SEVENTH AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees has the power and authority to amend the Plan and has exercised that authority from time to time; and

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees, by decision at its April 8, 2020 meeting, amended the Plan pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, to temporarily permit Participants who have an outstanding Fund loan balance or who receive a Fund loan by November 24, 2020, to defer their loan payment, if they meet certain COVID-19 related criteria; and

WHEREAS, the Board of Trustees desire to memorialize their decision in a formal document;

NOW, THEREFORE, the Board of Trustees adopts this amendment effective March 27, 2020, to memorialize certain changes made to the Plan regarding loans.

1. Section 8.8 is amended to read as follows, with additions in **bold** text:

> Section 8.8 - Plan Loans: Loans may be made available to all Participants on a reasonably equivalent basis in an amount not to exceed the lesser of (i) 50% of the present value of the Participant's vested Account Balance, or (ii) $50,000 reduced by the excess, if any, of the highest outstanding balances of all other loans from the Plan during the one-year period ending on the day before the loan was made, over the outstanding balance of loans from the Plan on the date on which such loan was made. All loans shall be subject to the Trustees' approval. The Trustees shall investigate each loan application. Subject to such uniform and nondiscriminatory rules as the

Trustees may periodically adopt, the Trustees, upon application by a Participant, may make a loan or loans to such Participants. A Participant who defaults on a Plan Loan is prohibited from receiving another loan. Plan loans are deemed automatically defaulted on the 90th day following date of the first missed payment. In the case of a loan default, a Participant may not apply for a new loan. In addition to such rules as the Trustees may adopt, all loans shall comply with the following terms and conditions:

a) An application by a Participant for a loan shall be made in writing to the Trustees (on a Trustee-prescribed form) whose action thereon shall be final. Only vested Participants who have account balances of at least two thousand dollars ($2,000) shall be eligible to apply for a loan. Retired Participants, Beneficiaries and Alternate Payees under qualified domestic relations orders are not eligible to apply for loans. No Participant may have more than one (1) loan outstanding at any time. The minimum loan amount is $1000.

b) The period of repayment for any loan shall be arrived at my mutual agreement between the Trustees and the borrower, but such period in no event shall exceed five years. Repayment of interest and principal shall commence at the discretion of the Trustees, but in no event later than the first day of the third month beginning after the loan was received by the Participant. Repayment of interest and principal shall be made according to a substantially level amortization schedule of payments of principal and interest (not less frequently than quarterly) over the term of the loan. Repayments will be made on a monthly basis from a Participant's bank account. The Plan will not charge additional fees to the Participant for a Plan loan other than record keeping, for which the Participant will be solely responsible.

Effective for the temporary period beginning March 27, 2020 to November 24, 2020, Participants may defer

their loan payments, if they meet certain COVID-19 related criteria which includes the Participant, Spouse or Dependent is diagnosed with COVID-19 by a test approved by the CDC; or the Participant has experienced adverse financial consequences due to: layoff, furlough, reduction of hours, lack of child care, or reduced hours of a business owned by the Participant.

Loans may be deferred for up to one (1) year for any loan payment that would have been paid between March 27, 2020 and December 31, 2020.

Skipped loan payments during this period will automatically be treated as deferred loan payments. Skipped loan payments will not be assessed late payment charges and will not count toward the four (4) missed loan payment cap.

All deferred loan payments will be re-amortized and will resume for the January 2021 loan payment.

c) Each loan shall be collateralized by the assignment of the borrower's right, title and interest in and to the Trust Fund to the extent of the borrowed amount, supported by the borrower's collateral promissory note for the amount of loan, including interest, payable to the order of the Trustees.

d) Each loan shall bear interest at a rate to be fixed by the Trustees, and reviewed at least annually by the Trustees. In determining the interest rate, the Trustees shall take into consideration interest rates currently being charged by financial institutions for similarly secured personal loans as well as the rate of return earned by the Fund's investments in its previous fiscal year. The Trustees shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates if, in the opinion of the Trustees, the difference in rates is justified by a change in

general economic conditions or otherwise. In any event, each loan shall bear a reasonable rate of return.

e) No portion of a Participant's account may be used as collateral for a loan unless at the time a security agreement is entered into, the Participant's spouse, if any (on the date the security agreement is entered into), consents in writing to the use of the account as security for the loan. The consent must be made within the 90-day period ending on the date the loan is made. The consent must be in writing, must acknowledge the effect of the loan and must be witnessed by a Plan representative or a Notary Public. A new consent is required if the Participant pledges additional portions of his account balance to secure his obligations to the Plan.

f) A loan may be not be reamortized (**exception for the COVID-19 related loan deferral in section (b) above**. An outstanding loan balance will not become immediately due and payable upon termination of employment.

IN WITNESS WHEREOF, this Seventh Amendment to the Utility Workers' Union of America Deferred Compensation Plan, is adopted by the Trustees and executed on their behalf.

Patrick M. Dillon
Chairman

Dated: November 11, 2020

Secretary

Dated: 11/12/2020

SIXTH AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time; and

WHEREAS, the Board of Trustees desires to amend the Plan effective January 1, 2020 pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, which in part, temporarily suspends the required minimum distribution for Plan Participants who otherwise would be required to take a minimum distribution during the 2020 calendar year; and

WHEREAS, the Board of Trustees desires to memorialize their decision at its April 8, 2020 meeting in a formal document;

NOW, THEREFORE, the Board of Trustees adopts this Amendment effective January 1, 2020:

1. Article VIII, Section 1 is amended to read as follows with amendments in *italicized* text:

8.1 Date Payment Commences. Payment of benefits under the Plan shall begin, unless the Participant elects otherwise with the approval of the Trustees, before the 60th day after the latest of the close of the Plan Year in which the following occurs: a) The Participant attains his Normal Retirement Date; b) The termination of the Participant's employment or severance from employment with the Contributing Employer; or c) The death or disability of the Participant. Notwithstanding the foregoing, effective July 1, 2007, qualified reservists (as defined by Code Section 72(t)(2)(G)(iii)), the date on which a period referred to in sub-clause (III) of such section begins.

Notwithstanding the foregoing, if at the time benefits are distributable under this Section 8, the balances credited to a Participant's Account exceed $5,000, benefits shall be paid only if the Participant consents in writing to such distribution not more than 90 days before commencement, or if the Participant has attained age 62. The

failure of a Participant to consent to a distribution, where required is deemed to be an election by such Participant to defer commencement until age 62.

The Plan may determine the present value of a Participant's Account without regard to the portion of the Account that is attributable to Rollover Contributions (and any earnings thereon). An election of a Participant to have payment of benefits commence subsequent to the time set forth above must be in writing, must be signed by the Participant and must describe the benefit to which the Participant is entitled and the date as of which payment of such benefits is to commence. In no event will distributions commence later than April 1 of the calendar year following the calendar year in which he attains age 70½ or retires, if later. Effective January 1, 2020, payments must start no later than the April 1 following the calendar year in which the Participant attains age 72, if the Participant turns age 70 ½ after December 31, 2019, pursuant to the SECURE Act of 2019.

Effective January 1, 2020, the required minimum distribution for calendar year 2020 is temporarily waived pursuant to the CARES Act of 2020 unless the Participant (or his Beneficiary or Surviving Spouse) affirmatively elects to receive the required minimum distribution.

All distributions shall be made in accordance with the regulations under Code Section 401(a) including Treasury Regulation Section 1.401(a)(9)-2 and the provisions of this Section 8.1 shall override any distribution options in the Plan inconsistent with Section 401(a)(9) of the Code. Benefits must be distributed (i) over a period not longer than the life of the Participant or over the lives of the Participant and his designated Beneficiary, or (ii) over a period not extending beyond the life expectancy of the Participant or the joint life expectancies of the Participant and his designated Beneficiary. If the Participant or former Participant dies before all of his Accounts have been distributed to him, or if distribution has commenced to the Beneficiary, the Participant's or former participant's entire Account (or the unpaid amount thereof if distribution has commenced) will be distributed within five years after his death (or the death of the Beneficiary); provided, however, that this sentence shall not apply if the distribution of the Participant's or former Participant's Account is for a term not extending beyond the life or life expectancy of the Participant's Beneficiary and such distribution commences to the Beneficiary within one year after the Participant's or former Participant's death, provided further, however, if the surviving Spouse is the Beneficiary, payments need not commence to the surviving Spouse until April 1 of the year following the year the Participant or former Participant would have attained age 70½ (age 72 for a Participant who turns age 70

½ after December 31, 2019). ***If the Participant's required beginning date occurs in calendar year 2020, the Participant's (or his Beneficiary's or Surviving Spouse's) 2020 required minimum distribution is temporarily waived, pursuant to the CARES Act, unless the Participant (or his Beneficiary or Surviving Spouse) affirmatively elects to receive the 2020 required minimum distribution.***

If the Participant or former Participant dies after commencement of payments, the remaining portion of such Account shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's or former Participant's death.

Notwithstanding the foregoing, an Alternate Payee under a "qualified domestic relations order" may receive an immediate distribution from the Plan after the Fund Manager approves the domestic relations order and provided that such domestic relations order contains provisions with respect to such immediate distribution.

IN WITNESS HEREOF, the Fund's Chairman and Secretary have executed this Sixth Amendment to the Plan, as amended and restated.

By: Patrick M. Dillon
Chairman

Dated: November 11, 2020

By: Tina Hayes
Secretary

Dated: 11/12/2020

FIFTH AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time; and

WHEREAS, the Board of Trustees, by decision at its January 29, 2020 meeting, amended the Plan pursuant to the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, which in part, delays the commencement of the required minimum distribution by increasing the Plan Participant's age from seventy and one-half (70 ½) to seventy-two (72), for individuals turning seventy and one-half (70 ½) after December, 31, 2019; and

WHEREAS, the Board of Trustees desires to memorialize their decision in a formal document;

NOW, THEREFORE, the Board of Trustees adopts this Amendment effective January 1, 2020:

1. Article VIII, Section 1 is amended to read as follows with amendments in *italicized* text:

8.1 Date Payment Commences. Payment of benefits under the Plan shall begin, unless the Participant elects otherwise with the approval of the Trustees, before the 60th day after the latest of the close of the Plan Year in which the following occurs: a) The Participant attains his Normal Retirement Date; b) The termination of the Participant's employment or severance from employment with the Contributing Employer; or c) The death or disability of the Participant. Notwithstanding the foregoing, effective July 1, 2007, qualified reservists (as defined by Code Section 72(t)(2)(G)(iii)), the date on which a period referred to in sub-clause (III) of such section begins.

Notwithstanding the foregoing, if at the time benefits are distributable under this Section 8, the balances credited to a Participant's Account exceed $5,000, benefits shall be paid only if the Participant consents in writing to such distribution not more than 90 days before commencement, or if the Participant has attained age 62.

attained age 70½ ***(age 72 for a Participant who turns age 70 ½ after December 31, 2019)***. If the Participant or former Participant dies after commencement of payments, the remaining portion of such Account shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's or former Participant's death.

Notwithstanding the foregoing, an Alternate Payee under a "qualified domestic relations order" may receive an immediate distribution from the Plan after the Fund Manager approves the domestic relations order and provided that such domestic relations order contains provisions with respect to such immediate distribution.

IN WITNESS HEREOF, the Fund's Chairman and Secretary have executed this Fifth Amendment to the Plan, as amended and restated.

By: Patrick M. Dellar
Chairman

Dated: 1-29-2020

By: Tina Hayes
Secretary

Dated: 2/4/2020

AMENDMENT TO THE
UTILITY WORKERS' UNION OF AMERICA
DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees has the power and authority to amend the Plan and has exercised that authority from time to time, and

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees, by decision at its July 10, 2019 meeting, amended the Plan to allow participant loans; and

WHEREAS, the Board of Trustees desire to memorialize their decision in a formal document;

NOW, THEREFORE, the Board of Trustees adopts this amendment effective September 1, 2019 to memorialize certain changes made to the Plan regarding loans

1 Section 8.8 is added as follows.

> **Section 8.8 - Plan Loans: Loans may be made available to all Participants on a reasonably equivalent basis in an amount not to exceed the lesser of (i) 50% of the present value of the Participant's vested Account Balance, or (ii) $50,000 reduced by the excess, if any, of the highest outstanding balances of all other loans from the Plan during the one-year period ending on the day before the loan was made, over the outstanding balance of loans from the Plan on the date on which such loan was made. All loans shall be subject to the Trustees' approval. The Trustees shall investigate each loan application. Subject to such uniform and nondiscriminatory rules as the Trustees may periodically adopt, the Trustees, upon application by a Participant, may make a loan or loans to such Participants. A Participant who defaults on a Plan Loan is prohibited from receiving another loan. Plan loans are deemed automatically defaulted on the 90th day following date of the first missed payment. In the case of a loan default, a Participant may not apply for a new loan. In addition to such rules as the Trustees may adopt, all loans shall comply with the following terms and conditions:**

a) An application by a Participant for a loan shall be made in writing to the Trustees (on a Trustee-prescribed form) whose action thereon shall be final. Only vested Participants who have account balances of at least two thousand dollars ($2,000) shall be eligible to apply for a loan. Retired Participants, Beneficiaries and Alternate Payees under qualified domestic relations orders are not eligible to apply for loans. No Participant may have more than one (1) loan outstanding at any time. The minimum loan amount is $1000.

b) The period of repayment for any loan shall be arrived at my mutual agreement between the Trustees and the borrower, but such period in no event shall exceed five years. Repayment of interest and principal shall commence at the discretion of the Trustees, but in no event later than the first day of the third month beginning after the loan was received by the Participant. Repayment of interest and principal shall be made according to a substantially level amortization schedule of payments of principal and interest (not less frequently than quarterly) over the term of the loan. Repayments will be made on a monthly basis from a Participant's bank account. The Plan will not charge additional fees to the Participant for a Plan loan other than record keeping, for which the Participant will be solely responsible.

c) Each loan shall be collateralized by the assignment of the borrower's right, title and interest in and to the Trust Fund to the extent of the borrowed amount, supported by the borrower's collateral promissory note for the amount of loan, including interest, payable to the order of the Trustees.

d) Each loan shall bear interest at a rate to be fixed by the Trustees, and reviewed at least annually by the Trustees. In determining the interest rate, the Trustees shall take into consideration interest rates currently being charged by financial institutions for similarly secured personal loans as well as the rate of return earned by the Fund's investments in its previous fiscal year. The Trustees shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates if, in the opinion of the Trustees, the difference in

rates is justified by a change in general economic conditions or otherwise. In any event, each loan shall bear a reasonable rate of return.

e) No portion of a Participant's account may be used as collateral for a loan unless at the time a security agreement is entered into, the Participant's spouse, if any (on the date the security agreement is entered into), consents in writing to the use of the account as security for the loan. The consent must be made within the 90-day period ending on the date the loan is made. The consent must be in writing, must acknowledge the effect of the loan and must be witnessed by a Plan representative or a Notary Public. A new consent is required if the Participant pledges additional portions of his account balance to secure his obligations to the Plan.

f) A loan may be not be reamortized. An outstanding loan balance will not become immediately due and payable upon termination of employment.

IN WITNESS WHEREOF, this Amendment to the Utility Workers' Union of America Deferred Compensation Plan, is adopted by the Trustees and executed on their behalf on this ___ day of _____, 2019.

