled; for Limitation Years beginning before January 1, 1997, but not for Limitation Years

beginning after December 31, 1996., such imputed Compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee, as defined in **section 414(q)** of the Code, and contributions made on behalf of such Participant are nonforfeitable when made.

For Limitation Years beginning after December 31, 1997, Compensation paid or made available during such Limitation Year 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 includible in the gross income of the Employee by reason of **section 125, 132(f)(4) or 457**. For Limitation Years beginning after December 31, 2000, or an earlier date specified in the Adoption Agreement, Compensation shall also include any elective amounts that are not includible in the gross income of the Employee by reason of **section 132(f)(4)**.

(c) Employer: For purposes of this Article IX, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in **section 414(b)** of the Internal Revenue Code as modified by **section 415(h)**), all commonly controlled trades or businesses (as defined in **section 414(c)** as modified by **section 415(h)**) or affiliated service groups (as defined in **section 414(m)**) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under **section 414(o)** of the Code.

(d) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Annual Additions.

(e) Highest Average Compensation: The average Compensation for the three (3) consecutive Years of Service with the Employer that produces the highest average. A Year of Service with the Employer is the 12-consecutive month period defined in the Adoption Agreement.

(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in **Item 17** of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(g) Master or Prototype Plan: A Plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(h) Maximum Annual Additions: Except for Catch-Up Contributions, 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

(1) Forty Thousand (\$40,000) Dollars, as adjusted for cost-of-living increases under **section 415(d)** of the Code, or

(2) one hundred (100%) percent of the Participant's Compensation for the Limitation Year.

The Compensation limit referred to in (2) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of **section 401(h)** or **419A(f)(2)** of the Code) which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the Maximum Annual Additions will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{number of months in the short Limitation Year}}{12}$$

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

(1) the Participant will continue employment until Normal Retirement Age under the Plan (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.

(j) Defined Contribution Dollar Limitation: Forty Thousand (\$40,000) Dollars as adjusted **section 415(d)** of the Code.

## ARTICLE X

### INVESTMENT FUND

10.01 The Trustee shall maintain an Investment Fund for the purposes of accumulating funds necessary to pay benefits under the Plan. Subject to the terms of the Trust if a separate Trust agreement is executed, the Trustee shall invest and reinvest the principal and income of the Investment Fund, without distinction between principal and income, in such property, real or personal, wherever situated, as the Trustee may deem advisable, including, but not limited to, variable annuity contracts, stocks, common or preferred, bonds and mortgages, mutual funds, and other evidences of indebtedness or ownership. In making such investment, the Trustee shall not be restricted to securities or other property of the character authorized or required by applicable law from time to time for trust investments, but shall be controlled by the provisions of **Sections 12.04 and 12.05**.

Notwithstanding the provisions of the preceding paragraph, if the Employer so elects in **Item 8E** of the Adoption Agreement, the Committee shall establish a selection of investment alternatives and give each Participant the opportunity to determine the extent to which his or her Accrued Benefit is to be invested in each alternative. If the Committee provides such a selection, the Committee and the Trustee shall have no responsibility for the prudence or diversity of the investment selection made by the Participant, and the Participant's Accrued Benefit shall consist of the assets in which such investment is directed to the extent of such direction. To the extent the Participant does not select the investment of his or her Accrued Benefit, such amounts shall be invested in accordance with the other provisions of the Plan and Trust.

10.02 Subject to the terms of the Trust if a separate Trust agreement is executed, the Trustee shall have the following powers and authority in the administration and investment of the Investment Fund:

(a) To purchase, or subscribe for, securities or other property, and to retain the same in trust;

(b) To sell, exchange, convey, transfer or otherwise dispose of securities or other property held by the Trustee by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expedience, or propriety of any such sale or other disposition;

(c) To vote upon stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise conversion privileges, subscription rights, or other options, and to make payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the investment;

(d) To cause securities or other property held as part of the Investment Fund to be registered in its own name or names, or in the name of one or more of their nominees, and to hold investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Investment Fund. Securities held in a nominee or street name shall be held on behalf of the Plan by a bank or trust company subject to supervision by the United States or a State, or a nominee of such bank or trust company; a broker or dealer

registered under the Securities Exchange Act of 1934 or a nominee of such broker or dealer; or a "clearing agency" as defined in **section 3(a)(23)** of the Securities Exchange Act of 1934 or its nominee.

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

(f) To keep such portion of the Investment Fund in cash as the Trustee may, from time to time, determine to be in the best interest of this Trust, without liability for interest thereon.

(g) Except as otherwise permitted by law, under no circumstances shall the Trustee(s) maintain the indicia of ownership of any Trust assets outside the jurisdiction of the district courts of the United States.

(h) Except as otherwise permitted by law, under no circumstances shall the Trustee purchase any form of security issued by the Employer, or any real property owned by or leased to the Employer.

10.03 The Trustee shall value the Trust assets and liabilities annually at fair market value as of the last day of each Plan Year, unless a different Valuation Date or Dates has been selected by the Employer in **Item 10** of the Adoption Agreement. Such gains and losses shall be allocated to each Participant's Account in the ratio that such Account bears to all Account balances.

10.04 At the direction of the Committee, or as otherwise provided in the Trust if a separate Trust agreement is executed, the Trustee shall have the power to enter into arrangements for the deposit of funds with an Insurer, bank or trust company, and in connection therewith:

(a) to authorize such depository to act as custodian of the cash, securities or other property comprising such funds;

(b) to authorize such depository to convert the funds in whole or in part into, or to invest and reinvest the same in, securities of any kind and nature whatsoever;

(c) if deemed advisable, to authorize such depository to invest such funds in any trust fund created and maintained by such depository as trustee for the collective investment of funds of trusts for employee benefit plans qualified under **section 401(a)** of the Internal Revenue Code of 1954 (or corresponding provision of any Federal Revenue law at the time in effect), the instrument creating such collective trust, together with any amendments, modifications or supplements thereto at the time in effect being hereby effective when and as any such investment is made, incorporated in, and make a part hereof; and

(d) to provide for the payment to the depository of reasonable compensation for its services.

