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tation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(i) For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in Compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

(j) For limitation years beginning after December 31, 2000, Compensation shall also include any elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4).

(k) For limitation years beginning after December 31, 2001, Compensation shall also include deemed Code Section 125 compensation. Deemed Code Section 125 compensation is an amount that is excludable under Code Section 106 that is not available to a Participant in cash in lieu of group health coverage under a Code Section 125 arrangement solely because the Participant is unable to certify that he or she has other health coverage. Amounts are deemed Code Section 125 compensation only if the Employer does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(l) Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(3) Defined Benefit Compensation Limitation: 100 percent of a Participant's high three-year average compensation, payable in the form of a straight life annuity.

(a) In the case of a Participant who has had a severance from employment with the Employer, the defined benefit compensation limitation applicable to the Participant in any limitation year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the Participant in the prior limitation year by the annual adjustment factor under Code Section 415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall apply to limitation years ending with or within the calendar year of the

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date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(b) In the case of a Participant who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the Participant's high three-year average compensation, as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100 percent of the Participant's high three-year average compensation, as determined after the severance from employment under Paragraph (F)(7).

(4) Defined Benefit Dollar Limitation: effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the defined benefit dollar limitation under Code Section 415(d) shall apply to Participants who have had a separation from employment.

(5) Employer: For purposes of this Section, Employer shall mean the Employer that participates in this Plan, and all members of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

(6) Formerly Affiliated Plan of the Employer: A plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the Employer, such as the sale of a member controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

(7) High Three-Year Average Compensation: The average compensation for the three consecutive years of service (or, if the Participant has less than three consecutive years of service, the Participant's longest consecutive period of

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service, including fractions of years, but not less than one year) with the Employer that produces the highest average. A year of service with the Employer is the 12-consecutive month period. In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's high three-year average compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's compensation for a year of service shall not include compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which such year of service begins.

(8) **Limitation Year:** A calendar year. All qualified plans maintained by the Employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(9) **Maximum Permissible Benefit:** The lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

(a) **Adjustment for Less than 10 Years of Participation or Service:** If the Participant has less than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (ii) the denominator of which is 10. In the case of a Participant who has less than ten years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of service with the Employer, and (ii) the denominator of which is 10.

(b) **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65:** Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the Participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(i), as modified by Paragraph (F)(9)(b)(iii). If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(ii), as modified by Paragraph (F)(9)(b)(iii).

(i) **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before age 62:**

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(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) 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; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning on or After July 1, 2007.

aa. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

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bb. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement: If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(i)II[AA] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section.

(ii) Adjustment of defined benefit dollar limitation for Benefit Commencement After Age 65:

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) 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; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning Before July 1, 2007.

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a. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required), with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

b. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(ii)(II)[A] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section. For this purpose, the adjusted immediately commencing straight life annuity

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under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Paragraph (F)(9)(b), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.

(c) Minimum Benefit Permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the maximum permissible benefit if:

(i) the retirement benefits payable for a limitation year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction, (I) the numerator of which is the Participant's number of years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10; and

(ii) the Employer (or a predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for postre-

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tirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

(10) Predecessor Employer: If the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for a former Employer, the former Employer is a predecessor Employer with respect to the Participant in the Plan. A former entity that antedates the Employer is also a predecessor Employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(11) Severance from Employment: An Employee has a severance from employment when the Employee ceases to be an Employee of the Employer maintaining the Plan. An Employee does not have a severance from employment if, in connection with a change of employment, the Employee's new Employer maintains the Plan with respect to the Employee.

(12) Year of Participation: The Participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a Participant to receive a year of participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one year of participation be credited for any 12-month period.

(13) Year of Service: For purposes of Paragraph (F)(7), the Participant shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a predecessor Employer.

(G) Other Rules.



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(1) Benefits Under Terminated Plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all Plan Participants and a Participant in the Plan has not yet commenced benefits under the Plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated Plan at each possible annuity starting date shall be taken into account in applying the limitations of this Section. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated Plan.

(2) Benefits Transferred From the Plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, the transferred benefits are treated by the Employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the Plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, the amount transferred is treated as a benefit paid from the transferor plan.

(3) Formerly Affiliated Plans of the Employer. A formerly affiliated plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

(4) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a predecessor Employer, the Participant's benefits under a plan maintained by the predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the predecessor Employer shall be treated as if

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they were a single Employer immediately prior to such event and as unrelated Employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the predecessor Employer.