Chairman

Dated: 7-19-2019

Secretary

Dated: 7/18/2019

THIRD AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees, by resolution at its November 24, 2014 meeting, amended the Plan retroactively effective as of June 26, 2013 to assure compliance with IRS Notice 2014-19 and the United States Supreme Court's decision in *United States v. Windsor*; and

WHEREAS, the Board of Trustees directed that the action taken in its November 24, 2014 resolution also be memorialized in formal document;

NOW, THEREFORE, the Board of Trustees adopts this Amendment effective June 26, 2013:

1. Section 12.11 is amended as follows.

12.11 – **Construction of Agreement**. The Plan, or provisions thereof, and its validity shall be construed according to the laws of the State of Michigan, except as it may be pre-empted by federal law. Effective June 26, 2013, notwithstanding any contrary provision in the law of Michigan or any other state, "spouse" shall include a same sex spouse of a Participant. The Plan shall recognize any and all same sex marriages that are valid or recognized as valid in the jurisdiction in which they are or were performed.

IN WITNESS WHEREOF, the Fund's Chairman and Secretary have executed this Amendment to the Plan to memorialize the Board of Trustees' November 24, 2014 action.

_____
Chairman

_____
Secretary

THIRD AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees, by resolution at its November 24, 2014 meeting, amended the Plan retroactively effective as of June 26, 2013 to assure compliance with IRS Notice 2014-19 and the United States Supreme Court's decision in *United States v. Windsor*; and

WHEREAS, the Board of Trustees directed that the action taken in its November 24, 2014 resolution also be memorialized in formal document;

NOW, THEREFORE, the Board of Trustees adopts this Amendment effective June 26, 2013:

1. Section 12.11 is amended as follows.

12.11 – **Construction of Agreement**. The Plan, or provisions thereof, and its validity shall be construed according to the laws of the State of Michigan, except as it may be pre-empted by federal law. Effective June 26, 2013, notwithstanding any contrary provision in the law of Michigan or any other state, "spouse" shall include a same sex spouse of a Participant. The Plan shall recognize any and all same sex marriages that are valid or recognized as valid in the jurisdiction in which they are or were performed.

IN WITNESS WHEREOF, the Fund's Chairman and Secretary have executed this Amendment to the Plan to memorialize the Board of Trustees' November 24, 2014 action.

Steven Van Slooten

Chairman

Secretary

SECOND AMENDMENT TO THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retained authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees, by resolution at its March 3, 2014 meeting, amended the Plan to augment existing plan language concerning participant-directed investment; and

WHEREAS, the Board of Trustees directed that the action taken in its March 3, 2014 resolution also be memorialized in formal document;

NOW, THEREFORE, the Board of Trustees adopts this Amendment effective July 1, 2014:

1. Section 1.30 is amended as follows.

1.30 - **"Valuation Date"** means the date of determination of the fair market value of a participant's investments in each Investment Fund. This determination can be made at the end of each Plan Year or at other times, as determined by the Trustees, pursuant to appropriate valuation procedures applicable to one or more investment funds and/or adopted by the Trustees.

2. Section 4.2 is amended as follows:

4.2 - **Allocation to Investment Funds**. The Trustees may direct the investment of all Participant Accounts until such time as the total assets of the Trust reach a threshold set by the Trustees in exercise of their grantor discretion or, subsequently, if determined to be appropriate by the Trustees in exercise of their grantor discretion. A Participant or former Participant shall designate that current Elective Contributions, Employer Contributions and Rollover Contributions be allocated as the Participant shall elect to one or more of the available Investment Funds. Elections must be made in whole percentages. A Participant's designation regarding the percent of a contribution to be allocated to each Investment Fund with respect to Elective Contributions and Employer Contributions is independent of his designation with respect to all Contributions of any type previously made. . If at any time there shall be credited to a Participant's Account an amount(s) for which no such instructions have been furnished, or for which the instructions furnished are, in the opinion of the Trustees, incomplete or unclear, or for

which the instructions furnished would require investment in an Investment Option not approved by the Trustees for use under the Plan, such amount(s) may be invested in shares of the default investment designated in the Participant's most recent investment instructions (which may be written, electronic, or telephonic) or, if the Participant has never provided instructions, as determined by the Trustees. Notwithstanding the foregoing, to the extent that the Trustees permit and/or invest plan assets in Employer securities within the meaning of Code Section 401(a)(35), the Fund shall permit any Participant who has completed at least three Years of Service or a beneficiary of a deceased Participant who has completed at least three Years of Service shall be permitted to elect, at least quarterly, but in no event less frequently than generally applicable Plan provisions under which Participants can change their existing Plan investment selections, to change from an investment Fund investing in Employer securities into another available investment Fund made available by the Plan for Participant/Beneficiary-directed investment of each such person's respective Plan account balance.

IN WITNESS WHEREOF, the Fund's Chairman and Secretary have executed this Amendment to the Plan to memorialize the Board of Trustees' March 3, 2014 action.

Chairman

Secretary

which the instructions furnished would require investment in an Investment Option not approved by the Trustees for use under the Plan, such amount(s) may be invested in shares of the default investment designated in the Participant's most recent investment instructions (which may be written, electronic, or telephonic) or, if the Participant has never provided instructions, as determined by the Trustees. Notwithstanding the foregoing, to the extent that the Trustees permit and/or invest plan assets in Employer securities within the meaning of Code Section 401(a)(35), the Fund shall permit any Participant who has completed at least three Years of Service or a beneficiary of a deceased Participant who has completed at least three Years of Service shall be permitted to elect, at least quarterly, but in no event less frequently than generally applicable Plan provisions under which Participants can change their existing Plan investment selections, to change from an investment Fund investing in Employer securities into another available investment Fund made available by the Plan for Participant/Beneficiary-directed investment of each such person's respective Plan account balance.

IN WITNESS WHEREOF, the Fund's Chairman and Secretary have executed this Amendment to the Plan to memorialize the Board of Trustees' March 3, 2014 action.

Steven Van Slooten

Chairman

Secretary

FIRST AMENDMENT TO UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN (2014 Amendment and Restatement)

WHEREAS, the Board of Trustees of the Utility Workers' Union of America Deferred Compensation Trust (Fund) retain authority to amend the Utility Workers' Union of America Deferred Compensation Plan (Plan) from time to time, and

WHEREAS, the Board of Trustees amended and restated the Plan, generally effective January 1, 2014 and submitted the amended and restated Plan and related documents to the Internal Revenue Service for a determination that the Plan is tax-qualified within the meaning of Section 401(a) of the Internal Revenue Code of 1986, as amended (Code) and that the Fund is tax-exempt pursuant to Code Section 501(a); and

WHEREAS, the Internal Revenue Service (IRS) has requested that the Fund's Board of Trustees retroactively adopt certain amendments that the IRS asserts are required to assure the tax-qualified status of the Plan and the tax-exempt status of the Fund; and

NOW, THEREFORE, to comply with the IRS' request and to assure the continuous tax-qualified status of the Plan and tax-exempt status of the Fund, the Fund's Trustees adopt this First Amendment effective as of the dates set forth below:

1. Effective July 1, 2007, Article III, Section 3.1 the Plan is amended as follows:

3.1 **Elective Contributions**:

a) Each Contributing Employer shall contribute to the Trust Fund such amounts of Elective Contributions as each Participant has designated in a salary reduction agreement, and/or, if not revoked by the Participant, the "automatic contribution amount" designated in the collective bargaining agreement, in accordance with Subsection (b). Such Elective Contributions shall be made to the Trust Fund in cash, as soon as administratively practicable, but in all events no later than the time required under the applicable Labor Department Regulations.

b) Each Participant who is permitted or is required under the terms of an applicable collective bargaining agreement to have Elective Contributions made to the Plan shall complete a salary reduction agreement on the appropriate form, which shall be filed with the Fund Manager. The Participant elects to reduce his Compensation by an amount stated as a percentage of compensation in cents per hour or dollars per week in such amount as shall be permitted pursuant to the collective bargaining agreement or participation agreement under which the Participant is covered and approved by the Trustees. Notwithstanding the catch-up contributions permitted under Code Section 414(v), a Participant may not reduce his salary by an amount in excess of $11,000 (as adjusted in accordance with rulings of the Secretary of the Treasury).

If a Participant makes Elective Contributions to this Plan and to any other qualified cash or deferred plan in excess of the dollar limit specified above for the Participant's taxable year, then the Participant must notify the Fund Manager in writing by the first March 1 of the following year of

the amount, if any, to be refunded from this Plan. The amount to be refunded shall be paid to the Participant in a single payment not later than the first April 15 following the close of the taxable year and shall include any income or loss allocated to the refund, as determined below, for the period during (i) the Participant's taxable year, and, for years prior to January 1, 2008, (ii) the period between the end of that year and the date of the refund payment. The payment shall be deemed to have been made before the close of the calendar year in which such excess Elective Contribution was made. If the Participant fails to notify the Fund Manager by March 1, no refund will be made under this Section 3.1(b).

Although the excess deferral may be refunded, it shall still be considered as an Elective Contribution for the Plan Year in which it was originally made and shall be included in the Participant's Actual Deferral Percentage. The income or loss allocable to excess Elective Contributions for the Participant's taxable year shall be determined by multiplying the income or loss for the Participant's taxable year allocable to the Participant's Elective Contributions for such year by a fraction, the numerator of which is the amount of excess Elective Contributions and the denominator of which is the participant's closing balance (as of the end of the Participant's taxable year) of the Participant's Elective Contributions Account reduced by gains (or increased by losses) allocable to such Account during the taxable year. For years prior to January 1, 2008, the income or loss allocable to excess Elective Contributions allocated to each Participant during the period between the end of the Participant's taxable year and the date of the refund payment may be calculated by multiplying the income or loss allocable to the excess Elective Contribution for the period between the end of the Participant's taxable year and the last day of the month preceding the date of distribution by a fraction determined under the method specified above. Alternatively, for years prior to January 1, 2008, the allocable income or loss for the period between the end of the Participant's taxable year and the date of refund payment shall be deemed to be equal to 10% of the income or loss allocable to the excess Elective Contribution for the taxable year multiplied by the number of calendar months that have elapsed since the end of the taxable year. For this purpose, payment occurring on or before the 15th day of the month will be treated as having been made on the last day of the preceding month. A payment occurring after the 15th day of the month will be treated as having been made on the first day of the next month.

Notwithstanding the foregoing, any reasonable method for computing the income or loss allocable to excess Elective Contributions may be used, provided such method is used consistently for all Participants and for all corrective distributions made under the Plan for the Plan Year, and is used by the Plan for allocating income or loss to the Participant's Account.

c) Each completed salary reduction agreement shall be effective as soon as practicable in the next regular payroll period after the date the Fund Manager receives the salary reduction agreement. If permitted by the applicable collective bargaining agreement, a Participant may revise his salary reduction agreement no more than once in any calendar quarter to provide for increased or decreased reductions in his Compensation. Such change may be made at any time during the calendar quarter by filing the appropriate form with the Fund Manager, provided that such form is filed with the Fund Manager at least 30 days before it is to become effective. A Participant may elect to suspend his Elective Contributions once during the calendar year. Such change may be made at any time during the calendar year by filing the appropriate form with the Fund Manager,

provided that such form is filed with the Fund Manager at least 30 days before it is to become effective. The Fund Manager shall notify Participants of their right to suspend Elective Contributions, including automatic Elective Contributions provided under applicable collective bargaining agreements when such persons first become Participants and once each year thereafter. A Participant may elect to retroactive vacate the automatic election within 90 days of the date on which such person becomes a Participant on a form provided by the Fund Manager. Upon such election, the Fund Manager shall refund to the Participant all contributions made on account of the automatic election, but not any Employer contributions. Such refund will be provided with 90 days of receipt of a timely request to vacate the automatic election.

d) A Participant who has suspended both his Elective Contributions under this Section 3.1 may not resume having Elective Contributions made until 12 months following the payroll period in which the total suspension was effective. A Participant may thereafter resume having Elective Contributions made as of any subsequent payroll period by entering into a new salary reduction agreement on the appropriate forms with his Employer, provided such agreement is filed with the Fund Manager at least 30 days prior thereto.

e) In the absence of a salary reduction agreement, an active Participant shall nevertheless be considered to be a Participant in the Plan for purposes of Section 3.5.

f) Any Participant who has attained age 50 before the close of the taxable year shall be eligible to defer additional income to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the requirements of Code Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b) or 416, as applicable, by reason of the making of such catch-up contributions.

2. Effective July 1, 2007, Article III, Section 3.4 the Plan is amended as follows:

3.4 **Provisions to Preclude Discrimination.**

a) **ADP Test.** For each Plan Year, the Actual Deferral Percentage for the eligible "Highly Compensated Employees" for the Plan Year shall not exceed the Actual Deferral Percentage for all other eligible employees by the greater of: i. 125%; or ii. 200% but not more than two percentage points. The Actual Deferral Percentage for the Highly Compensated Employees and all other eligible employees for a Plan Year shall be the average of the ratios (calculated separately for each individual in each group) of the employee's Elective Contributions made during the Plan Year to the employee's compensation. An Employee's compensation for this purpose shall mean the compensation for service performed for a Contributing Employer which is includable in gross income for the Plan Year and shall include amounts deferred pursuant to a salary reduction agreement under Section 125, 132(f) or Section 401(k) of the Code. If there were no Elective Contributions for an eligible employee, the ratio is zero for such employee. An individual shall

be an eligible employee with respect to any Plan Year if he is eligible to make Elective Contributions at any time during such year.

b) **Excess ADP Percentage.** In the event the Actual Deferral Percentage for Highly Compensated Employees exceeds the limitation specified in (a) above, then the excess Elective Contributions and any income thereon (as allocated pursuant to the procedure set forth in Section 3.1(b) but with respect to the Plan Year) shall be distributed within two and one-half months after the Plan Year for which such excess Elective Contributions were made. The payment shall be deemed to be made before the close of the Year in which the contributions were made.

c) The Plan shall determine how much the actual deferral ratio (ADR) of the highly compensated employee with the highest ADR would have to be reduced to satisfy the ADP test or cause such ratio to equal the ADR of the highly compensated employee with the next highest ratio. Second, this process shall be repeated until the ADP test is satisfied. The amount of Excess Contributions equal to the sum of these hypothetical reductions multiplied, in each case, by the highly compensated employee's Compensation.

d) The Elective Contributions of the highly compensated employees with the highest dollar amount of Elective Contributions are reduced by the amount required to cause that highly compensated employee's Elective Contributions to equal the dollar amount of the Elective Contributions of the highly compensated employee with the next highest dollar amount of Elective Contributions. This amount is then distributed to the highly compensated employee with the highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this step, would equal the total Excess Contributions, the lesser reduction amount is distributed. If the total amount distributed is less than the total Excess Contributions, the foregoing step is repeated.

e) Excess Contributions, for taxable years beginning prior to January 1, 2008, (including any Excess Matching Contributions) shall be adjusted for any income or loss up to the earlier of the date of distribution or the end of the Plan Year. Any reasonable method for computing the income or loss allocable to Excess Contributions may be used, provided that such method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the Plan Year and the date of distribution shall be disregarded in determining income or loss.

