

**AMERICAN CONFERENCE OF CANTORS RETIREMENT PLAN,  
A QUALIFIED 403B PLAN**

**Dated: July 1, 2015**

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## ARTICLE I

### DEFINITIONS

- 1.01** “ACC” means the American Conference of Cantors, Inc..
- 1.02** “Active Participant” means an Eligible Employee who is participating in this Plan.
- 1.03** “Anniversary Date” means December 31st.
- 1.04** “Appropriate Form” means the form prescribed, from time to time, by the Trustees for a stated purpose.
- 1.05** “Beneficiary” means the person designated under Section 6.03 to receive benefits by the Participant or the person otherwise entitled to receive benefits pursuant to the provisions of the Plan.
- 1.06** “Code” means the Internal Revenue Code of 1986, as amended.
- 1.07** “Compensation” with respect to any Participant means the Participant's total compensation (including parsonage) to be received during the Plan Year as reported by the Employer or, if the Employer fails to do so, by the Participant. Payments received from any non-Employer shall not be considered as Compensation.
- 1.08** “Contract” or “Policy” means a life insurance policy or annuity contract (group or individual) issued by an Insurer. No life insurance policy will be issued under the Plan on or after September 24, 2007.
- 1.09** “Deferred compensation” means that portion of a Participant’s total Compensation that has been contributed to the Plan in accordance with the Participant’s deferral election pursuant to Section 4.03.
- 1.10** “Deferred Retirement Date” means the date a Participant retires if retirement occurs after the Participant’s Normal Retirement Date.
- 1.11** “Disability Retirement Date” means the date as of which the Trustees determine that the Participant has incurred a Permanent Disability.
- 1.12** “Early Retirement Date” means the date a Participant retires (before his Normal Retirement Date but after attaining age 59½) from full-time employment as a professional cantor or temple musician (as determined by the Trustees). For this purpose, “full-time” shall mean regularly scheduled to work 30 or more hours per week.
- 1.13** “EGTRRA” means the Economic Growth and Tax Relief Reconciliation Act of 2001.

**1.14** “Elective Contribution” means any Employer’s contributions to the Plan that are made pursuant to the Participant’s deferral election provided in Section 4.03.

**1.15** “Eligible Employee” means an Employee who is a resident of the United States, and a Member in good standing of the American Conference of Cantors or the Guild of Temple Musicians or who satisfies such other criteria established by the Executive Board by uniform, non-discriminatory rule.

**1.16** “Employee” means any person employed by an Employer who the Executive Board determines, by uniform nondiscriminatory rule, is eligible to participate in this Plan. A person will not fail to be deemed an “Employee” for purposes of this Plan merely because the person is treated as self-employed for purposes of the Federal Insurance Contribution Act.

**1.17** “Employer” means any temple or other eligible organization employing an Employee, limited to synagogues or temples or associations of synagogues and/or temples, or elementary or secondary schools which are controlled, operated or principally supported by a synagogue, temple or an association of synagogues and/or temples, or qualified church-controlled organizations (within the meaning of Code Section 3121(w) (3) (B); provided, however, the term “Employer” shall only include organizations exempt from federal income tax pursuant to Code Section 501(c) (3) and those organizations which permit the Plan to maintain its status as a “church plan.” Notwithstanding anything contained herein to the contrary, the ACC shall be considered an “Employer” eligible to participate in the Plan, but only with respect to Elective Contributions.

**1.18** “Employee Contribution” means any Employee Contributions to the Plan that are made pursuant to Section 4.04.

**1.19** “Employer Contribution” means any Employer contributions to the Plan that are made pursuant to Section 4.01, including Elective Contributions.

**1.20** “Executive Board” means the ACC’s Executive Board.

**1.21** “Fiduciary” means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or discretionary responsibility in the administration of the Plan, including, but not limited to, the Trustees.

**1.22** “Inactive Participant” means a person who is participating in this Plan, but who has ceased to be an Eligible Employee for any reason.

**1.23** “Includible Compensation” is the Employee's compensation received from an Employer that is includible in the participant's gross income for federal income tax purposes for the most recent period that is a year of service. Includible compensation for a Participant who is self-employed means the Participant's earned income as defined in Code Section 401(c)(2) (computed without regard to the amounts excluded from the Employee's

gross income as foreign earned income under Code Section 911) for the most recent period that is a year of service. For purposes of making a nonelective contribution under Section 4.02, a Participant who is a former Employee is deemed to have monthly includible compensation for the period through the end of the taxable year of the Employee in which he or she ceases to be an Employee and through the end of the next five taxable years. The amount of the monthly includible compensation is equal to one-twelfth of the former Employee's most recent year of service.

**1.24** “Insurer” means any legal reserve life insurance company as selected by the Trustees which shall issue one or more Contracts under the Plan.

