

**PENSION PLAN FOR AGRICULTURAL EMPLOYEES  
OF MEMBER EMPLOYERS  
OF THE CALIFORNIA GROWER FOUNDATION**

**2012 Restatement**

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RECITALS OF FACT

Effective as of January 1, 2012, except as otherwise specifically provided in this document or required by applicable law, California Grower Foundation has approved and adopted an amendment and restatement of the Pension Plan for Agricultural Employees of Member Employers of the California Grower Foundation (“Plan”). The reasons for this restatement are to (i) comply with IRS Revenue Procedure 2007-44, as amended or superseded, by incorporating all statutes, regulations and other guidance identified in the IRS 2011 Cumulative List of Changes in Plan Qualification Requirements, as set forth in IRS Notice 2011-97, (ii) incorporate all Plan amendments to date, and (iii) include other changes necessary or desirable to meet the objectives of California Grower Foundation and its participating member employers.

This Plan, and related Trust Agreement (“Trust”), initially was effective as of April 17, 1972, was amended and restated in its entirety effective January 1, 1985, January 1, 1989, January 1, 1997 and most recently as of January 1, 2002, and has been amended from time to time thereafter. The Plan is a defined benefit pension plan intended to provide retirement benefits for the exclusive benefit of Eligible Employees and their Beneficiaries in accordance with the terms and conditions set forth in the Plan.

The restated Plan, and related Trust, are intended to continue to meet the requirements for qualification under §401(a) and exemption from tax under §501(a) of the Internal Revenue Code

of 1986, as amended (“Code”). Further, notwithstanding any provision of the Plan to the contrary, no benefit accrued under the Plan prior to this restatement and protected under Code §411(d)(6), and Treasury Regulations thereunder, will be reduced or eliminated by this restatement. The rights of any person who did not have an Hour of Service under the Plan on or after the relevant effective date(s), will generally be determined in accordance with the terms of the Plan as in effect on the date for which he was last credited with an Hour of Service.

However, the Plan as it existed prior to this restatement will continue to apply to persons who retired, terminated or ceased to be eligible to participate in the Plan prior to this restatement, except that the provisions of the Plan, as amended and restated herein, regarding the duties of the Plan’s fiduciaries and distributions on Plan termination will apply to such inactive persons.

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## I. DEFINITIONS

The following words and phrases in this Plan will have the following meanings when capitalized. Whenever required by the context of this Plan, masculine gender will include the feminine and the neuter, the singular will include the plural and the plural will include the singular.

A. Accrued Benefit. Accrued Benefit, as of any date, means the retirement benefit a Member is entitled to receive pursuant to the retirement benefit formula set forth in Section A of Article IV, determined as of that date.

B. Actuarial Equivalent. Actuarial Equivalent means a form of benefit differing in time, period, or manner of payment from a specific benefit provided under the Plan but having the same value as the Member's Accrued Benefit when computed under assumptions determined by the Enrolled Actuary. The assumptions to be used for this purpose are the greater of paragraph 1 or 2, below:

1. Benefit as of December 31, 1983. The Actuarial Equivalent of the Accrued Benefit of the Member as of December 31, 1983, computed at a rate of interest of 5¼% per annum, on the basis of the GA51 Mortality Table (with FPS setback); or

2. Benefit at Date of Termination. The Actuarial Equivalent of the Accrued Benefit of the Member computed at a rate of interest of 5½% per annum and on the basis of the UP-1984 (Uninsured Pensioners-Unisex) table.

If the definition of "Actuarial Equivalent" is amended, the value of a Member's Accrued Benefit on or after the date of such amendment will be the greater of (a) the Actuarial Equivalent of the Member's total Accrued Benefit computed in accordance with the new definition, or (b) the Actuarial Equivalent of the Member's Accrued Benefit determined as of the later of

(i) the effective date of such amendment and (ii) the date such amendment was adopted, and computed in accordance with the prior definition.

Notwithstanding the above, for the purpose of calculating a benefit payable in the form of a lump sum and consistent with paragraph 4 of Section J of Article IV, the lump sum will be the amount calculated using the Applicable Interest Rate and Applicable Mortality Table (“Applicable Amount”) effective for the Plan Year in which the distribution from the Plan is made; provided, however, that if a Member requests a distribution before the end of the 12-month period following his termination of employment (in accordance with Section H of Article IV), then the amount will be the greater of (A) the Applicable Amount effective for the Plan Year in which the distribution is made or (B) the lump sum calculation based on the Applicable Interest Rate and Applicable Mortality Table for the Plan Year in which he terminated employment.

C. Administrator. Administrator means the Plan Sponsor, unless the Plan Sponsor appoints or designates another person or entity to act as such.

D. Affiliated Employer. Affiliated Employer means any corporation or trade or business which is or was a member of a controlled group of corporations, a group of businesses under common control or an affiliated service group (within the meaning of Code §414(b), (c), (m) or (o)) of which the Plan Sponsor or Participating Employer is a member, but only for such period as the corporation or trade or business and the Plan Sponsor or Participating Employer are or were considered members of the group.

E. Annuity Starting Date. Annuity Starting Date means the first day of the first period for which an amount is payable as an annuity or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Member to

such benefit. In the case of a deferred annuity, the Annuity Starting Date is the date on which the annuity payments are scheduled to begin. In the case of a distribution that begins as of a date on or after normal retirement age (within the meaning of Code §411(a)(8)), the date on which such distribution began will be the Annuity Starting Date for any accruals on or after such date.

F. Applicable Interest Rate. Applicable Interest Rate means, for the period beginning each January 1<sup>st</sup> and ending each December 31<sup>st</sup> (“Stability Period”), the adjusted first, second and third segment rates applied under rules similar to the rules of Code §430(h)(2)(C), for the month immediately preceding the Stability Period, and will remain the same for the Plan Year. For this purpose, the adjusted first, second and third segment rates are determined without regard to the 24-month averaging provided under Code §430(h)(2)(D)(i), subject to a transition rule under Code §417(e)(3)(D)(ii) that phases in the use of the segment rates over 5 years.

G. Applicable Mortality Table. “Applicable Mortality Table” means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the Plan Year under Code §430(h)(3)(A), without regard to subparagraph (C) or (D) of that Code Section.

H. Beneficiary. Beneficiary means a Member’s Eligible Spouse or, if the Member does not have an Eligible Spouse, his surviving children designated by such Member under Article VIII to receive benefits after such Member’s death.

I. Board. Board means the Board of Directors of the Plan Sponsor.

J. Code. Code means the Internal Revenue Code of 1986, as amended from time to time.

K. Committee. Committee means the administrative committee, which may be established under Section I of Article XI to administer the Plan. The Committee, if appointed,

will consist of at least one individual. A member of the Committee may be removed by the Board at any time with or without cause on prior written notice, and any vacancy existing on the Committee from time to time may be filled by the Board. Any member of the Committee may resign by delivering his written resignation to the Board. Any Member may obtain disclosure of the names, titles and addresses of the members of the Committee by requesting that information from the Plan Sponsor. This may be done in person or in writing.

L. Compensation. Compensation means all earnings paid by any Employer to an Employee, in cash, for personal services, as reportable on his Form W-2 and that is paid in a Plan Year during which such Employee is a Member, and that is considered wages as defined in Code §3401(a), determined without regard to any rules that limit compensation included in wages based on the nature or location of the employment or services performed.

1. In addition to the foregoing, Compensation also will include (a) amounts contributed by the Member's Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Member under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) and 457(b), and (b) amounts treated as contributions by the Member's Employer but contributed by the Employee pursuant to Code §414(h)(2).

2. Effective for Plan Years beginning on and after July 1, 2007, Compensation also will include "Regular Pay," as described below, that is paid to the Member after his Severance from Employment but no later than 2½ months after his Severance from Employment or the end of the Limitation Year that includes the Member's Severance from Employment, whichever is later. Any other amounts paid after Severance from Employment that is not "Regular Pay" will not be included even if payment is made within the time period specified above.

"Regular Pay" means regular compensation for services during the Member's regular

working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments that would have been paid to the Member before his Severance from Employment if the Member had continued in employment with an Employer.

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

4. Compensation will exclude (a) amounts contributed by an Employer or an Affiliated Employer, for or on account of its Employees, under this Plan or any other employee benefit plan qualified under the provisions of Code §401(a), other than amounts specifically included in paragraphs 1 and 2, above; (b) amounts realized from (i) the exercise of a non-qualified stock option, (ii) restricted stock that is no longer subject to a substantial risk of forfeiture, or (iii) the disposition of a qualified stock option; (c) group term life insurance premiums or any other amounts which receive special tax benefits; (d) compensation paid to a Member who is permanently and totally disabled, as defined in Code §22(e)(3); and (e) any amount in excess of \$100,000.

M. Death Benefit. Death Benefit means a benefit payable in the event of the death of a Member prior to such Member's Normal Retirement Date or Severance from Employment, whichever is later.

N. Early Retirement. Early Retirement means retirement on or after a Member's Early Retirement Age.

O. Early Retirement Age. Early Retirement Age means the later of age 55 or the age of the Member upon completion of five Years of Service.

P. Early Retirement Benefit. Early Retirement Benefit means a monthly benefit payable in the Normal Form as determined under Section D of Article IV.

Q. Early Retirement Date. Early Retirement Date means the first day of any month coinciding with or following a Member's termination of employment with all Employers and Affiliated Employers that occurs prior to the Member's Normal Retirement Date but after satisfaction of the requirements for entitlement to an Early Retirement Benefit.

R. Effective Date. Effective Date means January 1, 2012, except as otherwise specifically provided in the Plan or required by applicable law.

S. Eligible Employee. Eligible Employee means any Employee who is employed by any Participating Employer and covered by an Employer Contract that provides for his coverage under the Plan, excluding (a) any Employee whose duties are primarily non-agricultural in nature, unless employed by the Plan Sponsor; (b) any Employee who is classified as an owner-employee under Code §401(c)(3); (c) any Highly Compensated Employee, unless or to the extent permitted or required under the terms of an individual participation agreement entered into between the Plan Sponsor and any one or more Participating Employers prior to 2012; and (d) any Excludable Leased Employee, as described in Section AF of this Article I.

T. Eligible Retirement Plan. Eligible Retirement Plan means a plan that accepts an eligible rollover distribution on behalf of a Member, a surviving Spouse or a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code §414(p), and includes an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §403(a), a qualified trust described in Code §401(a), an annuity contract described in Code §403(b) and an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

U. Eligible Spouse. Eligible Spouse means a spouse to whom a Member is married on either the Annuity Starting Date or the date of the Member's death, whichever is earlier. To the extent provided under a Qualified Domestic Relations Order, the term Eligible Spouse means a former spouse in addition to or in place of the Member's spouse as defined in the preceding sentence.

V. Employee. Employee means a person currently employed by an Employer or an Affiliated Employer, any portion of whose income is subject to withholding of income tax and/or for whom Social Security or railroad retirement contributions are made by the Employer or an Affiliated Employer, as well as any other person qualifying as a common law employee of the Employer or an Affiliated Employer. Unless the Plan Sponsor elects otherwise, "Employee" also includes any Leased Employee within the meaning of Code §414(n)(2) but excludes any individual retained by an Employer to perform services for such Employer (for either a definite or indefinite duration) and is characterized thereby as a fee-for-service worker or independent contractor or in a similar capacity (other than in the capacity of an employee), regardless of such

individual's status under common law, including, without limitation, any such individual who is or has been determined by a third party, including, without limitation, a government agency or board or court or arbitrator, to be an employee of an Employer for any purpose, including, without limitation, for purposes of any employee benefit plan of an Employer (including this Plan) or for purposes of federal, state or local tax withholding, employment tax or employment law.

W. Employer. Employer means the Plan Sponsor and any Participating Employer.

X. Employer Contract. Employer Contract means a contract entered into between the Plan Sponsor and a qualifying member Employer of the Plan Sponsor pursuant to which such member will make contributions to the Plan on behalf of its Eligible Employees.

Y. Enrolled Actuary. Enrolled Actuary means a person enrolled by the Joint Board for the Enrollment of Actuaries under ERISA who has been engaged by the Administrator to prepare valuations, establish appropriate assumptions, complete all required actuarial reports, and determine the minimum contributions required to comply with the funding requirements of the Code and ERISA.

Z. Entry Date. Entry Date means the first day of each month.

AA. ERISA. ERISA means the Employee Retirement Income Security Act of 1974, as amended.

AB. Forfeiture. Forfeiture means the portion of a Member's Accrued Benefit that is not vested and will be forfeited by him under Section A of Article VI.

AC. Highly Compensated Employee ("HCE"). Highly Compensated Employee or HCE means an individual described in Code §414(q), and Treasury Regulations issued



thereunder, who:

1. Is or was a Five Percent Owner at any time during the Plan Year (“determination year”) or preceding Plan Year (“look-back year”);
2. Received Compensation from the Employer for the preceding Plan Year in excess of \$80,000 (as adjusted under Code §415(d)) and was in the “Top Paid Group,” as defined in Section AZ of this Article I, for the preceding Plan Year;
3. Is a former Employee who was an HCE on his Severance from Employment;
4. Is a highly compensated former Employee based on the rules applicable to determining HCE status as in effect for that determination year, in accordance with Temporary Treasury Regulations §1.414(q)-1T, A-4; or
5. Is a former Employee who was an HCE at any time after attaining age 55.

AD. Hour of Service. Hour of Service means each hour for which an Employee is:

1. Directly or indirectly paid or entitled to payment by any Employer or Affiliated Employer for the performance of duties;
2. Directly or indirectly paid or entitled to payment by any Employer or Affiliated Employer on account of a period of time during which no duties were performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence authorized under Section C of Article II. However, no more than 501 Hours of Service will be credited under this paragraph 2 on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period). Payments made or due under a plan maintained by any Employer or Affiliated Employer solely to comply with applicable workers’ compensation, unemployment compensation, or disability insurance law, or

to reimburse an Employee for medical or medically-related expenses will not be considered as payments by any Employer or Affiliated Employer for purposes of this paragraph;

3. Absent from work with any Employer or Affiliated Employer by reason of the pregnancy of the Employee, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of the child by the Employee, or the care of such child by the Employee for a period immediately following birth or placement. No more than 501 Hours of Service will be credited under this paragraph 3 by reason of any one pregnancy or placement. Hours of Service credited under this paragraph 3 will be credited solely for purposes of determining whether a One-Year Break-in-Service has occurred in a computation period with respect to membership and vesting. All Hours of Service credited under this paragraph 3 will be credited only in the computation period in which the absence from work begins if any of such Hours of Service are required in that computation period to avoid a One-Year Break-in-Service. If none of the Hours of Service credited under this paragraph 3 are required to avoid a One-Year Break-in-Service in the computation period in which the absence begins, then the Hours of Service will be credited to the next computation period. An Employee will be credited with 8 Hours of Service for each day of absence covered by this paragraph. Credit will be given pursuant to this paragraph 3 only after the Employee furnishes to the Administrator such timely information as the Administrator may reasonably require to establish that the absence is for a reason described in this paragraph; or

4. Either awarded back pay or for which any Employer or Affiliated Employer agrees to pay such back pay, irrespective of mitigation of damages. An Hour of Service received under this paragraph 4 will be credited to that computation period for which the award was granted. The same Hours of Service will not be credited both under either paragraph 1 or 2, as

the case may be, and under this paragraph 4. Hours of Service for which back pay is awarded or agreed to with respect to periods described in paragraph 2 will be subject to the limitations set forth in that paragraph.

For purposes of this Section AD, in the case of an Employee for whom records of hours worked are not required by applicable law to be kept, an Employee will be credited with 8 Hours of Service for each day for which he would have been required to be credited with an Hour of Service. Hours of Service will be credited to the applicable computation period in accordance with Department of Labor Regulation §2530.200b-2(b) and (c).

AE. Key Employee. Key Employee means an Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was (a) an officer of any Employer, having annual Compensation greater than \$130,000, as adjusted under Code §416(i)(1), (b) a Five-Percent Owner of any Employer, or (c) a One-Percent Owner of any Employer, having annual Compensation of more than \$150,000. For this purpose, annual Compensation means Compensation within the meaning of Code §415(c)(3) and the determination of who is a Key Employee, including the definition of determination date, Five-Percent Owner and One Percent Owner, will be made in accordance with Code §416(i)(1) and applicable Treasury Regulations and other guidance of general applicability issued thereunder, which are hereby incorporated by reference into this Plan.