f) Excess Elective Contributions which are refunded to the Participant shall cause the corresponding Employer Matching Contribution to be refunded to the extent it is vested.

g) For purposes of conducting the Actual Deferral Percentage Test, the Plan shall use the prior year testing method in lieu of the current year testing method in accordance with Section 401(k)(3)(A) of the Code, the provisions of which are incorporated herein by reference.

h) For purposes of this Section 3.4, the term "Highly Compensated Employee" shall mean an Employee who during the Plan Year or the preceding Plan Year is eligible to have Elective

Contributions made on his behalf to the Plan (whether or not such contributions are being made), and who received Compensation from the Contributing Employer or an Affiliated Corporation in excess of $85,000. For purposes of this definition, "Compensation" has the meaning set forth in Section 415(c)(3) of the Code. The $85,000 amount shall be increased based on cost of living adjustments in accordance with rulings of the Secretary of the Treasury. The determination of whether a person is a "highly compensated employee" shall be made taking into account the employees of all companies which are members of a controlled group of corporations (within the meaning of Section 414(b) of the Code or such other Federal income tax statutory provisions as shall at the time be applicable) of which the Contributing Employer or an Affiliated Corporation is also a member. A former "Highly Compensated Employee" shall continue to be treated as a Highly Compensated Employee if he was a Highly Compensated Employee when he separated from service or at any time after age 55. In determining who is a Highly Compensated Employee, the top-paid group election is not made.

i) **ACP Test.** For each Plan Year, the Matching Contribution made either (a) shall be part of a qualified automatic contribution arrangement as defined in Code Section 401(k)(13) and the Matching Contribution are not made on Employee Elective Deferrals that exceed six percent of a Participant's Compensation, the rate of Matching Contribution does not increase as the rate of a Participant's contributions or elective deferrals increase, and the rate of matching contribution for any Highly-Compensated Employee Participant is not greater than the rate that applies to any non-Highly Compensated Employee/Participant or (b) the Actual Contribution Percentage for the eligible highly compensated employees for the Plan Year shall not exceed the Actual Contribution Percentage for all other eligible employees by the greater of: i. 125%; or ii. 200% but not more than two percentage points. The Actual Contribution Percentage for the highly compensated employees and all other eligible employees for a Plan Year shall be the average of the ratios (calculated separately for each individual in each group) of the Employer Matching Contributions made during the Plan Year to the employee's compensation. An employee's compensation for this purpose shall mean the compensation for service performed for the Contributing Employer which is includable in gross income for the Plan Year and shall include amounts deferred pursuant to a salary reduction agreement under Section 125, 132(f) or Section 401(k) of the Code. If there were no Employer Matching Contributions for an eligible employee, the ratio is zero for such employee. An individual shall be an eligible employee with respect to any Plan Year if he is eligible to make Elective Contributions at any time during such year.

j) In the event the Actual Contribution Percentage for Highly Compensated Employees exceeds the limitation specified in (e) above, then the excess Employer Matching Contributions and any income thereon (as allocated pursuant to the procedure set forth in Section 3.1(b) but with respect to the Plan Year) shall be distributed no later than the last day of each Plan Year in which such excess Employer Matching Contributions were made on behalf of Highly Compensated Employees so that the Actual Contribution Percentage of the Highly Compensated Employees with the highest Actual Contribution Percentage will first be lowered to the next percentage necessary to satisfy the limitations of paragraph (e) or to that of those highly compensated employees with the next highest Actual Contribution Percentage, whichever first occurs. If such reduction is not sufficient to satisfy the limitations of paragraph (e), the Actual Contribution Percentage of all Highly Compensated Employees who elected at least the next highest Actual Contribution

Percentage will be lowered by an additional percentage. If such reduction is not sufficient, similar reductions will be made until all Highly Compensated Employees have been reduced to the same Actual Contribution Percentage. If further reductions are necessary, then adjustments shall be made to the Actual Contribution Percentage of all Highly Compensated Employees until the limitations are satisfied.

k) For purposes of conducting the Actual Contribution Percentage Test, the Plan shall use the prior year testing method in lieu of the current year testing method in accordance with Section 401(m)(2)(A) of the Code, the provisions of which are incorporated by reference.

l) Multiple Use Test for Plan Years beginning prior to January 1, 2002, if the Actual Deferral Percentage for the Highly Compensated Employees under paragraph (a) for any Plan Year is more than the Actual Deferral Percentage for all other eligible employees multiplied by 125% and the Actual Contribution Percentage for Highly Compensated Employees under paragraph (e) for the same Plan Year is more than the Actual Contribution Percentage for all other eligible employees multiplied by 125%, then the sum of the Actual Deferral Percentage for Highly Compensated Employees plus the Actual Contribution Percentage for Highly Compensated Employees for such Plan Year may not exceed the greater of: A) the sum of: 1) the greater of (a) the Actual Deferral Percentage for all other eligible employees, and (b) the Actual Contribution Percentage for all other eligible employees multiplied by 125%; plus 2) the lesser of (a) the Actual Deferral Percentage for all other eligible employees, and (b) the Actual Contribution Percentage for all other eligible employees; plus two percentage points, but not in excess of 200% of the lesser of 2(a) or 2(b) above, or B) the sum of: 1) the lesser of (a) the Actual Deferral Percentage for all other eligible employees and (b) the Actual Contribution Percentage for all other eligible employees multiplied by 125%, plus 2) the greater of (a) the Actual Deferral Percentage for all other eligible employees and (b) the Actual Contribution Percentage for all other eligible employees plus two percentage points, but not in excess of 200% of the lesser of (2) (a) or (2) (b) above. In the event the sum of the Actual Deferral Percentage for highly compensated employees plus the Actual Contribution Percentage for Highly Compensated Employees exceeds the amount set forth in this Section, the Actual Contribution Percentage for the Highly Compensated Employees shall be reduced first in the manner provided in paragraph (j), until such excess no longer exists.

3. Effective July 1, 2007, Article III, Section 3.5 the Plan is amended as follows:

3.5 - **Limitations on Benefits and Contributions.**

a) In no event, shall the "Annual Additions" to the Account of a Participant exceed an amount equal to the lesser of: i. $40,000 (as adjusted under Code Section 415(d)); or ii. 100% of the total Code Section 415 compensation. As used herein, "Annual Additions" means, for each Participant, the sum of (i) Elective Contributions allocated to an Employee's Account and (ii) Employer Contributions allocated to an Employee's Account.

b) Effective for limitation years beginning before July 1, 2007, if the foregoing limitation is exceeded as a result of contributions based on estimated annual compensation, the allocation of forfeitures or a reasonable error in determining the amount of elective deferrals under IRC Section 402(g)(3), for any Participant for any Plan Year, the following action shall be taken until the limitation for the Plan Year is no longer exceeded:

i. No further Elective Contributions shall be permitted, and to the extent necessary, any Elective Contributions made by the Participant shall be returned to the Participant, without interest.

ii. Employer Contributions allocated in accordance with Section 4.2 shall be subtracted from the Participant's Account. If as a result of a reasonable error in estimating a Participant's compensation, or under such other facts and circumstances as may be found by the Internal Revenue Service, the limitations set forth above for a Participant are exceeded for any Plan Year, such excess amounts which are attributable to Employer Contributions, or discretionary contributions shall be maintained in a separate suspense account. Such amounts must be used to reduce Employer Contributions and must be allocated to Participants in the next succeeding Plan Year. Such suspense account, and any allocations thereof, shall comply with the provisions of Section 1.415-6 of the Income Tax Regulations.

c) In the event that in any Plan Year beginning before January 1, 2000, a Participant of the Plan is also covered by a defined benefit plan of a Contributing Employer, and if during any Plan Year the sum of the "defined benefit fraction" and the "defined contribution fraction" shall exceed 1.0 with respect to such Participant, the Participant's benefit payable pursuant to the provisions of such defined benefit plan shall be reduced so that the sum of such fractions does not exceed 1.0 for the Plan Year. As used herein, "defined benefit fraction" shall mean a fraction, the numerator of which is the sum of the projected annual pension benefits payable to a Participant pursuant to the provisions of all defined benefit plans (whether or not terminated) maintained by a Contributing Employer (hereinafter referred to as the "DCP") as of the end of the Plan Year of reference, and the denominator of which is the lesser of (i) the product of 1.25 and the dollar limitation under Section 415(b)(1)(A) of the Code, as adjusted pursuant to Code Section 415(b)(2), if required, as such amount is in effect for the Plan Year of reference, or (ii) the product of 1.4 and the maximum amount which may be considered pursuant to Code Section 415(b)(1)(B) for such Participant during such Plan Year.

As used herein, "defined contribution fraction" shall mean a fraction, the numerator of which is the sum of all contributions, forfeitures and "employee contributions" allocated to the account of the Participant pursuant to the provisions of all defined contribution plans at any time maintained by a Contributing Employer (hereinafter referred to as the "DCP") as of the end of the Plan Year of reference, and the denominator of which is the sum of the lesser of the following amounts determined for the Plan Year of reference and for each prior year of service: (i) the product of 1.25 and the dollar limitation under Code Section 415 (c)(1)(A), as such amount is in effect for the Plan Year of reference and for each such prior service, or (ii) the product of 1.4 and the maximum amount which may be considered pursuant to Code Section 415(b)(1)(B) for such Participant during such Plan Year and for each such prior year of service. As used herein, "employee contributions" shall mean the amounts specified in Code Section 415(c)(2).

4. Effective July 1, 2007, Article VIII, Section 8.5 the Plan is amended as follows:

8.5 **Direct Rollover Provision**

a) Notwithstanding any provision of this Plan to the contrary that would otherwise limit a distributee's election under this Section 8.5(a), a distributee may elect, at the time and manner prescribed by the Fund Manager, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The Fund Manager shall, within a reasonable time (but not more than 180 days before his/her annuity starting date) before his/her receipt an eligible rollover distribution, written explanation of his/her rollover rights in a manner that satisfied Code Section 402(f), including a description of the consequences of failing to defer receipt of a distribution.

b) For purposes of this Section 8.5, 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: (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) any distribution made on account of the hardship.

c) For purposes of this Section 8.5, an eligible retirement plan is (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) an annuity plan described in Section 403(a) of the Code, or (iv) a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution; provided, however, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any instrumentality of a state or a political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a Surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order (as defined in Code Section 414(p)).

d) For purposes of this Section 8.5, a distributee is a Participant or Former Participant. In addition, the Participant's or Former Participant's surviving Spouse and the Participant's or Former Participant's spouse or former spouse who is the alternate payee under a "qualified domestic relations order," as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2010, a distributee also includes the Participant's non-Spouse designated beneficiary. In the case of a non-Spouse designated

beneficiary, the direct rollover may only be made to an individual retirement account or annuity described in Code section 408(a) or 408(b) (IRA) that is established on behalf of the designated beneficiary as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&As 17 and 18, 2007-5 IRB 395.

e) For purposes of this Section 8.5, a direct rollover is any payment by the Plan to the eligible retirement plan specified by the distributee.

5. Effective January 1, 2007, Article XI, Section 11.2 of the Plan is amended as follows:

11.2 **For any Plan Year prior to January 1, 2002, the following Top Heavy rules are applicable to the Plan:**

Definitions. Wherever used in this Section, the following words and phrases shall have the following meanings:

a) "Aggregated Plans" — All plans of a Contributing Employer satisfying the requirements of Code Section 401(a)(i) which are required to be aggregated with the Plan pursuant to Code Section 416 (g)(2)(A)(i), including each Plan in which a Key Employee participates in the Plan Year containing the Determination Date or any of the four preceding Plan Years and each other Plan which must be considered with such Plan in order for such Plan to meet the requirements of Code Section 401(a)(4) or Section 410, and (ii) which the Fund Manager elects to aggregate with the Plan pursuant to Section Code 416(g)(2)(A)(ii), including any other plan as elected by the Fund Manager that satisfies the requirements of Code Sections 401(a)(4) and 410 when considered together with the Plans required to be aggregated as described above. A terminated or frozen Plan shall be treated as an Aggregated Plan only in accordance with Treasury Department regulations.

b) "Aggregated Plans Participant" — Any person who is or was a Participant (or Beneficiary of a Participant) of the Aggregated Plans as of the applicable Determination Date or any of the four Determination Dates immediately prior thereto.

c) "Compensation" — For purposes hereof, the term Compensation shall have the meaning ascribed to such term for purposes of Section 1.415-2(d) of the Income Tax Regulations, and shall be subject to the limitations set forth in Section 1.5.

d) "Determination Date" — The date as of which it is determined if a Plan is to be a Top-Heavy Plan for a Plan Year. The Determination Date with respect to a Plan shall be the last day of the preceding Plan Year or, in the case of a new plan for the first Plan Year, the last day of such Plan Year.

e) "Key Employee" — Any Employee or former Employee (or Beneficiary of them) of a Contributing Employer who, during the Plan Year or any of the four Plan Years preceding any applicable Determination Date, with respect to a Contributing Employer was:

i. an officer whose annual compensation is greater than 50% of the amount in effect under Code Section 415(b)(1)(A) for the calendar year in which the Determination Date occurs; or

ii. one of the 10 largest owners (within the meaning of Code Section 318) whose annual compensation is greater than the maximum dollar limitation under Code Section 415(c)(1)(A) for the Plan Year in which the Determination Date occurs; or iii. a five percent owner; or iv. a half percent owner who owns the largest interest in the Employer and whose aggregate annual compensation (as defined in Section 1.415-2(d) of the Income Tax Regulations) from a Contributing Employer is in excess of $150,000.

For purposes of (i) above:

A. no more than the lesser of (I) 50 or (II) the greater of (1) 3, or (2) 10% of the total employees of a Contributing Employer shall be considered as Key Employees;

B. only those officers who have the greatest amount of compensation during the Plan Year and the four Plan Years preceding the applicable Determination Date shall be considered Key Employees until the limitation in (A) above is reached.

f) "Present Benefit Value"

i. With respect to a defined benefit plan which is included in the Aggregated Plans, the sum of the present values of a Participant's accrued benefits under such plans. Except as provided in the applicable Treasury Department regulations, such accrued benefits shall be determined as if the Participant had voluntarily terminated employment on the valuation date which is or would be used for computing Plan costs for minimum funding purposes pursuant to Code Section 412 and which is within the 12 month period ending on the Determination Date. Such present value shall be determined on the basis of interest at the rate of five percent per annum and mortality in accordance with the 1971 Group Annuity Mortality Table, and may include cost of living increases (to the maximum benefit then permitted pursuant to Code Section 415). Non-proportional subsidies may be taken into consideration in accordance with the regulations issued by the Secretary of the Treasury.

ii. With respect to a defined contribution plan which is included in the Aggregated Plans, the sum of a Participant's account balances attributable to employer and employee contributions under such plans as of the most recent valuation date under the Plan ending within the 12-month period ending on the applicable Determination Date and shall be adjusted for contributions due as of such Determination Date. If the Plan is not subject to the funding requirements of Code Section 412, a Participant's account balance shall include contributions not yet required to be contributed, but which would be allocated as of a date not later than the Determination Date, and the adjustment

shall reflect any contributions made or due after the valuation date but prior to the expiration of the extended payment period of Code Section 412(c)(10).

iii. Present Benefit Value shall also include, to the extent not otherwise include, any amounts distributed to the Participant or the Participant's Beneficiary during the Plan Year which includes the Determination Date or during the four preceding Plan Years. Present Benefit Value shall not include the present value of any accrued benefit under a defined benefit Plan or the account balance under a defined contribution Plan with respect to a Participant who has not received any compensation from an employer maintaining the plan (other than benefits under the Plan) at any time during the 5-year period ending on the applicable Determination Date, or with respect to a Participant who is not a Key Employee for a Plan Year, although such person was a Key Employee in a prior Plan Year.

g) "Top-Heavy Plan" — Aggregated Plans in which more than 60% but not more than 90% of the sum of all Present Benefit Values is attributable to Key Employees, as determined as of the applicable Determination Date. For this purpose, plans will be aggregated with reference to the Determination Date which occurs within the same calendar year.

h) "Year of Top-Heavy Service" — Each Year of Service which commences in a Plan Year in which the Plan is a Top-Heavy Plan.