**1.25** “Investment Manager” means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

**1.26** “Non-Elective contribution” means any Employer’s contributions to the Plan other than Elective Contributions.

**1.27** “Normal Retirement Age” means age 65.

**1.28** “Normal Retirement Date” means the date a Participant attains Normal Retirement Age if the Participant retires on his 65th birthday.

**1.29** “Participant” means an Active Participant or Inactive Participant.

**1.30** “Participant’s Account” means the account established and maintained by the Trustees for each Participant with respect to his total interest in the Plan resulting from an Employer’s Elective and Non-Elective Contributions, as well as any Employee Contributions. It shall also include any balance in the Participant’s Rollover Account.

**1.31** “Participant’s Elective Account” means the account, established and maintained by the Trustees for each Participant with respect to his total interest in the Plan resulting from an Employer’s Elective Contributions.

**1.32** “Participant’s Employee Contribution Account” means the account established and maintained by the Trustees for each Participant with respect to his total interest in the Plan resulting from Employee Contributions.

**1.33** “Participant’s Non-Elective Account” means the account established and maintained by the Trustees for each Participant with respect to his total interest in the Plan resulting from an Employer’s Non-Elective Contributions.

**1.34** “Participant’s Rollover Account” means the account established and maintained by the Trustees for each Participant with respect to his total interest in the Plan resulting from the transfer to the Plan of funds from another 403(b) plan, a 401(a) plan, a 457(b) plan maintained by a governmental employer, or an individual retirement account.



**1.35** “Permanent Disability” means any physical or mental condition of a Participant that may reasonably be expected to be permanent and which renders the Participant incapable of continuing in employment as a professional cantor or temple musician. If subsequently determined that such Participant is no longer disabled and the Participant enters into employment with an Employer, he shall be eligible to re-enter the Plan as an Active Participant. In determining whether a Participant has incurred a Permanent Disability, the Trustees may select a physician to examine such Participant. The final determination shall be made by the Trustees on the basis of all the evidence.

**1.36** “Plan” means this instrument, including all amendments thereto, which shall be known as the American Conference of Cantors Retirement Plan, A Qualified 403b Plan. The Plan is intended to be a "retirement income account" as described in Code Section 403(b)(9).

**1.37** “Plan Fund” means the assets of the Plan and Trust as the same shall exist from time to time. Notwithstanding any other provision of the Plan, the Plan Fund, including all amounts of deferred compensation, all property and rights purchased with those amounts and all income attributable thereto, shall be held solely for the purposes set forth in this Plan.

**1.38** “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on January 1st of each year and ending the following December 31st.

**1.39** “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or his delegate, as amended from time to time.

**1.40** “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

**1.41** “Retirement Date” means a Participant’s Normal Retirement Date, Early Retirement Date, Social Security Retirement Date, Deferred Retirement Date, or Disability Retirement Date, whichever applies to the Participant involved.

**1.42** “Social Security Retirement Date” means the date as of which the Participant qualifies for unreduced Social Security Retirement benefits, other than on the basis of disability.

**1.43** “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, disability or retirement.

**1.44** “Trust” means the trust established under Article VII to be known as the American Conference of Cantors Retirement Trust.

**1.45** “Trustees” means the persons and/or entity named as trustee herein, and any successors.

**1.46** “Trust Fund” means the Plan Fund.

**1.47** “USERRA” means the Uniformed Services Employment and Reemployment Rights Act.

**1.48** “Valuation Date” means an Anniversary Date or such other date or dates the Trustees shall designate for the valuation of the Trust Fund and the Participants’ Accounts.

**1.49** “Vested” means the portion of a Participant’s Account that is nonforfeitable. Under this Plan, all Accounts are 100% Vested at all times.

## ARTICLE II

### ADMINISTRATION

#### **2.01 POWERS AND RESPONSIBILITIES OF THE EXECUTIVE BOARD**

a. The Executive Board shall be empowered to appoint and remove the Trustees from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated in accordance with the terms of this Plan, the Code and the Regulations.

b. The Executive Board shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of the Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Executive Board or by a qualified person specifically designated by the Executive Board, through day-to-day conduct and evaluation, or through other appropriate ways.

#### **2.02 ASSIGNMENT AND DESIGNATION OF ADMINISTRATIVE AUTHORITY**

The Executive Board may appoint one or more persons to serve as Trustees. Any person, including, but not limited to, Participants and Employees of an Employer, shall be eligible to serve as a Trustee. Any person so appointed shall signify his acceptance by filing written acceptance with the Executive Board.

If more than one person is appointed to serve on the Board of Trustees, the responsibilities of each Trustee may be specified by the Executive Board and accepted in writing by each Trustee. In the event that no such delegation is made by the Executive Board, the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify the Executive Board in writing of such action and specify the responsibilities of each Trustee. The Board of Trustees may further delegate certain day-to-day responsibilities of administering the Plan to a retirement administrator selected by the Trustees, subject to the supervision of the Trustees.