AF. Leased Employee. Leased Employee means any person who, as determined in accordance with Code §414(n)(6), performs services for an Employer or an Affiliated Employer (the “recipient”) (other than an employee of the recipient) pursuant to an agreement between the recipient and any other person (the “leasing organization”) on a substantially full-time basis for a period of at least one year, provided that such services are performed under the primary direction

or control of the recipient. An “Excludable Leased Employee” means any leased employee of the recipient who is covered by a money purchase pension plan (“MP Plan”) maintained by the leasing organization which provides for (a) a nonintegrated employer contribution on behalf of each such person included in the MP Plan equal to at least ten percent of compensation, (b) full and immediate vesting, and (c) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in each plan year during the four-year period ending with the plan year is less than \$1,000); provided, however, that leased employees do not constitute more than 20 percent of the recipient’s nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient will be treated as provided by the recipient.

AG. Member. Member means each Eligible Employee who has become covered by the Plan, in accordance with Article II.

AH. Non-Highly Compensated Employee (“NCE”). Non-Highly Compensated Employee or NCE means an Employee who is not an HCE.

AI. Non-Key Employee. Non-Key Employee means any Employee who is not a Key Employee.

AJ. Normal Form. Subject to Section G of Article IV, Normal Form means an annuity payable monthly for the life of the Member. The first monthly payment will be made as soon as practicable following the Member’s Normal Retirement Date with the last payment as of the first day of the month in which the recipient’s death occurs.

AK. Normal Retirement. Normal Retirement means retirement on or after the Member's Normal Retirement Age. In the case of a Member who continues in the employ of any Participating Employer after reaching Normal Retirement Age, Normal Retirement means retirement on the delayed retirement date, which is the date of the Member's actual Severance from Employment. When a Member actually retires, he will be entitled to a delayed retirement benefit in accordance with Section E of Article IV. Notwithstanding the foregoing, if a Member continues employment, but not in "§203(a)(3)(B) service," payment will begin to the Member as if the Member had terminated employment as of his Normal Retirement Age and benefits will continue to accrue under the Plan.

AL. Normal Retirement Age. Normal Retirement Age means age 65.

AM. Normal Retirement Benefit. Normal Retirement Benefit means a monthly benefit payable in the Normal Form as determined under Article IV.

AN. Normal Retirement Date. Normal Retirement Date means the first day of the month coinciding with or next following a Member's attainment of Normal Retirement Age.

AO. One-Year Break-in-Service. One-Year Break-in-Service means, with respect to any Employee, a Plan Year during which the Employee is credited with 500 or fewer Hours of Service, or in which less than \$25 is contributed by any Employer on behalf of the Employee during the Plan Year; provided, however, that effective as of August 1, 2004 with respect to any Employee who is (a) hired by an Employer on or after that date or (b) rehired by an Employer on or after that date and was non-vested when he terminated employment, it means a Plan Year in which that Employee earns Compensation from any one or more Employers totaling less than \$4,000.

AP. Participating Employer. Participating Employer means the Plan Sponsor and any entity that has an Employer Contract in effect on the applicable date, and, with the consent of the Board, has adopted this Plan for the benefit of its Eligible Employees.

AQ. Plan. Plan means the Pension Plan for Agricultural Employees of Member Employers of the California Grower Foundation and any amendments to the Plan. Prior to January 1, 1976, the Plan was known as the Pension Plan for Agricultural Employees of Member Employers of the Winegrower's Foundation.

AR. Plan Sponsor. Plan Sponsor means California Grower Foundation, a California nonprofit corporation.

AS. Plan Year. Plan Year means the 12-month period beginning January 1<sup>st</sup> and ending December 31<sup>st</sup> and will be the Limitation Year for purposes of Code §415.

AT. QDRO. QDRO means any judgment, decree or order ("Order") (including approval of a property settlement agreement) which (a) relates to the provision of child support, alimony payments, or marital property rights to a spouse, child or other dependent of a Member ("Alternate Payee"), (b) is made pursuant to a state domestic relations law (including a community property law), (c) creates or recognizes the existence of an Alternate Payee's right, or assigns to an Alternate Payee the right, to receive all or a portion of the benefits payable with respect to a Member under the Plan, and (d) otherwise meets the requirements for a qualified domestic relations order under Code §414(p) and ERISA §206(d). An Order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO: (i) solely because the Order is issued after, or revises, another Order or QDRO or (ii) solely because of the time at which the Order is issued, including issuance after the Member's Severance from Employment.

AU. Qualified Joint and Survivor Annuity. Qualified Joint and Survivor Annuity means the following:

1. In the case of a Member who does not have an Eligible Spouse, an immediate annuity, reduced, as applicable, in accordance with Article IV, payable in the form of a single life annuity; or

2. In the case of a Member who has an Eligible Spouse, an immediate annuity, reduced, as applicable, in accordance with Article IV and reduced further, as applicable, to the Actuarial Equivalent of the Normal Form, payable for the life of the Member with a survivor annuity for the life of the Eligible Spouse equal to 50% of the amount payable to the Member during the joint lives of the Member and his Eligible Spouse.

Notwithstanding the above, if a more valuable benefit (within the meaning of Treasury Regulation §1.401(a)-20, Q & A 16) is payable at the same time as the benefit described above and if such benefit is a Qualified Joint and Survivor Annuity, the more valuable benefit will be the Qualified Joint and Survivor Annuity. If such benefit is not a Qualified Joint and Survivor Annuity, the Qualified Joint and Survivor Annuity will be the automatic survivor annuity described above, increased to the extent necessary to make the benefit equally valuable.

AV. Qualified Optional Survivor Annuity. Qualified Optional Survivor Annuity or QOSA means a monthly annuity payable to the Member for his life and, following his death, a monthly survivor annuity to his surviving Spouse at a rate equal to 75% of the rate at which such benefits were payable to the Member during his lifetime, which will meet the requirements of, and be referred to as, a Qualified Optional Survivor Annuity (“QOSA”) under, Code §417(a)(1) and IRS Notice 2008-30, as amended or superseded, and will be the Actuarial Equivalent of the Qualified Joint and Survivor Annuity.

AW. Required Beginning Date. Required Beginning Date means April 1<sup>st</sup> of the calendar year following the later of (a) the calendar year in which the Member attains age 70½ or (b) the calendar year in which the Member retires; provided, however that clause (b) will not apply in the case of a Member who is a Five Percent Owner.

For purposes of this Section AW, a Member will be considered a Five Percent Owner if at any time during the Plan Year ending with the calendar year in which he reaches age 70½, he owns (or is considered as owning within the meaning of Code §318) more than 5% of the outstanding stock of an Employer or stock possessing more than 5% of the total combined voting power of all stock of an Employer. In applying Code §318, §318(a)(2)(C) will be applied by substituting 5% for 50%. In the case of a non-corporate entity, a Member will be considered a Five Percent Owner if at any time during the Plan Year ending with the calendar year in which he reaches age 70½, he owns (or is considered as owning under any method prescribed by the Secretary of the Treasury or his delegate under his authority under Code §416(i)(1)(B)(iii)) more than 5% of the capital or profits interest in the Employer.

Any election by a Member eligible to defer distribution beyond age 70½ to retirement must be made by April 1<sup>st</sup> of the calendar year following the calendar year in which such Member reached age 70½. If no election is made, the Member will begin receiving distributions by April 1<sup>st</sup> of the calendar year following the calendar year in which he reaches age 70½.

AX. Severance from Employment. Severance from Employment means, with respect to any Member, the date on which such Member ceases to be an Employee of any Participating Employer. Notwithstanding the foregoing, a Member will not have a Severance from Employment if either (a) in connection with a change of employment, the Employee's new Employer maintains the Plan with respect to that Employee, or (b) effective for periods prior to



July 1, 2008, a former Employee continues to be employed by a Participating Employer that has withdrawn from participation in the Plan.

AY. Spousal Consent. Spousal Consent means an Eligible Spouse's written consent which acknowledges the effect of the Member's election under Section J of Article IV and is witnessed by a Plan representative or a notary public. Spousal Consent will specify the alternate form of distribution elected and, once made, will be irrevocable unless the Member revokes his election to waive the Qualified Joint and Survivor Annuity, in which case a Spousal Consent will be deemed to be revoked. Notwithstanding the foregoing, Spousal Consent is not required under the following circumstances:

1. In order for a Member to receive a Qualified Optional Survivor Annuity;
2. If the Member establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Eligible Spouse or that the Eligible Spouse cannot be located;
3. If the Member has been legally separated or abandoned within the meaning of local law and the Member provides the Plan representative with a court order to that effect, so long as such court order does not conflict with a Qualified Domestic Relations Order; or
4. If the Eligible Spouse is legally incompetent to consent, the Eligible Spouse's legal guardian may consent on her behalf, even if the legal guardian is the Member; or
5. If the Actuarial Equivalent present value of the Member's benefit payable in a lump sum is \$5,000 or less.

AZ. Top Paid Group. Top Paid Group means the group consisting of the top 20 percent of the Employer's Employees when ranked on the basis of Compensation received from the Employer during the applicable year. The identification of the particular Employees who are

in the Top Paid Group for the applicable year involves a two-step procedure:

1. The determination of the number of Employees that corresponds to 20 percent of the Employer's Employees; and

2. The identification of the particular Employees who are among the number of Employees who receive the most Compensation during the applicable year. Employees who perform no services for the Employer during the applicable year are not included in making either of these determinations for that year.

AAA. Total Compensation. Total Compensation means all amounts paid or made available to an Employee which are treated as compensation under Treasury Regulation §1.415-2(d)(1), and are not excluded from compensation under Treasury Regulation §1.415-2(d)(2). For Plan Years beginning on and after January 1, 2008, Total Compensation includes amounts treated as compensation under Treasury Regulations §§1.415(c)-2(b)(7) and 415(c)-2(e)(3) and may not exceed the limit set forth in Treasury Regulations §1.415(c)-2(f).

AAB. Trust. Trust means the trust established under Article X.

AAC. Trustee. Trustee means the trustee or trustees of the Trust established under this Plan.

AAD. Valuation Date. Valuation Date means (a) at least each December 31<sup>st</sup> and (b) any other date designated by the Plan Sponsor under extraordinary circumstances and in its sole discretion, as a Valuation Date for Trust accounting.

AAE. Year of Service. Year of Service means a Plan Year during which an Employee has been credited with at least 1,000 Hours of Service, provided, however, that effective as of August 1, 2004, with respect to any Employee who is (i) hired by any Employer on or after that date or (ii) rehired by any Employer on or after that date and was non-vested when he terminated

employment, Year of Service means a Plan Year in which that Employee earns Compensation from all Employers totaling at least \$4,000, up to a maximum of one Year of Service for any Plan Year. For purposes of determining (a) an Employee's Early Retirement Age under Section O of Article I, (b) an Employee's eligibility for a deferred vested benefit under Section H of Article IV, and (c) the alternative vesting schedule under paragraph 3 of Section A of Article VI, an Employee will be credited with the greater of the number of Years of Service provided by (1) or (2), below, with respect to the Plan Year, as follows:

1. Based on Hour Counting: One Year of Service for each Plan Year in which the Employee has been credited with one thousand (1,000) or more Hours of Service, or

2. Based on Employer Contributions: One-quarter (1/4) Year of Service for each twenty-five dollars (\$25.00) that an Employer contributes on the Employee's behalf for such Plan Year, up to a maximum of 2½ Years of Service for any Plan Year.

AAF. "§203(a)(3)(B) Service." "§203(a)(3)(B) service," as provided in Department of Labor Regulation §2530.203-3, means a calendar month in which the Member receives payment for any Hours of Service (as defined in Department of Labor Regulation §2530.200b-2(a)(1) and (2)) worked for an Employer or an Affiliated Employer performed on each of 8 or more days (or separate workshifts) in such month.

## II. ELIGIBILITY AND MEMBERSHIP

An Eligible Employee will become a Member upon meeting the conditions of paragraph 1 of Section A below, provided that an Eligible Employee who was a Member prior to August 1, 2004 and who is employed by an Employer on that date will continue to be a Member under the terms and conditions of the Plan described at paragraph 2 of Section A below.

### A. Eligibility.

1. On and After August 1, 2004. Each Eligible Employee will become eligible to participate in the Plan on the later of (a) the 13<sup>th</sup> month following the month in which he first earned Compensation from an Employer or (b) the first month in which his total Compensation from an Employer totals at least \$4,000, and will begin to participate as a Member on the Entry Date that is six months after the month in which he has met the above conditions, provided he is still employed by an Employer on that Entry Date. If an Eligible Employee has met the above conditions but is not employed by an Employer on the applicable Entry Date, he will become a Member on the Entry Date that falls on or immediately following the month in which he again earns Compensation from an Employer, provided he has not incurred a One-Year Break-in-Service, and further provided that in no event will an Employee become a Member later than the time prescribed by Code §§410(a)(1)(A) and 410(a)(4).

2. Prior to August 1, 2004. Each Eligible Employee will become a Member as of the earlier of:

(a) The Entry Date coincident with or next following the 12-month period in which he first completes a Year of Service in either (i) the first 12-month period beginning on his employment commencement date (the date on which he is first credited with one Hour of Service with an Employer or an Affiliated Employer) or his

reemployment commencement date (the date on which he is first credited with an Hour of Service following a One-Year Break-in-Service) or (ii) any subsequent Plan Year of Plan Years; or

(b) The first day of the Plan Year following his completion of one Year of Service.

B. Membership. Membership in the Plan continues until a Member terminates due to Early Retirement, Normal Retirement, delayed retirement, death or Severance from Employment with all Participating Employers, whichever is earliest, provided he also has incurred a One-Year Break-in-Service. An Employee whose membership in the Plan has ceased but who has not received all benefits under the Plan will be a “former Member” and will become a Member again on the date he again becomes an Eligible Employee, if applicable.

C. Leaves of Absence. A Member’s employment is not considered terminated for purposes of the Plan while he is on leave of absence with the consent of his Employer, provided that he returns to the employ of any Employer at the expiration of such leave. Leaves of absence will mean leaves granted by his Employer, in accordance with rules uniformly applied to all Employees. A Member’s employment also will not be deemed to have terminated while he is serving with the Armed Forces of the United States, provided that he returns to the employment of any Employer within 90 days (or such longer period as may be prescribed by law) from the date he first became entitled to his discharge. Members who do not return to the employ of any Employer within 60 days following the end of the leave of absence, or within the required time in case of service with the Armed Forces, will be deemed to have terminated their employment as of the date when their leaves of absence began, unless such failure to return was the result of Early Retirement, Normal Retirement, delayed retirement, or death.

D. Suspended Membership. A Member who ceases to be an Eligible Employee, but who remains employed by any Employer, will become a suspended Member. During the period of suspension, no amounts which are based on his Compensation or Total Compensation from and after the date of suspension will be used to determine Employer contributions hereunder. However, the Member will continue to vest in his Accrued Benefit and continue to be subject to all other provisions of the Plan while he is a suspended Member.

E. Reemployment After Retirement. If a Member is reemployed by any Employer in “ERISA §203(a)(3)(B) service” after commencing benefit payments, the Member’s payments will be suspended and benefits will continue to accrue as described in Article IV. Benefit payments will recommence as of the Member’s delayed retirement date and will be determined as provided in Section E of Article IV.

1. Reemployment Prior to Full Payment. If a Member is reemployed by any Employer before payment of his retirement benefit has commenced, payment of such benefit will not commence prior to the termination of his employment following reemployment.

2. Reemployment while Receiving Annuity Benefits. If a Member who is receiving a retirement benefit under the Plan in the form of an annuity is reemployed by any Employer, or if a Member’s employment continues beyond his Normal Retirement Date (whether in “ERISA §203(a)(3)(B) service” or not) the payment of such benefit will be suspended during such period of reemployment. If such reemployed or continuing Member is employed in “ERISA §203(a)(3)(B) service,” no retirement benefit will be paid to the Member for any calendar month in which he is so employed; provided, however, that payment of the Member’s retirement benefit upon his subsequent retirement under the Plan will be actuarially increased to take into account

the retirement benefit payments that would otherwise have been made to the Member for the months in which he was employed in other than “ERISA §203(a)(3)(B) service.”

