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(B) Time and Manner of Distribution.

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

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

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

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

(c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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

For purposes of this Paragraph (B)(2) and Paragraph (E) below, unless Paragraph (B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Paragraph (B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Eligible Spouse under Paragraph (B)(2)(a). If distributions under an annuity meeting the requirements of this Section commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Eligible Spouse before the date distributions are required to begin to the surviving Eligible Spouse under Paragraph (B)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

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(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Paragraphs (C), (D) and (E) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations that apply to individual accounts.

(C) Determination of Amount to be Distributed Each Year.

(1) General Annuity Requirements. If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:

(a) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Paragraph (D) or (E);

(c) once payments have begun over a period, the period will be changed only in accordance with Paragraph (F) of this Section;

(d) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(ii) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(iii) by a constant percentage of less than five (5%) percent per year, applied not less frequently than annually;

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(iv) as a result of dividend or other payments that result from actuarial gains, provided:

(I) actuarial gain is measured not less frequently than annually,

(II) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(III) the actuarial gain taken into account is limited to actuarial gain from investment experience,

(IV) the assumed interest rate used to calculate such actuarial gains is not less than three (3%) percent, and

(V) the annuity payments are not increased by a constant percentage as described in Paragraph (iii) of this Paragraph (C)(1)(d);

(v) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in Paragraph (D) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

(vi) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code Section 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan (or, if greater, the total amount of employee contributions) over the total of payments before the Participant's death;

(vii) to allow a Beneficiary to convert the survivor portion of a Joint and Survivor Annuity into a single sum distribution upon the Participant's death; or

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(viii) to pay increased benefits that result from a Plan amendment.

(2) Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Paragraph (B)(2)(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(3) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

(D) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Eligible Spouse. If the Participant's interest is being distributed in the form of a Joint and Survivor Annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the Treasury Regulations, to determine the applicable percentage. If the form of distribution combines a Joint and Survivor Annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

(2) Period Certain Annuities. Unless the Participant's Eligible Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the

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Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in §1.401(a)(9)-9, Q&A-2, of the Treasury Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Eligible Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Paragraph (D)(2), or the joint life and last survivor expectancy of the Participant and the Participant's Eligible Spouse as determined under the Joint and Last Survivor Table set forth in §1.401(a)(9)-9, Q&A-3, of the Treasury Regulations, using the Participant's and Eligible Spouse's attained ages as of the Participant's and Eligible Spouse's birthdays in the calendar year that contains the annuity starting date.

(E) Requirements For Minimum Distributions After the Participant's Death.

(1) Death After Distributions Begin. If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this article, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.

(2) Death Before Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Paragraph (B)(2)(a) or (b), over the life of the designated Beneficiary or over a period certain not exceeding:

(i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of

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September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Eligible Spouse Before Distributions to Surviving Eligible Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary, and the surviving Eligible Spouse dies before distributions to the surviving Eligible Spouse begin, this Paragraph (E) will apply as if the surviving Eligible Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Paragraph (B)(2)(a).

(F) Changes to Annuity Payment Period.

(1) Permitted Changes. An annuity payment period may be changed only in association with an annuity payment increase described in Paragraph (C)(1)(d) of this Section or in accordance with Paragraph (F)(2).

(2) Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Paragraph (F)(3) are satisfied and:

(a) the modification occurs when the Participant retires or in connection with a Plan termination;

(b) the payment period prior to modification is a period certain without life contingencies; or

(c) the annuity payments after modification are paid under a Qualified Joint and Survivor Annuity over the joint lives of the Participant and a designated Beneficiary, the Participant's Eligible Spouse is the sole designated Beneficiary, and the modification occurs in connection with the Participant's becoming married to such Eligible Spouse.

(3) Conditions. The conditions in this Paragraph (F)(3) are satisfied if:

(a) the future payments after the modification satisfy the requirements of Code Section 401(a)(9), Section 1.401(a)(9) of the Treasury Regulations, and this Section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

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(b) for purposes of Code Sections 415 and 417, the modification is treated as a new annuity starting date;

(c) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(d) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the Employee at the original annuity starting date under Code Section 401(a)(9) and this Section.

(G) Payments to a Surviving Child.

(1) Special rule. For purposes of this Section, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Eligible Spouse to the extent the payments become payable to the surviving Eligible Spouse upon cessation of the payments to the child.

(2) Age of majority. For purposes of this Section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(H) Definitions.

(1) Actuarial gain. The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(2) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving Eligible Spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury Regulations.

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(3) 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 pursuant to Paragraph (B)(2).

(4) Eligible cost-of-living index. An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Treasury Regulations.

(5) 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.

(6) Required beginning date.

(a) The required beginning date of a Participant is April 1 of the calendar year following the calendar year in which the Participant attains age 70½, except that benefit distributions to a Participant (other than a 5-percent owner) with respect to benefits accrued after the effective date of the amendment to the Plan that implements the changes to the required beginning date of this paragraph must commence by the later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or retires.