#### **2.03 ADMINISTRATIVE POWERS AND DUTIES OF THE TRUSTEES**

In addition to the responsibilities of Trust Fund management set forth in Article VII, it shall be a primary responsibility of the Trustees to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Trustees shall administer the Plan in accordance with its terms and shall have the power to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Trustees shall be conclusive and binding upon all persons. The Trustees may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purposes of the Plan; provided, however, that any procedure, discretionary act,

interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed an eligible deferred compensation plan under the terms of Code Section 403(b), and shall comply with the pertinent terms of the Code and all regulations issued pursuant thereto. The Trustees shall have all power necessary or appropriate to accomplish its duties under this Plan.

The Trustees shall have the duties and authority of the general administration of the Plan, including, but not limited to, the following:

a. To make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants to effectuate the purposes of the Plan;

b. to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder, including questions of fact;

c. to compute, certify, and direct payment with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

d. to authorize and direct the Custodian with respect to all nondiscretionary or otherwise directed disbursements from the Plan;

e. to maintain all necessary records for the administration of the Plan;

f. to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

g. to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

h. to compute and certify to each Employer and to the Trustees from time to time the sums of money necessary or desirable to be contributed to the Plan Fund;

i. to consult with the Executive Board and the Trustees regarding the short and long-term liquidity needs of the Plan in order that the Trustees can exercise any investment discretion in a manner designed to accomplish specific objectives;

j. to prepare and implement a procedure to notify Employees that they may elect to have a portion of their Compensation deferred or paid to them in cash;

k. to assist any Participant regarding such Participant's rights, benefits, or elections available under the Plan.

l. to designate as parsonage, on behalf of the Executive Board, as each Participating Employer's agent under Section 10.02, all or a portion of any benefits to be paid from the Plan during a calendar year to a retired cantor. A retired cantor who wishes to have a portion of his benefits designated as parsonage hereunder shall file with the Plan the Appropriate Form setting forth his estimate or the total parsonage expenses he expects to incur during the calendar year. A

parsonage designation for a retired cantor filing the Appropriate Form under the preceding sentence shall be deemed automatically made for the total estimated parsonage expenses shown on, and as of the date the Plan receives, the Appropriate Form. Neither the Executive Board, the Trustees nor the Trustees shall be under any obligation to verify whether a retired cantor's actual parsonage expenses in any calendar year equals or exceeds the amount of benefits designated as parsonage for the year. It shall be the sole obligation and responsibility of each retired cantor to determine whether the amount of any benefits designated as parsonage hereunder is excludable from his gross income pursuant to Code Section 107 and the Regulations promulgated thereunder.

#### **2.04 RECORDS AND REPORTS**

The Trustees shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

#### **2.05 APPOINTMENT OF ADVISERS**

The Trustees may appoint counsel, specialists, advisers, and other persons as the Trustees deem necessary or desirable in connection with the administration of this Plan.

#### **2.06 REQUIRED INFORMATION**

To enable the Trustees to perform its functions, any Employer, Participant, Beneficiary or other person entitled to benefits shall furnish to the Trustees any information or proof requested by the Trustees. The Trustees may rely upon such information as is supplied, and shall have no duty or responsibility to verify such information.

#### **2.07 TRUSTEE COMPENSATION, EXPENSES AND TAXES**

The Trustees shall serve without compensation for service and, except as otherwise required by law or by the Executive Board, without bond. If a Trustee is bonded for whatever reason, the cost of such bond shall be considered an administrative expense of the Plan. The Trustees shall be reimbursed for reasonable expenses.

All expenses of administration may be paid out of the Plan Fund unless paid by an Employer. Such expenses shall include any expenses incident to the functioning of the Trustees, including, but not limited to, fees of accountants, counsel and other specialists and their agents, and any other costs of administering the Plan. All taxes of any kind, and all kinds whatsoever, that may be levied or assessed under existing or future laws upon, or in respect of, the Plan Fund or the income thereon shall be paid from the Plan Fund. Until paid, the expenses shall constitute a liability of the Plan Fund. However, an Employer may reimburse the Plan Fund for any administration expenses incurred. Any administration expense paid to the Plan Fund as a reimbursement shall not be considered an Employer Contribution.

## **2.08 MAJORITY ACTIONS**

The Trustees shall act by majority of their number, or by unanimous approval if there are two or less Trustees in office at the time; provided, however, that the Trustees may authorize one or more of them to execute documents on behalf of all Trustees.

Such action may be taken (a) by vote in a meeting, (b) in writing without a meeting or (c) by telephone or electronic communication if necessary or desirable. In the event of a Trustee deadlock, the Executive Board shall decide the matter in question. If there are two or more members in office at the time, no Trustee shall act upon any question pertaining solely to himself.

## **2.09 INDEMNIFICATION**

The ACC shall indemnify and hold the Trustees harmless against any liability it may incur in the administration of the Plan, except each Trustee shall be individually liable for his own gross negligence or willful misconduct. This Section shall be construed in all cases to provide protection to Trustees which is supplemental to, and not in lieu of, that provided by any other provision of this Plan and any insurance covering the Trustees, and shall be applied accordingly.