6. Effective January 1, 2007, Article XI, Section 11.3 of the Plan is amended as follows:

11.3 **Minimum Contribution**

a) For any Plan Year in which the Plan is a Top-Heavy Plan, Employer contributions shall be made for the benefit of each employee who is not a Key Employee in an amount that will cause the total of all Employer contributions and forfeitures for such year to equal at least the lesser of (i) three percent of his total Compensation, or (ii) that percentage of his Compensation which represents the largest percentage determined by dividing, for each Key Employee, (A) the total of all Employer Contributions and Elective Contributions and forfeitures for such Key Employee's benefit for such year, by (B) his Compensation for such year.

b) If an Employee is also a Participant in any other defined contribution plan of a Contributing Employer, the minimum contribution set forth in (a) above shall be reduced by any contributions to such other plan with respect to the Employee.

c) If an Employee is also a Participant in a defined benefit plan of a Contributing Employer which is determined to be Top-Heavy and such Employee is entitled to receive the defined benefit plan minimum benefit which satisfies the requirements set forth in Code Section 416 (c)(1), the minimum benefit set forth in (a) above shall be reduced to the extent permitted by Code Section 416 (or any regulations issued thereunder) with respect to any benefits provided under such plans.

7. Effective January 1, 2007, Article XI, Section 11.4 of the Plan is amended as follows:

11.4 **Adjustment to Maximum Benefit Limitations.** If the Plan is a Top-Heavy Plan with respect to a Plan Year, and a Participant has been or is participating in a defined contribution plan of the Contributing Employer, the number 1.0 shall be substituted for the number 1.25 wherever such number shall appear in Section 3.5(c); provided, however, the foregoing shall not be applicable with respect to any Plan Year in which the Plan is a Top-Heavy Plan if for such Plan Year such Participant is provided with the benefit set forth in Section 11.2(a), but with four percent being substituted for three percent therein, and further provided that, if applicable, such benefit shall be reduced pursuant to Sections 11.2(b) and 11.2(c).

8. Effective January 1, 2007, Article XII, Section 12.7 of the Plan is amended as follows:

12.7 **Credit for Qualified Military Service**. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Sections 401(a)(37) and 414(u) of the Code, including, specifically, Section 414(u)(12) of the Code. Liability to make retroactive contributions to the Plan for the returning Employee shall be determined by the Trustees or, if the Trustees do not so determine, liability shall be allocated to the last Employer employing the Employee before the period of military service or, if such Employer is no longer a signatory to an Agreement, then liability shall be allocated to the Plan. Specifically, notwithstanding any contrary Plan provision, the survivors of any participants who die while on military service are entitled to any additional benefits that would have been provided under the plan had the participant resumed employment and then terminated employment on account of death.

IN WITNESS WHEREOF, the Fund's Chairman and Secretary have executed this First Amendment to the Plan as authorized by the Fund's Board of Trustees this ____ day of _____, 2016.

Chairman

Secretary

Addendum to the 2014 Amendment and Restatement

Of the Utility Workers' Union of America Deferred Compensation Plan

The Plan is a profit sharing plan for purposes of the Internal Revenue Code of 1986, as amended. Employer contributions are determined pursuant to written collective bargaining agreements and/or participation agreements that are entered into by contributing Employers. Attached hereto are examples of collective bargaining agreement provisions pursuant to which Employers contribute.

2014 AMENDMENT AND RESTATEMENT OF THE UTILITY WORKERS' UNION OF AMERICA DEFERRED COMPENSATION PLAN

INTRODUCTION

Effective July 1, 2007, Utility Workers' Union of America Local 223 Deferred Compensation Fund (the "Fund") adopted the Utility Workers' Union of America Local 223 Deferred Compensation Plan (the "Plan"), as contained herein. Effective June 1, 2009, the Utility Workers' Union of America was substituted for Utility Workers' Of America Local 223 as a sponsoring part of the Plan and the name of the Plan was changed to the Utility Workers' Union of America Deferred Compensation Plan.

This amended and restated Plan, as set forth herein, is effective as of January 1, 2010 except as otherwise provided. The Plan is intended to comply with the Internal Revenue Code of 1986, as amended, and to conform to the requirements of the Small Business Jobs Act of 2010, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, the Moving Ahead for Progress in the 21st Century Act and the American Taxpayer relief Act of 2012 and other current requirements for tax-qualification and other applicable laws and to reflect certain administrative and conforming amendments. The purpose of this Plan is to provide additional retirement security for eligible employees of Contributing Employers.

It is intended that this Plan, together with the Declaration of Trust, meet **all** the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code") and the Plan shall be interpreted, whenever possible, to comply with the terms of ERISA and the Code and all regulations and rulings issued under ERISA and the Code and amendments thereto. The Plan shall be qualified as a defined contribution plan containing cash or deferred arrangements under Section 401(k) of the Code.

The provisions of this Plan shall apply only to an Employee who terminates employment on or after the Effective Date. The rights and benefits, if any, of a former Employee shall be determined in accordance with the provisions of the Plan in effect on the date his employment terminated, except as otherwise specifically provided in the Plan or as otherwise required by applicable law or regulation.

SECTION 1

DEFINITIONS

Wherever used in the Plan, the following words and phrases shall have the meanings continued in this Section 1 unless a different meaning is plainly required by the context. Whenever used herein, the masculine gender shall be deemed to include the feminine, and the singular term shall be deemed to include the plural.

1.1 **"Account"** means the portion of the Trust Fund which is attributable to a Participant: Elective Contributions Account - The Account to which all salary deferred Elective Contributions made in accordance with Section 3.1 are credited. Employer

Contributions Account - The Account to which all Employer Contributions or Employer Matching Contributions made in accordance with Section 3.2 are credited. Rollover Contribution Account — The Account to which all rollover contributions made to the Plan in accordance with Section 3.7 are credited. Each Participant may direct the investment of his Account among various investment funds according to rules and procedures to be established by the Fund. The value of each Account shall be determined as of the Valuation Date.

1.2 **"Appeals Committee"** means a committee appointed by the Trustees pursuant to Section 9.1 and comprised of an equal number of Employer and Union Trustees.

1.3 **"Beneficiary"** means any person entitled to receive any benefits payable under the Plan as a result of the death of a Participant, in accordance with the provisions of Section 7.3.

1.4 **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

1.5 **"Compensation"** means the total remuneration paid or accrued to an Employee by a Contributing Employer and reflected on his IRS Form W-2 Wage and Tax Statement including salary, bonuses, shift differential or commissions and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Sections 125, 132(0(4) or 457. To the extent required by Code Section 415 and its regulations, an Employee's Compensation for a limitation year also shall include payments made to an Employee on or before two and one-half months after severance from employment or, if later, the end of the limitation year that includes the date of such Employee's severance from employment. Notwithstanding anything to the contrary contained herein, compensation shall not include amounts in excess of $200,000 (adjusted for increases in the cost of living in accordance with the rulings of the Secretary of the Treasury).

1.6 **"Contributing Employer"** means each employer who has duly executed a collective bargaining agreement with the Union providing for participation in the Plan, and shall include each employer, excluding not-for-profit employers, who, after the effective date of this Plan, executes a collective bargaining agreement, provided that such employer satisfies the requirements for participation established by the Trustees and agrees to be bound by the terms and provisions of the Declaration of Trust and by the terms and provisions of the Plan. The term "Contributing Employer" shall also mean the Union, provided that each such entity satisfies the requirements of participation established by the Trustees and agrees to be bound by the terms and provisions of the Declaration of Trust and by the terms and provisions of the Plan and contributes to the Trust Fund in accordance with the provisions of a written participation agreement. A Contributing Employer shall cease to be a Contributing Employer upon the later of the date that such employer ceases to have (i) a collective bargaining agreement with the

Union providing for participation in the Plan or (ii) a legal obligation to participate in the Plan.

1.7 **"Covered Employment"** means employment in any job category which is normally a job category which is within a bargaining unit covered by collective bargaining between the Employer and the Union or employment in any other job category designated by a Contributing Employer in writing on a form filed with and accepted by the Trustees or employment with the Union if such entity is a Contributing Employer

1.8 **"Declaration of Trust"** means the Agreement and Declaration of Trust executed by the Trustees on May 9, 2007, as amended.

1.9 **"Deferred Retirement Date,"** means the first day of any month coincident with or next following a Participant's termination of service after his Normal Retirement Date.

1.10 **"Disability Retirement Date"** means the first day of the month coincident with or next following the date on which a Participant suffers a "permanent disability" while in Covered Employment. As used herein, "permanent disability" means total and permanent disability which entitles the Participant to disability benefits under the Social Security laws and which the Trustees determine, on the basis of medical evidence satisfactory to them, to have, for a continuous period of six months, prevented a Participant from engaging in any occupation or employment for wage or profit as a result of bodily injury or disease of the mind or body, either occupational or non-occupational in cause, but excluding any compensable disability resulting from service in the armed forces of any country. Such disability must be of such a nature that, on the basis of medical evidence satisfactory to the Trustees, it is considered to be of a permanent nature. The Trustees shall be the sole and final judges of total and permanent disability.

1.11 **"Early Retirement Date"** means the last date on which a Participant is entitled to be paid, if any, following the date on which a Participant attains age 55.

1.12 **"Effective Date"** means July 1, 2007.

1.13 **"Elective Contributions"** means the contributions made automatically as provided herein or pursuant to a salary reduction agreement under Section 3.1 of **the** Plan.

1.14 **"Employee"** means any person employed by a Contributing Employer.

1.15 **"Employer Contributions"** means the contributions made by the Contributing Employers under Section 3.2 of the Plan and shall include Employer Matching Contributions when applicable.

1.16 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time,

1.17 **"Fund Manager"** means the individual or entity appointed by the Trustees to oversee the daily administration of the Plan.

1.18 **"Hour of Service"** means each of the following, determined without duplication:

a) Each hour for which an Employee is directly or indirectly paid or entitled to payment by a Contributing Employer for the performance of duties for a Contributing Employer.

b) Each hour for which an Employee is directly or indirectly paid or entitled to payment by a Contributing Employer for the performance of duties in non-covered employment for a Contributing Employer, but only if the Employee's period of non-covered employment with the Contributing Employer is subsequent to, and contiguous with, the Employee's period of Covered Employment with the Contributing Employer.

c) Each hour up to a maximum of 501 hours during a single continuous period for which an Employee is paid by a Contributing Employer on account of a period of time during which no duties are performed as the result of vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

d) Each hour not otherwise credited for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Contributing Employer. These hours shall be credited for the period or periods to which the award or agreement pertains rather than the period in which the award, agreement, or payment was made.

An Employee shall be credited with an Hour of Service at the time he performs duties for a Contributing Employer, regardless of when payment for such duties is received by the Employee. If a Contributing Employer does not maintain hourly records with respect to any Employee employed by it, such Employee shall be credited with 45 Hours of Service for each week in which he is entitled to be credited with an Hour of Service.

1.19 **"Industry"** means the types of business engaged in by employers who are parties to collective bargaining agreements with the Union.

1.20 **"Investment Fund(s)"** means each investment fund as may be established or selected for the investment of Plan assets.

1.21 **"Investment Manager"** means the individual(s) or entity(ies) appointed by the Trustees to advise the Trustees as to the investments of the Plan.

1.22 **"Normal Retirement Date"** means the first day of the month coincident with or next following the Participant's attainment of age 60.

1.23 **"One-Year Break in Service"** means a Plan Year during which an Employee is credited with not more than 500 Hours of Service; provided, however, that an Employee who is on a "qualified absence" shall not incur a One-Year Break in Service with respect to (a) the Plan Year in which the "qualified absence" commenced, if a One-Year Break in Service would have been incurred but for the provisions hereof, or (b) the next subsequent Plan Year, in all other cases. "qualified absence" means the absence by an Employee from employment with a Contributing Employer as a result of (i) the pregnancy of the Employee, (ii) the birth or adoption of a child of the Employee, (iii) the caring for such child immediately subsequent to the child's birth or adoption if such Employee is the natural or adoptive parent of such child, (iv) military or other service of the United States of America to the extent the Employee's reemployment rights are protected by law. The Trustees may require such information as they deem appropriate to confirm the reasons for and duration of any such absence.

1.24 **"Participant"** means an Employee who is eligible for participation in the Plan as provided in Section 2 and whose participation has not terminated under Section 2.3.

1.25 **"Plan"** means the Utility Workers Local 223 Deferred Compensation Plan changed and effective June 1, 2009 to Utility Workers' Union of America Deferred Compensation Plan, as herein set forth and as amended from time to time.

1.26 **"Plan Year"** means the twelve consecutive month period beginning each January 1 and ending the following December 31.

1.27 **"Trustees"** means the Trustees designated in the Declaration of Trust together with their successors designated in the manner provided therein.

1.28 **"Trust Fund"** means all assets held at any time by the Trustees under the terms of the Declaration of Trust.

1.29 **"Union"** means prior to June 1, 2009 Local 223 of the Utility Workers' Union of America, AFL-CIO and effective June 1, 2009, the Utility Workers' Union of America, AFL-CIO.

1.30 **"Valuation Date"** means the date of determination of the fair market value of a participant's investments in each Investment Fund. This determination can be made at the end of each Plan Year or at other times, as determined by the Trustees, pursuant to appropriate valuation procedures applicable to one or more investment funds and/or adopted by the Trustees.

1.31 **"Year of Service"** means the 12-consecutive month period ("computation period") during which the Employee completes at least 1,000 Hours of Service. For purposes of determining a Year of Service, the initial eligibility computation period is the 12-consecutive month period beginning on the date the Employee first performs an

Hour of Service for the employer ("employment commencement date"). The succeeding 12-consecutive month periods commence with the first Plan Year which commences prior to the first anniversary of the Employee's employment commencement date regardless of whether the Employee is entitled to be credited with 1,000 Hours of Service during the initial eligibility computation period.

SECTION 2

ELIGIBILITY AND PARTICIPATION

2.1 **Participation On or After Effective Date.** Each person who is an Employee of a Contributing Employer in Covered Employment on the Effective Date shall be eligible to become a Participant in the Plan. Each person who becomes an Employee of a Contributing Employer in Covered Employment thereafter shall be eligible to become a Participant as of the first payroll period in the month following the later of the date of employment or the end of the employment probationary period, if any, established by a Contributing Employer, but in no event later than 12 months after the date of employment.