(b) Any Participant (other than a 5-percent owner) attaining age 70½ in years after 1995 may elect by April 1 of the calendar year following the calendar year in which the Participant attains age 70½ (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996), to defer distributions until April 1 of the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant will begin receiving distributions by April 1 of the calendar year following the year in which the Participant attained age 70½

(c) Any Participant (other than a 5-percent owner) attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by April 1 of the calendar year following the year in which the Participant retires.

To satisfy the Qualified Joint and Survivor Annuity requirements described in Section 4.08, the requirements in Notice 97-75, Q&A-8, must be satisfied for any Participant who elects to stop distributions, including the requirement that such distributions stop before the end of the Plan's remedial amendment period under Code Section 401(b) for changes in Plan



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qualification requirements made by the Small Business Job Protection Act of 1996. There is either:

- (i) a new annuity starting date upon recommencement,  
or
- (ii) no new annuity starting date upon recommencement.

(d) Except with respect to a 5-percent owner, a Participant's accrued benefit will be actuarially increased to take into account the period after age 70½ in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Employee attains age 70½ (January 1, 1997 in the case of an Employee who attains age 70½ prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Code Section 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase under this Section is not in addition to the actuarial increase required for that same period under Code Section 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under this Section will be provided even during the period during which an Employee is in Code Section 203(a)(3)(B) service. For purposes of Code Section 411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of normal retirement age. Accordingly, to the extent permitted under Code Section 411(b)(1)(H), the actuarial increase required under this Section will reduce the benefit accrual otherwise required under Code Section 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

(7) 5-percent owner. A Participant is treated as a 5-percent owner for purposes of this Section if the Participant is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70½. Once distributions have begun to a 5-percent owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

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(I) TEFRA Section 242(b)(2) Elections.

(1) Notwithstanding the other requirements of this Section and subject to the requirements of Section 4.08, Qualified Joint and Survivor Annuity requirements, distribution on behalf of any Employee, including a 5-percent owner, who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

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

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

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

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

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

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

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

(4) If a designation is revoked any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Treasury Regulations there-

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

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

(J) Transition Rules.

(1) Election to Apply the Final Regulations Under Code Section 401(a)(9) for the 2002 Distribution Calendar Year. Except as provided in Paragraph (J)(2), if applicable, the provisions of this Section apply for purposes of determining minimum required distributions for the 2002 distribution calendar year that are made on or after the date specified by the Employer in the adoption agreement. If any minimum required distributions were made in 2002, the transition rule described in Section 1.2 of Model Amendment 2 in Rev. Proc. 2002-29, 20021 C.B. 1176, also applies.

(2) Alternative Compliance with Certain Annuity Requirements in 2003, 2004 and 2005. F-3 and F-3A of Section 1.401(a)(9)-1 of the 1987 proposed Treasury Regulations, A-1 of Section 1.401 (a)(9)-6 of the 2001 proposed Treasury Regulations, Section 1.401(a)(9)-6T of the temporary Treasury Regulations, or a reasonable and good faith interpretation of the requirements of Code Section 401(a)(9) (as elected by the Employer) apply in lieu of the requirements of Paragraphs (C), (D) and (E) of this Section for purposes of determining minimum required distributions for calendar years 2003, 2004, 2005, or (if the Employer has made the election in Paragraph (J)(1)) 2002.

(K) Notwithstanding the other provisions of this Section 4.07, a Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectan-

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cy) of the Participant, the joint lives (or joint life expectancy) of the Participant, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant chooses to receive such distributions. Participants described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, notwithstanding Section 4.10 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered for 2009 RMDs, Extended 2009 RMDs and distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H), and will be treated as eligible rollover distributions.

4.08 Qualified Joint and Survivor Annuity and Qualified Pre-retirement Survivor Annuity.

(A) The provisions of this Section 4.08 shall apply to any Participant who is credited with at least one Hour of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Paragraph (F).

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

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

(D) Qualified Pre-Retirement Survivor Annuity.

(1) Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a Participant dies after the earliest retirement age, the Participant's surviving Eligible Spouse, if any, will receive the same benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death.

The surviving Eligible Spouse may elect to commence payment under such annuity within a reasonable period after the Participant's death. The actuarial value of benefits which commence later than the date on which payments would have been made to the surviving Eligible Spouse under a Qualified Joint and Survivor Annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

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(2) Unless an optional form of benefit is selected within the election period pursuant to a qualified election, if a Participant dies on or before the earliest retirement age, the Participant's surviving Eligible Spouse (if any) will receive the same benefit that would be payable if the Participant had:

(a) separated from service on the date of death (or date of separation from service, if earlier),

(b) survived to the earliest retirement age,

(c) retired with an immediate Qualified Joint and Survivor Annuity at the earliest retirement age, and

(d) died on the day after the earliest retirement age.