## **2.10 CLAIMS PROCEDURE**

Claims for benefits under the Plan may be filed with the Trustees on the Appropriate Form. Written notice of the disposition of a claim shall be furnished to the claimant within 90 days after the application is filed. In the event the claim is denied, the reasons for denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited and where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

## **2.11 CLAIMS REVIEW PROCEDURE**

Any Employee, Participant, or Beneficiary of either, who has been denied a benefit by a decision of the Trustees pursuant to Section 2.11 shall be entitled to request the Trustees to give further consideration to the claim by filing with the Trustees a written request for a full and fair review of the claim. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Trustees no later than 60 days after receipt of the written notification provided for in Section 2.11. The Trustees shall then conduct a full and fair review of the claim. The claimant or his representative shall have an opportunity to review all documents in the possession of the Trustees which are pertinent to the claim at issue and its disallowance. A final decision as to the allowance of the claim shall be made by the Trustees within 60 days of receipt of the appeal (unless there has been an extension of 60 days due to special circumstances, provided the delay and the special circumstance occasioning it are communicated to the claimant within the 60 day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

## ARTICLE III

### ELIGIBILITY AND PARTICIPATION

#### **3.01 ELIGIBILITY**

a. Any Eligible Employee shall be eligible to participate in the Plan on the date of his employment with an Employer, subject to Section 3.02.

b. Any Eligible Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in this Plan.

#### **3.02 APPLICATION FOR PARTICIPATION**

In order to participate in the plan, each Employee and his Employer shall complete and return to the Trustees the Appropriate Forms.

#### **3.03 EFFECTIVE DATE OF PARTICIPATION**

Participation in the Plan commences with respect to a Participant as of the first day of the Plan Year for which the Plan receives contributions on behalf of the Participant in accordance with procedures established by the Trustees for this purpose. The Trustees shall have no obligation to see to the participation in the Plan by any person nor to the making of continuing contributions to the Plan by, or on behalf of, any Participant.

#### **3.04 DETERMINATION OF ELIGIBILITY**

The Trustees shall determine the eligibility of each Employee for participation in the Plan. Such determination shall be conclusive and binding upon all persons as long as the same is made pursuant to the Plan. However, such determination shall be subject to review per Section 2.12.

#### **3.05 ACCEPTANCE OF PLAN**

All participants shall be deemed to have accepted and agreed to be bound by all of the provisions of the Plan, even though not an actual signatory hereto, as the date contributions are first received or allocated in their behalf.

#### **3.06 CHANGE OF EMPLOYMENT STATUS**

An Active Participant becomes an Inactive Participant if he ceases to be an Eligible Employee. No subsequent Elective Contributions shall be received by the Plan on behalf of such Inactive Participant; however Non-Elective Contributions may be made by an Employer pursuant to Section 4.02. The benefits to which he, or his Beneficiary, may be entitled upon his retirement under the Plan, or death, shall be that which may be provided from the Participant's Account as of the date on which he ceased to be an Eligible Employee after being adjusted for

subsequent Non-Elective Contributions (if any) and allocations of income and appreciation (or losses and depreciation) pursuant to Section 4.05. In the event an Inactive Participant subsequently becomes an Eligible Employee, the Employer of the Participant may resume contributions on the Participant's behalf.

### **3.07     TRANSFER OF EMPLOYMENT**

In the event a Participant leaves the employ of one Employer to enter directly into the employ of another Employer, he shall not be deemed to have suspended or terminated his status as an Eligible Employee or to have become an Inactive Participant hereunder, and such successor Employer may continue contributions on behalf of such Participant.



## ARTICLE IV

### CONTRIBUTIONS AND EXPENSES

#### 4.01 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

For the Plan Year during which the Plan is adopted and each Plan Year thereafter, each Employer shall contribute on behalf of each Participant-Employee of such Employer:

a. The amount of the Participant's total salary reduction elections made pursuant to Section 4.03, which amount shall be deemed the Employer's Elective contribution. This contribution shall be fully vested.

b. A discretionary amount, which amount shall be deemed an Employer's Non-Elective contribution. The Employer's Non-Elective contribution is expected to be not less than fifteen percent (15%) of the Participant's annual Compensation. This contribution shall be fully vested.

All contributions by Employers for a particular Plan Year shall be made in cash.

#### 4.02 NON-ELECTIVE CONTRIBUTION POST-SEVERANCE

An Employer may make a non-elective contribution for a Participant who is a former Employee up to the lesser of the dollar limitation expressed in Section 4.08(a)(1) or the former Employee's annual Includible Compensation. This contribution shall be fully vested

#### 4.03 PARTICIPANT'S SALARY REDUCTION ELECTION

a. Each Participant may elect to defer a portion of his Compensation which would have been received in a year (except for the deferral election) up to the maximum amount which will not cause the Plan to violate the provisions of Sections 4.06 and 4.07.