2.2 **Designation of Elective Contribution and Investment Election.** A Participant who is permitted or required to make Elective Contributions to the Plan under the terms of a collective bargaining agreement with the Union shall designate the amount of his Compensation to be deferred and allocated to his Elective Contribution Account as provided in Section 3.1, and designate the manner of investment of his Accounts as provided in Section 4.2.

2.3 **Termination of Participation.** Participation in the Plan shall cease immediately upon a Participant's death, retirement, disability or termination of Covered Employment.

2.4 **Eligibility of Former Participants.** A former Participant shall be eligible to participate immediately upon his return to the status of an eligible Employee.

SECTION 3

CONTRIBUTIONS

3.1 **Elective Contributions:**

a) Each Contributing Employer shall contribute to the Trust Fund such amounts of Elective Contributions as each Participant has designated in a salary reduction agreement, and/or, if not revoked by the Participant, the "automatic contribution amount designated in the collective bargaining agreement, in accordance with Subsection (b). Such Elective Contributions shall be made to the Trust Fund in cash, as soon as administratively practicable, but in all events no later than the time required under the applicable Labor Department Regulations.

b) Each Participant who is permitted or is required under the terms of an applicable collective bargaining agreement to have Elective Contributions made to the Plan shall complete a salary reduction agreement on the appropriate form, which shall be filed with the Fund Manager. The Participant elects to reduce his Compensation by an amount stated as a percentage of compensation in cents per hour or dollars per week in such amount as shall be permitted pursuant to the collective bargaining agreement or participation agreement under which the Participant is covered and approved by the Trustees. Notwithstanding the catch-up contributions permitted under Code Section 414(v), a Participant may not reduce his salary by an amount in excess of $11,000 (as adjusted in accordance with rulings of the Secretary of the Treasury).

If a Participant makes Elective Contributions to this Plan and to any other qualified cash or deferred plan in excess of the dollar limit specified above for the Participant's taxable year, then the Participant must notify the Fund Manager in writing by the first March 1 of the following year of the amount, if any, to be refunded from this Plan, The amount to be refunded shall be paid to the Participant in a single payment not later than the first April 15 following the close of the taxable year and shall include any income or loss allocated to the refund, as determined below, for the period during (i) the Participant's taxable year, and (ii) the period between the end of that year and the date of the refund payment. The payment shall be deemed to have been made before the close of the calendar year in which such excess Elective Contribution was made. If the Participant fails to notify the Fund Manager by March 1, no refund will be made under this Section 3.1(b),

Although the excess deferral may be refunded, it shall still be considered as an Elective Contribution for the Plan Year in which it was originally made and shall be included in the Participant's Actual Deferral Percentage. The income or loss allocable to excess Elective Contributions for the Participant's taxable year shall be determined by multiplying the income or loss for the Participant's taxable year allocable to the Participant's Elective Contributions for such year by a fraction, the numerator of which is the amount of excess Elective Contributions and the denominator of which is the participant's closing balance (as of the end of the Participant's taxable year) of the Participant's Elective Contributions Account reduced by gains (or increased by losses) allocable to such Account during the taxable year. The income or loss allocable to excess Elective Contributions allocated to each Participant during the period between the end of the Participant's taxable year and the date of the refund payment may be calculated by multiplying the income or loss allocable to the excess Elective Contribution for the period between the end of the Participant's taxable year and the last day of the month preceding the date of distribution by a fraction determined under the method specified above. Alternatively, the allocable income or loss for the period between the end of the Participant's taxable year and the date of refund payment shall be deemed to be equal to 10% of the income or loss allocable to the excess Elective Contribution for the taxable year multiplied by the number of calendar months that have elapsed since the end of the taxable year. For this purpose, payment occurring on or

before the 15th day of the month will be treated as having been made on the last day of the preceding month, A payment occurring after the 15th day of the month will be treated as having been made on the first day of the next month.

Notwithstanding the foregoing, any reasonable method for computing the income or loss allocable to excess Elective Contributions may be used, provided such method is used consistently for all Participants and for all corrective distributions made under the Plan for the Plan Year, and is used by the Plan for allocating income or loss to the Participant's Account.

c) Each completed salary reduction agreement shall be effective as soon as practicable in the next regular payroll period after the date the Fund Manager receives the salary reduction agreement. If permitted by the applicable collective bargaining agreement, a Participant may revise his salary reduction agreement no more than once in any calendar quarter to provide for increased or decreased reductions in his Compensation. Such change may be made at any time during the calendar quarter by filing the appropriate form with the Fund Manager, provided that such form is filed with the Fund Manager at least 30 days before it is to become effective. A Participant may elect to suspend his Elective Contributions once during the calendar year. Such change may be made at any time during the calendar year by filing the appropriate form with the Fund Manager, provided that such form is filed with the Fund Manager at least 30 days before it is to become effective. The Fund Manager shall notify Participants of their right to suspend Elective Contributions, including automatic Elective Contributions provided under applicable collective bargaining agreements when such persons first become Participants and once each year thereafter. A Participant may elect to retroactive vacate the automatic election within 90 days of the date on which such person becomes a Participant on a form provided by the Fund Manager. Upon such election, the Fund Manager shall refund to the Participant all contributions made on account of the automatic election, but not any Employer contributions. Such refund will be provided with 90 days of receipt of a timely request to vacate the automatic election.

d) A Participant who has suspended both his Elective Contributions under this Section 3.1 may not resume having Elective Contributions made until 12 months following the payroll period in which the total suspension was effective. A Participant may thereafter resume having Elective Contributions made as of any subsequent payroll period by entering into a new salary reduction agreement on the appropriate forms with his Employer, provided such agreement is filed with the Fund Manager at least 30 days prior thereto.

e) In the absence of a salary reduction agreement, an active Participant shall nevertheless be considered to be a Participant in the Plan for purposes of Section 3.5.

f) Any Participant who has attained age 50 before the close of the Plan Year shall be eligible to defer additional income to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such catch-up contributions shall

not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the requirements of Code Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b) or 416, as applicable, by reason of the making of such catch-up contributions.

3.2 **Employer Contributions.** As of each payroll period after the Effective Date, each Contributing Employer shall contribute to the Trust Fund an Employer Contribution determined pursuant to a collective bargaining agreement with the Union or, for non-bargaining unit employees, pursuant to an agreement with the Trustees. The Employer Contribution may be an Employer Matching Contribution which, pursuant to collective bargaining, shall be determined based on the amount of an Employee's Elective Contribution. Each Contributing Employer shall make its Employer Contribution or Employer Matching Contribution to the Trust Fund in cash in accordance with the collective bargaining agreement.

3.3 **Payment of Expenses.** All administrative expenses of the Plan, fees and retainers of the Plan's trustees, actuary, accountant, counsel, consultant, administrator, or other specialists and all expenses directly relating to the investments of the Trust Fund, including taxes, brokerage commissions and registration charges shall be paid out of the Trust Fund from the earnings thereon so long as the Plan or Trust Fund remains in effect. The Trustees may, at their discretion, impose charges on the Participants of the Plan to pay for administrative expenses of the Plan and deduct such charges from the account balances of Participants.

3.4 **Provisions to Preclude Discrimination.**

a) **ADP Test.** For each Plan Year, the Actual Deferral Percentage for the eligible "Highly Compensated Employees" for the Plan Year shall not exceed the Actual Deferral Percentage for all other eligible employees by the greater of: i. 125%; or ii. 200% but not more than two percentage points. The Actual Deferral Percentage for the Highly Compensated Employees and all other eligible employees for a Plan Year shall be the average of the ratios (calculated separately for each individual in each group) of the employee's Elective Contributions made during the Plan Year to the employee's compensation. An Employee's compensation for this purpose shall mean the compensation for service performed for a Contributing Employer which is includable in gross income for the Plan Year and shall include amounts deferred pursuant to a salary reduction agreement under Section 125, 132(f) or Section 401(k) of the Code. If there were no Elective Contributions for an eligible employee, the ratio is zero for such employee. An individual shall be an eligible employee with respect to any Plan Year if he is eligible to make Elective Contributions at any time during such year.

b) **Excess ADP Percentage.** In the event the Actual Deferral Percentage for Highly Compensated Employees exceeds the limitation specified in (a) above, then the excess Elective Contributions and any income thereon (as allocated pursuant to the procedure set forth in Section 3.1(b) but with respect to the Plan Year) shall be

distributed within two and one-half months after the Plan Year for which such excess Elective Contributions were made. The payment shall be deemed to be made before the close of the Year in which the contributions were made.

c) The Plan shall determine how much the actual deferral ratio (ADR) of the highly compensated employee with the highest ADR would have to be reduced to satisfy the ADP test or cause such ratio to equal the ADR of the highly compensated employee with the next highest ratio, Second, this process shall be repeated until the ADP test is satisfied. The amount of Excess Contributions equal to the sum of these hypothetical reductions multiplied, in each case, by the highly compensated employee's Compensation.

d) The Elective Contributions of the highly compensated employees with the highest dollar amount of Elective Contributions are reduced by the amount required to cause that highly compensated employee's Elective Contributions to equal the dollar amount of the Elective Contributions of the highly compensated employee with the next highest dollar amount of Elective Contributions, This amount is then distributed to the highly compensated employee with the highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this step, would equal the total Excess Contributions, the lesser reduction amount is distributed. If the total amount distributed is less than the total Excess Contributions, the foregoing step is repeated.

e) Excess Contributions (including any Excess Matching Contributions) shall be adjusted for any income or loss up to the earlier of the date of distribution or the end of the Plan Year. Any reasonable method for computing the income or loss allocable to Excess Contributions may be used, provided that such method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the Plan Year and the date of distribution shall be disregarded in determining income or loss.

f) Excess Elective Contributions which are refunded to the Participant shall cause the corresponding Employer Matching Contribution to be refunded to the extent it is vested.

g) For purposes of conducting the Actual Deferral Percentage Test, the Plan shall use the prior year testing method in lieu of the current year testing method in accordance with Section 401(k)(3)(A) of the Code, the provisions of which are incorporated herein by reference.

h) For purposes of this Section 3.4, the term "Highly Compensated Employee" shall mean an Employee who during the Plan Year or the preceding Plan Year is eligible to have Elective Contributions made on his behalf to the Plan (whether or not such contributions are being made), and who received Compensation from the Contributing

Employer or an Affiliated Corporation in excess of $85,000. For purposes of this definition, "Compensation" has the meaning set forth in Section 415(c)(3) of the Code. The $85,000 amount shall be increased based on cost of living adjustments in accordance with rulings of the Secretary of the Treasury. The determination of whether a person is a "highly compensated employee" shall be made taking into account the employees of all companies which are members of a controlled group of corporations (within the meaning of Section 414(b) of the Code or such other Federal income tax statutory provisions as shall at the time be applicable) of which the Contributing Employer or an Affiliated Corporation is also a member. A former "Highly Compensated Employee" shall continue to be treated as a Highly Compensated Employee if he was a Highly Compensated Employee when he separated from service or at any time after age 55. In determining who is a Highly Compensated Employee, the top-paid group election is not made.

i) **ACP Test.** For each Plan Year, the Matching Contribution made either (a) shall be part of a qualified automatic contribution arrangement as defined in Code Section 401(k)(13) and the Matching Contribution are not made on Employee Elective Deferrals that exceed six percent of **a** Participant's Compensation, the rate of Matching Contribution does not increase as the rate of a Participant's contributions or elective deferrals increase, and the rate of matching contribution for any Highly-Compensated Employee Participant is not greater than the rate that applies to any non-Highly Compensated Employee/Participant or (b) the Actual Contribution Percentage for the eligible highly compensated employees for the Plan Year shall not exceed the Actual Contribution Percentage for all other eligible employees by the greater of: i. 125%; or ii. 200% but not more than two percentage points. The Actual Contribution Percentage for the highly compensated employees and all other eligible employees for a Plan Year shall be the average of the ratios (calculated separately for each individual in each group) of the Employer Matching Contributions made during the Plan Year to the employee's compensation. An employee's compensation for this purpose shall mean the compensation for service performed for the Contributing Employer which is includable in gross income for the Plan Year and shall include amounts deferred pursuant to a salary reduction agreement under Section 125, 132(f) or Section 401(k) of the Code. If there were no Employer Matching Contributions for an eligible employee, the ratio is zero for such employee. An individual shall be an eligible employee with respect to any Plan Year if he is eligible to make Elective Contributions at any time during such year.

j) In the event the Actual Contribution Percentage for Highly Compensated Employees exceeds the limitation specified in (e) above, then the excess Employer Matching Contributions and any income thereon (as allocated pursuant to the procedure set forth in Section 3.1(b) but with respect to the Plan Year) shall be distributed no later than the last day of each Plan Year in which such excess Employer Matching Contributions were made on behalf of Highly Compensated Employees so that the Actual Contribution Percentage of the Highly Compensated Employees with the highest Actual Contribution Percentage will first be lowered to the next percentage necessary to

satisfy the limitations of paragraph (e) or to that of those highly compensated employees with the next highest Actual Contribution Percentage, whichever first occurs. If such reduction is not sufficient to satisfy the limitations of paragraph (e), the Actual Contribution Percentage of all Highly Compensated Employees who elected at least the next highest Actual Contribution Percentage will be lowered by an additional percentage. If such reduction is not sufficient, similar reductions will be made until all Highly Compensated Employees have been reduced to the same Actual Contribution Percentage. If further reductions are necessary, then adjustments shall be made to the Actual Contribution Percentage of all Highly Compensated Employees until the limitations are satisfied.

k) For purposes of conducting the Actual Contribution Percentage Test, the Plan shall use the prior year testing method in lieu of the current year testing method in accordance with Section 401(m)(2)(A) of the Code, the provisions of which are incorporated by reference.

1) Multiple Use Test for Plan Years beginning prior to January 1, 2002, if the Actual Deferral Percentage for the Highly Compensated Employees under paragraph (a) for any Plan Year is more than the Actual Deferral Percentage for all other eligible employees multiplied by 125% and the Actual Contribution Percentage for Highly Compensated Employees under paragraph (e) for the same Plan Year is more than the Actual Contribution Percentage for all other eligible employees multiplied by 125%, then the sum of the Actual Deferral Percentage for Highly Compensated Employees plus the Actual Contribution Percentage for Highly Compensated Employees for such Plan Year may not exceed the greater of: A) the sum of: 1) the greater of (a) the Actual Deferral Percentage for all other eligible employees, and (b) the Actual Contribution Percentage for all other eligible employees multiplied by 125%; plus 2) the lesser of (a) the Actual Deferral Percentage for all other eligible employees, and (b) the Actual Contribution Percentage for all other eligible employees; plus two percentage points, but not in excess of 200% of the lesser of 2(a) or 2(b) above, or B) the sum of: 1) the lesser of (a) the Actual Deferral Percentage for all other eligible employees and (b) the Actual Contribution Percentage for all other eligible employees multiplied by 125%, plus 2) the greater of (a) the Actual Deferral Percentage for all other eligible employees and (b) the Actual Contribution Percentage for all other eligible employees plus two percentage points, but not in excess of 200% of the lesser of (2) (a) or (2) (b) above. In the event the sum of the Actual Deferral Percentage for highly compensated employees plus the Actual Contribution Percentage for Highly Compensated Employees exceeds the amount set forth in this Section, the Actual Contribution Percentage for the Highly Compensated Employees shall be reduced first in the manner provided in paragraph (j), until such excess no longer exists.