3. Reemployment After Receiving a Lump Sum Payment. If a former Member who received a lump sum payment is subsequently reemployed by any Employer, then on the Annuity Starting Date following his subsequent termination of employment with all Employers, his retirement benefit will be determined as follows:

(a) The amount of the Member’s retirement benefit will be calculated in the automatic form described in Section G of Article IV (payable at Normal Retirement Date), on the basis of the terms of the Plan as in effect at the time of such subsequent termination of employment, based on his total Years of Service before and after reemployment and without regard to his previous lump sum payment;

(b) The retirement benefit calculated pursuant to subparagraph (a), above, will be reduced by the retirement benefit calculated in the automatic form described in Section G of Article IV (payable at Normal Retirement Date) to which he was entitled at the time of his previous lump sum payment; and

(c) The amount determined under subparagraph (b), above, will be converted actuarially to the form elected by the former Member.

F. Determination of Eligibility. Any question as to the eligibility of any Employee under this Plan will be determined by the Plan Sponsor, in its sole and absolute discretion, and its determination will be conclusive and binding on all persons for all purposes under the Plan.

### **III. EMPLOYER FUNDING AND BENEFITS**

A. Employer Contributions. Each Employer will contribute all amounts needed to provide the benefits under the Plan in a timely manner. If any Employer fails to pay any required contributions within a reasonable period of the due date established by the Board, the Plan Sponsor will impose interest on the delinquent payment equal to 10% per annum, compounded daily. The determination of what constitutes a reasonable period will be made by the Plan Sponsor, in its sole and absolute discretion, and will be binding on all affected persons under the Plan. The amount of Employer contributions will be based on the recommendation of the Enrolled Actuary using such methods and assumptions as the Enrolled Actuary may deem advisable and consistent with the minimum funding standards of ERISA and the Code. Any actuarial gains from Forfeitures will be used to reduce Employer contributions. All contributions to the Plan are contingent upon their deductibility under Code §404.

B. Waiver of Employer Contributions. Notwithstanding any provision in the Plan to the contrary, contributions by any Employer may be waived in whole or in part in any Plan Year during which a substantial business hardship has been sustained, as determined in writing by the Secretary of the Treasury pursuant to Code §412(d).

C. Annual Valuation. Within 60 days after each Valuation Date and within 60 days after the removal or resignation of the Trustee, the Trustee will determine the fair market value of the Trust Fund as of the close of the applicable Plan Year (or the close of the shorter period ending with such resignation or removal), using procedures in accordance with generally accepted accounting principles.

D. Funding Standard Account. The Plan Sponsor will maintain a funding standard account for all Employers. This account will be charged and credited, respectively, with the



annual cost of future pension benefits and with amounts contributed by the Employers, and with any other items, adjustments, gains, losses and entries necessary to determine whether the Plan is meeting the minimum funding requirements of the Code, ERISA or any similar or successor rules or laws.

E. Actuarial Methods and Valuation.

1. Methods. In establishing the liabilities under and contributions to the Plan, the Enrolled Actuary will use such methods and assumptions as will reasonably reflect the cost of the benefits.

2. Valuation. Plan assets will be valued as of each Valuation Date using any reasonable method of valuation that takes into account fair market value under the Code and Treasury Regulations.

F. Return of Employer Contributions.

1. Employer contributions may, in the sole discretion of the Board, be returned to an Employer if and to the extent made because of a reasonable mistake as to the facts and circumstances existing at the time the contribution was made.

2. To the extent a federal income tax deduction is disallowed for any Employer contribution, the Trustee will refund the disallowed amount to the affected Employer on demand by the Plan Sponsor.

3. Any return of a contribution described in paragraphs 1 and 2 above must:

(a) Be made within one year, or such longer period permitted by the pension laws, after (i) the date the mistaken Employer contribution was made or (ii) the date the deduction was disallowed;

(b) Not include income attributable to the returned amount;

(c) Be reduced by any loss attributable to any returned amounts; and

(d) Be limited so as to avoid causing the Accrued Benefit of any Member to be reduced to an amount that is less than his Accrued Benefit would have been had the nondeductible or mistaken Employer contribution not been made.

#### IV. BENEFITS

##### A. Normal Retirement Benefit.

1. A Member retiring on or after Normal Retirement Age will receive a monthly Normal Retirement Benefit payable for life, commencing as of the first day of the month coincident with or next following his retirement date, equal to one-twelfth of the amount calculated below. Such amount will be equal to a percentage of his Compensation, rounded down to the next lower \$1,000. For a given Member, the applicable percentage is the same for all years prior to January 1, 1988 and is determined as follows:

(a) .75% of Compensation for a Member who accrued no full or partial Years of Service after December 31, 1979;

(b) 1.0% of Compensation for a Member who accrued at least one-quarter of a Year of Service after December 31, 1979, but accrued no full or partial Years of Service after December 31, 1982;

(c) 1.25% of Compensation for a Member who accrued at least one-quarter of a Year of Service after December 31, 1982, but either (i) accrued no full or partial Years of Service after December 31, 1986 or (ii) was not a Member on December 31, 1987; or

(d) For a Member who accrued at least one-quarter of a Year of Service after December 31, 1986 and was a Member on December 31, 1987:

(i) 2.5% of Compensation for each year the individual was a Member of the Plan before 1988, plus

(ii) 1.25% of Compensation for each year the individual was a Member of the Plan after December 31, 1987 and before July 1, 2008, plus

(iii) .75% of Compensation for each year the individual was a Member of the Plan after June 30, 2008.

With respect to all full or partial Years of Service accrued after June 30, 2008, the applicable percentage is .75% of Compensation.

2. Notwithstanding any contrary provision of paragraph 1 of this Section A, if a Member is entitled to a Minimum Annual Retirement Benefit under Section B of this Article IV, the Member's Normal Retirement Benefit will be the greater of the benefit otherwise provided by this Section A or the Minimum Annual Retirement Benefit provided by Section B.

B. Minimum Benefit Requirements. Notwithstanding any contrary provision of this Plan, in any Plan Year in which this Plan is Top-Heavy, as described in Article XIV, each Non-Key Employee who is a Member will accrue a Minimum Annual Retirement Benefit, as described in Article XIV.

C. Maximum Benefit for any Member. The amount of a Member's Retirement Benefit will be subject to the limitations of Code §415 as described in Article V.

D. Early Retirement Benefit. Each Member, upon Early Retirement, will be entitled to receive, at his election, an Early Retirement Benefit equal to his Accrued Benefit reduced by .5% for each month by which his Annuity Starting Date precedes his Normal Retirement Date. Such benefit will commence as of the first day of the month coincident with or next following the Member's elected Annuity Starting Date.

E. Delayed Retirement Benefit. Each Member who retires after his Normal Retirement Age will be entitled to receive a Delayed Retirement Benefit equal to the greater of:

1. The Actuarial Equivalent of the Normal Retirement Benefit the Member would have received at his Normal Retirement Date; or

2. The Normal Retirement Benefit based on Years of Service and Compensation through the Member's actual retirement date. Notwithstanding the foregoing, if a Member continues to be employed (or is reemployed by the Employer) after attaining Normal Retirement Age, but not in "§203(a)(3)(B) service," the commencement of payments will not be delayed (or, in the case of reemployment, suspended) until the Member's delayed retirement date. Payments to such Member will commence as if the Member had terminated employment as of the Member's Normal Retirement Age. Benefits will accrue while such Member remains employed as described in Article II and the amount of the payments will be recalculated each year on the anniversary of the Member's Normal Retirement Date to reflect those additional benefits. In the case of a Member who continues employment after attaining Normal Retirement Age or who is reemployed after commencing benefit payments, the Committee will reasonably attempt to give notice to such Member as required under Department of Labor Regulation §2530.203-3(b)(4) no later than the end of the first calendar month or payroll period in which the Plan delays the commencement of payments due to reemployment.

F. Death Benefits. If a Member or former Member dies on or after January 1, 2005, the following rules apply:

1. If such Member or former Member dies before full vesting in his Accrued Benefit in accordance with Article VI, or if on his date of death, he has no Eligible Spouse and either has no surviving children or fails to designate surviving children as Beneficiaries, in accordance with Article VIII, no benefits will be payable on his behalf under the Plan.

2. If such Member or former Member has no Eligible Spouse and is vested in his Accrued Benefit but dies on or before the first date he could have separated from service (if

necessary) and received a benefit in accordance with Article IV (“Earliest Retirement Date”), his Beneficiary will be entitled to receive a death benefit, payable in the form of a lump sum, equal to the present value of the Member’s vested Accrued Benefit as of the date of the Member’s death calculated as the Actuarial Equivalent of the Normal Form.

3. If such Member or former Member has an Eligible Spouse and dies after vesting in his Accrued Benefit in accordance with Article VI but on or before the first date he could have separated from service (if necessary) and received a benefit in accordance with Article IV (“Earliest Retirement Date”), his Eligible Spouse will receive, subject to Paragraph 1 of Section J, a monthly retirement benefit equal to the Actuarial Equivalent of the amount the Member or former Member would have received under the automatic form described in paragraph 1 of Section G had such Member or former Member separated from service, survived until his Earliest Retirement Date and died the next day. Subject to Section J, such benefit payment will begin on his Earliest Retirement Date; however, if the Eligible Spouse does not survive until such Spouse’s Annuity Starting Date, such benefits will be payable to the Member’s Beneficiary, if any.

4. If such Member or former Member has an Eligible Spouse and dies after his Earliest Retirement Date but prior to his Annuity Starting Date, his Eligible Spouse will be entitled to receive a monthly retirement benefit equal to the Actuarial Equivalent of the amount the Member or former Member would have received under the automatic form described in paragraph 1 of Section G had such Member or former Member retired on the day immediately preceding his date of death (actuarially adjusted to reflect the commencement of payments after the Member’s or former Member’s Earliest Retirement Date). Subject to Section J of this Article IV, payments will begin as of the first day of the month following the Member’s or former

Member's date of death; however, if his Eligible Spouse does not survive until the date payments are to begin, such benefits will be paid to the Member's or former Member's Beneficiary, if any.

5. As an alternative to paragraph 3 or 4 of this Section F, as applicable, the Eligible Spouse of a Member or former Member may elect to receive a death benefit, payable in the form of a lump sum, which is equal to the present value of such Member's or former Member's vested Accrued Benefit as of the date of the Member's or former Member's death and calculated as the Actuarial Equivalent of the Normal Form; provided, however, the election to receive a lump sum must be made by the Eligible Spouse in writing and within the 90 day period following receipt of a notice substantially similar to the notice described in Section K of this Article IV; and further provided, that failure to timely elect a lump sum payment will cause payment to be made to the Eligible Spouse in the form of a single life annuity equal to the amount described at Section I of this Article IV commencing at the time elected by the Eligible Spouse and payable solely during the Eligible Spouse's lifetime.

6. Notwithstanding any provision to the contrary in this Section F of this Article IV, if a Member or former Member dies after his Annuity Starting Date, his death benefit will be determined by the form of such retirement benefit in effect at his death.

G. Automatic Form of Benefit.

1. The automatic form of benefit for a Member or former Member who has an Eligible Spouse on his Annuity Starting Date will be a Qualified Joint and Survivor Annuity. Unless the Member or Former Member elects otherwise, as provided in paragraph 2 of this Section G, the Plan Sponsor will direct the Trustee to distribute on behalf of a vested Member or Former Member described in this paragraph a benefit in this automatic form of benefit.

2. Notwithstanding paragraph 1 of this Section G, a Member or Former Member

may elect to waive the Qualified Joint and Survivor Annuity and thereby receive an alternate form of distribution as set forth in Section I of this Article IV. Such waiver must be made after receipt of the “general notice of distribution” described in Section K of this Article IV but before the Member’s or former Member’s Annuity Starting Date. A Member or former Member may subsequently revoke an election to waive a Qualified Joint and Survivor Annuity and elect again to waive the Qualified Joint and Survivor Annuity at any time and any number of times prior to such Annuity Starting Date. All such elections and revocations will be in writing. Any election to waive a Qualified Joint and Survivor Annuity must (a) specify the alternate form of distribution elected and (b) be accompanied by a Spousal Consent to the extent required under Section J of this Article IV. A Member may, however, without consent of his Spouse, elect to receive a Qualified Optional Survivor Annuity or a lump sum payment if the Actuarial Equivalent present value of the Member’s benefit payable in a lump sum is \$5,000 or less.

H. Deferred Vested Benefit.

1. A Member who has a Severance from Employment for reasons other than death or attaining Normal Retirement Age and who is vested in his Accrued Benefit will be entitled to receive a deferred vested benefit, commencing as of his Normal Retirement Date, equal to his Accrued Benefit at termination of employment multiplied by his vested percentage determined under Article VI.

2. A Member who has a Severance from Employment prior to satisfying the service requirements for an Early Retirement Benefit will be entitled to elect to receive his deferred vested benefit payable immediately in the Normal Form or automatic form described in Section G of this Article IV, as applicable, or in an optional form described in Section I of this Article IV. The amount paid pursuant to this paragraph 2 will be the Actuarial Equivalent of the



deferred vested benefit he would have received at his Normal Retirement Date.

3. Notwithstanding paragraphs 1 and 2 of this Section H, such Member may elect to receive his benefit in the form of a single sum payment under paragraph 2 of Section I of this Article IV, which will be paid no earlier than one year following the date the Member terminated employment with all Employers; provided, however, if the Member has attained age 62 or is Totally Disabled, the one-year waiting period will be waived. For purposes of this paragraph 3, “Totally Disabled” means the permanent incapacity of a Member, by reason of physical or mental illness, to perform any duties for any Employer, resulting in termination of service with any Employer. Total Disability will be determined by the Plan Sponsor in its sole discretion, exercised in a uniform and nondiscriminatory manner, after consideration of such evidence relating to the objective criteria established by the Plan Sponsor from time to time as it may require, including a report of such physician(s) as it may designate.

4. A Member who has a Severance from Employment after satisfying the service requirements for an Early Retirement Benefit but before satisfying the age requirement for such Early Retirement Benefit will be entitled, upon satisfaction of the age requirement, to elect to receive his deferred vested benefit payable immediately in the Normal Form or automatic form described in Section G of this Article IV, as applicable, or in an optional form described in Section I of this Article IV. The amount paid pursuant to this paragraph 4 will be the Actuarial Equivalent of the deferred vested benefit he would have received at his Normal Retirement Date.

5. Effective July 1, 2008, a Member who is employed by an Employer that has withdrawn as a Participating Employer will be treated as having had a Severance from Employment and become eligible to receive a distribution in accordance with the provision of this Article IV.

I. Optional Forms at Retirement. Subject to Section J of this Article IV and the provisions of Code §401(a)(9), a Member may elect to receive his retirement benefit in one of the following forms, in lieu of the applicable Normal Form or automatic form described in Section G, as applicable:

1. A single life annuity equal to his Accrued Benefit, payable monthly solely during the Member's lifetime.

2. A single sum payment, which is the Actuarial Equivalent of the Normal Form of Accrued Benefit payable at a Member's Normal Retirement Date, but only with respect to the Actuarial Equivalent present value of that Member's or former Member's vested Accrued Benefit determined (a) on or before May 31, 2009, and (b) if the conditions of paragraph 3 of Section J of this Article IV are met, the amount determined on and after June 1, 2009.

J. Election of Optional Forms of Retirement Benefit.

1. In order to be effective, an optional form of retirement benefit must be elected in writing, in a form approved by the Plan Sponsor, prior to the Member's Annuity Starting Date, in accordance with Section K of this Article IV. The completed retirement application form must be returned to the Plan Sponsor within the 90-day (or, effective January 1, 2007, 180-day) period ending on the Member's Annuity Starting Date. If the Member files another retirement application form after the earlier form and prior to his Annuity Starting Date, the earlier form will be superseded and deemed void. No election, or revocation thereof, will be permitted after the Annuity Starting Date. Except as provided in Section AY of Article I, a Member who has an Eligible Spouse and elects to receive his Plan benefit in a form other than a Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity will not take effect unless Spousal Consent is obtained.