10.05 At the direction of the Committee, or as otherwise provided in the Trust if a separate Trust agreement is executed, the Trustee shall have the authority to enter into arrangements with an investment manager or managers to manage assets of the Trust, and such appointment may include the power to acquire and dispose of such assets. Such investment

managers shall be entitled to reasonable compensation for their services, payable from Trust assets.

## ARTICLE XI

### ACCOUNT

11.01 The Account established and maintained for each Participant covering the amounts allocated from Employer and Employee contributions shall reflect all credits to the Investment Fund by reason of:

- (a) income and realized and unrealized gains to the Investment Fund;
- (b) allocation to the Investment Fund from contributions to the Plan;
- (c) any Policy dividends or other credits on the insurance contracts;

and shall reflect all charges to the Investment Fund by reason of:

- (x) realized and unrealized losses of the Investment Fund;
- (y) expenses of the Trustee allocated to the Investment Fund;
- (z) any amount withdrawn from the Investment Fund in accordance with the provisions of the Plan.

The credits set forth in **Section 11.01(b) and (c)** will be allocated only after all other credits and charges have been allocated.

11.02 Except to the extent elected in **Item 8F** of the Adoption Agreement, income and realized and unrealized gains to the Investment Fund will be allocated to each Participant's Account in the proportion that his or her Account at the last preceding Valuation Date bears to the aggregate of all Participants' Accounts at that time. If the weighted average method is selected in **Item 8F** of the Adoption Agreement, each contribution shall be credited with gains from the date it is made to the Plan.

11.03 Except to the extent elected in **Item 8F** of the Adoption Agreement, expenses and any realized and unrealized losses of the Investment Fund will be charged to each Participant's Account in the proportion that his or her Account at the last preceding Valuation Date bears to the aggregate of all Participants' Accounts at that time. If the weighted average method is selected in **Item 8F** of the Adoption Agreement, each contribution shall be credited with losses from the date it is made to the Plan.

## ARTICLE XII

### THE COMMITTEE

12.01 The board of directors of the Employer or, if the Employer is not incorporated, a partner or proprietor of the Employer, shall appoint one or more persons who shall be designated as the Committee. The initial Committee Members shall be designated in the Adoption Agreement. The Committee shall have all powers necessary for the performance of its duties hereunder. A Committee Member may, but need not, be an officer or Employee of the Employer. The Committee shall be the fiduciary with the sole power to control and manage the operation and administration of the Plan. Except as provided in **Sections 10.04 and 10.05**, the Committee shall not delegate any of the power and authority vested in it.

12.02 The members of the Committee shall serve at the pleasure of the Employer with such compensation as may be prescribed by such Employer. Any Committee Member may resign by a written notice addressed to the Employer. The Employer shall fill any vacancy in the Committee which may occur from time to time. The appointment of a Committee Member shall become effective upon his or her acceptance, in writing, addressed to the Employer, and upon such acceptance such Committee Member shall be vested with all the rights, powers, and duties of his or her predecessor. No Committee Member who receives full-time compensation from the Employer shall be compensated for his or her services as a Committee Member.

12.03 The Plan is intended to qualify under Code **section 401(a)**. The Committee shall have the power and authority either alone or on advice of counsel to reconcile any inconsistencies and to construe and interpret the provisions of the Plan, specifically to ensure the qualification of the Plan in all circumstances in a manner closest to the intended provisions, and to determine all questions with respect to the individual rights of Participants, Retired Participants and their Beneficiaries.

12.04 The Committee shall establish a funding policy and method consistent with the objectives of the Plan, and shall communicate same to the Trustee. The Committee shall discharge its duties solely in the interest of the Participants and their Beneficiaries.

12.05 The Committee shall act at all times 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, and shall direct the Trustee to diversify the investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so.

12.06 Provided the Committee acts in accordance with the provisions of **Sections 12.04 and 12.05**, the Committee shall be free of any liability, joint or several, to the Employer, any Employee, any Participant, Retired Participant or Beneficiary for the making, retention or sale of any investment or reinvestment made by it as herein provided or for any loss to or dimension of the assets of the Trust. In addition, should the Committee select a custodian as provided in **Section 10.04**, or an investment manager as provided in **Section 10.05**, to the extent that such selection is prudent, the Committee shall be free of any liability for any acts or omissions of such custodian or investment manager.

12.07 If more than one Committee Member is appointed, they shall act by majority vote, and action may be taken either by a vote at a meeting or in writing without a meeting. Any one Committee Member may sign, on behalf of all, any papers which may be required.

12.08 No Committee Member shall be precluded from becoming a Participant under the Plan upon his or her meeting the eligibility requirements set forth in **Section 2.01**.

12.09 All expenses related to the administration of the Plan, including counsel fees, shall be paid from the Trust, unless the Employer pays such expense directly. The Employer may reimburse the Plan and/or the Committee and its members for any reasonable expense, including counsel fees, incurred in the administration of the Plan.

To the extent administration expenses are related to the Accrued Benefit of a former Employee or surviving spouse the Committee may elect to charge reasonable administrative expenses to the Accrued Benefit of that former Employee or surviving spouse. Such expenses must be charged on a pro rata basis or another reasonable basis that complies with the requirements of Title I of ERISA. In addition, the allocation of administrative expenses must meet the nondiscrimination rules under **section 401(a)(4)** of the Code.

12.10 The Committee shall keep accurate and detailed accounts of the transactions effected hereunder and all accounts, books and records relating thereto shall be open for inspection at all reasonable times by the Employer, or any person designated by it. A Participant may inspect the Committee's records only insofar as they relate to such Participant's own participation.

12.11 The Committee Members shall not be required to give bond or other security for the faithful performance of duties, unless required by law.

12.12 The Committee shall be fully protected in relying upon any written instructions and direction of the Employer, and in taking any action upon any instrument believed by the Committee to be genuine and signed and presented by the proper person or persons. The Committee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.

12.13 In the event that any dispute shall arise as to any act to be performed by the Committee, they may postpone performance until adjudication of such dispute in a court of competent jurisdiction or until indemnified against loss to their satisfaction.