3.5 - **Limitations on Benefits and Contributions.**

a) In no event, shall the "Annual Additions" to the Account of a Participant exceed an amount equal to the lesser of: i. $40,000 (as adjusted under Code Section 415(d));

or ii. 100% of the total Code Section 415 compensation, As used herein, "Annual Additions" means, for each Participant, the sum of (i) Elective Contributions allocated to an Employee's Account and (ii) Employer Contributions allocated to an Employee's Account.

b) If the foregoing limitation is exceeded for any Participant for any Plan Year, the following action shall be taken until the limitation for the Plan Year is no longer exceeded:

i. No further Elective Contributions shall be permitted, and to the extent necessary, any Elective Contributions made by the Participant shall be returned to the Participant, without interest.

ii. Employer Contributions allocated in accordance with Section 4.2 shall be subtracted from the Participant's Account. If as a result of a reasonable error in estimating a Participant's compensation, or under such other facts and circumstances as may be found by the Internal Revenue Service, the limitations set forth above for a Participant are exceeded for any Plan Year, such excess amounts which are attributable to Employer Contributions, or discretionary contributions shall be maintained in a separate suspense account. Such amounts must be used to reduce Employer Contributions and must be allocated to Participants in the next succeeding Plan Year. Such suspense account, and any allocations thereof, shall comply with the provisions of Section 1.415-6 of the Income Tax Regulations.

c) In the event that in any Plan Year beginning before January 1, 2000, a Participant of the Plan is also covered by a defined benefit plan of a Contributing Employer, and if during any Plan Year the sum of the "defined benefit fraction" and the "defined contribution fraction" shall exceed 1.0 with respect to such Participant, the Participant's benefit payable pursuant to the provisions of such defined benefit plan shall be reduced so that the sum of such fractions does not exceed 1.0 for the Plan Year. As used herein, "defined benefit fraction" shall mean a fraction, the numerator of which is the sum of the projected annual pension benefits payable to a Participant pursuant to the provisions of all defined benefit plans (whether or not terminated) maintained by a Contributing Employer (hereinafter referred to as the "DCP") as of the end of the Plan Year of reference, and the denominator of which is the lesser of (i) the product of 1.25 and the dollar limitation under Section 415(b)(1)(A) of the Code, as adjusted pursuant to Code Section 415(b)(2), if required, as such amount is in effect for the Plan Year of reference, or (ii) the product of 1.4 and the maximum amount which may be considered pursuant to Code Section 415(b)(1)(B) for such Participant during such Plan Year.

As used herein, "defined contribution fraction" shall mean a fraction, the numerator of which is the sum of all contributions, forfeitures and "employee contributions" allocated to the account of the Participant pursuant to the provisions of all defined contribution plans at any time maintained by a Contributing Employer (hereinafter referred to as the

"DCP") as of the end of the Plan Year of reference, and the denominator of which is the sum of the lesser of the following amounts determined for the Plan Year of reference and for each prior year of service: (i) the product of 1.25 and the dollar limitation under Code Section 415 (c)(1)(A), as such amount is in effect for the Plan Year of reference and for each such prior service, or (ii) the product of 1.4 and the maximum amount which may be considered pursuant to Code Section 415(b)(1)(B) for such Participant during such Plan Year and for each such prior year of service. As used herein, "employee contributions" shall mean the amounts specified in Code Section 415(c)(2),

3.6 **Maximum Deductible Contribution.** In no event shall a Contributing Employer be obligated to make a contribution for a Plan Year in excess of the maximum amount deductible for the Contributing Employer under Code Section 404(a)(3)(A), or any statute or rule of similar import.

3.7 **Rollover Contributions.** A Participant may elect to make a Rollover Contribution to the Plan from an eligible retirement plan by delivering, or causing to be delivered, an amount in cash which constitutes such Rollover Contribution to the Trustees at such time or times and in such manner as shall be permitted by the Fund Manager, provided that the Fund Manager receives written certification from the Participant and such other documentation that the Fund Manager deems appropriate to determine if such contribution is eligible for rollover to the Plan and will not affect the qualification of the Plan or the tax-exempt status of the Trust under Sections 401(a) and 501(a) of the Code. Any Rollover Contribution that is found by the IRS as not being qualified for tax-free rollover treatment shall be returned to the Participant. Any expense incident to or liability incurred by the Plan or any fiduciary of the Plan because of transfer of such disqualified assets to the Trust shall be borne solely by and charged to the individual who requested the rollover. The Participant shall designate the proportion of his Rollover Contribution that shall be placed in each Investment Fund. As of the date of receipt of such Rollover Contribution by the Trustee, a Rollover Contribution Account shall be established for the Participant and credited with the fair market value of such Rollover Contribution, as determined by the Trustee. Notwithstanding any other provision of this Plan, under no circumstances shall any funds attributable to any Participant's Rollover Contribution be used in any way as a basis for the allocation or reallocation of any Employer Contributions or forfeitures. At all times the interest of such Participant in his Rollover Contribution Account shall be fully (100%) vested, and any forfeiture provisions contained in this Plan shall not apply to such account. The Plan will accept a Rollover Contribution from a qualified plan described in Section 401(a) or 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or an eligible plan under Section 457(b) of the Code.

3.8 **Plan to Plan Transfers.** The Trustees, in accordance with a uniform and nondiscriminatory policy applicable to Employees, may direct the Trust Fund to accept a contribution transferred directly to the Trust Fund from the trustee of another trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code on behalf of an Employee (whether or not otherwise a Participant) who

participated in that trust. Prior to the acceptance of such a contribution, the Trustees shall obtain such evidence, assurances, opinions and certifications it may deem necessary to establish to its satisfaction that the amount to be contributed will not affect the qualification of the Plan or the tax-exempt status of the Trust under Sections 401(a) and 501(a) of the Code, respectively.

SECTION 4

INVESTMENT FUNDS AND PARTICIPANTS' ACCOUNTS

4.1 **Separate Accounts or Accountings.** Separate Accounts shall be established and maintained for each Participant reflecting his interest in each of the Investment Funds, and the extent to which such interest reflects Elective Contributions and Employer Contributions. Except as provided in Section 4.2, the Trustees shall make available at least three Investment Funds (other than Funds that invest in Employer securities within the meaning of Code Section 401(a)(35)) that provide Participants with a broad range of investment alternatives within the meaning of Department of Labor Regulation Section 2550.404c-1. The Trustees reserve the right, at any time, to eliminate any Investment Fund or create additional Investment Funds for the investment of the Trust in the future.

4.2 **Allocation to Investment Funds.** The Trustees may direct the investment of all Participant Accounts until such time as the total assets of the Trust reach a threshold set by the Trustees in exercise of their grantor discretion or, subsequently, if determined to be appropriate by the Trustees in exercise of their grantor discretion. A Participant or former Participant shall designate that current Elective Contributions, Employer Contributions and Rollover Contributions be allocated as the Participant shall elect to one or more of the available Investment Funds. Elections must be made in whole percentages. A Participant's designation regarding the percent of a contribution to be allocated to each Investment Fund with respect to Elective Contributions and Employer Contributions is independent of his designation with respect to all Contributions of any type previously made. If, at any time, there shall be credited to a Participant's Account an amount(s) for which no such instructions have been furnished, or for which the instructions furnished are, in the opinion of the Trustees, incomplete or unclear, or for which the instructions furnished would require investment in an Investment Option not approved by the Trustees for use under the Plan, such amount(s) may be invested in shares of the default investment designated in the Participant's most recent investment instructions (which may be written, electronic, or telephonic) or, if the Participant has never provided instructions, as determined by the Trustees. Notwithstanding the foregoing, to the extent that the Trustees permit and/or invest Plan assets in Employer securities within the meaning of Code Section 401(a)(35), the Fund shall permit any Participant who has completed at least three Years of Service or a beneficiary of a deceased Participant who has completed at least three Years of Service shall be permitted to elect, at least quarterly, but in no event less frequently than generally

applicable Plan provisions under which Participants can change their existing Plan investment selections, to change from an investment Fund investing in Employer securities into another available investment Fund made available by the Plan for Participant/Beneficiary-directed investment of each such person's respective Plan Account Balance.

4.3 **Change of Investment Direction and Transfers Between Investment Funds:**

a) Any investment direction given by a Participant shall be deemed to be a continuing direction until changed. A Participant may elect at any time to change his investment direction with respect to future Elective Contributions and Employer Contributions by filing the appropriate form with the Fund Manager designating a new percentage that is a multiple of one percent applicable to the funds. Such change shall be implemented as soon as practicable following such directive given by the Participant.

b) A Participant may transfer amounts allocated to any of the Investment Funds at any time by filing with the Fund Manager a notice directing that a portion of his Accounts held in one or more funds be transferred to another such fund. Such change shall be implemented as soon as practicable following such directive given by the Participant.

c) A Participant whose participation has terminated may continue to transfer amounts among his account as set forth in (b) above until his Accounts have been fully distributed.

4.4 **Investment Funds:**

a) **Maintenance of Separate Investment Funds.** Subject to Section 4.2, the Trustees shall maintain separate investment funds which may be changed from time to time, pursuant to which Elective and Employer Contributions and Rollover Contributions shall be invested at the direction of Participants as set forth in Sections 4.2 and 4.3. The earnings from investments in each Fund shall be reinvested in the same Fund.

b) **Valuation of Investment Accounts.** Each Participant's interest in each of the Investment Funds shall be maintained in separate accounts as provided in Section 4.1 to be valued at fair market on each Valuation Date. Once the valuations have been made, the accounts will be proportionally adjusted for gains or losses and payment of Plan expenses paid pursuant to Section 3.3.

c) **Former Participants.** The Accounts of a former Participant or Beneficiary shall continue to be subject to adjustment as provided in paragraph (b) hereof as of each succeeding Valuation Date until such Accounts have been fully distributed.

4.5 **Reports.** As soon as practicable after each calendar quarter, and at such other times as the Fund Manager may determine, there shall be furnished to each Participant, former Participant and Beneficiary who then has a balance in any account a statement,

in such form as the Trustees may authorize, showing the current condition of his accounts. The statement will show the Participant's total Account Balance and balance in each Investment Fund at the beginning of the statement period, the total Employer and Employee Contributions and Rollover Contributions made during the period, investment gains or losses during the period, any transfers between investments made during the period, the total Account Balance and balance in each Investment Fund at the end of the period.

SECTION 5

VALUATION OF TRUST FUND

5.1 **Valuation of Trust Fund.** The Trustees shall value the Trust Fund at its fair market value as of each Valuation Date. In determining such value, allocation made to Participant's Accounts pursuant to Section 5.2 shall be deemed to have been made as of the day immediately following such immediately preceding Valuation Date.

5.2 **Allocation of Accounts.** As of each Valuation Date, the Account of each Participant shall be adjusted to reflect:

a) Income or loss earned or accrued, including any capital gain and loss, expenses, and increases and decreases of the fair market value of the assets held in each of the various Investment Funds into which the Participant has directed the investment of his Account since the immediately preceding Valuation Date. Such allocation shall be in the same proportion as the value of each Participant's Account invested in each Investment Fund as of the immediately preceding Valuation Date bears to the total value of the Accounts of all Participants invested in that Investment Fund as of such date.

b) Elective Contributions made since the next preceding Valuation Date.

c) Employer Contributions, including any Employer Matching Contributions, shall be determined for each Participant and credited.

d) Rollover Contributions, if any, made since the next preceding Valuation Date.

e) Distributions payable as of the current Valuation Date.

Amounts allocated to a Participant's Account shall be invested in the Investment Funds in the percentages elected by the Participant pursuant to Section 4.2 based on the value of the Participant's Account as of the current Valuation Date. Amounts held in a suspense account under this Plan shall not share in losses or gains for purposes of allocating investment earnings and losses.

SECTION 6

VESTING

6.1 **Vesting of Contributions,** Each Participant shall be 100% vested at all times in his Elective Contributions Account, his Employer Contributions Account and his Rollover Contribution Account, including any increment or decrement thereon.

SECTION 7

BENEFITS PAYABLE UPON DEATH

7.1 **Benefit Payable Upon Death.** Upon the death of a Participant, his Beneficiary shall be entitled to the unpaid balance of the Participant's Account.

7.2 **Payment of Death Benefits.** No payment of benefits on account of the death of a Participant under this Section 7 shall be made until due notice of the death of the Participant has been received by the Fund Manager, in such manner as the Fund Manager in its sole discretion shall determine.

7.3 **Designation of Beneficiary.** Each Participant shall have the right to designate a Beneficiary (and one or more alternate Beneficiaries) to receive any death benefit payable under the Plan. Such designation shall be made by filing the appropriate form with the Fund Manager. Any such designation may be revoked and a new Beneficiary designated in a similar manner, without the consent of any person. In the absence of any such designation or if there shall be no designated person living at the time a benefit becomes payable, Beneficiary shall mean the surviving lawful Spouse of the Participant, or if there is no Spouse, the Participant's estate, Notwithstanding the above, in the case of a Participant who is married at the time of his death, such Beneficiary shall automatically be his Spouse (and no other person designated by him shall be entitled to any other benefits in respect of him under the Plan) unless another Beneficiary is named with the written consent of the Spouse, Such consent shall contain an acknowledgment of the effect upon the Spouse of the election of the Participant to have the benefit paid to other than the Participant's Spouse and shall be witnessed by (i) a notary public, (ii) an employee of the Fund Manager or anyone designated by the Fund Manager, or (iii) any other person who is designated by the Trustees for such purpose. Such consent shall be irrevocable. Spousal consent shall not be required if it is established to the satisfaction of the Trustees that consent may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as may be prescribed by regulations.

7.4 **Distribution of Benefits.** Distribution of any benefits payable under this Section shall be paid in accordance with and subject to the provisions of Section 8.

SECTION 8

PAYMENT OF BENEFITS

8.1 **Date Payment Commences.** Payment of benefits under the Plan shall begin, unless the Participant elects otherwise with the approval of the Trustees, before the 60th day after the latest of the close of the Plan Year in which the following occurs: a) The Participant attains his Normal Retirement Date; b) The termination of the Participant's employment or severance from employment with the Contributing Employer; or c) The death or disability of the Participant. Notwithstanding the foregoing, effective July 1, 2007, qualified reservists (as defined by Code Section 72(t)(2)(G)(iii)), the date on which a period referred to in sub-clause (III) of such section begins.

Notwithstanding the foregoing, if at the time benefits are distributable under this Section 8, the balances credited to a Participant's Account exceed $5,000, benefits shall be paid only if the Participant consents in writing to such distribution not more than 90 days before commencement, or if the Participant has attained age 62. The failure of a Participant to consent to a distribution, where required is deemed to be an election by such Participant to defer commencement until age 62.