2. If the Member's Eligible Spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the Member's life expectancy and payments under such distribution method will comply with Treasury Regulations under Code §401(a)(9).

3. Notwithstanding anything to the contrary in this Article IV, if a Member ceases to be an Eligible Employee for any reason and the Actuarial Equivalent present value of his vested Accrued Benefit on the date distributions commence (including the case in which his vested Accrued Benefit is \$0) is (a) equal to or less than \$1,000, or (b) greater than \$1,000 but less than or equal to \$5,000 and the Member consents in accordance with the provisions of this Article IV, the Plan Sponsor will pay, as soon as practicable, to the Member, his Eligible Spouse or his Beneficiary, as the case may be, the Actuarial Equivalent present value of his vested Accrued Benefit in a lump sum. No distribution may be made under the preceding sentence after the Member's Annuity Starting Date unless the Member and, if applicable, his Eligible Spouse, consent thereto in a manner which is comparable to the Spousal Consent requirements in this Article IV. In addition to and notwithstanding the foregoing, written consent of an Eligible Spouse will not be required if the Actuarial Equivalent present value of the Member's benefit payable in a lump sum, is \$5,000 or less. For purposes of this paragraph 3, the determination of whether the Actuarial Equivalent present value of the Member's vested Accrued Benefit is equal to or less than \$1,000, greater than \$1,000 but less than or equal to \$5,000 or less than \$5,000, will be made using as the interest assumption the lesser of (a) the interest rate specified in Section B of Article I or (b) the Applicable Interest Rate.

4. The amount of a lump sum payment will be calculated in accordance with the provisions of Code §417(e)(3). In no event will the amount of any benefit determined under this

paragraph 4 exceed the maximum benefit permitted under Code §415.

K. Distribution Notice.

1. The Plan Sponsor must provide the Member with a “general notice of distribution” no less than thirty and no more than ninety days (or, effective January 1, 2007, 180 days) before the Member’s Annuity Starting Date. Such notice must be in writing and must set forth the following information: (a) an explanation of the eligibility requirements for, the material features of, and the relative values of the alternate forms of benefits available under Sections G and I of this Article IV, and (b) the Member’s right to defer receipt of a Plan distribution under paragraphs 3 and 4 of this Section K. This general notice also must include (a) the terms and conditions of a Qualified Joint and Survivor Annuity; (b) the Member’s right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity; (c) the rights of the Member’s Eligible Spouse; and (d) the right to make, and the effect of, a revocation of an election to waive a Qualified Joint and Survivor Annuity. Such notice will be given to the Member in person, by mailing, by posting, or by placing it in an Employer publication which is distributed in such a manner as to be reasonably available to such Member. If the notice is posted, it must be posted at the location within the Member’s principal place of employment which is customarily used for Employer notices to Employees with regard to labor-management relation matters. If a terminated vested Member’s benefits do not commence at the Annuity Starting Date due to administrative delay or inability to locate the Member, payments retroactive to the Member’s Annuity Starting Date, accumulated with interest at the Plan’s actuarial equivalence rate of 5.5% per annum, will be made as soon as practicable after locating the Member. Notice under this Section K is not required if the present value of the Member’s vested Accrued Benefit is less than or equal to \$1,000.

2. Upon receipt of the general notice of distribution, a Member may consent in writing to receive a distribution of his vested Accrued Benefit to be distributed at the time and in the manner set forth in this Article IV. The Member's consent to receive such distribution prior to his Normal Retirement Age must be accompanied by the written consent of the Member's Eligible Spouse, if any, which is comparable to the Spousal Consent requirements in Section AY of Article I, unless the distribution is to be made in the form of a Qualified Joint and Survivor Annuity, a Qualified Optional Survivor Annuity or is less than \$5,000.

3. Subject to the maximum deferral requirements of paragraph 5 of this Section K, a Member may elect to defer receipt of a Plan distribution, provided that such election is in writing, describes the form of benefit payment, indicates the date the distribution is to commence, and is signed by the Member. To the extent not inconsistent with paragraph 4 of this Section K, in the event the Member does not elect to defer receipt of his distribution, payment of such Member's Accrued Benefit will begin not later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

- (a) The Member attains Normal Retirement Age;
- (b) Occurs the tenth anniversary of the year in which the Member entered the Plan; or
- (c) The Member terminates employment with all Employers.

For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Member's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90<sup>th</sup> day after the issuance of Treasury Regulations (unless future Internal Revenue Service guidance otherwise requires), the notice will include: (i) a description of how much larger benefits will be

if the commencement of distributions is deferred); and (ii) the portion of the summary plan description that contains any special rules that might affect materially a Member's decision to defer. For purposes of clause (i), the distribution notice may provide a description that includes the financial effect of deferring distributions, as described in Treasury Regulations §1.417(a)(3)-1(d)(2)(i), based solely on the normal form of benefit.

4. In the event the Member has terminated employment and the Member (and Eligible Spouse, if applicable) neither consents to receive a Plan distribution nor elects to defer receipt of a Plan distribution, the Actuarial Equivalent present value of the Member's vested Accrued Benefit will be distributed in the form of a Qualified Joint and Survivor Annuity upon the Member's Normal Retirement Date if the Actuarial Equivalent present value of such vested Accrued Benefit exceeds \$1,000. For purposes of this paragraph 4, the determination of whether the Actuarial Equivalent present value of the Member's vested Accrued Benefit is equal to or less than \$1,000 will be made using as the interest assumption the lesser of (a) the interest rate specified in Section B of Article I or (b) the Applicable Interest Rate. The Plan Sponsor may distribute a benefit in the form of a Qualified Joint and Survivor Annuity to the Member without his prior consent if such distribution is necessary to comply with Code §415 or 411(b).

5. Notwithstanding any contrary provision of the Plan, a Member's entire Accrued Benefit will be distributed, or begin to be distributed, no later than the Member's Required Beginning Date, in a form and at the time or times required under Code §401(a)(9) and Article XV.

6. Effective for Plan Years beginning on and after December 31, 2006, if the value of a Member's vested Accrued Benefit exceeds \$5,000, and is immediately distributable, the Member and his Eligible Spouse, or the survivor of them, must consent to any distribution of that

Accrued Benefit and any additional distributions made with respect to a particular distribution option that previously commenced under the Plan.

7. The Plan Sponsor will notify the Member and his Eligible Spouse of the right to defer a distribution until the Member's vested Accrued Benefit is no longer immediately distributable. The notice will include a general description of the material features, and an explanation of the relative values, of the optional form of benefit available under the Plan, in a manner that would satisfy the notice requirements of Code §417A)(3) and Treasury Regulations §1.417(a)-3, and also will include a description of how much larger the benefit would be if the distribution were deferred. The Plan Sponsor also will clearly inform the Member that (a) he has a right to a period of at least 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), (b) there are consequences for failing to defer receipt of a distribution, and (c) after receiving the 30-day notice, he must affirmatively elect a distribution.

L. Incidental Death Benefit. Notwithstanding the above and irrespective of any elections by the Member or Eligible Spouse, a Member may not elect to defer receipt of benefits to the extent such deferral, based on the Member's life expectancy, would result in the Member receiving less than 50% of his benefits prior to his death.

M. Direct Rollover of Eligible Rollover Distributions.

1. This Section M applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision of the Plan that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement plan specified by the distributee in a direct rollover.

2. Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: 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 §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.)

3. Distributee. A Distributee includes an Employee or former Employee, the Employee's or former Employee's Eligible Spouse or an alternate payee under a Qualified Domestic Relations Order.

4. Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

N. Special Adjustment for Members Eligible for a Retirement Benefit as of January 1, 1988.

1. Any Member or Eligible Spouse who, as of January 1, 1988, was receiving a monthly retirement benefit or death benefit will be entitled to receive benefit payments on or after January 1, 1988 equal to 200 percent of the amount he was receiving before January 1, 1988.

2. Any Member or Eligible Spouse who, as of January 1, 1988, was entitled to receive a monthly retirement benefit or death benefit will be entitled to receive benefit payments



equal to 200 percent of the benefit such Member or Eligible Spouse would have otherwise been entitled to receive as of December 31, 1987.

O. Non-Spouse Beneficiary Rollovers.

1. Direct Transfer. If any portion of a deceased Member's Accrued Benefit is payable to a designated Beneficiary who is not the Member's surviving Eligible Spouse, the Plan Sponsor may distribute such Accrued Benefit, at the request of such Beneficiary, in the form of a direct trustee-to-trustee transfer to an individual retirement plan described in Code §408(a) or an individual retirement annuity described in Code §408(b) (other than an endowment contract) on behalf of such Beneficiary. For purposes of this Section, such transfer will be treated as an inherited individual retirement account or annuity, within the meaning of Code §408(d)(3)(C), and will be subject to Code §401(a)(9)(B), other than clause (iv) of that Code Section.

2. Trusts. For purposes of this Section, to the extent provided in rules prescribed by the Secretary of the Treasury, a trust maintained for the benefit of one or more designated Beneficiaries will be treated in the same manner as a trust that is a designated Beneficiary for all other purposes of the Code and the Plan.

P. Administrative Feasibility. For purposes of this Article IV, all references to the timing of benefit payments will be presumed to mean as soon as administratively feasible.

Q. Payments to Authorized Persons.

1. Member's Incapacity. If a physician or psychiatrist satisfactory to the Plan Sponsor certifies in writing that a person entitled to receive a payment under this Plan has a legal disability or is incapacitated in any way so as to be unable to personally receive and give a valid receipt for any distribution or payment due him under this Plan, the Plan Sponsor may direct the Trustee to make the distribution to a duly court-appointed guardian for that person or any other

person authorized under state law to receive the benefits. Any distribution made under this subsection will be a complete discharge of any liability for making that payment under the provisions of this Plan.

2. Payments to Minors. If a Member's Beneficiary lacks capacity on account of age, the Plan Sponsor may direct the Trustee to make any payment to the Beneficiary's court-appointed guardian or any other person authorized under state law to receive the benefits.

## V. LIMITATIONS ON BENEFITS

A. Annual Benefit. For purposes of this Article, “annual benefit” means the benefit payable annually under the terms of the Plan (exclusive of any benefit not required to be considered for purposes of applying the limitations of Code §415 to the Plan) payable in the form of a straight life annuity with no ancillary benefits. If the benefit under the Plan is payable in any other form, the “annual benefit” will be adjusted to the Actuarial Equivalent of a straight life annuity.

B. Maximum Annual Benefit.

1. Limitations. Notwithstanding the foregoing and subject to the exceptions below, the maximum “annual benefit” payable to a Member under this Plan in any Plan Year will equal the lesser of: (i) \$160,000 payable as a straight life annuity or (ii) 100% of the Member’s Compensation averaged over the three consecutive Plan Years (or actual number of Plan Years for Employees who have been employed for less than three consecutive Plan Years) during which the Employee had the greatest aggregate Compensation from all Employers.

2. COLA Increases. The dollar limitation under Code §415(b)(1)(A) stated in subparagraph (1)(i), above, will be adjusted annually as provided in Code §415(d) in accordance with Treasury Regulations. The adjusted limitation is effective as of January 1<sup>st</sup> of each calendar year and is applicable to Plan Years ending with or within that calendar year.

3. Adjustments. The limitation stated in subparagraph (1)(ii), above, for a Member who had a Severance from Employment and has a nonforfeitable right to an Accrued Benefit will be adjusted automatically by multiplying such limitation by the cost-of-living adjustment factor prescribed by the Secretary of the Treasury under Code §415(d) in such manner as the Secretary

prescribes. The adjusted limitation will apply to Plan Years ending with or within the calendar year of the date of the adjustment.

4. Multiple Plans. For the purpose of this Article, all qualified defined benefit plans (whether or not terminated) ever maintained by any Employer will be treated as one defined benefit plan. If a Member currently participates, or ever has participated, in more than one defined benefit plan maintained by any Employer or Affiliated Employer, the sum of the Member's "annual benefits" from all such plans may not exceed the maximum "annual benefit" of this Section B. Where the Member's Employer-provided benefits under all defined benefit plans ever maintained by any Employer or Affiliated Employer (determined as of the same age) would exceed the maximum "annual benefit" applicable at that age, the Employer will reduce the rate of accrual in this Plan to the extent necessary so that the total "annual benefit" payable at any time under such plans will not exceed the maximum "annual benefit."

5. Compliance. Notwithstanding anything in this Article to the contrary, the limitations, adjustments and other requirements prescribed in this Article will at all times comply with the provisions of Code §415 and Treasury Regulations issued thereunder.

6. Benefit Increases. Benefit increases resulting from the increase in the limitations of Code §415(b) will be provided to all Members who have one Hour of Service on or after the first day of the first Plan Year ending after December 31, 2001.

7. Grandfather Provision. The application of the provisions of this Article V will not cause the maximum permissible benefit for any Member to be less than the Member's Accrued Benefit under all the defined benefit plans of all Employers or a predecessor employer as of the end of the last Plan 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, Treasury Regulations, and other published guidance relating to Code §415 in effect as of the end of the last Plan Year beginning before July 1, 2007, as described in Treasury Regulations §1.415(a)-1(g)(4).

8. Incorporation by reference. Notwithstanding any contrary provisions in the Plan, the limitations, adjustments, and other requirements prescribed in the Plan will comply with the provisions of Code §415 and final Treasury Regulations promulgated under that Section, the terms of which are specifically incorporated herein by reference as of the effective date of this Article V, except where an earlier effective date is otherwise provided in final Treasury Regulations or in this Amendment. However, where final Treasury Regulations permit the Plan to specify an alternative option to a default option set forth in Treasury Regulations, and the alternative option was available under statutory provisions, Treasury Regulations, and other published guidance relating to Code §415 as in effect prior to April 5, 2007, and the Plan provisions in effect as of April 5, 2007 incorporated the alternative option, such alternative option will remain in effect as a Plan provision for Plan Years beginning on or after July 1, 2007 unless another permissible option is selected in this Article V.

C. Maximum Permissible Benefit . The “maximum annual benefit” described at Section B of this Article will be adjusted, where required, as provided in paragraph 1 of this Section C and, if applicable, in paragraph 2 or 3 of this Section C.

1. Less Than 10 Years. If a Member has fewer than 10 years of participation in the Plan, the dollar limitation described at Section B of this Article V will be multiplied by a fraction, (a) the numerator of which is the number of years (or part thereof) of participation in the Plan and (b) the denominator of which is 10. In the case of a Member who has fewer than 10 Years of

Service with one or more Employers, the Compensation limitation will be multiplied by a fraction, (i) the numerator of which is the number of Years (or part thereof) of Service with one or more Employers and (ii) the denominator of which is 10. For purposes of this paragraph 1, “year of participation” means each accrual computation period for which the following conditions are met: (A) the Member is credited with at least the number of Hours of Service for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (B) the Member is included as a Member 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 Member will equal the amount of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of Code §415(c)(3)(C)(i) for an accrual computation period will receive a year of participation with respect to that period. In no event will more than one year of participation be credited for any 12-month period.

2. Prior to Age 62. If the benefit of a Member begins prior to age 62, the dollar limitation described at Section B of this Article V applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the Actuarial Equivalent of the dollar limitation applicable to the Member at age 62 (adjusted under paragraph 1 of this Section C, if required). The dollar limitation applicable at an age prior to age 62 is determined as the lesser of (a) the Actuarial Equivalent (at such age) of the dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section B of Article I and (b) the Actuarial Equivalent (at such age) of the dollar limitation computed using a 5% interest rate and the applicable mortality table as defined in Section B of Article I. For Plan Years beginning in 2004 and 2005, 5.5% will be substituted for 5% in the

preceding sentence. Any decrease in the dollar limitation determined in accordance with this paragraph 2 will not reflect a mortality decrease if benefits are not forfeited on the death of the Member. If any benefits are forfeited on death, the full mortality decrease is taken into account.