(5) Special Rules. The limitations of this Section shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Treasury Regulations.

(6) Aggregation with Multiemployer Plans.

(a) If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits provided under a plan maintained by the Employer for purposes of this Section.

(b) Effective for limitation years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Paragraphs (F) and (F)(9)(a) to a plan which is not a multiemployer plan.

## 5.02 Early Plan Termination

Benefits distributed to any of the 25 most Highly Compensated active and former Highly Compensated Employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a single life annuity that is the actuarial equivalent of the sum of the Employee's Accrued Benefit and the Employee's other benefits under the Plan.

The preceding paragraph shall not apply if (i) after payment of the benefit to an Employee described in the preceding paragraph, the value of Plan assets equals or exceeds 110% of the value of current liabilities, as defined in Code Section 412(l)(7) or (ii) the value of the benefits for an Employee described above is less than 1% of the value of current liabilities.

For purposes of this Section, benefits include loans in excess of the amount set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee, and any death benefits not provided for by insurance on the Employee's life.

5.03 Pre-Termination Restrictions. In the event of Plan termination, the benefit of any Highly Compensated Employee (whether active or former) is limited to a benefit that is non-discriminatory under Code Section 401(a)(4). As of the date this Plan is terminated, if the value of Plan assets is not less than the present value of all Accrued Benefits (whether nor not non-forfeitable), distribution of assets to each Participant equal to the present value of that Partici-

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pant's Accrued Benefit will not be discriminatory if the formula for computing benefits as of the date of Plan termination is not discriminatory. All present values and the value of Plan assets will be computed using assumptions satisfying Section 4044 of the Employee Retirement Income Security Act.

## SECTION 6: TOP HEAVY PROVISIONS

6.01 Application of Section. The provisions in this Section shall take precedence over any other provisions in the Plan with which they conflict.

6.02 Definitions.

(A) "Key Employee." 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 an Employer having an annual compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having an annual compensation of more than \$150,000. For purposes of this paragraph, annual compensation means compensation within the meaning of Section 1.05 of the Plan. The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the Treasury Regulations thereunder.

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

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

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

(3) If this Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(C) "Top-heavy ratio."

(1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan (including any Simplified Employee Pension Plan) which during the one-year period ending on the determination date(s) has or has had account balances, 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 present value of accrued

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benefits of all key Employees as of the determination date(s) (including any part of any accrued benefit distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of accrued benefits (including any part of any accrued benefits distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), both computed in accordance with Code Section 416 and the Treasury Regulations thereunder.

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

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

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the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a Participant other than a key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

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

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

(F) "Determination date." For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first year of the Plan, the last day of that year.

(G) "Non-key Employee." Any Employee who is not a key Employee.

(H) "Valuation date." For each defined benefit plan sponsored by the Employer, the valuation date is the most recent date within the 12-month period ending on the determination date used for computing plan costs for minimum funding for such plan. For each defined contribution plan sponsored by the Employer, the valuation date is the most recent date within the 12-month period ending on the determination date used for annual valuation of account balances for such plan.

(I) "Present value." For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted using the interest and mortality rates described in Section 1.02.

6.03 Accelerated Vesting Unless the Plan provides for full and immediate vesting of the Participant's Accrued Benefit upon participation, then for any Plan Year in which this Plan is deemed to be a top-heavy plan, the vesting schedule contained in Section 1.29 shall be modified as follows:

(A) Total Service for Vesting (excluding Years of Service prior to Effective Date of this Plan)

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Vested	Percentage
less than 3 years	0%
3 years or more	100%

Should this Plan not be deemed to be a top-heavy plan after previously being so categorized, the vesting schedule contained in Section 1.29 shall again be effective except that the Vested percentage attained by Participants shall not be reduced thereby and Participants with 3 or more Years of Service for Vesting shall have the right to select the vesting schedule under which their Vested Accrued Benefit will be determined.

6.04 Minimum Benefits. Notwithstanding any other provision in this Plan except Paragraphs (C), (D), (E) and (F) below, for any Plan Year in which this Plan is top-heavy, each Participant who is not a key Employee and has completed 1,000 hours of service will accrue a benefit (to be provided solely by Employer contributions and expressed as a life annuity commencing at normal retirement age) of not less than two percent of his or her highest average Compensation for the five consecutive years for which the Participant had the highest Compensation. The aggregate Compensation for the years during such five-year period in which the Participant was credited with a year of service will be divided by the number of such years in order to determine average annual Compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key Employee fails to make mandatory contributions to the Plan, (ii) the non-key Employee's Compensation is less than a stated amount, (iii) the non-key Employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with Social Security.