12.14 The Committee, any custodian designated in accordance with **Section 10.04**, and any investment manager designated in accordance with **Section 10.05**, shall not, either directly or indirectly, deal with the assets of the Trust for it, his or her own interest or account; act in any transaction involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan, or any Participant or Beneficiary; or receive any consideration for it, his or her own account from any party dealing with the Plan in connection with a transaction involving Trust assets.

## ARTICLE XIII

### AMENDMENT

13.01 Subject to the provisions of **Sections 13.04 and 13.05**, the Employer the Committee and the Trustee, as initially and subsequently designated, hereby delegate authority to the Sponsor to amend this Plan at any time and such amendments are deemed made with the consent of the Employer, Committee and Trustee and on their behalf. Such amendments by the Sponsor may be executed without the consent of any other party and shall be stated in instruments executed by the Sponsor, copies of which shall be provided to each Employer who shall provide copies of same to the Committee and the Trustee. Such amendments by the Sponsor shall bind each Employer, the Committee and the Trustee, and all Participants and their Beneficiaries hereunder. The power to amend granted to the Sponsor is in no way intended to, nor shall it be deemed to, grant the Sponsor any discretionary power in the operation or management of the Plan.

The amendments made by the Sponsor are limited solely to the form of the Plan. The Sponsor may not change an election previously made by the Employer, and may not amend any provision of the Trust without the consent of the Trustee.

If the Prototype is submitted on a mass submitter basis, the mass submitter shall be substituted for the Sponsor wherever authority is given to the Sponsor to amend the Plan, Trust or Adoption Agreements. If the Sponsor does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan.

13.02 Subject to the provisions of **Section 13.04 and 13.05**, the Employer may change the choice of options in the Adoption Agreement, add overriding language in the Adoption Agreement when such language is necessary to satisfy **section 415 or 416** of the Code because of the required aggregation of multiple plans, amend administrative provisions of the Trust or custodial document, add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the Plan to be treated as individually designed and add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross references that merely correct a reference but do not in any way change the original intended meaning of the provisions. The Employer may also attach to the Plan a list of benefits protected under **section 411(d)(6)** of the Code if such benefits must be protected as a result of a restatement of the Plan from an individually designed plan to this prototype, or from another prototype to this prototype. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under **section 412(d)** of the Code, will no longer participate in this Prototype and will be considered to have an individually designed plan.

13.03 No amendment shall vest in the Employer, directly or indirectly, any right, title, interest, or control over Policies purchased hereunder, or over Trust funds subject to the terms of this Plan. No trust asset shall, by reason of any amendment, be used for or diverted to purposes other than for the exclusive benefit of Participants, Retired Participants, and their Beneficiaries. No amendment shall reduce any vested right or interest to which any Participant, Retired Participant or Beneficiary is then entitled hereunder. The Employer may, however, make such retroactive amendments as may be required by the Internal Revenue Service in order to initially qualify or maintain the qualification of the Plan under the appropriate provisions of the Internal Revenue Code of 1954, as amended, and of any other applicable statute.

13.04 Notwithstanding the provisions of **Section 13.03**, a Participant's Account balance may be reduced to the extent permitted under **section 412(c)(8)** of the Code.

13.05 If any amendment by the Employer affects the rights, duties, responsibilities, or obligations of the Committee or the Trustee hereunder, such amendment may be made only with the consent of the Committee or the Trustee, as the case may be. Any amendment to the Plan made by the Employer in accordance with the provisions of this **Section 13.05** shall become effective when a signed copy has been delivered to the affected party.

13.06 Subject to the provisions of **Sections 13.04 and 13.05**, an Employer may adopt this Plan and Trust and the Adoption Agreement as a restatement of a previously adopted pension plan other than this prototype. To do so, the Employer must check **Item C** in the Introduction of the Adoption Agreement and complete all Items in the Adoption Agreement.

13.07 No amendment to a vesting schedule shall deprive a Participant of his or her nonforfeitable rights to benefits accrued to the date of the amendment. Further, if the vesting schedule of the Plan is amended, or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Participant with at least three (3) Years of Service with the Employer may elect, within a reasonable period after the adoption of the amendment or change, to have his or her nonforfeitable percentage computed under the Plan without regard to such amendment or change. For Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "five (5) Years of Service" for "three (3) Years of Service" where such language appears.

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 on the latest of:

- (a) sixty (60) days after the amendment is adopted;
- (b) sixty (60) days after the amendment becomes effective; or
- (c) sixty (60) days after the Participant is issued written notice of the amendment by the Employer or the Committee.

13.08 No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. Notwithstanding the preceding sentence, a Participant's Accrued Benefit may be reduced to the extent permitted under **section 412(c)(8)** of the Code. For purposes of this **Section 13.08**, a Plan amendment which has the effect of decreasing a Participant's Accrued Benefit with respect to benefits attributable to service before the amendment shall be treated as reducing an Accrued Benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage determined as of such date of such Employee's right to his or her Employer-derived Accrued Benefit will not be less than his or her percentage computed under the Plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her account balance under a particular optional form of benefit if the amendment provides a single sum distribution form that is

otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single sum distribution form is otherwise identical only if the single sum distribution form 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 timing of payments after commencement.

Plan amendments may also provide exceptions from the general prohibition against the elimination or restriction of optional forms of benefit for in-kind distributions and elective transfers as specified under regulations 1.411(d)-4 Q&A 2 and 3). Plans may provide for an exception from the general prohibition against the elimination or restriction of optional forms for certain elective transfers. If a plan provides for the elimination or restriction of optional forms for elective transfer made on or after January 1, 2002, the Plan must also provide that where the participant is eligible to receive an immediate distribution of the Participant's entire nonforfeitable Accrued Benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution under **section 401(a)(31)**, such transfer will be accomplished as a direct rollover under **section 401(a)(31)**.

## ARTICLE XIV

### TERMINATION OF PLAN

14.01 The Employer reserves the right at any time to terminate the Plan and/or Trust for any reason or for no reason. The Employer shall notify the Committee and the Trustee that it desires to terminate the Plan and/or Trust. Upon termination or partial termination of the Plan, or the complete discontinuance of contributions if the Plan is a profit sharing Plan, the rights of all Participants to their Accrued Benefits shall be fully vested and nonforfeitable.