(3) For purposes of Paragraph (C)(2), and subject to the provisions of Section 4.07 of the Plan, a surviving Eligible Spouse will begin, with the Eligible Spouse's consent, to receive payments at the earliest retirement age. Benefits commencing after the earliest retirement age will be the actuarial equivalent of the benefit to which the surviving Eligible Spouse would have been entitled if benefits had commenced at the earliest retirement age under an immediate Qualified Joint and Survivor Annuity in accordance with Paragraph (C)(2).

(4) For the purposes of this Paragraph (C), the benefit payable to the surviving Eligible Spouse shall be attributable to Employee contribution in the same proportion as the total accrued benefit derived from Employee contributions is to the accrued benefit of the Participant.

(E) Definitions.

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

Pre-age 35 waiver. A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified Pre-Retirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms as are comparable to the explanation required under Paragraph (E)(1). Qualified Pre-Retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35.

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Any new waiver on or after such date shall be subject to the full requirements of Section 4.08.

(2) “Earliest retirement age.” The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

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

Any consent by an Eligible Spouse obtained under this provision (or establishment that the consent of 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 this provision shall be valid unless the Participant has received notice as provided in Paragraph (E) below.

(4) “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 50% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible Spouse and which is the actuarial equivalent of the normal form of benefit, or if greater, any optional form of benefit, and is further defined in Section 4.03.

(5) “Qualified Optional Survivor Annuity.” An immediate annuity for the life of the Participant with a survivor annuity for the life of the Eligible

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Spouse which is not less than 75% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible Spouse and which is the actuarial equivalent of the normal form of benefit, or if greater, any optional form of benefit, and is further defined in Section 4.03.

(6) "Eligible Spouse." The spouse or surviving spouse of the Participant as defined in Section 1.11, 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 Code Section 414(p).

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

The annuity starting date for disability benefits shall be the date such benefits commence if the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit which does not reduce the benefit payable at Normal Retirement Age.

(8) "Vested accrued benefit." The value of the Participant's Vested accrued benefit derived from Employer and Employee contributions (including roll-overs). The provisions of this Section 4.08 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.

(F) Notice Requirements.

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

The annuity starting date for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) to a form of distribution other than a Qualified

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Joint and Survivor Annuity; (b) the Participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the Participant. The written explanation shall comply with the requirements of Treasury Regulation Section 1.417(a)(3)-1.

(2) In the case of a Qualified Pre-Retirement Survivor Annuity as described in Paragraph 4.08(C), the Contract Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Paragraph (E)(1) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period ending after the individual becomes a Participant; (c) a reasonable period ending after Paragraph (E)(3) ceases to apply to the Participant; (d) a reasonable period ending after this Section 4.08 first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

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

(3) Notwithstanding the other requirements of this Paragraph (E), the respective notices prescribed by this Paragraph (E) need not be given to a Participant if: (a) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity, and (b) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Paragraph (E)(3), a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits



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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 Pre-Retirement 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.

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

- (a) the Participant is not married;
- (b) the Eligible Spouse whose consent would be required cannot be located; or
- (c) consent of the Eligible Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.

(G) Retroactive Annuity Starting Date

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

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

(2) The Participant's Eligible Spouse (including an alternate payee who is treated as a Eligible Spouse under a Qualified Domestic Relation Order as described in Code Section 414(p)), determined as if the date distributions commence were the Participant's annuity starting date, shall consent to the distribution in a manner that would satisfy the requirements of Paragraph (D) of

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this Section. The Eligible Spousal consent requirement of this Paragraph (E)(2) does not apply if the amount of such Eligible Spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such Eligible Spouse would have been under an optional form of benefit that would satisfy the requirements to be a Qualified Joint and Survivor Annuity under Paragraph (D)(4) of this Section and that has an annuity starting date after the date the explanation required by Paragraph (E) of this Section was provided.

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

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

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

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

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of Code Section 417(e)(3) with the applicable interest rate and the applicable mortality table determined as of that date.

(H) Transitional Rules.

(1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Paragraphs of this Section 4.08 must be given the opportunity to elect to have the prior provisions of this Section 4.08 apply if such Participant is credited with at least one Hour of Service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 Years of Service for Vesting when he/she separated from service.

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

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

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

(a) Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married Participant who:

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

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

(iii) begins to receive payments on or after the qualified early retirement age; or

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(iv) separates from service on or after attaining Normal Retirement Age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits; then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least 6 months before the Participant attains qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(b) 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 Eligible Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his/her or her death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of: (i) the 90th day before the Participant attains the qualified early retirement age, or (ii) the date on which participation begins, and ends on the date the Participant terminates employment.