(A) For purposes of computing the minimum accrued benefit, Compensation shall mean Compensation as defined in Section 5.01(D)(2) of the Plan, as limited by Section 401 (a)(1 7) of the Code.

(B) No accrual shall be provided pursuant to Paragraph (A) above for a year in which the Plan does not benefit any key Employee of former key Employee.

(C) No additional benefit accruals shall be provided pursuant to Paragraph (A) above to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a life annuity commencing at normal retirement age that equals or exceeds 20 percent of the Participant's highest average Compensation for the five consecutive years for which the Participant had the highest Compensation.

(D) The provision in Paragraph (A) above shall not apply to any Participant to the extent the Participant is covered under any other Plan or plans of the Employer and the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other Plan or plans.

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(E) All accruals of Employer-derived benefits, whether or not attributable to years for which the Plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (3) above are satisfied.

6.05 Limitation on Compensation Taken into Account Under Plan. For any Plan Year prior to Plan Years beginning before January 1, 1989, in which this Plan is deemed to be a top-heavy plan the definition of annual Compensation contained in Paragraph 6.02(A) shall exclude amounts in excess of \$200,000. For any Plan Year beginning on or after January 1, 1989 annual Compensation shall exclude amounts in excess the limitation under Code Section 401(a)(17) (i.e., \$150,000 adjusted for the cost of living).

6.06 Modification of Defined Benefit and Defined Contribution Plan Fraction. For any Plan Years beginning after December 31, 1999, this Section shall not apply. For any Plan Year in which the Plan is deemed to be a top-heavy plan, the denominators of the defined benefit fraction and the defined contribution fraction contained in Paragraph 5.01(D) shall be deemed to be modified by substituting 100% for 125%. Notwithstanding the above, if this Plan would not be deemed to be a top-heavy plan if 90% were substituted for 60% in Paragraph 6.02(B) and if the Employer provides benefits and/or makes contributions to the accounts of non-key Employees who participate in defined benefit and/or defined contribution plans maintained by the Employer, in amounts at least equal to that which would be required by Section 6.04 after substituting 3% for 2% in the minimum non-integrated benefit, and by substituting 7.5% for 5% as the minimum non-elective contribution percentage made by the Employer for eligible non-key Employees for the Plan Year to a defined contribution plan sponsored by the Employer, then the reduction in the defined benefit fraction and the defined contribution fraction as set forth in the preceding sentence, shall not be made.

For Plan Years beginning after December 31, 1999, minimum benefits shall be determined under Section 6.04.

## **SECTION 7: APPLICATION FOR BENEFITS AND ADJUDICATION OF CLAIMS FOR BENEFITS**

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

7.02 Information Required and Recovery of Overpayments.

(A) Every claimant for benefits shall furnish to the Fund all information and proof relevant to his or her eligibility for benefits under the Fund. Each Participant, Pensioner, and Beneficiary shall furnish the Fund with all information and proof requested by it for the administration of the Fund. If a Participant, Pensioner, Beneficiary, or other claimant for benefits makes a willfully false statement relevant to his or her claim for

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benefits, or furnishes fraudulent information or proof relative to his or her claim for benefits, then benefits not vested under the Fund may be suspended or discontinued.

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

7.03 Action of Trustees. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties. The Trustees shall have the exclusive right and discretionary authority to construe the terms of the Plan, to resolve any ambiguities, and to determine any questions which may arise with the Plan's application or administration, including but not limited to determination of eligibility for benefits. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.