14.02 Subject to the provisions of **Article V** and upon termination of the Employer's participation in the Plan under **Section 14.01**, the Committee shall direct the Trustee to deliver all Policies acquired for the benefit of each Participant to each Participant, and Trust funds subject to the provisions of this Plan shall be distributed to each Participant according to the value of his or her Account. Upon such distribution, the Trustee shall be discharged from all obligations under the Plan, subject to the provisions of the Trust. Assets shall be distributed on termination as soon as administratively feasible.

14.03 The Employer's participation under the Plan shall terminate in the event of a legal adjudication of the Employer as a bankrupt; a general assignment by the Employer to or for the benefit of its creditors; dissolution of the Employer; sale or transfer of the Employer to another business organization; or merger or consolidation of the Employer with another business organization; unless the Plan is continued by a successor of the Employer by agreement with the Trustee assuming the liabilities of the Plan. This Plan shall not merge or consolidate with, or transfer assets or liabilities to, any other plan unless each Participant in this Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

## ARTICLE XV

### MISCELLANEOUS

15.01 The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Participant or Employee, or to be a consideration for, inducement to, or condition of employment of any person. Nothing herein contained shall be construed to give any Participant the right to be retained in the employ of the Employer or to interfere with the right of the Employer to terminate the employment of any Participant at any time.

15.02 Wherever it is herein provided that any person or persons concerned with the administration of the Plan shall exercise discretion in the making of any decision, such discretion shall be exercised so as not to discriminate among persons similarly situated.

15.03 A copy of the Plan and any and all future amendments thereto shall be available to the Plan Participants for inspection at all reasonable times.

15.04 No right or interest of any kind in any Trust asset shall be transferable or assignable by a Participant, or Retired Participant or their Beneficiaries, or be subject to alienation, encumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary. If any Participant attempts to alienate or assign such benefits or should such benefits be subject to any of the above legal or equitable processes, the Committee shall direct the Trustee to take the necessary steps so that such benefits shall not be available to the Participant, and such benefits shall be used as the Committee shall direct for the benefit of the Participant or for his Beneficiaries. This **Section 15.04** 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.

15.05 Neither the Employer, the Committee or the Trustee shall be responsible for the validity of a Policy or for the failure on the part of an Insurer to make any payment or to provide any benefit under any Policy or for the action of any person which may render any Policy invalid or unenforceable. The Employer, the Committee and the Trustee shall not be responsible for any failure to perform or delay in performing any act occasioned by any Policy provisions or restrictions imposed by an Insurer or any other person. In the event that it becomes impossible for the Employer, the Committee or the Trustee to perform any act under the Plan, that act shall be performed which, in the judgment of the Employer, the Committee or the Trustee, as the case may be, will most nearly execute the provisions of the Plan.

15.06 Except as provided in **Section 15.08**, under no circumstances shall any part of the corpus or income of the Plan be used for, or diverted to, purposes other than for the exclusive benefit of the Employees and their Beneficiaries and to defray reasonable expenses of administration. The Plan shall at all times be interpreted and administered in accordance with the applicable provisions of the Internal Revenue Code of 1986, as now in effect or as hereafter amended, or of any other applicable statute. Any funds contributed to the Plan and any assets of the Plan shall not revert to, or be used by or for the benefit of the Employer, except as provided in **Section 15.08**.

15.07 The Plan embodied herein and the Trust through which it is funded shall be

construed according to the laws of the State in which the Employer has its principal office, except to the extent preempted by Federal law.

15.08 (a) Anything to the contrary herein contained notwithstanding, if the Commissioner of Internal Revenue having jurisdiction over the Employer shall determine that the Plan is not initially qualified under **section 401(a)** of the Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one (1) year after the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe. In such event, the Plan shall be of no force or effect as to the Employer, and without the assent of any other party the Employer shall be entitled to recover the contributions paid into the Plan to the extent set forth in the preceding sentence, with the exception of amounts paid for life insurance protection, any expense or commission incurred by the Insurer, and other administrative expenses incurred by the Committee and/or the Trustee. Any fund contributed to the Plan which are attributable to Employee contributions shall be returned to the respective Employee.

(b) In the case of a contribution which is made by an Employer by a mistake of fact, **Section 15.06** shall not prohibit the return of such contribution to the Employer within one (1) year after the time it is made.

(c) If a contribution is conditioned on the deductibility of the contribution under **section 404** of the Code, then to the extent the deduction is disallowed, **Section 13.06** shall not prohibit the return to the Employer of such contribution (to the extent disallowed) within one (1) year after the disallowance of the deduction. Unless the Employer provides otherwise at the time a contribution is made, all contributions shall be made on the condition they are deductible.

15.09 If the Plan fails to qualify or, after initial approval of this Plan by the Internal Revenue Service or if, after the Plan is established or amended, the Employer at a later date fails to attain or retain the Plan's qualified status, it shall no longer be regarded as participating in a Prototype Plan, and the Plan for such Employer shall be regarded as an individually drawn plan.

15.10 The Committee shall provide adequate notice in writing to any Participant or Beneficiary whose claim for benefits has been denied, setting forth the specific reasons for such denial written in a manner calculated to be understood by the Participant or Beneficiary. The Committee shall afford a reasonable opportunity to any Participant or Beneficiary whose claim for benefits has been denied for a full and fair review by at least one Committee Member of the decision denying the claim.

15.11 Except as provided in **Section 9.05(e)**, all Employees of all corporations which are members of a controlled groups of corporations (as defined in **section 414(b)** of the Code), all Employees of all trades and businesses, whether or not incorporated, which are under common control (as defined in **section 414(c)** of the Code), and all Employees of all members of affiliated service groups (as defined in **section 414(m)** of the Code) shall be treated as the Employees of a single employer. Any individual deemed under **section 414(n)** or **414(o)** of the Code to be an Employee of an Employer described in the previous sentence shall also be considered an Employee.