3. After Age 65. If the benefit of a Member begins after the Member attains age 65, the dollar limitation described at Section B of this Article V applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is the Actuarial Equivalent of the dollar limitation applicable to the Member at age 65 (adjusted under paragraph 1 of this Section C, if required). The Actuarial Equivalent of the dollar limitation applicable at an age after age 65 is determined as (a) the lesser of the Actuarial Equivalent (at such age) of the dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section B of Article I and (b) the Actuarial Equivalent (at such age) of the dollar limitation computed using a 5% interest rate assumption and the applicable mortality table as defined in Section B of Article I. For Plan Years beginning in 2004 and 2005, 5.5% will be substituted for 5% in the preceding sentence. For these purposes, mortality between age 65 and the age at which benefits commence will be ignored.

4. Special Rules. For purposes of this Article, no adjustments under Code §415(d) will be taken into account before the Plan Year for which such adjustment first takes effect.

5. Annuities. For purposes of this Article, no actuarial adjustment to the benefit is required for (a) the value of a Qualified Joint and Survivor Annuity, (b) benefits that are not directly related to retirement benefits (such as qualified disability benefits, pre-retirement death benefits, and post-retirement medical benefits), and (c) the value of post-retirement cost-of-living increases made in accordance with Code §415(d) and Treasury Regulations §1.415-3(c)(2)(iii). The “annual benefit” does not include any benefits attributable to Employee rollover

contributions, or the assets transferred from a qualified plan that was not maintained by an Employer.

D. Annual Benefit Not in Excess of \$10,000. This Plan may pay an “annual benefit” to any Member in excess of the Member’s maximum “annual benefit” if the “annual benefit” derived from Employer contributions under this Plan and all other defined benefit plans maintained by the Member’s Employer does not in the aggregate exceed \$10,000 for the Plan Year or for any prior Plan Year and the Member’s Employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in Code §419(A)(d)(3)), or an individual medical account in which the Member participated.

E. Benefit Forms Not Subject to the Present Value Rules of Code §417(e)(3).

1. Form of benefit. The straight life annuity that is actuarially equivalent to the Member’s form of benefit will be determined under this Section E, 1, if the form of the Member’s benefit is either:

(a) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or

(b) An annuity that decreases during the life of the Member merely because of:

(i) 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

(ii) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code §401(a)(11)).



2. Plan Years beginning before July 1, 2007. For Plan Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount:

(a) The interest rate and the mortality table specified in the Plan for adjusting benefits in the same form; and

(b) A 5% interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

3. Plan Years beginning on or after July 1, 2007. For Plan Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(a) The annual amount of the straight life annuity (if any) payable to the Member under the Plan beginning at the same annuity starting date as the Member's form of benefit; and

(b) The annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in the Plan for that annuity starting date.

F. Benefit Forms Subject to the Present Value Rules of Code §417(e)(3).

1. Form of benefit. The straight life annuity that is actuarially equivalent to the Member's form of benefit will be determined as indicated under this Section F, 1, if the form of the Member's benefit is other than a benefit form described in Section E, 1.

2. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Member's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(a) The annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using the interest rate and the mortality table specified in the Plan for adjusting benefits in the same form;

(b) The annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations §1.417(e)-1(d)(2); and

(c) The annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed for the distribution under Treasury Regulations §1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Treasury Regulations §1.417(e)-1(d)(2), divided by 1.05.

3. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the Member's form of benefit is in a Plan Year beginning in 2004 or 2005, except as provided in Section F, 4 of this Article V, if applicable, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity beginning at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a) The interest rate and the mortality table specified in the Plan for adjusting benefits in the same form: and

(b) A 5.5% interest rate assumption and the applicable mortality table for the distribution under Treasury Regulations §1.417(e)-1(d)(2).

4. Transition rule. If the annuity starting date of the Member's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, then the application of this Section will not cause the amount payable under the Member's form of benefit to be less than the benefit calculated under the Plan taking into account the limitations of this Article, except that for purposes of determining the actuarially equivalent straight life annuity, the applicable interest rate will be the applicable interest rate in effect as of the last day of the Plan Year beginning before January 1, 2004, under the provisions of the Plan then adopted and in effect.

5. Bifurcated Benefit Distributions. Notwithstanding any contrary provision in the Plan, in the event a Member receives payment partially in a lump sum and partially as an annuity as required under Article XVI, or, to the extent permitted by the Code and Treasury Regulations, for any other reason, the calculation of the lump sum and annuity portions will be made in accordance with the separate interest rates applicable to each payment method under the terms of the Plan, such that the Plan will treat each portion of a bifurcated benefit distribution as two separate optional forms of benefit.

**VI. VESTING OF EMPLOYER FUNDED BENEFITS**

A. Vesting.

1. A Member’s Accrued Benefit derived from Employer contributions will vest in accordance with this Article VI; provided, however, if the Member does not complete at least one Hour of Service on or after the first day of the Plan Year beginning on or after January 1, 1989, such Member will vest in his Accrued Benefit derived from Employer contributions pursuant to the vesting schedule(s) under the Plan which was in effect as of that date.

2. A Member’s total Accrued Benefit derived from Employer contributions will be 100% vested upon attainment of his Normal Retirement Age; if he terminates before attainment of his Normal Retirement Age, such Accrued Benefit will be partially or fully vested in accordance with paragraph 3 or 4 of this Section A, as applicable.

3. In the event this Plan is Top-Heavy, as described in Article XIV, then (except as provided in paragraph 1 of this Section A), a Member’s Accrued Benefit derived from Employer contributions will vest in accordance with the following schedule:

<b>Completed Years of Service</b>	<b>Vested Percentage</b>
Less than 2	0%
2	20%
3	40%
4	60%
5 or more	100%

4. Except as provided in paragraphs 1, 2 and 3 of this Section A, a Member’s Accrued Benefit derived from Employer contributions will vest in accordance with the following schedule:

<b>Completed Years of Service</b>	<b>Vested Percentage</b>
Less than 5	0%
5 or more	100%

5. In determining Years of Service under the Plan for purposes of calculating a Member's vested percentage under paragraphs 3 and 4 of this Section A, all of a Member's Years of Service with all Employers will be taken into account, except as provided in subsections (a) and (b) of this paragraph 5.

(a) If, at the time of a One-Year Break-in-Service, a Member does not have any vested right under paragraph 3 or 4 of this Section A, Years of Service before such One-Year Break-in-Service will not thereafter be taken into account if the number of consecutive One-Year Breaks in Service equals or exceeds either five (5) or the aggregate number of Years of Service completed before such Breaks in Service, whichever is greater;

(b) The aggregate number of Years of Service before such Breaks in Service will be deemed not to include any Years of Service not required to be taken into account hereunder by reason of any prior application of this paragraph 5.

6. Amounts vested pursuant to this Article will not be subject to Forfeiture for cause; provided, however, that if a Member is ordered or required to pay the Plan with respect to a judgment, order or decree issued, or settlement entered into, on or after August 5, 1997, that amount will be offset against his Accrued Benefit, notwithstanding Code §401(a)(13).

7. If an Employer withdraws from the Plan, service performed by Employees of such Employer after the date of withdrawal from the Plan will not be considered in determining such Employees' Years of Service for purposes of vesting under this Article VI. Such Employees will not continue to earn Years of Service for purposes of vesting in their Accrued Benefit under the Plan unless they are subsequently employed by another Employer.

8. A Member's non-vested Accrued Benefit will be forfeited on the earlier of

(a) distribution of the entire vested portion of his Accrued Benefit or (b) the last day of the Plan year in which such Member incurs five consecutive One-Year Breaks-in-Service. For purposes of clause (a), above, if the Member has a vested Accrued Benefit of zero, then such Member will be deemed to have received a distribution of his entire vested Accrued Benefit as of the date he terminated employment with the Employer.

9. If the vesting schedule of the Plan is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Member's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Member whose vesting percentage is determined under the new schedule and who has completed at least three Years of Service may elect to have his vested percentage determined without regard to that amendment. In addition, each Member whose vesting percentage is determined under the new schedule and who has completed less than three Years of Service may elect to have his vested percentage determined without regard to that amendment with respect to the portion of his Accrued Benefit in which he had vested prior to the amendment. Any such election must satisfy Code §411(a)(10) and the following conditions:

- (a) It may be made only by the Member;
- (b) It must be irrevocable; and
- (c) It must be made within 60 days following the latest of (i) the day the amendment was adopted, (ii) the day the amendment became effective, or (iii) the day the Member is issued written notice of the Plan amendment by the Employer. No amendment will cause a loss of vested interest or Accrued Benefits.

B. Termination of Employment. Upon termination of employment with all Employers, a Member will be entitled to receive a benefit equal to the product of his Accrued

Benefit multiplied by his vested percentage as determined hereunder. This amount will be subject to distribution in accordance with the provisions of Article IV.

C. Rehired Members. Notwithstanding anything to the contrary contained in this Article VI, a Member's Accrued Benefit will be offset by the Actuarial Equivalent of the amount of any distribution he has previously received from the Plan.

## **VII. LOANS TO MEMBERS**

No loans to Members will be made under this Plan from the assets of the Trust.



## VIII. BENEFICIARIES

A. Designation. A Member or former Member who does not have an Eligible Spouse will have the right to designate, on forms provided by the Employer, any one or more of the Member's child or children, including adopted children, to receive the benefits herein in the event of such Member's death and to revoke such designation or to substitute another child or children, including adopted children, at any time; provided, however, that any such designation will become void and invalid if the Member has an Eligible Spouse on his Annuity Starting Date.

B. Absence of Valid Designation of Beneficiary. If, upon the death of a Member, former Member or Beneficiary before benefits begin, there is neither a surviving Eligible Spouse nor a valid designation of Beneficiary, in accordance with Section A of this Article VIII, on file with the Plan Sponsor, then no benefits will be payable on behalf of such Member.

C. Final Decision. The determination of the Plan Sponsor as to which persons, if any, qualify as a Beneficiary will be final and conclusive upon all persons under the Plan.

D. Proof of Death. The Plan Sponsor may require such proper proof of death and such evidence of the right of any person to receive the death benefit payable as a result of the death of a Member as the Plan Sponsor may deem desirable. The Plan Sponsor's determination of death and the right of any person to receive payment will be made in its sole and absolute discretion and will be conclusive and binding on all persons under the Plan.

**IX. MEMBER'S CONTRIBUTIONS AND SPECIAL ACCOUNTS**

A. Employer Contributions. All contributions must be made by the Employers.

B. Member's Contributions. Individual Members may not make contributions to this

Plan.

## **X. ESTABLISHMENT OF TRUST**

A. Trust Agreement. Contributions made by Employers pursuant to Article III, and all other assets of this Plan will be held in trust under a Trust Agreement. The Plan Sponsor will enter into a Trust Agreement with the Trustee for the administration of the Trust which will contain the assets of the Plan. The Trustee will not be responsible for the administration of this Plan but only for the Trust established pursuant to this Plan.

B. Trust Agreement Part of Plan. The Trust Agreement will be deemed to be a part of this Plan, and any rights or benefits accruing to any person under this Plan will be subject to all of the relevant terms and provisions of the Trust Agreement, including any amendments. In addition to the powers of the Trustee set forth in the Trust Agreement, the Trustee will have any powers, express or implied, granted to it under the Plan. In the event of any conflict between the provisions of the Trust Agreement and the provisions of the Plan, the provisions of the Plan will control, except for the duties and responsibilities of the Trustee, in which case the Trust Agreement will control.

## **XI. PLAN FIDUCIARIES AND ADMINISTRATION**

A. Named Fiduciaries. The authority to control and manage the operation and administration of the Plan is vested in the named fiduciaries specified herein.

1. Limited Liability. The Board of Directors, the Plan Sponsor and the Committee will each be a “named fiduciary” within the meaning of ERISA §402. However, each named fiduciary will be responsible solely for the tasks allocated to it. No fiduciary will have any liability for a breach of fiduciary responsibility of another fiduciary with respect to the Plan and Trust, unless it participates knowingly in the breach, has actual knowledge of the breach and fails to take reasonable remedial action to remedy said breach, or, through its negligence in performing its own specific fiduciary responsibilities, which give rise to its status as a fiduciary, it has caused another fiduciary to commit a breach of fiduciary responsibility.

2. Discretionary Authority. All named fiduciaries and those to whom they have delegated some or all of their authority will have vested in them under the terms of this Plan full discretionary and final authority when exercising their duties hereunder, including the power in their sole and absolute discretion to make factual findings and interpret and construe the provisions of the Plan, including but not limited to, interpretation of a scrivener’s error, to supply omissions in the Plan and transaction of its business, including, but not limited to, determining who are Participants, what constitutes Years of Service and Compensation and how benefits are determined. In the event the Committee determines that there has been a scrivener’s error, it will take appropriate action (i) in accordance with applicable provisions of IRS Revenue Procedure 2008-50 (“EPCRS”), as amended or superseded, or (ii) by reformation, with court approval if necessary, as appropriate equitable relief under ERISA. All these interpretive and administrative decisions, and rules and regulations, will be binding on all persons having an interest in the Plan.

B. Fiduciary Standard. Each named fiduciary and every other fiduciary under the Plan will discharge its or his duties with respect to the Plan solely in the interests of the Members and Beneficiaries:

1. For the exclusive purpose of providing benefits to Members and their Beneficiaries and defraying reasonable expenses of administering the Plan;

2. With the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

3. In accordance with the documents and instruments governing the Plan, insofar as these are consistent with the provisions of Title I of ERISA.

C. Multiple Duties and Advisors. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan. A named fiduciary, or a fiduciary designated by a named fiduciary in accordance with the terms of the Plan, may employ one or more persons to render advice with regard to any responsibilities such fiduciary has under the Plan.

D. Allocation and Delegation of Fiduciary Duties. Each named fiduciary may allocate its fiduciary duties among its members or may delegate its responsibilities to persons who are not named fiduciaries with respect to the specific responsibility delegated. Any such allocation or delegation will be in writing and will be made a permanent part of the records of the named fiduciary. Such allocation or delegation will be reviewed periodically by the named fiduciary and will be terminable upon such notice as the named fiduciary, in its sole discretion, deems reasonable and prudent under the circumstances. An action by the Board or the Plan

Sponsor allocating or delegating its named fiduciary responsibilities will be evidenced by a duly adopted resolution of the Board.

E. Indemnification. Each Employer will indemnify and hold harmless the Plan's named fiduciaries, any officers and employees of the Plan Sponsor and members of the Board and the Committee to which fiduciary responsibilities have been delegated, from and against any and all liabilities, claims, demands, costs and expenses, including attorneys' fees, which may arise out of an alleged breach in the performance of their fiduciary duties under the Plan and under ERISA, other than such liabilities, claims, demands, costs and expenses as may result from the gross negligence or willful misconduct of such persons. The Plan Sponsor will have the right, but not the obligation, to conduct the defense of such persons in any proceeding to which this Section applies. An Employer may satisfy its obligation under this Section, in whole or in part, through the purchase of a policy or policies of insurance; however, no insurer will have any rights against the Employer arising out of this Section.

F. Costs and Expenses. The reasonable costs and expenses incurred by the named fiduciaries on behalf of the Plan will be paid by the Plan Sponsor to the extent not paid from Plan assets. The Plan Sponsor may in turn charge to an Employer such expenses advanced by it on behalf of that Employer.

G. Board of Directors. The Board is the named fiduciary responsible for the amendment and termination of the Plan and Trust. In addition, the Board will appoint and replace the members of the Committee as required.

H. Plan Sponsor. The Plan Sponsor is the named fiduciary with the discretion, the power and the duty to (a) interpret and apply the terms of the Plan, (b) formulate rules and

regulations necessary to administer the Plan in accordance with its terms, and (c) finally review claims under the claims review procedure of the Plan.

I. Plan Administrator. The Committee will be the Plan Administrator of the Plan for purposes of ERISA §3(16) and Code §414(g), with the discretion to (a) establish and execute the funding policy of the Plan, (b) approve the investment of Plan assets, and (c) annually review the funding policy and method.

1. The Committee will consist of two or more persons and will have as its officers a chairman who will be a member of the Committee, a secretary who may be, but need not be, a member of the Committee, and such other officers as may be appointed by the Board. The members of the Committee and its officers will be appointed by and hold office at the pleasure of the Board and will serve as such without compensation.