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

The Contract Administrator will make an initial determination within 90 days (45 days in the case of Disability claims) of receipt of the benefits claim form. The Contract Administrator may extend the period for the initial determination for a period not to exceed 90 days (or 30 days, in the case of Disability claims), provided: (1) the Participant or Beneficiary is notified of the extension within the initial 90- or 45-day period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. The Contract Administrator may further extend the period for the initial determination of Disability claims for an additional 30 days, provided: (1) the Participant or Beneficiary is notified of the extension within the first 30-day extension period; (2) the extension is required for reasons beyond the Contract Adminis-



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trator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. If any extension is necessary because the Participant or Beneficiary submits an incomplete claim to the Contract Administrator, the period for making an initial determination will be suspended from the date that the request for additional information is sent to the Participant or Beneficiary until the earlier of: (a) the date that the Participant or Beneficiary responds to the Contract Administrator, or (b) 90 days (45 days for Disability claims) from the date of the request. The Participant or Beneficiary must submit the additional information requested by the Contract Administrator within 90 days (45 days for Disability claims). If a claim is denied, in whole or in part, the Participant or Beneficiary shall be sent written notice of the denial containing the following information: (1) the specific reason or reasons for the denial of the claim; (2) a specific reference to pertinent plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why the additional material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

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

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

7.07 Rights on Appeal to the Board of Trustees. The Participant or Beneficiary may request a hearing in person before the Board of Trustees. This request must be set forth in the written

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

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

## **SECTION 8: DESIGNATION OF BENEFICIARY**

8.01 Designation of Beneficiary. A Participant or Pensioner may designate a person or persons as a Beneficiary or Beneficiaries to receive the Death Benefits, if any, provided in accordance with the Plan, or any benefits due but not yet received by the Pensioner at the time of his or her death, by forwarding such designation to the Contract Administrator in a form acceptable to the Board of Trustees. Designated Beneficiaries other than individual(s) are not acceptable; however, a trust or an estate may be a designated Beneficiary. See also Plan Section 4.08(B) (spousal consent requirement at retirement) and 4.08(D) (preretirement surviving spouse pension) for limitations on beneficiary designations. A Participant or Pensioner shall have the right to change his or her designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Fund unless it is received by the Contract Administrator prior to the time any payments are made to the Beneficiary whose designation is on file with the Contract Administrator. Any benefits due but not yet received by the Pensioner at the

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time of his or her death, shall be paid to the most recently designated Beneficiary filed with the Contract Administrator. If such designated Beneficiary who has survived the Pensioner or Participant dies, and further payments are due for periods after the death, and if no successor Beneficiary named by the Participant is still then living, such payments shall be made to the designated Beneficiary's survivor(s), as applicable, according to the order listed in Plan Section 8.02.

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

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

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

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

## **SECTION 9: MISCELLANEOUS PROVISIONS**

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

9.02 Non-Assignment of Benefits.

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

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eration of law or otherwise, and shall be exempt from the claims of creditors or other proceedings to the fullest extent permitted by law.

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

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

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

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

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

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

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

(a) written spousal consent is obtained;

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

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

(C) A Participant or Beneficiary may authorize in writing the payment of his or her entire monthly Pension benefit to a trust fund. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary at any time. Such au-

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thorization shall not be an assignment of benefits to the trust fund so designated, and the trust fund designated shall have no right enforceable against the Plan to any part of the Participant or Beneficiary's Pension benefit. The trust fund must acknowledge in writing that the payment of benefits creates no enforceable right in or to any benefit payment, or portion thereof, from the Plan. The payment will only be made when or after the benefit would otherwise be payable to the Pensioner or Beneficiary.

(D) A Participant or Beneficiary may authorize in writing a deduction from his or her monthly Pension benefit for remittance to a health and welfare trust fund to pay for health and welfare coverage. Such authorization must be strictly voluntary and subject to revocation by the Participant or Beneficiary at any time. Such authorization shall not be an assignment of benefits to the health and welfare fund, and the health and welfare fund must acknowledge in writing that it shall have no right enforceable against the Fund to any part of the Participant's or Beneficiary's Pension benefit or to any other assets of the Fund. The payment will be made to the health and welfare fund only when the Pension benefit would otherwise be payable to the Participant or Beneficiary. In addition, the health and welfare fund must reimburse the Fund all of its costs for the deduction and transfer. Both the Fund and the health and welfare fund must have the authority to revoke such an arrangement upon reasonable notice to the other.

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

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

9.04 Plan Amendments. No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) 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 Code Section 412(c)(8). For purposes of this Section 9.04, a Plan amendment that has the effect of: (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amend-

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ment, shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Participant's accrued benefit, early retirement benefit, retirement-type subsidy or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Sections 1.411(d)-3 and 1.411(d)-4 of the Treasury Regulations. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, or a death benefit (including life insurance). Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the non-forfeitable percentage (determined as of such date) of such Employee's employer-provided accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment.

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

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

9.07 Vesting on Plan Termination. In the event of the termination or partial termination of this Plan, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be non-forfeitable.