15.12 (a) The Employer listed as the Employer on the first page of the Adoption Agreement shall be the Employer whose Board of Directors or, if such Employer is a proprietorship or partnership, whose proprietor or partners, shall have the power to amend the Plan as to all Employers under **Article XII**, although each Employer listed on the APPENDIX to the Adoption Agreement shall retain the right to amend the Plan as to its Employees. The

Employer listed on the first page of the Adoption Agreement shall be the Employer whose Board of Directors or, if such Employer is a proprietorship or partnership, whose proprietor or partners, shall appoint the Committee and the Trustee and shall be the Employer exercising all of the powers set forth in **Article XII** to be exercised by an Employer.

(b) Each Employer retains the right under **Article XIII** to terminate the Plan as to its Employees and no Employer shall have the right to terminate the Plan as to Employees of another Employer.

(c) If a Participant is employed by more than one participating Employer in the same Plan, his or her Compensation from all such Employers shall be aggregated prior to the calculation of the contribution to be made to his or her Account, and the contribution shall be allocated pro rata between or among the Employers of such Participant based on his Compensation from each such Employer.

(d) In a target benefit Plan in all cases, or in a money purchase Plan unless the Employer has elected otherwise in **Item 7K** of the Adoption Agreement, forfeitures shall be used to reduce the contributions of the Employer by whom the Participant was employed and in a profit sharing Plan shall be allocated to Employees of the Employer by whom the terminating Participant was employed.

15.13 (a) If the Employer so selects in **Item 20** of the Adoption Agreement, loans may be made to a Participant or a Beneficiary provided they are made available to all Participants and Beneficiaries on a reasonably equivalent basis, they are adequately secured and bear a reasonable interest rate, no Participant loan exceeds the present value of the Participant's Vested Accrued Benefit, and in the event of default foreclosure on the note and attachment of the security will not occur until a distributable event occurs in the Plan. Loans shall not be made available to Highly Compensated Employees as defined in **section 414(q)** of the Code in amounts greater than the amount made available to other Employees.

(b) 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 (i) Fifty Thousand (\$50,000) Dollars reduced by the excess, if any, of the highest outstanding balance of loans during the one (1) year period ending on the day before the loan is made over the outstanding balance of loans from the Plan on the date the loan is made, or (ii) one-half ( $\frac{1}{2}$ ) of the present value of the nonforfeitable Accrued Benefit of the Participant or, if greater, the total Accrued Benefit up to Ten Thousand (\$10,000) Dollars. For the purpose of the above limitation, all loans from all plans of the Employer and other members of a group of employers described in **sections 414(b), 414(c), and 414(m)** of the Code are aggregated. Furthermore, any loan shall by its terms require that repayment of principal and interest be amortized in level payments, no 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 Policy purchased under the Plan, will be treated as a loan under this **Section 15.13**.

(c) A Participant must obtain the consent of his or her spouse, if any, to use of the Accrued Benefit as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the ninety (90) day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. A new

consent shall be required if the Accrued Benefit is used for renegotiation, extension, renewal or other revision of the loan.

(d) Loan repayments will be suspended under this Plan as permitted under **section 414(u)(4)** of the Internal Revenue Code.

(e) If a valid spousal consent has been obtained in accordance with **Section 15.13(d)**, then, notwithstanding any other provision of the Plan, the portion of the Participant's Vested Accrued Benefit used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Accrued Benefit payable at the time of death or distribution, but only if the reduction is used as a repayment of the loan. If less than one hundred (100%) percent of the Participant's Vested Accrued Benefit, determined without regard to the preceding sentence, is payable to the surviving Spouse, then the Accrued Benefit shall be adjusted by first reducing the Vested Accrued Benefit by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

(f) For purposes of this **Section 15.13**, the term "Accrued Benefit" shall include rollovers or transfers made by the Participant in accordance with the provisions of **Section 5.12**.

15.14 Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to the services performed for the recipient employer shall be treated as provided by the recipient Employer. A Leased Employee shall not be considered an Employee of the recipient if such individual is

(a) covered by a money purchase pension plan providing

(1) a nonintegrated Employer contribution rate of at least ten (10%) percent of compensation as defined in **section 415(c)(3)** of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under **section 125, section 132(f)(4) section 402(a)(8), section 402(h), section 403(b) and 457** of the Code;

(2) immediate participation;

(3) full and immediate vesting; and

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

For purposes of this **Section 15.14**, the term "Leased Employee" shall have the meaning set forth in **Section 1.45**.

15.15 No Participant or Beneficiary shall be entitled to any amount from the Trust, unless the right is based upon the express written terms of the Plan.

15.16 A distribution from the Plan may be made in cash, in kind or a combination so long as no Participant or Beneficiary is required to take more than his/her pro rata share of that asset.

## ARTICLE XVI

### THE TRUSTEE

16.01 The board of directors of the Employer or, if the Employer is not incorporated, a partner or proprietor of the Employer, shall appoint one or more Trustees (herein referred to as the Trustee) who shall have powers necessary for the performance of the duties hereunder. The initial Trustee shall be designated in the Adoption Agreement. Except as provided in **Sections 10.04** and **10.05**, or in a separate trust agreement, the Trustee shall not delegate any of its power and authority. A separate trust agreement may be entered into between the Employer and any institutional Trustee, in which event the terms of such separate trust agreement shall be the Trust and shall supersede any conflicting terms in this document as to the Trustee.

16.02 The Trustee shall serve at the pleasure of the Employer with such compensation as may be prescribed by agreement between the Employer and the Trustee. Any Trustee may resign by a written notice addressed to the Employer. The Employer shall fill any Trustee's vacancy which may occur from time to time. The appointment of a Trustee shall become effective upon the acceptance of the Trustee, in writing, addressed to the Employer, and upon such acceptance such Trustee shall be vested with all the rights, powers, and duties of the predecessor Trustee. No Trustee who receives full time compensation from the Employer shall be compensated for services as Trustee.

16.03 The Trustee shall establish a funding policy and method consistent with the objectives of the Plan. The Trustee shall manage the assets of this Trust and otherwise discharge duties solely in the interest of the Participants and their Beneficiaries. The assets of the Trust shall be used solely for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan.