2. The Committee will keep minutes of its meetings and proceedings. Every decision made or action taken by a majority of the members then in office will constitute a decision or action of the Committee, and will be final, conclusive and binding upon all persons affected. A Committee decision or action, under or in connection with the Plan, may be made or taken either at a meeting held pursuant to its rules, at which a majority of the members then in office are present and vote in favor thereof, or without a meeting if approved and evidenced by a writing signed by a majority of the members then in office. No Committee member will vote on any question relating solely to himself.

J. Claims Procedures. All questions and claims regarding benefits under the Plan must be directed in writing to the Plan Sponsor. The Plan Sponsor will decide all claims in accordance with the claims procedures described below and, where appropriate, apply Plan provisions consistently with respect to similarly situated Members, former Members or

Beneficiaries, as applicable (“Claimants”). If a Member’s claim for benefits under the Plan is denied or ignored, in whole or in part, or if a Member otherwise has a right under ERISA to file a lawsuit in a state or federal court, such lawsuit will be valid with respect to, and in connection with, the Plan and the Plan’s fiduciaries, only if filed within one year following the date on which the Member knew or should have known of the existence of such a claim.

An authorized representative of the Claimant may act on behalf of that Claimant in pursuing a benefit claim or appealing such a claim. The Plan Sponsor may request, at its discretion, written confirmation from the Claimant that such an individual is his or her authorized representative.

1. The following rules in paragraphs (a) through (g) apply to all claims other than those relating to Disability.

(a) Initial Benefit Determination. After a claim has been filed, the Plan Sponsor will reach an initial decision within 90 days. In special cases requiring more than 90 days, the Plan Sponsor will notify a Claimant of the delay, in writing, before the end of the initial 90-day period, explaining the reason for the delay and giving the approximate date that the Plan Sponsor is expected to reach a decision. After giving notice, the Plan Sponsor may take up to another 90 days to make a decision on any claim. If the time period is extended due to the Claimant’s failure to submit necessary information, the time period will be tolled from the date the Plan Sponsor informs the Claimant of the need for additional information to the date the Claimant responds to the request for, and the Plan Sponsor receives, the additional information.

(b) Denial of Initial Claim. The Plan Sponsor will notify the Claimant of its decision in writing or in electronic form. If the Plan Sponsor’s decision is adverse to the



Claimant, the notice will contain (i) the specific reasons for the denial, (ii) the Plan provisions on which the Plan Sponsor based its decision, (iii) a description of any additional material or information necessary for the Claimant to complete the claim and an explanation of why such material or information is necessary, (iv) a description of the Plan's review procedures and time limits and (v) a statement of the Claimant's right to bring a civil action under ERISA §502(a) following an adverse benefit determination on appeal.

(c) Appeal of Benefit Determination. A Claimant may make a written request for a review of any denial of benefits within 60 days following an adverse benefit determination. Once a review is requested, the Plan Sponsor has 60 days to arrange a hearing and reach a decision. The Plan Sponsor may extend this 60-day period for another 60 days by following the procedures for obtaining an extension described in paragraph (a), above.

On appeal, a Claimant will be given, on request and free of charge, access to and copies of all documents and papers relevant to his claim and will be allowed to submit written comments, documents, records and other information to the Plan Sponsor. The review will take into account all comments, documents, records and other information submitted by the Claimant regarding the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Notice of Denial of Benefit Determination On Appeal. The Plan Sponsor will notify the Claimant of its decision on review in writing or in electronic form. If the Plan Sponsor's decision is adverse to the Claimant, the notice will contain the information required in subparagraphs (i), (ii) and (v) of paragraph (b) of this Section J,

and a statement that the Claimant is entitled to receive, on request and free of charge, access to and copies of all documents and papers relevant to his claim.

(e) Notice of Benefit Determination in Electronic Form. An electronic notice of a benefit determination may be sent only to Claimants who have the ability to access electronic mail at their worksite and to print documents sent in electronic form. The notice must be sent with an electronic return receipt requested and inform the Claimant of the significance of the notice and any attached documents. The Plan Sponsor must furnish, on request of the Claimant, any document delivered in electronic form.

(f) Verification. The Plan Sponsor will perform periodic claims audits to verify that its determinations are made in accordance with these procedures and in a manner intended to protect the privacy of Plan Members. The Plan Sponsor also will maintain all documents relevant to its claims audits.

2. The following special rules at paragraphs (a) through (e) of this subsection 2 apply solely to claims involving disability determinations.

(a) Initial Benefit Determination. Instead of the 90 day period referred to at 1(a), above, a disability benefit determination will be made within 45 days after the claim has been filed with the Plan Sponsor. In special cases requiring more than 45 days, the Plan Sponsor may take up to an additional two 30 day periods subject to the same requirements described at 1(a), above. In addition, the notice of extension will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues. The Claimant will then be given at least 45 days within which to provide the specified information.

(b) Denial of Initial Claim. In addition to the procedures described at 1(b), above, if an internal rule, guideline, protocol or other similar condition (referred to as “Rule”) was relied on in making the adverse determination, either the specific Rule itself or a statement that such Rule was relied on will be provided without charge to the Claimant on request.

(c) Appeal of Benefit Determination. Instead of the 60 day period described at 1(c), above, a Claimant will have up to 180 days to request a review of any denial of benefits.

Once a review is requested, the rules described at 1(c), above regarding the Plan Sponsor’s time limits for implementing the appeal process will apply except that 45 day periods will be substituted for the 60 day periods.

(d) Additional Rights. A Member and the Plan may have other voluntary alternative dispute resolution options, such as mediation, in which case they may contact the local U.S. Department of Labor Office and the California state insurance regulatory agency.

## **XII. AMENDMENT AND TERMINATION**

A. Amendment. To provide for contingencies which may require or make advisable the clarification, modification or amendment of this Plan, the Board reserves the right to amend this Plan (and such right is delegated to the Board by all Employers), at any time and from time to time, in whole or in part, by adopting such amendment in writing. Such power to amend includes the right, without limitation, to make retroactive amendments referred to in Code §401(b). However, no amendment of the Plan will (1) alter, change or modify the duties, powers or liabilities of the Trustee or an investment manager appointed pursuant to the Trust Agreement without its written consent, or (2) permit any assets of the Trust to be used to pay premiums or contributions of the Employer under any other plan maintained by the Employer for the benefit of its employees. No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) will be effective to the extent that it has the effect of decreasing a Member's Accrued Benefit. For purposes of this paragraph, a Plan amendment that has the effect of (a) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (b) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment will be treated as reducing Accrued Benefits. In the case of a retirement-type subsidy, the preceding sentence will apply only with respect to a Member who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Member's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code §412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code §412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Treasury Regulations §§1.411(d)-3 and 1.411(d)-4. For purposes of this

Section, a retirement-type subsidy is the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the Accrued Benefit beginning at Normal Retirement Age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit begins.

B. Termination. Although the Plan Sponsor has established, and each Employer has adopted, the Plan with the bona fide intention and expectation that the Plan will continue indefinitely and each Employer will be able to make contributions indefinitely, except as otherwise provided in Section C of this Article XII, an Employer is not, and will not be, under any obligation or liability whatsoever to continue its contributions or to maintain the Plan for any given length of time. In its sole and absolute discretion, the Plan Sponsor may terminate the Plan, in accordance with the provisions of the Plan, at any time with no liability whatsoever for such discontinuance or termination in accordance with the applicable Sections of ERISA. If the Plan is terminated or partially terminated, the rights of all affected Members in their Accrued Benefits will thereupon become nonforfeitable, notwithstanding any other provisions of the Plan. However, the Trust will continue until all benefits have been distributed in accordance with the Plan.

A determination regarding whether a partial termination of the Plan has occurred, as described in Code §411(d)(3), will depend on all the facts and circumstances, including the extent to which Members or former Members have experienced an involuntary termination from employment; provided, however, that if at least 20% of Members and former Members have experienced an involuntary termination of employment, there will be a presumption that a partial termination of the Plan has occurred.

C. Withdrawal Liability. Effective July 1, 2008, in the event any Employer withdraws from the Plan, regardless of whether such Employer is a “substantial employer,” as that term is defined in §4063 of ERISA, such Employer will be liable to the Plan for that Employer’s proportionate share of the Plan’s unfunded liability determined (a) as of the date of withdrawal, (b) on a “termination basis,” as set forth in applicable Sections of ERISA, and (c) by the Enrolled Actuary in accordance with generally accepted accounting principles; provided, however, the withdrawal liability for any “substantial employer” will be the greater of the liability determined under this Section C or such amount determined by the Pension Benefit Guaranty Corporation (“PBGC”). In addition, effective for Plan Years beginning on and after January 1, 2012, in the event of a significant reduction in contributions to the Plan by any Employer due to, among other things a reduction in the number of Employees employed by that Employer, the Board may impose, in its sole and absolute discretion and for the exclusive benefit of all Plan Members and Beneficiaries, withdrawal liability on such Employer. The determination of what constitutes a significant reduction and the manner of calculating such partial withdrawal liability will be made by the Board, with the assistance of the Enrolled Actuary, and will be binding on all affected persons under the Plan.

D. Nonreversion.

1. Except as provided in Section F of Article III and this Section D, the assets of the Plan will never inure to the benefit of the Employers but will be held for the exclusive purpose of providing benefits to Members and their Beneficiaries and for defraying the reasonable administrative expenses of the Plan.

2. In the case of the termination of the Plan, any residual assets of the Plan will be distributed to one or more Employers at the direction of the Board (or at the direction of a trustee

appointed upon the application of the PBGC) if all liabilities of the Plan to Members and their Beneficiaries have been satisfied and the distribution does not contravene any provision of law. The certificate of an Enrolled Actuary engaged by the Board pursuant to ERISA stating that there are residual assets of the Plan remaining in the Trust Fund after all liabilities of the Plan to Members and their Beneficiaries have been satisfied will be conclusive evidence of this fact; but in its discretion, the Trustee may require other and additional evidence of the existence and amount of residual assets. Notwithstanding the foregoing, any Employer that receives residual assets may elect to reallocate some or all of those residual assets to its Employees who are Members as of the date of termination of the Plan, such allocation to be made in a nondiscriminatory manner. Said election will be in writing and will be made prior to receipt of a determination by the Internal Revenue Service of the Plan's qualified status resulting from the termination.

3. The Board will have no right to modify or amend the Plan retroactively in such manner as to reduce the benefits of any Member, former Member, or Beneficiary by reason of contributions made by an Employer prior to the modification or amendment, except to the extent that such reduction is permitted by ERISA or the Code.

E. Limitation on Early Termination.

1. Applicability. On the happening of any event described in subsection 2 of this Section E, the use of Employer contributions under this Plan for certain highly-paid Employees will be limited under subsection 3 of this Section E. For these purposes, "highly-paid Employee" will mean each Employee who is one of the 25 highest paid Employees, determined separately for each Employer, as of the date the Plan was established ("Initial Effective Date") or as of the date of any Plan amendment which substantially increases benefits in the event of the

subsequent termination of the Plan or the subsequent discontinuance of contributions to the Plan (“Amendment Date”), and whose anticipated annual retirement benefit exceeds \$1,500.

2. Events. The restrictions described in subsection 3 of this Section E apply on the occurrence of the following events:

(a) The Plan is terminated within ten years after the Initial Effective Date;

(b) The benefits of a highly-paid Employee become payable within ten years after the Initial Effective Date; or

(c) The benefits of a highly-paid Employee become payable within ten years after the Initial Effective Date and the full current costs of the Plan for the first ten years have not been funded. However, this subparagraph (c) will not apply to a defined benefit plan subject to Code §412, without regard to Code §412(h)(2).

If subparagraph (b) of this subsection 2 applies, the limitations will remain in effect until the later of ten years after the Initial Effective Date or the date on which the full current costs have been funded. If subparagraph (a) or (c) of this subsection 2 applies, the limitation will continue until the full current costs have been funded.

3. Limitations. On the happening of an event described in subsection 2 of this Section E, Employer contributions used for the benefit of a highly-paid Employee described in subsection 1 of this Section E will not exceed the greater of:

(a) \$20,000;

(b) 20% of the first \$50,000 of that Employee’s Compensation multiplied by the number of years between the Initial Effective Date and: (i) if 2(a) applies, the date the Plan is terminated; (ii) if 2(b) applies, the date the benefits become payable; or (iii) if 2(c) applies, the date of the failure to meet the full current costs; or



(c) The Employer's contributions (or funds attributable thereto) that would have been applied to provide benefits for that Employee under the above restrictions if:

(i) The Employer contributions are applied either (A) to provide level amounts of annuity in the basic form of benefit under the Plan for that Member at retirement (or, if he has already retired, beginning immediately), or (B) to provide level amounts of annuity in an optional form of benefit under the Plan if a level amount of annuity under that optional form of benefit is not greater than the level amount of annuity under the basic form of benefit under the Plan;

(ii) That annuity is supplemented, to the extent necessary to provide the full retirement income benefits in the basic form provided under the Plan, by current payments to that Employee as those benefits come due; and

(iii) Those supplemental payments are made only if the full current costs of the Plan have then been met, or the aggregate of those supplemental payments for all those Employees does not exceed the aggregate Employer contributions already made under the Plan in the current year.

However, if the full current costs have not been met on the date described in paragraph (i) or (ii) of subsection 3(b) of this Section E, whichever applies, then the date of the failure to meet the full current costs will be substituted for the date referred to in paragraph (i) or (ii) of subsection 3(b) of this Section E. For purposes of determining the contributions which may be used for the benefit of an employee when paragraph (ii) of subsection 3(b) of this Section E applies, the number of years taken into account may be recomputed for each year if the full current costs of the Plan are met for each year.

4. Amendment of Plan. If the Plan is amended so as to increase the benefit actually payable in the event of the subsequent termination of the Plan or the subsequent discontinuance of contributions to the Plan, then the provisions of subsections 2 and 3 of this Section E will be applied to the Plan as if it were a new plan established on the Amendment Date. The original group of highly-paid Employees described in subsection 1 of this Section E will continue to have the limitations in subsection 3 of this Section E apply as if the Plan had not been changed. The limitations in subsection 3 of this Section E relating to the amendment will apply to benefits or funds for each member of the original group of highly-paid Employees on the Amendment Date, but need not apply to any of the original highly-paid Employees whose normal annual pension or annuity provided by Employer contributions prior to the Amendment Date and during the ensuing ten years, based on his rate of Compensation on that date, could not exceed \$1,500.

5. Limitations Effective on Amendment of Plan. The Employer contributions which may be used for the benefit of the new group of 25 highly-paid Employees, after the Amendment Date will be limited to the greater of:

- (a) The Employer contributions (or funds attributable to Employer contributions) that would have been applied to provide benefits for the highly-paid Employee if the Plan had not been amended;
- (b) \$20,000; or
- (c) The sum of (i) the Employer contributions (or funds attributable to Employer contributions) that would have been applied to provide benefits for the new highly-paid Employees under the Plan if it had been terminated on the day before the Amendment Date and (ii) an amount computed by multiplying the number of years for

which the current costs of the Plan after the Amendment Date are met by (A) 20% of his annual Compensation or (B) \$10,000, whichever is less.

6. Alternative Limitations. Notwithstanding the limitations described in subsections 3 and 5 of this Section E, the following limitations will apply if they would result in a greater amount of Employer contributions to be used for the benefit of the highly-paid Employee:

(a) In the case of a highly-paid Employee who is a substantial owner (as defined in §4022(b)(5) of ERISA), (i) a dollar amount which equals the present value of the benefit guaranteed for that Employee under §4022 of ERISA or, (ii) if the Plan has not terminated, the present value of the benefit that would be guaranteed on the date the benefit commences, determined in accordance with regulations of the Pension Benefit Guaranty Corporation (“PBGC”); and

(b) In the case of a highly-paid Employee who is not a substantial owner, a dollar amount that equals the present value of the maximum benefit described in §4022(b)(3)(B) of ERISA (determined in the earlier of the date the Plan terminates or the date benefits commences, and determined in accordance with PBGC regulations) without regard to any other limitations in §4022 of ERISA.