The amount by which Compensation is reduced shall be that Participant's Deferred Compensation and be treated as an Employer Elective contribution and allocated to that Participant's Elective Account.

b. Amounts held in the Participant's Elective Account (other than amounts attributable to assets that were held as of the close of the last year beginning before January 1, 1989, provided separate accounting is maintained for such accounts) may not be distributable prior to the earlier of:

- i. the proven financial hardship of a Participant, subject to the limitations of Section 6.07;
- ii. a Participant's disability within the meaning of Code Section 72(m) (7);

- iii. a Participant's termination of employment;
- iv. a Participant's attainment of age 59 1/2;
- v. a Participant's death.

c. Participant's Deferred Compensation pursuant to this Section shall not exceed during any taxable year the limitation imposed by Code Section 402(g) as in effect at the beginning of such taxable year.

For purposes of this limitation, any salary reduction contributions made by the Participant to any eligible deferred compensation plan (within the meaning of Code Section 457), any qualified cash or deferred arrangement (within the meaning of Code Section 401(k)), simplified Employee Pension (as defined in Code Section 408(k)) or any other tax sheltered annuity plan (within the meaning of Code Section 403(b)) maintained by an Employer shall reduce the otherwise applicable limit under this Plan.

d. In the event that the Participant is also a participant in (1) a qualified cash or deferred arrangement (as defined in Code Section 401(k)), (2) a simplified employee pension (as defined in Code Section 408(k)), (3) a salary reduction arrangement (within the meaning of Code Section 3121(a) (5) (D)), or (4) a plan meeting the rules of Code Section 501(c) (18), and the elective deferrals, as defined in Code Section 402(g), made under such other arrangement(s) and this Plan cumulatively exceed the limitation imposed by Code Section 402(g) (as adjusted annually in accordance with the method provided in Code Section 415(d) pursuant to Regulations) for such Participant's taxable year, the Participant may, not later than March 1 following the close of his taxable year, notify the Trustees in writing of such excess in accordance with the procedures established by the Trustees for this purpose. Such notification may request a reduction of the Participant's Deferred compensation by any amount specified by the Participant. The Trustees, shall, upon receipt of the written notification, reduce the deferred compensation of the Participant for the prior year by the amount requested and return any excess (together with any income allocable to such excess amount) to the Participant no later than the April 15th following the close of the Participant's taxable year.

e. The Employer and the Trustees shall adopt a procedure to implement the salary reduction elections provided for herein. Such procedure shall provide for the following:

- i. A salary reduction election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed the election.
- ii. The Participant may commence making Elective Contributions to the Plan only after first satisfying the eligibility requirements of Article III. However, a Participant must make his initial salary reduction election within a reasonable time, not to exceed 30 days, after entering the Plan pursuant to Article III. If the Participant fails to make an initial salary reduction election within such time, then the Participant may thereafter make an election in accordance with the rules governing modifications. The Participant shall make such an election by entering into a written

salary reduction agreement with the Participant's Employer, and filing the agreement with the Employer's designated representative. Such election shall initially be effective beginning with the pay period following the acceptance of the salary reduction agreement by the Employer, shall not have retroactive effect and shall remain in force until revoked.

- iii. A Participant may modify a prior election during a year and concurrently make a new election by filing a written notice with the Participant's Employer within a reasonable time before the pay period for which such modification is to be effective. However, modifications to a salary reduction election shall only be permitted during election periods established by the Participant's Employer. Any modification shall not have retroactive effect and shall remain in force until revoked.
- iv. A Participant may elect to prospectively revoke his salary reduction agreement in its entirety at any time during the year by providing the Participant's Employer with 30 days written notice of such revocation (or upon such shorter notice period as may be acceptable to Participant's Employer). Such revocation shall become effective as of the beginning of the first pay period coincident with or next following the expiration of the notice period. Furthermore, the termination of the Participant's employment, or the cessation of participation for any reason, shall be deemed to revoke any salary reduction agreement then in effect, effective immediately following the close of the pay period within which such termination or cessation occurs.

f. The requirements of this Section shall generally take effect as of the first Plan Year beginning after December 31, 1987; however, the requirements of Section 4.03(b) shall take effect on January 1, 1989.

#### **4.04 EMPLOYEE CONTRIBUTIONS**

Each Participant who is an Active Participant shall be permitted to make contributions to the Plan with his own after-tax funds. Any contribution made pursuant to this Section shall be treated as an Employee Contribution and allocated to the Participant's Employee Contribution Account.

#### **4.05 CATCH-UP CONTRIBUTIONS**

Effective January 1, 2002, all Participants who are eligible to make Elective Contributions under the Plan and who have attained age 50 before the close of the Plan Year shall be eligible 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 the applicable requirements of Code Section 410(b) or 403(b)(12) by reason of the making of such catch-up contributions.