16.04 The Trustee shall act at all times 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, and shall diversify the investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so.

16.05 Provided the Trustee act in accordance with the provisions of **Sections 16.03 and 16.04**, the Trustee shall be free of any liability, joint or several, to the Employer, any Employee, the Committee, any Participant, Retired Participant or Beneficiary for the making, retention or sale of any investment or reinvestment made by him as herein provided or for any loss to or diminution of the assets of the Trustee. In addition, should the Trustee select a custodian as provided in **Section 10.04**, or an investment manager as provided in **Section 10.05**, to the extent that such selection is prudent, the Trustee shall be free of any liability for any acts or omissions of such custodian or investment manager.

16.06 Except as provided in a separate agreement between the Trustee and the Employer, if more than one Trustee is appointed, they shall act by majority vote, and action may be taken either by a vote at a meeting or in writing without a meeting. Any one Trustee may sign, on behalf of all, any papers which may be required.

16.07 The Trustee shall receive all contributions to the Plan, and such contributions, together with all Policy dividends and refunds, amounts received by the Trustee under any Policies that are not distributed to Participants or their Beneficiaries and all other property held

from time to time hereunder, shall be held, managed, and administered in trust pursuant to the terms of the Plan and, if applicable, at the direction of the Committee.

16.08 No Trustee shall be precluded from becoming a Participant under the Plan upon his meeting the eligibility requirements.

16.09 All reasonable expenses, including counsel fees, incurred by the Trustee in the performance of duties as Trustee shall be paid from the Trust, unless the Employer pays such expense directly. The Employer may reimburse the Trustee for any such expense.

16.10 The Trustee shall keep accurate and detailed accounts of the transactions effected hereunder and all accounts, books and records relating thereto shall be open for inspection at all reasonable times by the Employer, the Committee or any person designated by either of them. A Participant may inspect the Trustee's records only insofar as they relate to his or her own participation.

16.11 Except to the extent otherwise provided by agreement between the Trustee and the Employer, as soon as practicable after the close of each Plan Year, and at such other times as the Committee may direct, the Trustee shall file with the Committee a written account, setting forth all receipts, expenditures, and other operations of the Plan during the period since the date of the last previous accounting. Upon the expiration of thirty (30) days after the date of filing such accounting with the Committee, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of the acts and transactions shown in such account, except with respect to any such act or transaction as to which the Committee shall file with the Trustee written objections within such thirty (30) day period, or except if such transaction violates the provisions of **Section 16.03 or 16.04**. Nothing herein contained, however, shall deprive the Trustee of the right to have any of the accounts settled by a court of competent jurisdiction.

16.12 Except to the extent otherwise provided by agreement between the Trustee and the Employer, the Trustee shall not be required to give bond or other security for the faithful performance of duties, unless required by law.

16.13 The Trustee shall be fully protected in relying upon any written instructions and direction of the Committee or the Employer, and in taking any action upon any instrument believed by the Trustee to be genuine and signed and presented by the proper person or persons. The Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.

16.14 Except to the extent otherwise provided by agreement between the Trustee and the Employer, in the event that any dispute shall arise as to any act to be performed by the Trustee, the Trustee may postpone performance until adjudication of such dispute in a court of competent jurisdiction or until indemnified against loss to the Trustee's satisfaction.

16.15 The Trustee, any custodian designated in accordance with **Section 10.04**, and any investment manager designated in accordance with **Section 10.05**, shall not, either directly or indirectly, deal with the assets of the Trust for their own interest or account; act in any transaction involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan, or any Participant or Beneficiary; or receive any consideration for their own account from any party dealing with the Plan in connection with a transaction involving Trust assets.

## AMENDMENT

-to-

### THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST AGREEMENT

WHEREAS, GUARDIAN LIFE INSURANCE COMPANY OF AMERICA is a mass submitter of the above named Regional Prototype; and

WHEREAS, the Internal Revenue Service may require that certain interim amendments be made to the Prototype document and certain other changes are desirable;

NOW, THEREFORE, the following amendments are adopted to the GUARDIAN LIFE INSURANCE COMPANY OF AMERICA Defined Contribution Prototype Plan and Trust Agreement, effective as set forth in the individual amendments:

1. The Basic Plan Document is amended to add the following provision:

"Amounts under Section 125 of the Code include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan."

2. Sections 5.07 through 5.09 of The Basic Plan Document are amended to read as follows:

"5.07 (a) Subject to Section 5.06 the requirements of this Section 5.07 and Section 5.08 shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 5.07 and Section 5.08 apply to calendar years beginning after December 31, 2002.

"(b) All distributions required under Section 5.07 and Section 5.08 shall be determined and made in accordance with the Income Tax Regulations under section 401(a)(9) of the Code and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.

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

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

"(1) the life of the Participant,

"(2) the joint lives of the Participant and a Designated Beneficiary,

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

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

"5.08 (a) 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:

"(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in the Adoption Agreement, 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 ½, if later.

"(2) 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.

"(3) 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.

"(4) 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 are required to begin, this Section 5.08(a), other than Section 5.08(a)(1), will apply as if the surviving spouse were the Participant.

"For purposes of this Section 5.08(a) and Section 5.08(d), unless Section 5.08(a)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 5.08(a)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.08(a)(1). 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 5.08(a)(1), the date distributions are considered to begin is the date distributions actually commence.

"(b) 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 5.08(c) and 5.08(d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

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

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

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

"(B) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

"(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 5.08(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

"(1) Death On or After Date Distributions Begin.

"(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as

follows:

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

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

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

"(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

"(2) Death Before Date Distributions Begin.

"(A) Participant Survived by Designated Beneficiary. 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 5.08(d)(1).

"(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest 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 5.08(a)(1), this Section 5.08(d)(2)(C) will apply as if the surviving spouse were the Participant.

"(e) Elections with reference to 5-Year Rule.

"(1) Election by Participant or Beneficiary to Apply 5-Year Rule.

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 5.08(a) and 5.08(d)(2) 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 5.08(a) 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 5.08(a) and 5.08(d)(2) and, if applicable, the elections in Section 5.08(a).