7. Present Value. If, as of the date the Plan terminates, the value of Plan assets is not less than the present value of all Accrued Benefits (whether or not nonforfeitable), distributions of assets to each Member equal to the present value of that Member’s Accrued Benefit will not be discriminatory if the formula for computing benefits as of the date of termination is not discriminatory. All present values and the value of Plan assets will be computed using assumptions satisfying §4044 of ERISA. The amount by which the value of Plan assets exceeds

the present value of Accrued Benefits (whether or not nonforfeitable) will revert to the Employers, if and as determined by the Board.

8. Depository. Notwithstanding the limitations described above, a Member's benefit may be distributed in full upon depositing with an acceptable depository property having a fair market value equal to 125% of the amount that would be repayable had the Plan terminated on the date of the distribution. If the market value of the property held by the depository falls below 110% of the amount which would be repayable if the Plan were then to terminate, additional property necessary to bring the value of the property held by the depository up to 125% will be deposited.

9. Duration of Limitations. The limitations of this Section E will automatically be of no effect if and when an administrative determination by the Internal Revenue Service provides that they are not required.

10. Missing Members. In the event of a complete termination of the Plan, the Plan Sponsor will take reasonable steps to locate any Member who cannot be found, including (a) giving notice by certified mail to the Member's last known mailing address, and, if such address is not available or is incorrect, checking related Plan records, such as a group health plan or other plan that may have more up to date information; (b) checking with a designated Plan Beneficiary for updated information; (c) using a letter forwarding service provided by the Internal Revenue Service or Social Security Administration; or (d) using Internet search tools, commercial locator services and credit reporting agencies. Depending on the facts and circumstances relating to a particular missing Member, the Plan Sponsor will determine, in its sole and absolute discretion, which and how many of the above options to use, taking into account the size of the Member's Accrued Benefit in relation to the cost of the services and

whether the use of such services is appropriate. In the event a Member, after taking the appropriate steps, cannot be located, the Plan Sponsor will distribute the assets into an individual retirement account or annuity in accordance with the safe harbor for Plan fiduciaries set forth in ERISA §404(a), Code §401(a)(31) and IRS Rev. Rul. 2000-36. If no IRA is willing to accept such assets, the Plan Sponsor will establish an interest bearing federally insured bank account in the name of the missing Member or transfer the value of his Accrued Benefit to a state unclaimed property fund. The above procedures will comply with DOL Field Assistance Bulletin 2004-2, as amended or superseded.

### **XIII. MISCELLANEOUS**

A. Limitation of Rights; Employment Relationship. Neither the establishment of the Plan and the Trust, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to any Member or other person any legal or equitable right against the Plan Sponsor, any Employer or the Trustee except as provided herein; and in no event will the terms of employment of any Employee or Member, express or implied, be modified or in any way be affected hereby.

B. Transfer of Assets of Employer; Transfer of Assets of Plan.

1. If the Employer merges or consolidates with or into a corporation, or if substantially all of the assets of the Employer are transferred to another business, participation by such Employer in the Plan will terminate on the effective date of such merger, consolidation or transfer. However, if the surviving corporation resulting from such merger or consolidation, or the business to which the Employer's assets have been transferred, adopts this Plan, such Employer will continue as a Participating Employer and such corporation or business will succeed to all rights, powers and duties of the predecessor employer hereunder. The employment of any Employee who continues in the employ of such successor corporation or business will not be deemed to have been terminated for any purpose hereunder.

2. In no event will this Plan be merged or consolidated with any other plan, nor will there be any transfer of assets or liabilities from this Plan to any other plan, unless immediately after such merger, consolidation or transfer, each Member's benefits, if such other plan were then to terminate, are at least equal to or greater than the benefits to which the Member would have been entitled, had this Plan been terminated immediately before such merger, consolidation,

or transfer. In addition, if another qualified plan merges or consolidates with this Plan, notwithstanding any other provision of the Plan to the contrary, the forms of payment and other provisions that were available with respect to benefits accrued immediately prior to the transfer or merger under such other qualified plan and that may not be eliminated under Code §411(d)(6) will continue to be available under this Plan with respect to the benefit that any Member would have received immediately prior to such merger, consolidation or transfer of assets or liabilities.

C. Spendthrift Provision. Neither the Employer nor the Trustee will recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Member or Beneficiary of all or any part of his interest hereunder, except a transfer pursuant to a Qualified Domestic Relations Order. Such interest will not otherwise be subject in any manner to transfer by operation of law. Such interest will be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishments and/or executions and other legal or equitable processes or proceedings against such Member or Beneficiary to the fullest extent permitted by law.

D. Applicable Law; Severability. The Plan hereby created will be construed, administered and governed in all respects in accordance with ERISA and, to the extent not preempted by ERISA, the laws of the State of California; provided, however, that if any provision of this Plan is susceptible of more than one interpretation, such interpretation will be given thereto as is consistent with the Plan being a qualified employees' pension plan under the provisions for qualification set forth in the Code. If any provision of this Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue in full force and effect.

E. Incorporation of Trust Agreement Provisions. The relevant provisions of the Trust Agreement regarding: (a) the exclusive benefit of Employees and their Beneficiaries, (b) amendment, (c) termination, (d) other employers, (e) California law, (f) headings, gender and number, and (g) nonalienation are hereby incorporated into this Plan and are equally applicable to the Plan and to the Trust, which Plan and Trust together will constitute the entire Plan as defined in the Code.

F. Nonliability. Any payment to any Member, or to his legal representative or Beneficiary, in accordance with the provisions of the Plan, will to the extent thereof be in full satisfaction of all claims hereunder against the Trustee, the Plan Sponsor, the Committee and any Employer, any of whom may require such Member, legal representative or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefore in such form as will be determined by the Trustee, the Plan Sponsor, the Committee or the Employer, as the case may be. Neither the Plan Sponsor nor any Employer guarantees the Trust, the Members, former Members or their Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. All benefits payable hereunder will be paid or provided for solely from the Trust, and the Plan Sponsor and the Employer do not assume any liability or responsibility therefore, except or to the extent otherwise permitted or required by the Plan, the Code or ERISA.

G. Missing Persons. If a former Member, or Beneficiary, as applicable, to whom a benefit is payable under the Plan cannot be located, the Plan Sponsor will direct the Trustee to forfeit that benefit within a reasonable period following the Plan Sponsor's final determination that the former Member, or beneficiary, as applicable, cannot be found, such reasonable period to



be determined in the sole and absolute discretion of the Plan Sponsor, based on all the relevant facts and circumstances; provided, however, that the following conditions are met:

1. Forfeited benefits will be reinstated if a claim subsequently is made by that Member, or his Beneficiary, for the forfeited benefit;
2. If the Plan is terminated, undistributed benefits of any missing Member will be distributed in accordance with Section E, 10 of Article XII; and
3. All good faith efforts to locate such former Member and his Beneficiary, if applicable, have failed.

H. Counterparts. This Plan may be executed in several counterparts, each of which will be deemed to be an original, and said counterparts will constitute but one and the same instrument, which instrument may be sufficiently evidenced by one counterpart.

I. Veterans' Benefits. Notwithstanding any contrary provision of the Plan, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code §414(u).

J. Benefit Offsets for Overpayments. If a Member or Beneficiary receives benefits hereunder for any period in excess of the amount of benefits to which he was entitled under the terms of the Plan as in effect for such period, such overpayment will be offset against current or future benefit payments, as applicable, until such time as the overpayment is entirely recouped by the Plan.

K. Heart Act Provisions.

1. Death Benefits. In case of a death occurring on or after January 1, 2007, if a Member dies while performing qualified military service, as defined in Code §414(u), the survivors of the Member are entitled to any additional benefits, other than benefit accruals

relating to the period of qualified military service, that would have been provided under the Plan had the Member resumed and then terminated employment on account of death.

2. Differential Wage Payments. For Plan Years beginning after December 31, 2008, (a) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), will be treated as an employee of the Employer making the payment, (b) the differential wage payment will be treated as Compensation for purposes of applying applicable sections of the Code, including Code §415, but not for purposes of determining contributions and benefits under the Plan, and (c) the Plan will not be treated as failing to satisfy Code §414(s) by reason of the exclusion of differential wage payments from Compensation for purposes of determining benefits and contributions under the Plan.

#### **XIV. TOP-HEAVY PLAN PROVISIONS**

##### **A. Application.**

1. **Priority Over Other Plan Provisions.** If in any Plan Year the Plan is or becomes a “top-heavy plan,” as that term is defined in Code §416(g), taking into account amendments of Code §416 and any other applicable provisions of law, the provisions of this Article will supersede any conflicting provisions of the Plan. However, the provisions of this Article will not operate to increase the rights or benefits of Members under the Plan except to the extent required by Code §416 and other provisions of law and Treasury Regulations applicable to “top-heavy” plans.

2. **Top-Heavy Plan.** For any Plan Year, the Plan is a top-heavy plan if any of the following conditions exist:

(a) If the top-heavy ratio for the Plan exceeds 60% and the Plan is not part of any required aggregation group of qualified plans, or permissive aggregation group of qualified plans;

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

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

##### **B. Definitions.**

1. **Determination Period.** The determination period is the Plan Year containing the determination date and the immediately preceding Plan Year.

2. Determination Date. The determination date for any Plan Year after the first Plan Year is the last day of the preceding Plan Year.

3. Top-Heavy Valuation Date. The top-heavy valuation date will be the Valuation Date.

4. Present Value. Present value means the value of Accrued Benefits as of the determination date based on the interest rate and mortality table specified in Article I.

5. Permissive Aggregation Group of Qualified Plans. A permissive aggregation group of qualified plans consists of the required aggregation group of qualified plans plus any other qualified plan or plans of the Employer or any Affiliated Employer, which when considered as a group with the required aggregation group of qualified plans, would continue to satisfy the requirements of Code §§401(a)(4) and 410.

6. Required Aggregation Group of Qualified Plans. A required aggregation group of qualified plans consists of (1) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the five-year period ending on the determination date (whether or not that qualified plan has terminated), and (2) any other qualified plans of the Employer or any Affiliated Employer which enables a qualified plan described in clause (1) to meet the requirements of Code §§401(a)(4) or 410.

7. Top-Heavy Ratio.

(a) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the determination date(s) has or has had accrued benefits, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group, as appropriate, is a fraction, the numerator of

which is the sum of the account balances of all Key Employees as of the determination date(s) (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than Severance from Employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than Severance from Employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), both computed in accordance with Code §416 and Treasury Regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the determination date, but which is required to be taken into account on that date under Code §416 and Treasury Regulations thereunder.

(b) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the determination date(s) has or has had any accrued benefits, the top-heavy ratio for any required or permissive aggregation group, as appropriate, is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (i), above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key

Employees as of the determination date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all Members, determined in accordance with (i), above, and the present value of accrued benefits under the defined benefit plan or plans for all Members as of the determination date(s), all determined in accordance with Code §416 and Treasury Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than Severance from Employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

(c) For purposes of (i) and (ii), 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 §416 and Treasury Regulations thereunder for the first and second Plan Years of a defined benefit plan. The account balances and accrued benefits of a Member (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 1-year period (5-year period in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code §416 and Treasury Regulations

thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

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

C. Compensation Taken Into Account. Compensation means compensation as defined in Code §415(c)(3), but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludible from the Employee's gross income under Code §125, 402(a)(8), 402(h) or 403(b).

D. Minimum Benefit.

1. Calculation of Minimum Benefit. If for the Plan Year a Member is a Non-Key Employee during that Plan Year, the minimum Accrued Benefit derived from Employer contributions to be provided under this Section (without regard to any Social Security benefits) for each Member will equal the lesser of (i) two percent of the Employee's "average compensation" as defined below multiplied by that Member's Years of Service; or (ii) 20% of "average compensation;" provided, however, if a Non-Key Employee is covered by another qualified plan maintained by the Employer or an Affiliated Employer under which a minimum benefit is being accrued or a minimum contribution made (as defined in Code §416 and Treasury Regulations thereunder) for such Non-Key Employee, then the minimum benefit otherwise

provided by this Section D will be reduced so that the total minimum benefit provided does not exceed the minimum benefit required by Code §416(f), with such adjustments as may be elected by the Board to satisfy the requirements of Code §416(h).

2. Definitions.

(a) “Minimum Annual Retirement Benefit” means a benefit payable annually in the form of a single life annuity (with no ancillary benefits) beginning at Normal Retirement Age.

(b) “Average Annual Compensation” means the average of the Total Compensation for the Member’s five consecutive years which produce the highest such average. In the event a Member has been such for fewer than five years, such lesser period of participating service will be used to determine Average Annual Compensation. Except to the extent otherwise provided in the Plan, a year will not be included for purposes of determining Average Annual Compensation if:

- (i) Such year is not included in a Year of Service;
- (ii) Such year ends with or within a Plan Year beginning before January 1, 1984; or
- (iii) Such year begins after the close of the last year in which the Plan was Top-Heavy.

(c) “Years of Minimum Benefit Service” means Years of Service, excluding:

- (i) Years of Service prior to January 1, 1984
- (ii) Years of Service in which the Plan is not Top-Heavy; and
- (iii) Years of Service in excess of 10 years.



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 benefit accrual requirements of this paragraph are satisfied.

For purposes of satisfying the minimum benefit requirements of Code §416(c)(1) and the Plan, in determining Years of Service with the Employer, any service with the Employer will be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Code §410(b)) no Key Employee or former Key Employee.

3. Coordination with Other Non-Paired Plans. A Member who participates in another qualified plan of the Employer will receive the minimum benefit described in subsection (a), whether or not he receives the top-heavy minimum benefit under the other qualified plan.

4. Nonforfeitability. The Member's minimum allocation required under this Section, to the extent required to be nonforfeitable under Code §416(b) may not be forfeited under Code §411(a)(3)(B) (relating to suspension of benefits or re-employment) or 411(a)(3)(D) (relating to withdrawal of mandatory contributions).

## **XV. MINIMUM DISTRIBUTION REQUIREMENTS**

### **A. General Rules.**

1. Effective Date. The provisions of this Article XV apply for purposes of determining required minimum distributions for Plan Years beginning January 1, 2002.

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

3. Requirements of Treasury Regulations Incorporated. All distributions required under this Article XV will be determined and made in accordance with Treasury Regulations under Code §401(a)(9).

4. TEFRA §242(b)(2) Elections. Notwithstanding the other provisions of this Article XV, other than paragraph 3 of this Section A, distributions may be made under a designation made before January 1, 1984, in accordance with §242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to §242(b)(2) of TEFRA.

### **B. Time and Manner of Distribution.**

1. Required Beginning Date. A Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's Required Beginning Date.

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

(a) If the Member's surviving Eligible Spouse is the Member'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

Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.

(b) If the Member's surviving Eligible Spouse is not the Member'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 Member died.

(c) If there is no valid designated Beneficiary, made in accordance with Article VIII, as of September 30 of the year following the year of the Member's death, the Member's entire interest will be forfeited.

(d) If the Member's surviving Eligible Spouse is the Member's sole designated Beneficiary and the surviving Eligible Spouse dies after the Member but before distributions to the surviving Eligible Spouse begin, the Member's entire interest will be forfeited.

For purposes of this paragraph 2 and Section E of this Article XV, distributions are considered to begin on the Member's Required Beginning Date. If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving Eligible Spouse before the date distributions are required to begin to the surviving Eligible Spouse under subparagraph 2(a) of this Section B, the date distributions are considered to begin is the date distributions actually commence.

3. Form of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections C, D, and E of this Article XV. If the Member'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 §401(a)(9) and the Treasury Regulations.

Any part of the interest which is in the form of an individual account described in Code §414(k) will be distributed in a manner satisfying the requirements of Code §401(a)(9) and the Treasury Regulations that apply to individual accounts.

C. Determination of Amount to be Distributed Each Year.

1. General Annuity Requirements. If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(a) The annuity distributions will be paid in periodic payments made at 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 Section D or E of this Article XV;

(c) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(d) Payments will either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) To the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section D dies or is no longer the Member's Beneficiary pursuant to a Qualified Domestic Relations Order;

(iii) To provide cash refunds of employee contributions upon the Member's death; or

(iv) To pay increased benefits that result from a Plan amendment.

2. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under subparagraph 2(a) or (b) of Section B of this Article XV) 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. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member'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 Member's Required Beginning Date.

3. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Member 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 amount accrues.

D. Requirements for Period Certain Annuity Distributions That Commence During Member's Lifetime. Unless the Member's 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 Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in §1.401(a)(9)-9 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 Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in §1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's Spouse is the Member'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 Member's applicable distribution period, as determined under this Section D, or the joint life and last survivor expectancy of the Member and the Member's Spouse as determined under the Joint and Last Survivor Table set forth in §1.401(a)(9)-9 of the Treasury Regulations, using the Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the calendar year that contains the annuity starting date.

E. Requirements For Minimum Distributions Where Member Dies Before Date Distributions Begin.

1. Member Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the Member dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in subparagraph 2(a) or (b) of Section B of this Article XV, over the life of the Designated Beneficiary or over a period certain not exceeding:

(a) 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 Member's death; or

(b) 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.

2. No Designated Beneficiary. If the Member dies before the date distributions begin and there is no Designated Beneficiary as of the Member's death, the Member's entire interest will be forfeited.

3. Death of Surviving Eligible Spouse Before Distributions to Surviving Eligible Spouse Begin. If the Member dies before the date distribution of his interest begins, the Member's surviving Eligible Spouse is the Member's sole Designated Beneficiary, and the surviving Eligible Spouse dies before distributions to the surviving Eligible Spouse begin, the Member's entire interest will be forfeited.

F. Definitions.

1. "Designated Beneficiary" means the individual who is designated as the Beneficiary under Article VIII of the Plan and is the Designated Beneficiary under Code §401(a)(9) and Treasury Regulations §1.401(a)(9)-1, Q&A-4.

2. "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to subsection 2 of Section B of this Article XV.

3. “Life Expectancy” means life expectancy as computed by use of the Single Life Table in Treasury Regulations §1.401(a)(9)-9.



**XVI. LIMITATIONS APPLICABLE IF PLAN'S ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGE IS LESS THAN 80 PERCENT OR IF PLAN SPONSOR IS IN BANKRUPTCY**

A. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80%, But Not Less Than 60%. Notwithstanding any other provisions of the Plan to the contrary, if the Plan's Adjusted Funding Target Attainment Percentage for a Plan Year is less than 80% (or would be less than 80% to the extent described in Section A, 2 of this Article), but is not less than 60%, then the limitations set forth in this Section A apply.

1. 50% Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A Member or Beneficiary is not permitted to elect, and the Plan will not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an Annuity Starting Date on or after the applicable Code §436 measurement date, and the Plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

- (a) 50% of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment; or
- (b) 100% of the Pension Benefit Guaranty Corporation ("PBGC") maximum benefit guarantee amount (as defined in Treasury Regulations §1.436-1(d)(3)(iii)(C)).

The limitation set forth in this Section A, 1 does not apply to any payment of a benefit which under Code §411(a)(11) may immediately be distributed without the consent of the Member. If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Member or Beneficiary as of the Annuity Starting Date because of the

application of the requirements of this Section A, 1, the Member or Beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in Treasury Regulations §1.436-1(d)(3)(iii)(D)). The Member or Beneficiary also may elect any other optional form of benefit otherwise available under the Plan at that Annuity Starting Date that would satisfy the 50%/PBGC maximum benefit guarantee amount limitation described in this Section A, 1, or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan.

During a period when this Section A,1 applies to the Plan, Members and Beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the Plan that provides for the current payment of the unrestricted portion of the benefit (as described in Treasury Regulations §1.436-1(d)(3)(iii)(D)), with a delayed commencement for the restricted portion of the benefit (subject to other applicable qualification requirements, such as Code §§411(a)(11) and 401(a)(9)).

2. Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable will take effect in a Plan Year if the Adjusted Funding Target Attainment Percentage for the Plan Year is:

(a) Less than 80%; or

(b) 80% or more, but would be less than 80% if the benefits attributable to the amendment were taken into account in determining the Adjusted Funding Target

Attainment Percentage.

The limitation set forth in this Section A, 2 does not apply to any amendment to the Plan that provides a benefit increase under a Plan formula that is not based on Compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Members covered by the amendment.

B. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 60%. Notwithstanding any other provisions of the Plan, if the Plan's Adjusted Funding Target Attainment Percentage for a Plan Year is less than 60% (or would be less than 60% to the extent described in Section B, 2 of this Article XVI), then the limitations in this Section B apply.

1. Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A Member or Beneficiary is not permitted to elect, and the Plan will not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an Annuity Starting Date on or after the applicable Code §436 measurement date, and the Plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section B, 1 does not apply to any payment of a benefit which under Code §411(a)(11) may be distributed immediately without the consent of the Member.

2. Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year will not be paid if the Adjusted Funding Target Attainment Percentage for the Plan Year is:

- (a) Less than 60%; or

(b) 60% or more, but would be less than 60% if the Adjusted Funding Target Attainment Percentage were re-determined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the Plan Year is 100%.

3. Benefit Accruals Frozen. Benefit accruals under the Plan will cease as of the applicable Code §436 measurement date. In addition, if the Plan is required to cease benefit accruals under this Section B, 3, then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

C. Limitations Applicable If the Plan Sponsor Is In Bankruptcy. Notwithstanding any other provisions of the Plan, a Member or Beneficiary is not permitted to elect, and the Plan will not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an Annuity Starting Date that occurs during any period in which the Plan Sponsor is a debtor in a case under Title 11, United States Code, or similar Federal or State law, except for payments made within a Plan Year with an Annuity Starting Date that occurs on or after the date on which the Plan's Actuary certifies that the Plan's Adjusted Funding Target Attainment Percentage for that Plan Year is not less than 100%. In addition, during such period in which the Plan Sponsor is a debtor, the Plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's Actuary certifies that the Plan's Adjusted Funding Target Attainment Percentage for that Plan Year is not less than 100%. The limitation set forth in this Section C

does not apply to any payment of a benefit which under Code §411(a)(11) may be distributed immediately without the consent of the Member.

D. Provisions Applicable After Limitations Cease to Apply.

1. Resumption of Prohibited Payments. If a limitation on prohibited payments under Section A, 1, B, 1, or C of this Article XVI applied to the Plan as of a Code §436 measurement date, but that limit no longer applies to the Plan as of a later Code §436 measurement date, then that limitation does not apply to benefits with Annuity Starting Dates that are on or after that later Code §436 measurement date.

In addition, after the Code §436 measurement date on which the limitation on prohibited payments under Section A, 1 or B, 1 of this Article ceases to apply to the Plan, any Member or Beneficiary who had an Annuity Starting Date within the period during which that limitation applied to the Plan is permitted to make a new election (within 90 days after the Code §436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new Annuity Starting Date to be changed to a single sum payment for the remaining value of the Member's or Beneficiary's benefit under the Plan, subject to the other rules in this Section of the Plan and applicable requirements of Code §401(a), including spousal consent.

2. Resumption of Benefit Accruals. If a limitation on benefit accruals under Section B, 3 of this Article XVI applied to the Plan as of a Code §436 measurement date, but that limitation no longer applies to the Plan as of a later Code §436 measurement date, then benefit accruals will resume prospectively and that limitation does not apply to benefit accruals that are based on Years of Service on or after that later Code §436 measurement date, except as otherwise provided under the Plan. The Plan will comply with the rules relating to partial years

of participation and the prohibition on double proration under Department of Labor Regulations 29 CFR Section 2530.204-2(c) and (d).

In addition, benefit accruals that were not permitted to accrue because of the application of Section B, 3 of this Article XVI will be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the Plan's Actuary certifies that the Adjusted Funding Target Attainment Percentage for the Plan Year would not be less than 60% taking into account any restored benefit accruals for the prior Plan Year.

3. Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of Section B, 2 of this Article XVI, but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the Enrolled Actuary's certification of the Adjusted Funding Target Attainment Percentage for the Plan Year that meets the requirements of Treasury Regulations §1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit will be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section B, 2 of this Article XVI). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.

4. Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section A, 2 or B, 3 of this Article XVI, but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the Enrolled Actuary's certification of

the Adjusted Funding Target Attainment Percentage for the Plan Year that meets the requirements of Treasury Regulations §1.436-1(g)(5)(ii)(C)), then the Plan amendment must take effect automatically as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the same Plan Year, then it will be treated as if it were never adopted, unless the Plan amendment provides otherwise.

E. Notice Requirement. Section 101(j) of ERISA is incorporated by reference into this Amendment Number 6 for purposes of complying with the rules requiring the Plan Administrator of a single employer defined benefit pension plan such as this Plan to provide a written notice to Members and Beneficiaries within 30 days after certain specified dates if the Plan has become subject to a limitation described in Section A, 1, B, or C of this Article XVI.

F. Methods to Avoid or Terminate Benefit Limitations. Code §§436(b)(2), (c)(2), (e)(2), and (f) and Treasury Regulations §1.436-1(f) are incorporated by reference into this Amendment Number 6 for purposes of complying with the rules relating to Employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections A through C of this Article XVI for a Plan Year. In general, the methods the Plan Sponsor may use to avoid or terminate one or more of the benefit limitations under Sections A through C of this Article XVI for a Plan Year include Employer contributions and elections to increase the amount of Plan assets that are taken into account in determining the Adjusted Funding Target Attainment Percentage, making an Employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the Plan.

G. Special Rules.

1. Rules of Operation for Periods Prior to and after Certification of Plan's Adjusted Funding Target Attainment Percentage.

(a) In General. Code §436(h) and Treasury Regulations §1.436-1(h) set forth a series of presumptions that apply (i) before the Plan's Actuary issues a certification of the Plan's Adjusted Funding Target Attainment Percentage for the Plan Year and (ii) if the Plan's Actuary does not issue a certification of the Plan's Adjusted Funding Target Attainment Percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's Actuary issues a range certification for the Plan Year pursuant to Treasury Regulations §1.436-1(h)(4)(ii) but does not issue a certification of the specific Adjusted Funding Target Attainment Percentage for the Plan by the last day of the Plan Year). For any period during which a presumption under Code §436(h) and Treasury Regulations §1.436-1(h) apply to the Plan, the limitations under Sections A through C of this Article XVI are applied to the Plan as if the Adjusted Funding Target Attainment Percentage for the Plan Year were the presumed Adjusted Funding Target Attainment Percentage determined under the rules of Code §436(h) and Treasury Regulations §1.436-1(h)(1), (2), or (3). These presumptions are set forth in Sections G, 1(b) through G, 1(d) of this Article XVI.

(b) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Section A, B, or C of this Article XVI applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's Actuary issues a certification of the Adjusted



Funding Target Attainment Percentage for the Plan for the current Plan Year, or, if earlier, the date Section G, 1(c) or G, 1(d) of this Article XVI applies to the Plan:

(i) The Adjusted Funding Target Attainment Percentage of the Plan for the current Plan Year is presumed to be the Adjusted Funding Target Attainment Percentage in effect on the last day of the preceding Plan Year; and

(ii) The first day of the current Plan Year is a Code §436 measurement date.

(c) Presumption of Underfunding Beginning First Day of 4<sup>th</sup> Month. If the Plan's Actuary has not issued a certification of the Adjusted Funding Target Attainment Percentage for the Plan Year before the first day of the 4<sup>th</sup> month of the Plan Year and the Plan's Adjusted Funding Target Attainment Percentage for the preceding Plan Year was either at least 60% but less than 70% or at least 80% but less than 90%, or is described in Treasury Regulations §1.436-1(h)(2)(ii), then, commencing on the first day of the 4<sup>th</sup> month of the current Plan Year and continuing until the Plan's Actuary issues a certification of the Adjusted Funding Target Attainment Percentage for the Plan for the current Plan Year, or, if earlier, the date Section G, 1(d) of this Article XVI applies to the Plan:

(i) The Adjusted Funding Target Attainment Percentage of the Plan for the current Plan Year is presumed to be the Plan's Adjusted Funding Target Attainment Percentage for the preceding Plan Year reduced by 10 percentage points; and

(ii) The first day of the 4<sup>th</sup> month of the current Plan Year is a Code §436 measurement date.

(d) Presumption of Underfunding On and after First Day of 10<sup>th</sup> Month. If the Plan's Actuary has not issued a certification of the Adjusted Funding Target Attainment Percentage for the Plan Year before the first day of the 10<sup>th</sup> month of the Plan Year (or if the Plan's Actuary has issued a range certification for the Plan Year pursuant to Treasury Regulations §1.436-1(h)(4)(ii) but has not issued a certification of the specific Adjusted Funding Target Attainment Percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10<sup>th</sup> month of the current Plan Year and continuing through the end of the Plan Year:

(i) The Adjusted Funding Target Attainment Percentage of the Plan for the current Plan Year is presumed to be less than 60%; and

(ii) The first day of the 10<sup>th</sup> month of the current Plan Year is a Code §436 measurement date.

2. New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules.

(a) First Five Plan Years. The limitations in Sections A, 2, B, 2, and B, 3 of this Article XVI do not apply to this Plan for the first five Plan Years of the Plan, determined under the rules of Code §436(g) and Treasury Regulations §1.436-1(a)(3)(i).

(b) Plan Termination. The limitations on prohibited payments in Sections A, 1, B, 1, and C of this Article XVI do not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this Section of the Plan do not cease to apply as a result of termination of the Plan.

(c) Exception to Limitations on Prohibited Payments Under Certain Frozen Plans. The limitations on prohibited payments set forth in Sections A, 1, B, 1, and C of

this Article XVI do not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any Members. This Section G, 2(c) will cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(d) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any period in which none of the presumptions under Section G, 1 of this Article apply to the Plan and the Plan's Actuary has not yet issued a certification of the Plan's Adjusted Funding Target Attainment Percentage for the Plan Year, the limitations under Sections A, 2 and B, 2 of this Article XVI will be based on the inclusive presumed Adjusted Funding Target Attainment Percentage for the Plan, calculated in accordance with the rules of Treasury Regulations §1.436-1(g)(2)(iii).

3. Special Rules Under Pension Relief Act of 2010.

(a) Payments Under Social Security Leveling Options. For purposes of determining whether the limitations under Section A, 1 or B, 1 of this Article XVI apply to payments under a social security leveling option, within the meaning of Code §436(j)(3)(C)(i), the Adjusted Funding Target Attainment Percentage for a Plan Year will be determined in accordance with the "Special Rule for Certain Years" under Code §436(j)(3) and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

(b) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under Section B, 3 of this Article XVI applies to the Plan, the Adjusted

Funding Target Attainment Percentage for a Plan Year will be determined in accordance with the “Special Rule for Certain Years” under Code §436(j)(3) (except as provided under Section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

4. Interpretation of Provisions. The limitations imposed by this Section of the Plan will be interpreted and administered in accordance with Code §436 and Treasury Regulations §1.436-1.

H. Definitions.

1. Treasury Regulations. The definitions in the following Treasury Regulations apply for purposes of Sections A through G of this Article XVI: Section 1.436-1(j)(1) defining Adjusted Funding Target Attainment Percentage; Section 1.436-1(j)(2) defining Annuity Starting Date; Section 1.436-1(j)(6) defining prohibited payment; Section 1.436-1(j)(8) defining Code §436 measurement date; and 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

2. Plan Sponsor. For purposes of this Article XVI, Plan Sponsor means the Employer.

I. Legal Compliance.

1. Incorporation by Reference. Notwithstanding anything in this Article XVI to the contrary, the provision of Code §436 and Treasury Regulations thereunder are incorporated by reference.

2. Application. If the Plan applies a valuation date other than the first day of the Plan Year, the provisions of Code §436 and this Article will be applied in accordance with Treasury Regulations.

3. Compliance. This Article XVI is intended to comply with IRS Notice 2011-96 and satisfy Code §436 regarding limitations on the accrual and payment of benefits that are applicable if the Plan's funding requirements fall below specific thresholds.

IN WITNESS OF THIS PLAN AMENDMENT AND RESTATEMENT, the Plan Sponsor has caused this Plan, as amended and restated, to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by its Executive Director.

California Grower Foundation

By: \_\_\_\_\_  
Rebecca A. Barlow

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