The Plan may determine the present value of a Participant's Account without regard to the portion of the Account that is attributable to Rollover Contributions (and any earnings thereon), An election of a Participant to have payment of benefits commence subsequent to the time set forth above must be in writing, must be signed by the Participant and must describe the benefit to which the Participant is entitled and the date as of which payment of such benefits is to commence. In no event will distributions commence later than April 1 of the calendar year following the calendar year in which he attains age 70Y2 or retires, if later,

All distributions shall be made in accordance with the regulations under Code Section 401(a) including Treasury Regulation Section 1.401(a)(9)-2 and the provisions of this Section 8.1 shall override any distribution options in the Plan inconsistent with Section 401(a)(9) of the Code. Benefits must be distributed (i) over a period not longer than the life of the Participant or over the lives of the Participant and his designated Beneficiary, or (ii) over a period not extending beyond the life expectancy of the Participant or the joint life expectancies of the Participant and his designated Beneficiary. If the Participant or former Participant dies before all of his Accounts have been distributed to him, or if distribution has commenced to the Beneficiary, the Participant's or former participant's entire Account (or the unpaid amount thereof if distribution has commenced) will be distributed within five years after his death (or the death of the Beneficiary); provided, however, that this sentence shall not apply if the distribution of the Participant's or former Participant's Account is for a term not extending beyond the life or life expectancy of the Participant's Beneficiary and such distribution commences to the Beneficiary within one year after the Participant's or former Participant's death, provided further, however, if the surviving Spouse is the Beneficiary, payments need not

commence to the surviving Spouse until April 1 of the year following the year the Participant or former Participant would have attained age 70%. If the Participant or former Participant dies after commencement of payments, the remaining portion of such Account shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's or former Participant's death.

Notwithstanding the foregoing, an Alternate Payee under a "qualified domestic relations order" may receive an immediate distribution from the Plan after the Fund Manager approves the domestic relations order and provided that such domestic relations order contains provisions with respect to such immediate distribution.

8.2 **Form of Benefit Payment.** Upon the written election of the Participant, filed with the Fund Manager on a form approved by it not later than the date of commencement of payment of benefits, distribution of the Participant's Accounts shall be made pursuant to one of the following three methods described in Section 8.2(a), (b) or (c) below or if no election is made, then distribution shall be paid in a lump sum in full settlement of the Plan's liability therefore:

a) In a single sum distribution of cash in the full amount payable.

b) In a number of monthly installments over a period of five, ten, fifteen or twenty years, as the Participant shall elect. The amount of the monthly payment shall be adjusted annually in accordance with the provisions of Section 4.3. At any time after the commencement of payment of benefits pursuant to this Section 8.2(b), a Participant, or his Beneficiary in the event of a Participant's death, may elect to accelerate the payment of benefits and receive the remainder of the Participant's Accounts in a single sum distribution of cash.

c) In monthly installments based on the Participant's life expectancy. The Participant's total account balance will be divided by his life expectancy on the date payments are first made payable. After the first year on every anniversary of the date payments were first payable, the annual payout will be recalculated by dividing the total unpaid balance by the updated life expectancy. At any time after the commencement of payments pursuant to this Section 8.2(c), a Participant, or his Beneficiary in the event of a Participant's death, may elect to accelerate the payment of the Participant's Accounts in a single sum distribution of cash.

d) If the present value of any benefit payable to any person is $5,000 or less, the Fund Manager shall pay such benefit in a single sum distribution of cash in the full amount payable.

8.3 **Repayment of Distribution.** A Participant who, subsequent to his termination of employment, receives a lump sum payment equal to the value of the entire amount of his Account in which he is vested, shall, in the event that he is reemployed by a Contributing Employer, have the right to repay to the Trustees the full amount

distributed to him, In the event of such repayment, the value of the Participant's Account immediately after such repayment shall be equal to the value of the Participant's Account as in effect prior to the Participant's termination of employment. Such amount shall be determined regardless of any gains or losses to the Trust Fund subsequent to such distribution. Any repayment in accordance with the provisions hereof must be made not later than the end of the Plan Year in which a Participant incurs 5 consecutive One-Year Breaks in Service. Notwithstanding the foregoing, a qualified reservist within the meaning of Code Section 72(t)(2)(G) shall, in all circumstances, be permitted to repay a distribution received from the Plan, in one or more contributions not to exceed the amount of a distribution that satisfied Code Section 401(k)(2)(B)(i)(V), during the two (2) year period beginning on the day after the end of active-duty.

8.4 **Substitute Payee.** If any person entitled to receive any benefits hereunder is in his minority or under other legal disability, the Trustees may make distributions to his legally appointed guardian, if applicable, or to such person, persons, or institutions as, in the judgment of the Trustees, are then maintaining or having custody of the payee.

8.5 **Direct Rollover Provision**

a) Notwithstanding any provision of this Plan to the contrary that would otherwise limit a distributee's election under this Section 8.5(a), a distributee may elect, at the time and manner prescribed by the Fund Manager, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The Fund Manager shall, within a reasonable time (but not more than 180 days before his/her annuity starting date) before his/her receipt an eligible rollover distribution, written explanation of his/her rollover rights in a manner that satisfied Code Section 402(f), including a description of the consequences of failing to defer receipt of a distribution.

b) For purposes of this Section 8.5, 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: (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) any distribution from a 401(k) plan after December 31, 1999 made on account of the hardship of the Participant, under Section 1.401(k)-1(d)(2) of the Regulations.

c) For purposes of this Section 8.5, an eligible retirement plan is (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) an annuity plan described in

Section 403(a) of the Code, or (iv) a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution; provided, however, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any instrumentality of a state or a political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a Surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order (as defined in Code Section 414(p)).

d) For purposes of this Section 8.5, a distributee is a Participant or Former Participant. In addition, the Participant's or Former Participant's surviving Spouse and the Participant's or Former Participant's spouse or former spouse who is the alternate payee under a "qualified domestic relations order," as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2010, a distributee also includes the Participant's non-Spouse designated beneficiary. In the case of a non-Spouse designated beneficiary, the direct rollover may only be made to an individual retirement account or annuity described in Code section 408(a) or 408(b) (IRA) that is established on behalf of the designated beneficiary as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&As 17 and 18, 2007-5 IRB 395.

e) For purposes of this Section 8.5, a direct rollover is any payment by the Plan to the eligible retirement plan specified by the distributee.

8.6 **Early Retirement Benefits.** Upon the attainment of his Early Retirement Date, a Participant shall be 100% vested in his Account. Notwithstanding any other provisions of the Plan to the contrary, upon termination of employment following the attainment of such Early Retirement Date, a Participant shall be entitled to receive his Account valued as of the Valuation Date immediately preceding or coinciding with the date of distribution. Distribution shall be made in accordance with Section 8.

8.7 **Distributions under Code Section 401(a)(9).** Notwithstanding any provisions of the Plan to the contrary, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the final regulations under Code Section 401(a)(9) that were published on June 15, 2004. The Plan shall apply such regulations until the effective date of any applicable IRS guidance invalidating or modifying such final regulations under Code Section 401(a)(9) or such other date specified in such guidance published by the Internal Revenue Service.

SECTION 9

ADMINISTRATION, REVIEW, ARBITRATION, AND CLAIMS PROCEDURE

9.1 **Decisions of Trustees Binding.** Subject only to the provisions set forth in the Declaration of Trust with relation to deadlocks, the decision of the Trustees shall be final and binding with respect to all disputes concerning the meaning and application of the Plan, and such decisions of the Trustees shall be final and binding upon all persons including Employers, the Union, Employees and Participants. The Trustees may at any time, by resolution duly adopted, appoint a Committee for the hearing and consideration of any matters specified by the Trustees, and the report of such Committee shall be binding on all parties subject only to approval, disapproval or modification by the Trustees.

9.2 **Applications for Benefit and Review Procedure**

a) **Filing A Claim for Benefits.** All applications for benefits under the Plan shall be submitted to the Fund Manager, on forms prescribed by the Fund Manager, for processing and determination in accordance with procedures established from time to time by the Fund Manager. The Fund Manager may refer any application to the Trustees, for a ruling on whether the application should be denied in whole or in part.

b) **Timing of Notification of Benefit Determination.** The Fund Manager shall make a determination with respect to an application for benefits within 90 days after receipt of the claim by the Plan unless it is determined that special circumstances require an extension of time for processing the claim, not to exceed an additional 90 days. If such extension is required, the Fund Manager shall provide written notice of the extension prior to the expiration of the initial 90-day period. The notice of extension shall indicate the special circumstances requiring an extension of time and the date by which the Fund Manager expects to render a determination with respect to the claim. It is the intent of the Plan to respond to claims promptly. However, if notice of the denial of a claim for benefits is not furnished in accordance with the above within 90 days, the Participant's claim for benefits shall be deemed denied. The Participant shall then be permitted to proceed to the next stage as described hereafter.

c) **Manner and Content of Notification of Benefit Determination.** The Fund Manager shall notify the claimant whether his application has been granted or whether it has been denied in whole or in part. The Fund Manager shall provide a claimant with written or electronic notification of any adverse benefit determination. The notification shall set forth, in a manner calculated to be understood by the claimant:

1. The specific reason or reasons for the adverse benefit determination;

2. Reference to the specific provisions of the Plan on which the determination is based;

3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

4. A description of the Plan's review procedures and the applicable time limits including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

d) **Appeal of Adverse Benefit Determination.** If an adverse benefit determination is made by the Fund Manager, the claimant (or authorized representative) may request an appeal of such determination by the Trustees (or designated committee). All requests for review must be sent in writing to the Fund Manager within 60 days after receipt of a notification of adverse benefit determination. In connection with the request for review, the claimant (or authorized representative) may submit written comments, documents, records and other information relating to the claim for benefits. In addition, the claimant will be provided, upon written request and free of charge, with reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits, as determined under Labor Regulation Section 2560.5031. The review by the Trustees (or designated committee) shall take into account all comments, documents, records and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

e) **Timing of Notification of Benefit Determination on Review.** A decision on review shall be made by the Trustees (or a committee designated by the Trustees) at its next regularly scheduled meeting following receipt of the request for review, unless the request is filed less than 30 days prior to the next regularly scheduled meeting, in which case a decision will be made at the second regularly scheduled meeting following receipt of such request for review. If special circumstances require a further extension of time for processing the request for review, a benefit determination shall be made no later than the third meeting following the Plan's receipt of the request for review, in which case the Administrator shall notify the claimant, before the commencement of the extension, of the need for the extension of time and the special circumstances and the date as of which the benefit determination will be made. If the extension is required due to the claimant's failure to submit information necessary to decide the claim, the period for making the determination will be tolled from the date on which the extension notice is sent to the claimant until the date on which the claimant responds to the Administrator's request for information. The decision of the Trustees (or designated committee) shall be communicated to the claimant in writing within five days after the benefit determination is made. If the decision on review is not furnished by the Administrator within 90 days after receipt of the request for review, the claim shall be deemed denied on review.

f) Manner and content of notification of benefit determination on review the Fund Fund Manager shall provide a claimant with written or electronic notification of the benefit determination on review. In the case of an adverse benefit determination, the notification shall set forth in a manner calculated to be understood by the claimant:

1. The specific reason or reasons for the adverse benefit determination;

2. Reference to the specific provisions of the Plan on which the adverse benefit determination is based;

3. A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits, as determined under Labor Regulation Section 2560.503-1.

4. A statement of the claimant's rights to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review.

g) **Arbitration.** In the event of a dispute by the applicant of the denial of his claim by the Trustees, in whole or in part, the controversy or claim shall be settled by arbitration in accordance with the employee benefit claims arbitration rules of the American Arbitration Association. One half of the expenses of the arbitration, including the arbitrator's fees and charges shall be paid for from the funds of the Plan, and the other half shall be paid by the applicant if he loses and by the **Plan** if he wins. The arbitrator shall determine whether the applicant won or lost as part of his decision. The decision and award of the arbitrator shall be final and binding in all respects.

9.3 **Administration of the Plan.** The Trustees shall have the responsibility for administering this Plan and making determinations as to its effect and application. The Trustees may appoint a Fund Manager who shall be responsible for the day-to-day operation of the Plan. Forms or documents filed with the Fund Manager shall be deemed filed when received by the Fund Manager.

9.4 **Umpire Decides Disagreements,** Any question within the scope of the Trustees upon which no agreement is reached shall be referred to the umpire who shall be selected as provided in the Declaration of Trust. The scope of any arbitration proceeding before such umpire shall not infringe upon the area of provisions agreed upon in any collective bargaining agreement with the Union and the Declaration of Trust, nor shall such umpire have power of authority to change or modify such provisions or render any decisions or award in conflict with any of the provisions of any collective bargaining agreement with the Union or the Declaration of Trust.

9.5 **Trustees, Pension Committee and Appeals Committee May Retain Assistance.** The Trustees may retain such actuarial, legal, accounting, clerical and other assistance as they deem advisable and they shall be entitled to rely upon the

correctness of any information furnished by the Trustees. The fees and expenses of any individuals or companies retained under this section shall be borne by the Trust Fund.

9.6 **Limitation of Liability of Trustees.** Except as provided by ERISA, it is expressly stipulated that the Trustees are in no event to be under any personal obligation, that their obligation shall be solely as Trustees of the Trust Fund, that the distributions provided in this Plan are to be paid solely out of Plan assets as such and are payable only to the extent that assets are available for that purpose.

9.7 **Action or Decision by the Trustees.** Any action taken or decision made by the Trustees shall be binding if taken in accordance with the Declaration of Trust.

SECTION 10

AMENDMENT AND TERMINATION OF THE PLAN

10.1 **Amendment.** The Plan may be amended in whole or in part at any time by the Trustees, provided, however, that:

a) Except as otherwise provided in accordance with the provisions of Section 3.1(d) of the Plan and Section 403(c) of ERISA, prior to the satisfaction of all expenses of the Trust Fund and all liabilities under the Plan with respect to all Participants, no amendment or modification may be made which would permit any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participant or their Beneficiaries and/or other persons entitled to benefits under the Plan.

b) No amendment or modification shall deprive any Participant or Beneficiary of any benefit already accrued and payable, nor shall a plan amendment decrease a Participant's accrued benefit.

c) No amendment shall have the effect of reducing the non-forfeitable percentage of a Participant's Account to which he is vested with respect to anyone who is a Participant on the date the amendment is adopted or the date the amendment is effective, whichever is later; provided that if the vesting provisions set forth in Section 6 are amended, any Participant who, as of the effective date of the amendment, has been credited with three or more Years of Service, may irrevocably elect under procedures specified by the Trustees to have his non-forfeitable percentage computed without regard to the amendment.

d) Notwithstanding the provisions of Subsections (a), (b) and (c), any amendment may be retroactive to the extent necessary to preserve the qualified tax-exempt status of the Plan.

10.2 **Termination of the Plan.** While the Plan is intended to be permanent, it may be terminated at any time by the Trustees. Written notification of such action shall be given to the Union, each Contributing Employer and the Trustees setting forth the termination date. After termination of the Plan, no further contributions by a Contributing Employer shall be made hereunder. Upon the termination of the Plan, all provisions of the Plan and Declaration of Trust shall remain in force which are necessary in the opinion of the Trustees, other than the provisions for contributions, to wind-up the business of the Plan.

10.3 **Vesting and Maintenance of Accounts.** Upon termination or partial termination of the Plan or the complete discontinuance of contributions under the Plan, the Account of each Participant shall be fully vested and non-forfeitable; provided, however, that in the event of a partial termination, the non-forfeitable rights shall be applicable only to the portion of the Plan that is terminated. Until distributed to the Participant in accordance with Section 10.4, each Participant's Account shall continue to be valued in accordance with the provisions of Section 5. For purposes of such valuations, the date as of which the contributions are discontinued or the date set forth as the termination date shall be deemed a Valuation Date. Included in any such valuation shall be expenses incurred in effectuating such termination, partial termination or discontinuance (such as the fees and retainers of the Plan's Trustees, actuary, accountant, custodian, counsel, administrator or other specialist).