"(2) Election by Designated Beneficiary to Revoke 5-Year Rule. A

Designated Beneficiary who is receiving payments under the 5-year rule may make a new election at any time until December 31, 2003 to receive payments under the life expectancy rule, 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.

"(f) Transition Rules

"(1) For Plans in existence before 2003, required minimum

distributions before 2003 were made pursuant to Section 5.10, if applicable, and Sections 5.08(f)(2), (3) and (4).

"(2) 2000 and before. Required minimum distributions for calendar

years after 1984 and before 2001 were made in accordance with section 401(a)(9) of the Code and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 proposed regulations").

"(3) 2001. Required minimum distributions for calendar year 2001

were made in accordance with section 401(a)(9) of the Code and the 1987 proposed regulations, unless required minimum distributions for 2001 were made pursuant to proposed regulations under section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 proposed regulations"). If distributions were made in 2001 under the 1987 proposed regulations prior to the date in 2001 the Plan began operating under the 2001 proposed regulations, the special transition rule in Announcement 2001-82 applied.

“(4) 2002. Minimum required distributions for calendar year 2002 were made in accordance with section 401(a)(9) and the 1987 proposed regulations under section 401(a)(9) of the Code unless the provisions of subsections (A) or (B) below applies.

“(A) The minimum required distributions for 2002 were made pursuant to the 2001 proposed regulations.

“(B) The minimum required distributions for 2002 were made pursuant to the final and temporary regulations under section 401(a)(9) published in the Federal Register on April 17, 2002 (the "2002 final and temporary regulations") which are described in Sections 5.08(a) through (e) and Section 5.09. If distributions were made in 2002 under either the 1987 proposed regulations or the 2001 proposed regulations prior to the date in 2002 the Plan began operating under the 2002 final and temporary regulations, the special transition rule in Section 1.2 of the model amendment in Revenue Procedure 2002-29 applied.

#### “5.09 Definitions.

“(a) Designated Beneficiary. The individual who is designated by the Participant or the Participant's surviving spouse as the Beneficiary under the Plan and is the Designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4, of the Treasury regulations.

“(b) 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 5.08(a). 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.

“(c) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1 of the Treasury regulations.

“(d) 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.

“(e) Required beginning date. The date specified in the Adoption Agreement.”

3. Article IX of The Basic Plan Document is amended to read as follows:

“ARTICLE IX

LIMITATIONS ON ALLOCATIONS

“9.01 If the Participant does not participate in, and has never participated in another qualified plan or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the Employer or a welfare benefit fund, as defined in section 419(e) of the Code maintained by the Employer, or an individual medical account, as defined in section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Accrued Benefit for any Limitation Year will not exceed the lesser of the Maximum Annual Additions or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's Accrued Benefit would cause the Annual Additions for the Limitation Year to exceed the Maximum Annual Additions, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Annual Additions.

“(a) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Annual Additions for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

“(b) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Annual Additions for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

“(c) If, pursuant to Section 9.01(b) or as a result of the allocation of forfeitures, there is an Excess Amount the excess will be disposed of as follows:

“(1) any nondeductible voluntary Employee contributions, (plus attributable earnings), to the extent they would reduce the Excess Amount, will be returned to the Participant;

“(2) If after the application of Section 9.01(c)(1) an excess amount still exists, any Elective Deferrals (plus attributable earnings), to the extent they would reduce the excess amount, will be distributed to the Participant.

“(3) if, after the application of Section 9.01(c)(2), an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant’s Account will be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

“(4) if after the application of Section 9.01(c)(2) and (c)(3) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

“(5) if a suspense account is in existence at any time during a Limitation Year pursuant to this Section 9.01, it will not participate in the allocation of the Trust’s investment gains or losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants’ Accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants.”

“9.02 This Section 9.02 applies if, in addition to this Plan, the Participant is covered under another qualified master or prototype defined contribution plan maintained by the Employer or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the Employer or an individual medical account, as defined in section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. Except as otherwise provided in Item 25 of the Adoption Agreement, the Annual Additions which may be credited to a Participant’s Accrued Benefit under this Plan for any such Limitation Year will not exceed the Maximum Annual Additions reduced by the Annual Additions credited to a Participant’s account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Annual Additions and the Employer contribution that would otherwise be contributed or allocated to the Participant’s Accrued Benefit under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Annual Additions. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Annual Additions, no amount will be contributed or allocated to the Participant’s Account under this Plan for the Limitation Year.

“(a) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Annual Additions for a Participant in the manner described in Section 9.01(a).

“(b) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Annual Additions for the Limitation year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

“(c) If, pursuant to Section 9.02(b) or as a result of the allocation of forfeitures a Participant's Annual Addition under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first followed by annual additions to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

“(d) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,

“(1) the total Excess Amount allocated as of such date, times

“(2) the ratio of

“(A) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to

“(B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified master or prototype defined contribution plans.

“(e) Any Excess Amount attributed to this Plan will be disposed in the manner described in Section 9.01 (c).”

“9.03 If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan, Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with Section 9.02 as though the other plan was a master or prototype plan unless the Employer provides other limitations in Item 25 of the Adoption Agreement.”

“9.04 If the Employer maintains or at any time maintained, a qualified defined benefit plan other than a Paired Plan covering any Participant in this Plan, the sum of the Participant's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions which may be credited to the

Participant's Account under this Plan for any Limitation Year will be limited in accordance with Item 25 of the Adoption Agreement. This Section does not apply for Limitation Years beginning on or after January 1, 2000."

"9.05 Definitions.

"(a) Annual Additions: The sum of the following amounts credited to a Participant's Account for the Limitation Year:

"(1) Employer contributions;

"(2) forfeitures; and

"(3) Employee contributions; and

"(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 or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the Employer are treated as Annual Additions to a defined contribution Plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a Key Employee, as defined in section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer are treated as Annual Additions to a defined contribution Plan.

"For this purpose, any Excess Amount applied under Sections 9.01(c) or 9.02(e) in the Limitation Year to reduce Employer contributions will be considered Annual Additions for such Limitation Year.