#### **4.06 ALLOCATION OF CONTRIBUTION AND EARNINGS**

a. The Trustees shall establish and maintain an account in the name of each Participant to which the Trustees shall credit as of each Anniversary Date all amounts allocated to each such Participant as hereafter set forth.

b. As of each Valuation Date, before the current valuation period allocation of Employer Contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's non-segregated accounts bear to the total of all non-segregated accounts as of such date. Earnings or losses with respect to a Participant's directed investment account shall be allocated in accordance with Section 4.13.

c. Employer contributions shall be allocated as follows:

- i. With respect to the Employer's Elective Contribution made pursuant to Section 4.01(a), to each Participant's Elective Account in an amount equal to each such Participant's Deferred Compensation.
- ii. With respect to the Employer's Non-Elective contribution made pursuant to Section 4.01(b), to each Participant's Non-Elective Account in an amount equal to the Non-Elective Contribution made on behalf of each such Participant.

d. Employee contributions shall be allocated to each such Participant's Employee Contribution Account.

#### **4.07 MAXIMUM CONTRIBUTIONS**

a. No Elective Contribution may be made to the Plan that exceeds the limitation imposed by Code Section 402(g), as the same may be adjusted for cost of living increases by the Secretary of the Treasury. Upon a Participant's written request, the Trustees shall provide the Participant with such information as may be available to enable the Participant to determine the maximum contribution which can be made without exceeding the Code Section 402(g) limitation. The Trustees may assess reasonable charge for providing such information. Such charge must be paid by the Participant directly (and not from the Participant's Account).

b. Salary reduction contributions made by a Participant to any eligible deferred compensation plan (within the meaning of Code Section 457) shall not be considered in determining compliance with the Code Section 402(g) limitations as applied to this Plan, effective January 1, 2002.

#### **4.08 MAXIMUM ANNUAL ADDITIONS**

a. Notwithstanding the foregoing, except to the extent permitted under Code Section 414(v) (relating to catch-up contributions), the "annual additions" that may be contributed or allocated to a Participant's Account for any limitation year shall not exceed the lesser of:

- i. \$49,000 (2010 amount), as adjusted for increases in the cost-of-living under Code Section 415(d), or
- ii. one-hundred percent (100%) of the Participant's Includible Compensation for the limitation year.

b. For purposes of applying the limitations of Code Section 415, the phrase "annual additions" means the sum credited to a Participant's accounts for any "limitation year". "Annual additions" do not include transfers of funds from one plan to another. In addition, the following are not "annual additions" for the purposes of this Section: (1) rollover contributions as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of cash-out distributions received by an Employee pursuant to Code Section 411(a)(3)(D); and (4) Employee contributions to a simplified employee pension excludible from gross income under Code Section 408(k)(6).

c. For purposes of applying the limitations of Code Section 415, the "limitation year" shall be the same period as that used to compute Compensation.

d. If a Participant participates in more than one 415 plan maintained by the Employer which have different Anniversary Dates, the maximum "annual additions" under this Plan shall equal the maximum "annual additions" for the "limitation year" minus any "annual additions" previously credited to such Participant's accounts during the "limitation year".

e. Notwithstanding anything contained in this Plan to the contrary, the limitations, adjustments and other requirements prescribed in this Plan shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder, the terms of which are specifically incorporated herein by reference.

#### **4.09 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS**

If, as a result of a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limitations of Code Section 415, the aggregation of the Participant's rights under a qualified retirement plan and this Plan, or other facts and circumstances, the "annual additions" under this Plan would cause the maximum "annual additions" to be exceeded for any Participant, the Trustees shall correct the error in any manner permitted under the Employee Plans Compliance Resolution System, Revenue Procedure 2008-50 and any successor guidance thereto.

Code Section 415, the Treasury Regulations issued thereunder and other applicable guidance issued by the Department of Treasury or the Internal Revenue Service are hereby incorporated by reference.

#### **4.10 ROLLOVERS INTO PLAN**

a. Eligible rollover contributions may be transferred from other eligible retirement plans, provided that the plan from which such funds are transferred permits the transfer to be made and, in the opinion of legal counsel for the Trustees, the transfer will not jeopardize the tax

status of the Plan, create adverse tax consequences for the Employee, or require amendment to the Plan to maintain distribution restrictions inherent in the prior plan. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Rollover Account". Such account shall be fully vested at all times and shall not be subject to forfeiture for any reason.

b. Amounts in a Participant's Rollover Account shall be held by the Trustees pursuant to the provisions of this Plan, and may not be withdrawn by, or distributed to, the Participant, in whole or in part, except as provided in Paragraph (c) of this Section.

c. At Normal Retirement Date, or such other date when the Participant or his Beneficiary shall be entitled to receive benefits, the fair market value of the Participant's Rollover Account shall be used to provide additional benefits to the Participant.