9.08 If the Plan's vesting schedule 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, in the case of an Employee who is a Participant as of the later of the date such amendment or change is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's Employer-provided accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment or change. Furthermore, each Participant with at least 3 years of service with the Employer may elect within a reasonable period after the adoption of the amendment or change, to have his nonforfeitable percentage computed under the Plan without regard to such amendment or change. For Participants who do not have at least one hour of service in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "5 years of service" for "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) 60 days after the amendment is adopted;

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(B) 60 days after the amendment becomes effective; or

(C) 60 days after the Participant is issued written notice of the amendment by the Employer or Contract Administrator.

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

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

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

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

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

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

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

## **SECTION 10: EMPLOYER WITHDRAWAL LIABILITY**

10.01 A Covered Employer that withdraws from the Fund after May 1, 2000, in either a complete or partial withdrawal, shall owe and pay withdrawal liability to the Fund, as determined under this Article and the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, and the applicable regulations of Pension Benefit Guarantee Corporation.

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10.02 For purposes of this Article, Trade or Craft means all of the type of work performed by members of the bargaining unit covered by the Collective Bargaining Agreements that require Covered Employers to contribute to the Fund. The term Covered Employer for purposes of this Article shall also have the meaning set forth in the applicable provisions of ERISA. For purposes of this Article, Collective Bargaining Agreement shall also mean Participation Agreement.

10.03 A complete withdrawal occurs if a:

(A) Covered Employer ceases to have an obligation to contribute to the Fund,  
and

(B) The Covered Employer:

(1) continues to perform work in the Trade or Craft in the jurisdiction of the Collective Bargaining Agreements of the type in the Trade or Craft of which contributions were previously required, or

(2) resumes such work in the Trade or Craft within five (5) years after the date on which the obligation to contribute under the Fund ceased, and does not renew the obligation to contribute to the Fund at the time of the resumption.

10.04 A Covered Employer's obligation to contribute ceases when the Covered Employer is no longer required by a Collective Bargaining Agreement or by the National Labor Relations Act or other law to contribute to the Fund. If a Covered Employer was delinquent in making contributions for a period when it did have a contractual or statutory obligation to contribute, this will not prevent a withdrawal from occurring, even though the Covered Employer remains liable for the delinquent contributions.

10.05 A Covered Employer's obligation to contribute is not considered to have ceased solely because the:

(A) Covered Employer continues to have a Collective Bargaining Agreement requiring contributions for covered work in the Trade or Craft, but the Contributing Employer has no employees performing covered work in the Trade or Craft for a period of time, or

(B) Covered Employer goes out of business, or

(C) Covered Employer's Collective Bargaining Agreement requiring contributions is not renewed, but the Covered Employer does not continue to perform work in the Trade or Craft for which contributions had been required in the same jurisdiction, or

(D) Covered Employer temporarily suspends contributions during a labor dispute involving its employees covered by a Collective Bargaining Agreement.



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10.06 The date of a complete withdrawal is the date the Covered Employer's obligation to contribute ceased.

10.07 A partial withdrawal by a Covered Employer occurs if the Covered Employer's obligation to contribute to the Fund is continued for no more than an insubstantial portion of its work in the Trade or Craft in the jurisdiction of the Collective Bargaining Agreement or there is a partial cessation of the Covered Employer's contribution obligation under a Collective Bargaining Agreement. An insubstantial portion means thirty (30%) percent on the last day of the Plan Year.

10.08 There is a partial cessation of a Covered Employer's obligation to contribute for a Plan Year if, during such Plan Year, the Covered Employer permanently ceased to have an obligation to contribute under one or more but fewer than all Collective Bargaining Agreements under which the Covered Employer has been obligated to contribute to the Fund, but continues to perform work in the jurisdiction of the Collective Bargaining Agreement in the Trade or Craft for which contributions were previously required or transfers such work to an entity or entities owned or controlled by the Covered Employer.

10.09 To determine whether a partial withdrawal has occurred the Fund will compare, for each Plan Year:

(A) The amount of work in the Trade or Craft for which the Contributing Employer was obligated to contribute to the Fund for the Plan Year, with

(B) The total amount of the Covered Employer's work in the same Trade or Craft in the jurisdiction of the Collective Bargaining Agreement for the Plan Year.

10.10 The date of a partial withdrawal is the last day of the Plan Year during which the conditions of a partial withdrawal were met.