(c) For purposes of this Paragraph (f)(iv), qualified early retirement age is the latest of:

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

(ii) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or

(iii) the date the Participant begins participation.

#### 4.09 Qualified Domestic Relations Orders.

(A) Notwithstanding any other provisions of Section 4, any Accrued Benefit of a Participant may be apportioned between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) by providing the alternate payee a percentage or specific amount of the Participant's Accrued Benefit. The Contract Administrator may direct distributions to an alternate payee pursuant to a qualified domestic relations order as defined in Code Section 414(p)(1)(A) on or after the date on which the Participant attains the earliest retirement age, provided that the Contract Administrator has properly notified

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

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

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

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

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

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

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

(B) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Eligible Spouse and the Employee's (or

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

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

(D) "Eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to: (1) an indi-

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

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

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

4.12 Incompetence or Incapacity of a Pensioner. In the event it is determined that any Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, the Trustees may pay the benefits due to such Participant or Beneficiary to his or her legal guardian, conservator, committee, or other legal representative, or in the absence of any of them, to any relative by blood or marriage who is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. If such a Participant or Beneficiary resides in a residential health care facility, is not mentally competent, and lacks both a legal representative and a relative acting in his or her interest, the Trustees may pay the benefits due to the Participant or Beneficiary to the residential health care facility in which he or she resides and which is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. Payment by the Trustees hereunder to a legal representative, relative or residential health care facility shall operate to discharge the Trustees from any liability to such Par-

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participant or Beneficiary or to anyone representing the Participant or Beneficiary's interest. Payments to a legal representative, relative or a residential health care facility hereunder will not be deemed an assignment of benefits; and the relative or residential health care facility must acknowledge in writing that they will apply the amounts paid solely in the interest of the Participant or Beneficiary and that they have no right enforceable against the Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the Fund. No payment will be made hereunder to a governmental or private agency, institution, or facility if the Participant or Beneficiary is not legally required to pay for his or her care and maintenance.

## **SECTION 5: LIMITATION ON CONTRIBUTIONS AND BENEFITS**

### **5.01 Limitations on Benefits.**

(A) The limitations of this Section shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

(B) The annual benefit otherwise payable to a Participant under the Plan at any time shall not exceed the maximum permissible benefit. If the benefit the Participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

(C) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a predecessor Employer, the sum of the Participant's annual benefits from all such plans may not exceed the maximum permissible benefit.

(D) The application of the provisions of this Section shall not cause the maximum permissible benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the Employer or a predecessor Employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Treasury Regulations.

(E) The limitations of this Section shall be determined and applied taking into account the rules in Paragraph (G).

(F) Definitions.



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(1) Annual benefit: A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section. For a Participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401 (a)-20, Q&A 10(d) of the Treasury Regulations, and with regard to Section 1.415(b)1(b)(1)(iii)(B) and (C) of the Treasury Regulations.

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Section, and the Plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this Section applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the annual benefit shall take into account social security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Paragraphs (F)(1)(a) or (F)(1)(b).

(a) Benefit Forms Not Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Paragraph (F)(1)(a) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a

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straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a Qualified Pre-Retirement Survivor Annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

(i) Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(ii) Limitation Years Beginning On Or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(b) Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section if the form of the Participant's benefit is other than a benefit form described in Paragraph (F)(1)(a). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially

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equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan; and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan, divided by 1.05.

(ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan.

If the annuity starting date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, the application of this Paragraph (F)(1)(b)(ii) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

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(I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form;

(II) the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan; and

(III) the applicable interest rate defined in Section 1.02 of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Section 1.02 of the Plan.

(2) Compensation: Compensation shall mean one of the following:

(a) Information Required To Be Reported Under Code Sections 6041, 6051, And 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(b) Code Section 3401(a) Wages. Compensation is defined as wages within the meaning of Code Section 3401(a) 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 Code Section 3401 (a)(2)).

(c) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to 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 salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe

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benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Treasury Regulations), and excluding the following:

- (i) Employer contributions (other than elective contributions described in Code Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a plan of deferred compensation (including a simplified Employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified)
  - (ii) Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the Treasury Regulations), 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;
  - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
  - (iv) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in Code Section 125);
  - (v) Other items of remuneration that are similar to any of the items listed in (i) through (iv).
- (d) For any self-employed individual, Compensation shall mean earned income.
- (e) Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year. Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and con-

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sistent basis with respect to all similarly situated Employees, and no compensation is included in more than one limitation year.

(f) For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer maintaining the Plan or the end of the limitation year that includes the date of the Employee's severance from employment with the Employer maintaining the Plan, if:

(i) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer,

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

(iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

(g) Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, (a) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 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; or (b) compensation paid to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated Employee, as defined in Code Section 414(q), immediately before becoming disabled.

(h) Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Treasury Regulations, shall be treated as compensation for the limi-