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

- i. An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's Designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.
- ii. An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b).
- iii. A "distributee" includes an Eligible Employee.

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

e. The Trustees, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by the Plan.

#### **4.11 EXCHANGES FROM FORMER CONTRACTS**

a. A Participant or Beneficiary is permitted to change the investment of his or her accumulated amounts from the MetLife (formerly Travelers) group annuity contract to the vendor under which the assets of the Plan are invested, subject to the terms of the MetLife contract. However, because the MetLife contract is not eligible to receive contributions, this exchange is not permitted unless the conditions in paragraphs (b) through (d) of this Section 4.10 are satisfied.

b. The Participant or Beneficiary must have an account balance immediately after the exchange that is at least equal to the account balance of that Participant or Beneficiary immediately before the exchange (taking into account the account balance of that Participant or Beneficiary under both section 403(b) contracts, custodial accounts or retirement income accounts immediately before the exchange).

c. The distribution restrictions with respect to the Participant under the Plan are not less stringent than those imposed on the investment being exchanged.

d. The Plan Administrator enters into an agreement with the receiving vendor for the Plan under which the Plan Administrator and the vendor will from time to time in the future provide each other with the following information:

- i. Information necessary for the resulting retirement income account to satisfy section 403(b) of the Code, including the following:
  - A. Information as to whether the Participant's employment with the Employer is continuing, and notifying the vendor when the Participant has had a severance from employment;
  - B. Notification to the Employer of any distribution due to financial hardship if the withdrawal results in a 6-month suspension of the Participant's right to make elective deferrals under the Plan; and;
  - C. Information concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.05); and
- ii. Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions

have been made for the Participant by the Employer to satisfy other tax requirements, including the following:

- A. The amount of any plan loan that is outstanding to the Participant in order for the Plan Administrator to determine whether an additional plan loan is not a deemed distribution under Code Section 72(p)(1); and
- B. Information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a vendor to determine the extent to which a distribution is includible in gross income.

#### **4.12 PLAN TO PLAN TRANSFERS (OTHER THAN ROLLOVERS) FROM OTHER PLANS**

a. With the consent of the Trustees (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), amounts may be transferred (within the meaning of Code Section 414(l)) to this Plan from other tax qualified plans under Code Section 403(b), provided that the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require satisfactory evidence that the amounts to be transferred meet the requirements of this Section. The transferred amounts shall be allocated to the Transfer Account of the Participant.

Except as permitted by Regulations, amounts attributable to Elective Contributions, including amounts treated as elective contributions, that are transferred from another qualified plan in a plan to plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Section 4.03(b).

All amounts transferred to the Plan under this Section shall become nonforfeitable.

b. All amounts transferred to the Plan under this Section shall be held by the Trustee in a segregated account ("Transfer Account") for the benefit of the Participant pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

c. At the Participant's Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Transfer Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distributions of amounts held in the Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of the Plan with respect to distributions including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder. Furthermore, the Transfer Account shall be



considered as part of a Participant's benefit in determining whether an involuntary cash out of benefits may be made without Participant consent.

d. Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any benefit protected by Code Section 411(d)(6).

#### **4.13      DIRECTED INVESTMENT ACCOUNTS**

a. The Trustees, in its sole discretion, may determine that all Participants be permitted to direct the Trustees as to the investment of all or a portion of their individual account balances. If such authorization is given by the Trustees, Participants may, subject to a procedure established and applied in a uniform nondiscriminatory manner, direct the Trustees in writing to invest their account in specific assets permitted as investments under the Plan. Any account balances so directed will thereupon be considered a Directed Investment Account which shall not share in Plan Fund earnings, nor shall such account be taken into consideration for purposes of Section 4.04(b).

b. A separate Directed Investment Account shall be established for each Participant who has directed an investment. Transfers between the Participant's regular account and his Directed Investment Account shall be charged and credited as the case may be to each account. The Directed Investment Account shall not share in Plan Fund earnings, but it shall be charged or credited as appropriate with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in market value during each Plan Year attributable to such account. Such amounts shall not be considered in determining Plan Fund gains or losses.

c. Expenses incurred in connection with Directed Investment Accounts shall be charged against the balance in such accounts.

#### **4.14      IRREVOCABILITY OF CONTRIBUTIONS**

Contributions to the Plan are irrevocable when made, except that if a contribution to the Plan is made by reason of a mistake of fact, the Trustees shall, upon request by the Participating Employer, return to the Participating Employer the excess of the amount contributed over the amount, if any, that would have been contributed had there not occurred a mistake of fact. A mistake of fact is one other than an error as to the legal consequences or legal obligations from an assumed state of facts, such as an arithmetic or computational error. In no event shall the return of a contribution hereunder cause any Participant's Account to be reduced to less than it would have been had the mistaken or nondeductible amount not been contributed. No return of a contribution hereunder shall be made more than one year after the mistaken payment of the contribution.