10.4 **Termination of Trust Fund.** In the event that after termination of the Plan the Trustees shall determine that the continuance of the Trust Fund is not in the best interests of the Participants, the Trustees may terminate the Trust Fund, and upon such termination, the Trustees shall apply for the benefit of each Participant (or Beneficiary) the full value of such Participant's Account to which he may be entitled under Section 10.3. Such application shall be made by lump sum payment as the Trustees shall determine subject to the provisions of Section 8.

SECTION 11

TOP-HEAVY PROVISIONS

11.1 Modification of Top-Heavy Rules

a) This Section shall apply for purposes of determining whether the Plan is a Top-Heavy Plan under Section 416(g) of the Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Section 416(c) of the Code for such years. To the extent permitted by Code Section 416(g)(4)(H), a top-heavy plan shall not include a plan that consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) or 401(k)(13) and matching contributions with respect to which the requirements of Code Section 401(m)(11) or 401(m)(12) are met, provided, however, that, if the Plan is a member of an aggregation group which is a Top-Heavy group, contributions under the

Plan may be taken into account by the Top-Heavy Group in determining whether any other plan in the group meets Code Section 416(c)(2).

b) Determination of Top-Heavy Status

i. Key Employee means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than $130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a five-percent owner of the Employer, or a one-percent owner of the Employer having annual compensation of more than $150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and applicable Regulations and other guidance of general applicability issued thereunder.

ii, Determination of present values and amounts. This subsection shall apply for purposes of determining the present value of accrued benefits and the amounts of account balances of employees as of the determination date,

A. Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by distributions made with respect to the Employee under the Plan and any Plan aggregated with the Plan under Section 416(g)(2) of the Code during the one-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death or Disability, this provision shall be applied by substituting "five-year period" for "one-year period."

B. Employees not performing services during year ending on determination date. The accrued benefits and accounts of any individual who has not performed services for the Employer during the one-year period ending on the determination date shall not be taken into account.

C. Minimum benefits, For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Code and the Plan, in determining service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Section 410(b) of the Code) no key employee or former key employee.

D. Effective for purposes of determining whether the Plan satisfies the minimum benefit requirements of Section 416(c) of the Code for Plan Years beginning after December 31, 2001 in which the Plan is determined to be Top-Heavy, matching contributions shall

be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan. Matching contributions that are used to satisfy the minimum contribution requirements shall be treated as Employer matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.

11.2 - For any Plan Year prior to January 1, 2002, the following Top Heavy rules are applicable to the Plan:

Definitions. Wherever used in this Section, the following words and phrases shall have the following meanings:

a) "Aggregated Plans" — All plans of a Contributing Employer satisfying the requirements of Code Section 401(a)(i) which are required to be aggregated with the Plan pursuant to Code Section 416 (g)(2)(A)(i), including each Plan in which a Key Employee participates in the Plan Year containing the Determination Date or any of the four preceding Plan Years and each other Plan which must be considered with such Plan in order for such Plan to meet the requirements of Code Section 401(a)(4) or Section 410, and (ii) which the Fund Manager elects to aggregate with the Plan pursuant to Section Code 416(g)(2)(A)(ii), including any other plan as elected by the Fund Manager that satisfies the requirements of Code Sections 401(a)(4) and 410 when considered together with the Plans required to be aggregated as described above. A terminated or frozen Plan shall be treated as an Aggregated Plan only in accordance with Treasury Department regulations.

b) "Aggregated Plans Participant" — Any person who is or was a Participant (or Beneficiary of a Participant) of the Aggregated Plans as of the applicable Determination Date or any of the four Determination Dates immediately prior thereto.

c) "Compensation" — For purposes hereof, the term Compensation shall have the meaning ascribed to such term for purposes of Section 1.415-2(d) of the Income Tax Regulations, and shall be subject to the limitations set forth in Section 1.5.

d) "Determination Date" — The date as of which it is determined if a Plan is to be a Top-Heavy Plan or a Super Top-Heavy Plan for a Plan Year. The Determination Date with respect to a Plan shall be the last day of the preceding Plan Year or, in the case of a new plan for the first Plan Year, the last day of such Plan Year.

e) "Key Employee" — Any Employee or former Employee (or Beneficiary of them) of a Contributing Employer who, during the Plan Year or any of the four Plan Years preceding any applicable Determination Date, with respect to a Contributing Employer was:

i. an officer whose annual compensation is greater than 50% of the amount in effect under Code Section 415(b)(1)(A) for the calendar year in which the Determination Date occurs; or

ii. one of the 10 largest owners (within the meaning of Code Section 318) whose annual compensation is greater than the maximum dollar limitation under Code Section 415(c) (1) (A) for the Plan Year in which the Determination Date occurs; or iii. a five percent owner; or iv. a half percent owner who owns the largest interest in the Employer and whose aggregate annual compensation (as defined in Section 1.415-2(d) of the Income Tax Regulations) from a Contributing Employer is in excess of $150,000.

For purposes of (i) above:

A. no more than the lesser of (I) 50 or (II) the greater of (1) 3, or (2) 10% of the total employees of a Contributing Employer shall be considered as Key Employees;

B. only those officers who have the greatest amount of compensation during the Plan Year and the four Plan Years preceding the applicable Determination Date shall be considered Key Employees until the limitation in (A) above is reached.

f) "Present Benefit Value"

i. With respect to a defined benefit plan which is included in the Aggregated Plans, the sum of the present values of a Participant's accrued benefits under such plans. Except as provided in the applicable Treasury Department regulations, such accrued benefits shall be determined as if the Participant had voluntarily terminated employment on the valuation date which is or would be used for computing Plan costs for minimum funding purposes pursuant to Code Section 412 and which is within the 12 month period ending on the Determination Date. Such present value shall be determined on the basis of interest at the rate of five percent per annum and mortality in accordance with the 1971 Group Annuity Mortality Table, .and may include cost of living increases (to the maximum benefit then permitted pursuant to Code Section 415). Non-proportional subsidies may be taken into consideration in accordance with the regulations issued by the Secretary of the Treasury.

ii. With respect to a defined contribution plan which is included in the Aggregated Plans, the sum of a Participant's account balances attributable to employer and employee contributions under such plans as of the most recent valuation date under the Plan ending within the 12-month period ending on the applicable Determination Date and shall be adjusted for contributions due as of such Determination Date. If the Plan is not subject to the funding requirements of Code Section 412, a Participant's account balance shall include contributions not yet required to be contributed, but which would be allocated as of a date not later than the Determination Date, and the adjustment shall reflect any contributions made or due after the valuation date but prior to the expiration of the extended payment period of Code Section 412(c)(10).

iii. Present Benefit Value shall also include, to the extent not otherwise include, any amounts distributed to the Participant or the Participant's Beneficiary during the Plan Year which includes the Determination Date or during the four preceding Plan Years. Present Benefit Value shall not include the present value of any accrued benefit under a defined benefit Plan or the account balance under a defined contribution Plan with respect to a Participant who has not received any compensation from an employer maintaining the plan (other than benefits under the Plan) at any time during the 5-year period ending on the applicable Determination Date, or with respect to a Participant who is not a Key Employee for a Plan Year, although such person was a Key Employee in a prior Plan Year.

g) "Super Top-Heavy Plan" — Aggregated Plans in which more than 90% of the sum of all Present Benefit Values is attributable to Key Employees, as determined as of the applicable Determination Date. For this purpose, plans will be aggregated with reference to the Determination Date which occurs within the same calendar year.

h) "Top-Heavy Plan" — Aggregated Plans in which more than 60% but not more than 90% of the sum of all Present Benefit Values is attributable to Key Employees, as determined as of the applicable Determination Date. For this purpose, plans will be aggregated with reference to the Determination Date which occurs within the same calendar year.

i) "Year of Top-Heavy Service" — Each Year of Service which commences in a Plan Year in which the Plan is a Super Top-Heavy Plan or a Top-Heavy Plan.

11.3 **Minimum Contribution**

a) For any Plan Year in which the Plan is a Top-Heavy Plan or a Super Top-Heavy Plan, Employer contributions shall be made for the benefit of each employee who is not a Key Employee in an amount that will cause the total of all Employer contributions and forfeitures for such year to equal at least the lesser of (i) three percent of his total Compensation, or (ii) that percentage of his Compensation which represents the largest percentage determined by dividing, for each Key Employee, (A) the total of all Employer Contributions and Elective Contributions and forfeitures for such Key Employee's benefit for such year, by (B) his Compensation for such year.

b) **If** an Employee is also a Participant in any other defined contribution plan of a Contributing Employer, the minimum contribution set forth in (a) above shall be reduced by any contributions to such other plan with respect to the Employee.

c) If an Employee is also a Participant in a defined benefit plan of a Contributing Employer which is determined to be Top-Heavy and such Employee is entitled to receive the defined benefit plan

minimum benefit which satisfies the requirements set forth in Code Section 416 (c)(1), the minimum benefit set forth in (a) above shall be reduced to the extent permitted by Code Section 416 (or any regulations issued thereunder) with respect to any benefits provided under such plans.

11.4 **Adjustment to Maximum Benefit Limitations.** If the Plan is a Super Top-Heavy Plan or a Top-Heavy Plan with respect to a Plan Year, and a Participant has been or is participating in a defined contribution plan of the Contributing Employer, the number 1.0 shall be substituted for the number 1.25 wherever such number shall appear in Section 3.5(c); provided, however, the foregoing shall not be applicable with respect to any Plan Year in which the Plan is a Top-Heavy Plan (but is not a Super Top-Heavy Plan) if for such Plan Year such Participant is provided with the benefit set forth in Section 11.2(a), but with four percent being substituted for three percent therein, and further provided that, if applicable, such benefit shall be reduced pursuant to Sections 11.2(b) and 11.2(c).

11.5 **Amendment Not Required.** The foregoing provisions of this Section 11 are intended to conform the Plan to the requirements of Code Section 416 and any regulations, rulings or other pronouncements issued pursuant thereto, and shall be construed accordingly. In the event that under any statute, regulation or ruling all or a portion of the conditions of this Section are no longer required for the Plan to comply with the requirements of Code Section 401 (or any other provisions with respect to qualification for tax exemption of retirement plans and trusts), to the extent possible such conditions shall become void and shall no longer apply without the necessity of an amendment to the Plan,

11.6 **Safe Harbor 401(k) Plans Exempt.** The top-heavy requirements of this Section 11 shall not apply in any year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12).

SECTION 12

MISCELLANEOUS PROVISIONS

12.1 **Exclusive Benefit Rule.** The Plan has been created for the exclusive benefit of the Participants and their Beneficiaries. No part of the Trust Fund shall ever revert to a Contributing Employer or be used other than for the exclusive benefit of the Participants and their Beneficiaries, except as provided in Section 403(c)(2)(A) of ERISA. No person shall have any interest in or right to any part of the Trust Fund, or any rights in, to or under the Declaration of Trust except to the extent expressly provided in the Plan

12.2 **Non-alienation of Benefits.** Except as permitted under the terms of a qualified domestic relations order which meets the requirements of the Code, the right to receive a benefit under the Plan shall not be subject in any manner to anticipation, alienation, or

assignment, nor shall such right be liable for or subject to debts, contracts, liabilities or torts.

Notwithstanding the foregoing, a Participant's benefits may be offset against an amount that the Participant is ordered or required to pay if (i) the order or requirement to pay arises (A) under a judgment of conviction for a crime involving such plan, (B) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation of part 4 of subtitle B of Title I of ERISA or (C) pursuant to a settlement between the Secretary of Labor and the Participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the Participant in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person; or (ii) the judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan.

12.3 **Management of Trust Fund.** All contributions to the Trust Fund shall be made to and held in trust by the Trustees who shall be appointed pursuant to the provisions of the Declaration of Trust, and shall have such powers with respect to investment, reinvestment, control and disbursement of the funds as may be provided in the Declaration of Trust. The Trustees may be removed in accordance with the provisions of the Declaration of Trust, Upon such removal or upon the resignation or death of any Trustee, a successor Trustee shall be appointed pursuant to the provisions of the Declaration of Trust.

12.4 **Limitation of Rights.** Neither the establishment of the Plan, any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving (a) any Participant, or any other person any legal or equitable right against a Contributing Employer or the Trustees, unless such right shall be specifically provided for in the Plan or granted by affirmative action of the Trustees or a Contributing Employer in accordance with the terms and provisions of the Plan; or (b) any Participant or any other Employee of a Contributing Employer the right to be retained in the service of a Contributing Employer and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

12.5 **Limitation of Liability and Legal Actions.** Except as otherwise provided in accordance with ERISA, as a condition of participation in the Plan, each Employee agrees that neither a Contributing Employer nor the Trustees shall in any way be subject to any suit or litigation or to any legal liability for any cause or reason or thing whatsoever, in connection with the Plan and Trust Fund or their operation, except for its or their own negligence or willful misconduct, and each such Employee hereby releases each Employer, its officers and agents, and the Trustees from any and all such liability or obligation.

12.6 **Interest in Assets**. No Participant, Beneficiary or other person shall have any legal or equitable right or interest in the funds set aside by a Contributing Employer, or otherwise received or held under the Plan, or in any assets of the Trust Fund, except as expressly provided in the Plan.

12.7 **Credit for Qualified Military Service**. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. Liability to make retroactive contributions to the Plan for the returning Employee shall be determined by the Trustees or, if the Trustees do not so determine, liability shall be allocated to the last Employer employing the Employee before the period of military service or, if such Employer is no longer a signatory to an Agreement, then liability shall be allocated to the Plan.

12.8 **Severability**. If any provision of the Plan or any regulation adopted thereunder is deemed or held to be unlawful or invalid for any reason, the remaining provisions of the Plan or regulations thereunder, shall not be affected adversely unless such determination shall render it impossible or impractical for the continued operation of the Plan. In such event, the appropriate parties shall immediately adopt a new provision or regulation to replace the one held unlawful or invalid.

12.9 **Merger of Plans**. This Plan shall not be merged into any other retirement plan and the assets or liabilities of this Plan shall not be transferred to any other retirement plan, unless on the day of such merger, consolidation or transfer each Participant of the surviving plan is entitled to a benefit of not less than the benefit which such Participant would have received had the plan in which he was a participant terminated on the day immediately prior to such merger, consolidation or transfer.

12.10 **Titles and Headings**. The titles and headings of the Sections of this Plan are for convenience of reference only, and in the event of any conflict, the text of this Plan, rather than such titles or headings shall control.

12.11 **Construction of Agreement**. The Plan, or provisions thereof, and its validity shall be construed according to the laws of the State of Michigan. Effective June 26, 2013, notwithstanding any contrary provision in the law of Michigan or any other state, "Spouse" shall include a same sex Spouse of a Participant. The Plan shall recognize any and all same sex marriages that are valid or recognized as valid in the jurisdiction in which they are or were performed.

Steve Van Hoots

Chairman

Dated: February 2, 2015

Secretary

Dated: February 2, 2015

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Chairman

Dated: February 2, 2015

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