10.11 This Article shall not apply to a Covered Employer which purchases assets from a terminating Covered Employer and enters into an agreement contemplated by Section 4204 of ERISA.

10.12 In the event that a Covered Employer incurs a complete withdrawal or partial withdrawal and the Fund has unfunded vested benefits liability, the Fund's actuary will calculate the Covered Employer's withdrawal liability, if any, using the presumptive method set forth in Section 4211(b) of ERISA.

10.13 Withdrawal liability shall be determined by the Fund's Actuary utilizing actuarial assumptions and methods which, in the aggregate, and in the discretion of the Actuary, are reasonable, taking into account the experience of the Fund and reasonable expectations, and which, in combination, offer the Fund's Actuary's best estimate of anticipated experience under the Fund.

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10.14 The share of the unfunded vested benefits liability allocated to the Covered Employer will be reduced by the de minimis deductible provided by Section 3209 of ERISA. The de minimis deductible is the lesser of: (1) \$50,000, and (2) 0.75% of the unfunded vested benefits liability. If the share of the unfunded vested benefits liability allocated to the Covered Employer is less than the de minimis deductible, no withdrawal liability is assessed. The de minimis deductible is applied on a diminishing basis to the extent that the share of the unfunded vested benefits liability allocated to the Covered Employer is more than \$100,000. For every dollar that the Covered Employer's share of the unfunded vested benefits liability exceeds \$100,000, the deductible is reduced by a dollar. If the Covered Employer's share of the unfunded vested benefits liability is less than \$100,000, the full amount of the applicable deductible is applied to reduce the amount assessed as withdrawal liability. If the Covered Employer's share of the unfunded vested benefits liability exceeds \$150,000, the deductible is zero, and does not reduce the amount assessed as withdrawal liability.

10.15 The share of the unfunded vested benefits liability allocated to the Covered Employer will be further reduced by application of the limitations on withdrawal liability set forth in Section 4225 of ERISA if, and to the extent that, the Covered Employer demonstrates to the Fund's satisfaction that it qualifies for any of the limitations.

10.16 In the event that a Covered Employer incurs a partial withdrawal, its withdrawal liability will be a pro-rata share of the complete withdrawal liability calculated under Sections 1.13 through 1.16, above.

10.17 Withdrawal liability is payable by a Covered Employer on an installment payment schedule, the amount of which is to be determined by the Fund's Actuary in accordance with Section 4219(c) of ERISA. The installment payments shall include interest. The first installment will be payable within sixty (60) days following the notice of the assessment, and the subsequent installments shall be payable at three- (3) month intervals. Notwithstanding the installment payment schedule, a Covered Employer may prepay all or any part of its withdrawal liability without penalty.

10.18 As soon as practicable after a Covered Employer's complete withdrawal or partial withdrawal and the Fund's determination that the Covered Employer owes withdrawal liability, the Fund shall send a written notice of the assessment of withdrawal liability and demand for payment in accordance with the payment schedule. The notice will set forth the amount of withdrawal liability, the schedule for payment, and a description of the withdrawal liability calculation.

10.19 The Fund may require the Covered Employer to post a bond or other acceptable security for the payment of its withdrawal liability, initially or at any time before the withdrawal liability is fully paid, if the Covered Employer's payment schedule extends more than eighteen (18) months, if the Covered Employer is the subject of a bankruptcy petition or similar proceedings, or if substantially all of the Covered Employer's assets are sold, distributed or transferred out of the jurisdiction of the U.S. Courts or the Fund receives notice of a pending sale, distribution or transfer.

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10.20 The Fund may require immediate payment of the full amount of withdrawal liability under certain circumstances described in Sections 1.32 through 1.35, below.

10.21 No later than ninety (90) days following its receipt of a notice of withdrawal liability assessment, the Covered Employer may submit to the Fund's Board of Trustees a written request for review of any specific matter relating to the withdrawal liability assessment and payment schedule, including any alleged inaccuracy in the withdrawal liability determination. The Covered Employer shall also submit with its request for review any documents or other information that it considers supportive of its request for review.

10.22 The Fund's Board of Trustees shall review any such request for review. The Covered Employer will be notified in writing of the decision and the basis for the decision, including an explanation of any changes in the withdrawal liability assessment or payment schedule.

10.23 In the event that the Covered Employer is not satisfied by the Board of Trustees' decision, the Covered Employer may initiate arbitration in accordance with the rules of Section 4221 of ERISA.