"(b) Compensation: As elected by the Employer in Item 4A of the Adoption Agreement, Compensation shall mean one of the following:

"(1) Information required to be reported under sections 6041, 6051 and 6052 of the Code, which under current law is reported in the box on form W-2 labeled "Wages, Tips and Other Compensation". Compensation is defined as wages as defined in section 3401(a) of the Code and all other payments of compensation to an Employee by the Employer in the course of the Employer's trade or business, for which the Employer is required to furnish the Employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the Code. Compensation must be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in section 3401(a)(2).

“(2) Section 3401(a) wages. Compensation is defined as wages within the meaning of section 3401(a) of the Code for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in section 3401(a)(2).

“(3) 415 safe harbor Compensation. Compensation is defined as a Participant's Earned Income, wages, salaries, and fees for professional services, and other amounts received (without regard for whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements or other expense allowances under a nonaccountable plan as described in section 1.62-2(c) of the Income Tax Regulations) and excluding the following:

“(A) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a Simplified Employee Pension Plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

“(B) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

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

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

“For any Self-Employed Individual, Compensation will mean earned income.

“For Limitation Years beginning after December 31, 1991, Compensation for any Limitation Year is the Compensation actually paid or includible in gross income during such Limitation Year.

“Notwithstanding the preceding sentence, if the Employer so elects in Item 6C of the Adoption Agreement, Compensation for a Participant in a defined contribution Plan who is permanently and totally disabled (as defined in section 22(e)(3) of the Code) is the

Compensation such Participant would have received for the Limitation Year if the Participant was paid at the rate of Compensation paid immediately before becoming permanently and totally disabled; for Limitation Years beginning before January 1, 1997, but not for Limitation Years beginning after December 31, 1996., such imputed Compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee, as defined in section 414(q) of the Code, and contributions made on behalf of such Participant are nonforfeitable when made.

“For Limitation Years beginning after December 31, 1997, Compensation paid or made available during such Limitation Year 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 includible in the gross income of the Employee by reason of section 125, 132(f)(4) or 457. For Limitation Years beginning after December 31, 2000, or an earlier date specified in the Adoption Agreement, Compensation shall also include any elective amounts that are not includible in the gross income of the Employee by reason of section 132(f)(4).

“(c) Employer: For purposes of this Article IX, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Internal Revenue Code as modified by section 415(h)), all commonly controlled trades or businesses (as defined in section 414(c) as modified by section 415(h)) or affiliated service groups (as defined in section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under section 414(o) of the Code.

“(d) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Annual Additions.

“(e) Highest Average Compensation: The average Compensation for the three (3) consecutive Years of Service with the Employer that produces the highest average. A Year of Service with the Employer is the 12-consecutive month period defined in the Adoption Agreement.

“(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in Item 17 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

“(g) Master or Prototype Plan: A Plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

“(h) Maximum Annual Additions: Except for Catch-Up Contributions, 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

“(1) Forty Thousand (\$40,000) Dollars, as adjusted for cost-of-living increases under section 415(d) of the Code, or

“(2) one hundred (100%) percent of the Participant's Compensation for the Limitation Year.

“The Compensation limit referred to in (2) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

“If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the Maximum Annual Additions will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{“number of months in the short Limitation Year”}}{12}$$

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

“(1) the Participant will continue employment until Normal Retirement Age under the Plan (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.

“(j) Defined Contribution Dollar Limitation: Forty Thousand (\$40,000) Dollars as adjusted section 415(d) of the Code.”

4. The following additional amendments are made to the Basic Plan Document effective as of January 1, 2007 unless otherwise noted:

“Direct Rollover for Nonspouse Beneficiary.

“Effective for taxable years beginning on or after January 1, 2007, a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) may elect to directly rollover an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b). In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution (as defined in Code §402(c). In applying this Section 4.01, a non-spouse rollover will not be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements

under Code §3405(c).

“Direct Rollover of Non-Taxable Amounts.

“Notwithstanding any other provision of the Plan, effective for taxable years beginning after December 31, 2006, an eligible rollover distribution may include the portion of any distribution that is not includible in gross income. In addition, an eligible retirement plan includes defined contribution and defined benefit plans qualified under Code §401(a) and tax-sheltered annuity plans under Code §403(b), provided the rollover is accomplished through a direct rollover and the recipient eligible retirement plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.

“Distribution Notice Periods.

“Notwithstanding any other provision of the Plan, effective for Plan Years beginning after December 31, 2006, the period for providing the rollover notice as required under Code §402(f), the period for providing the notice regarding Participant (and spousal) consent as required under Code §417 and the period for providing the notice of a Participant’s right to defer receipt of a distribution under Code §411(a)(11) will be no less than 30 days and no more than 180 days before the date of distribution.

“Content of Notice of a Participant’s Right to Defer Receipt of a Distribution.

“Effective for Plan Years beginning after December 31, 2006, the notice relating to a Participant’s right to defer receipt of a distribution under Code §411(a)(11) must include a description of the consequences of a Participant’s decision not to defer the receipt of a distribution and how much larger benefits will be if the commencement is deferred. The notice must satisfy the requirements under Treas. Reg. §1.417(a)-3.

“Relative Value Notices for QJSA.

“Effective for Plan Years beginning after December 31, 2006, the notice relating to qualified joint and survivor annuities under Code §417 must include a description of the relative values of the various optional forms of benefit under the Plan, as provided under Treas. Reg. §1.417(a)-3.

“Qualified Domestic Relations Orders.

“Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order (QDRO) under Code §414(p)(3) shall not fail to be treated as a QDRO solely because:

“(a) the order is issued after, or revises, another domestic relations order or QDRO; or

“(b) of the time at which the order is issued, including orders issued after the death of the Participant.

“Any QDRO described in this Section shall be subject to the same requirements and protections which apply to QDROs under Code §414(p)(7).”

5. Except to the extent here set forth, the terms and conditions of the GUARDIAN LIFE INSURANCE COMPANY OF AMERICA Defined Contribution Prototype Pension Plan and Trust Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed by its authorized officer as of the dates set forth herein.

GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

By: \_\_\_\_\_