10.24 The Covered Employer must initiate arbitration within sixty (60) days after the earlier of:

(A) The date of which the Covered Employer receives notice of the Board of Trustees' decision on its request for review; or

(B) One hundred twenty (120) days after the date of the Covered Employer's request for review to the Board of Trustees.

10.25 Arbitration shall be initiated by written notice to the Philadelphia, Pennsylvania Regional Office of the American Arbitration Association (AAA), with copies to the Fund (or, if initiated by the Fund, to the Covered Employer). Such arbitration will be conducted in accordance with the "Multiemployer Pension Plan Arbitration Rules (the "AAA Rules") administered by the Philadelphia, Pennsylvania Regional Office of the AAA. The initial filing fee is to be paid by the party initiating the arbitration proceeding. Arbitration is timely initiated if received by the AAA along with the initial fee within the time period set forth in Section 1.25, above. All arbitrations, including all arbitration hearings under this Section, shall be conducted in Harrisburg, Pennsylvania, at the offices of the Fund. All arbitrators shall be selected pursuant to procedures of the AAA, from the withdrawal liability arbitration list maintained by the AAA, or by agreement between the Fund and the Covered Employer.

10.26 A Covered Employer cannot initiate arbitration unless it has submitted to the Board of Trustees, under Section 12.22, above, a written request for review.

10.27 Within thirty (30) days after the issuance of the final award by an arbitrator in accordance with these procedures, any party to such arbitration proceeding may bring an action in

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the United States District Court for the Middle District of Pennsylvania to enforce, modify or vacate the arbitration award, in accord with Sections 4221 and 4301 of ERISA.

10.28 If the Covered Employer does not initiate arbitration in accordance with Section 1.25 above, the Covered Employer will be deemed to have waived any right to contest the withdrawal liability assessment.

10.29 Notwithstanding the Covered Employer's request for review or initiation of arbitration, the Covered Employer shall pay its withdrawal liability assessment in accordance with the payment schedule set by the Fund's Actuary. If the withdrawal liability assessment is reduced or rescinded as a result of the Board of Trustees' review, arbitration, or other proceedings, an appropriate adjustment in future payments or refund will be made. If the Covered Employer has paid more withdrawal liability than it is determined to owe, the excess will be refunded with interest.

10.30 If the Fund determines that a Covered Employer has incurred a complete or partial withdrawal, or a Covered Employer is liable for withdrawal liability with respect to the complete or partial withdrawal from the Fund, and such determination is based in whole or in part on a finding by the Fund that a principal purpose of any transaction that occurred after December 31, 1998, and at least five (5) years (or two (2) years in the case of a small employer) before the date of complete or partial withdrawal was to evade or avoid withdrawal liability, and the Covered Employer contests the Fund's determination with respect to withdrawal liability payments through the review and arbitration proceedings set forth above, the Covered Employer is not obligated to make the withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the Fund's determination. This special rule applies only if the Covered Employer provides notice to the Fund of its election to apply the special rule within ninety (90) days after the Fund notifies the Covered Employer of its liability, and if a final decision on the arbitration proceeding, or in court, of the withdrawal liability dispute has not been rendered within twelve (12) months from the date of such notice, the Covered Employer provides to the Fund, effective as of the first day following the 12-month period, a bond issued by a corporate surety, or an amount held in escrow by a bank or similar financial institution satisfactory to the Fund, in an amount equal to the sum of the withdrawal liability payments that would otherwise be due for the 12-month period beginning with the first anniversary of such notice. The bond or escrow must remain in effect until there is a final decision in the arbitration proceeding, or in court, of the withdrawal liability dispute. At such time, the bond or escrow must be paid to the Fund if the final decision upholds the Fund's determination. If the withdrawal liability dispute is not concluded by 12 months after the Covered Employer posts the bond or escrow, the Covered Employer must, at the start of each succeeding 12-month period, provide an additional bond or amount held in escrow equal to the sum of the withdrawal liability payments that would otherwise be payable to the Fund during that period.

10.31 A Covered Employer will be in default on its withdrawal liability if:

- (A) Any installment payment is not received by the Fund when due;

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(B) The Fund has notified the Covered Employer of its failure to pay the installment when due; and

(C) The Covered Employer has failed to make the installment payment within sixty (60) days after receipt of the notice of non-payment from the Fund; the default date will be the sixtieth (60th) day after the Covered Employer's receipt of the notice of non-payment, unless payment is received by the Fund by then; or

(D) There is a filing or commencement by the Covered Employer, or the filing or commencement against the Covered Employer or any of its property, of any proceeding, suit or action, at law or equity, under or relating to any bankruptcy, reorganization, arrangement-of-debt, receivership, liquidation or dissolution law or statute.

10.32 In the event of default, the Covered Employer shall be liable to the Fund for:

(A) The amount of the overdue installment payment or the full amount of the withdrawal liability as permitted by Section 1.34;

(B) Interest shall be charged on any amount in default from the date the payment was due to the date it is paid at an annual rate equal to the prime rate plus one (1%) percent charged by M&T Bank on the first day of the calendar quarter preceding the due date of the payment. For each succeeding 12-month period that any amount in default remains unpaid, interest shall be charge on the unpaid balance (including accrued interest) at the prime rate plus one (1%) percent in effect on the anniversary date of the date as of which the initial interest rate was determined.

10.33 In the event of default, the Fund may require the Covered Employer to make immediate payment of the full amount of the withdrawal liability plus accrued interest on that full amount from the due date of the defaulted payment.

10.34 In the event that the Fund determines that there is a substantial likelihood that a Covered Employer will be unable to pay its withdrawal liability when due, the Fund may declare the Covered Employer in default and require the Covered Employer to immediately pay the full amount of the withdrawal liability plus accrued interest.

10.35 In any suit by the Fund to collect withdrawal liability, including a suit to enforce an arbitrator's award and a claim asserted by the Fund in an action brought by a Covered Employer or other party, if judgment is awarded in favor of the Fund, the Covered Employer shall pay to the Fund, in addition to the unpaid liability and interest thereon as determined in Section 1.33, liquidated damages equal to the greater of:

(A) The amount of the interest charged on the unpaid balance; or

(B) Twenty (20%) percent of the unpaid amount awarded.

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The Covered Employer shall also pay attorneys' fees and all costs incurred in the action. Nothing in this Section shall be construed as a waiver or limitation of the Fund's right to any other legal or equitable relief.

10.36 A Covered Employer is required, within thirty (30) days of written request from the Fund, to furnish to the Fund such information as the Fund reasonably need, in its judgment, to determine whether the Covered Employer has incurred a complete withdrawal or partial withdrawal, to determine the amount of any withdrawal liability, to collect any assessed withdrawal liability, or to otherwise administer these rules and ERISA's employer withdrawal liability provisions.

10.37 If a Covered Employer fails to comply with such a request for information, the Fund shall be entitled to draw reasonable inferences and make reasonable assumptions that are adverse to the Covered Employer.

10.38 This obligation, like all of the other Covered Employer's obligations under this Article, shall survive the Covered Employer's withdrawal from the Fund.

## **SECTION 11: PENSION PROTECTION ACT OF 2006**

11.01 Compliance. Notwithstanding anything in the Plan to the contrary, effective for Plan Years beginning on or after January 1, 2008, if the Actuary certifies that the Plan is in Endangered Status or Critical Status, the Board of Trustees will adopt and implement a Funding Improvement Plan or Rehabilitation Plan, as applicable, and comply with the requirements under Code Section 432 and the Treasury regulations thereunder. Such Funding Improvement Plan or Rehabilitation Plan, shall include, but is not limited to, the actions to improve the Plan's funded percentage to enable the Plan to emerge from Endangered Status or Critical Status, as applicable, including schedules with the revised benefit structures, revised contribution structures, or both, as prescribed under Code Section 432. Such Funding Improvement Plan or Rehabilitation Plan shall be set forth in Appendix C of this Plan. No later than the 90th day of each Plan Year, the Actuary will certify whether the Plan is in Endangered Status or Critical Status for such Plan Year. In accordance with Code Section 432, the Board of Trustees shall annually update the applicable Funding Improvement Plan or Rehabilitation Plan, including related schedules, to reflect the experience of the Plan. The Board of Trustees has the sole discretion to amend and interpret the Funding Improvement Plan or Rehabilitation Plan, including any related schedules.

11.02 Benefit Reductions and Restrictions. The Board of Trustees shall comply with the implementation and rules for operation regarding amendments that increase the Plan's liabilities and place restrictions on benefits and benefit increases, as described in Code Section 432, during the period beginning on the date the Actuary certifies that the Plan is in Endangered Status or Critical Status, as applicable, and continuing through the end of the Funding Improvement Period or Rehabilitation Period.