**4.15     USERRA**

Notwithstanding any provision of this Plan to the contrary,

a. Contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u); and

b. Loan repayments will be suspended under this Plan as permitted under Code Section 414(u)(4).

## ARTICLE V

### VALUATIONS

#### **5.01 VALUATION OF THE PLAN FUND**

The Trustees shall, as of each Valuation Date, determine the net worth of the assets comprising the Plan Fund as it exists on the Valuation Date. In determining such net worth, the Trustees shall value the assets comprising the Plan Fund at their fair market value as of the Valuation Date and shall deduct all expenses for which the Trustees or Trustees have not yet obtained reimbursement from the Plan Fund.

#### **5.02 METHOD OF VALUATION**

In determining the fair market value of securities held in the Plan Fund which are listed on a registered stock exchange, the Trustees shall value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Plan Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustees may appraise such assets itself or, in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

## ARTICLE VI

### **DETERMINATION AND DISTRIBUTION OF BENEFITS**

#### **6.01 DETERMINATION OF BENEFITS UPON RETIREMENT**

Upon a Participant's Retirement Date, the Participant shall become a Retired Participant and shall be entitled to all amounts credited to the Participant's Account, including the value of any Contracts held on the Retired Participant's behalf. Distribution of any benefits under this Section 6.01 shall commence upon the Participant's Retirement Date, or as soon thereafter as is practicable, or at such later date as the Participant shall select, in accordance with Section 6.03.

#### **6.02 DETERMINATION OF BENEFITS UPON DEATH**

a. Upon the death of a Participant (whether before or after his Retirement Date) who was not receiving benefits under this Plan prior to death, the Participant's Beneficiary shall be entitled to all amounts credited to the deceased Participant's Account, including the value of any Contracts held on the deceased Participant's behalf. Distribution of any death benefits under this Section 6.02(a) shall commence on or before the Anniversary Date next following the death of the Participant, in accordance with Section 6.04(a).

b. Upon the death of a Retired Participant who was receiving benefits payable under this Plan prior to death, the Participant's Beneficiary shall be entitled to all remaining amounts credited to the deceased Participant's Account, including the value of any Contracts held on the deceased Participant's behalf, in accordance with Section 6.04(b).

c. The Trustees may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Retired Participant as the Trustees may deem desirable. The Trustees' determination of death and of the right of any person to receive payment shall be conclusive.

#### **6.03 DESIGNATION OF BENEFICIARY**

a. Each Participant shall have the right, by written notice to the Trustees on the Appropriate Form, to designate, revoke or change the Beneficiary to receive any death benefit payable pursuant to this Section; provided, however, the Participant's spouse shall be the Participant's Beneficiary, whether or not designated as such, unless one of the following requirements in subsections (i) through (iv) below is satisfied:

- i. The spouse waives the right to be the Beneficiary in a consent which meets the requirements of subsection (v). The Participant may at any time restore the spouse as the Beneficiary, without spousal consent.
- ii. The Participant is legally separated from his spouse or has been abandoned, within the meaning of local law, and provides the Trustees with a court order regarding the applicable circumstance. (However, such

a spouse must be considered the spouse to the extent provided in a Qualified Domestic Relations Order.)

- iii. The Participant establishes to the satisfaction of the Trustees that the spouse cannot be located. The Plan Administrator shall adopt procedures to implement this provision, which shall be applied uniformly to all Participants.
- iv. The Participant is unmarried. This "deemed" waiver of spousal rights for an unmarried Participant is null and void if the Participant later marries.

b. Consent Requirement: The spouse's consent to waive the right to be Beneficiary is valid only if the following requirements are satisfied:

- i. The spouse's consent must be in writing and signed, must acknowledge the effect of the election, and must be witnessed by a Plan representative or notary public.
- ii. To the extent provided by the written form adopted by the Plan, the spouse's consent must expressly permit additional elections of Beneficiaries by the Participant without the further consent of the spouse;
- iii. The consent required by this subsection may be given by the legal guardian of a legally incompetent spouse. This applies even if the Participant is the legal guardian.
- iv. A consent is only valid for the spouse who gives the consent (or for whom the consent is given by a legal guardian).

A valid consent, once given, cannot be revoked. In the event no spouse survives the Participant and no valid designation of a Beneficiary exists at the time of the Participant's death, the death benefit shall be payable to the Participant's estate.

c. The Participant's designation of a Beneficiary not effective unless the designation is received on a form acceptable to the Plan Administrator not later than nine months following Participant's death. Notwithstanding anything contained in the Plan to the contrary; a designation of a Beneficiary shall not be effective with respect to distributions made under the terms of the Plan prior to the receipt by the Plan Administrator of the properly completed Beneficiary designation.

#### **6.04 DISTRIBUTION OF BENEFITS**

a. Benefits under this Plan shall be distributable in the form of an annuity over the life of the Participant, with benefit payments guaranteed for a term of ten (10) years (i.e., a life annuity with a 10 year term certain). In lieu, thereof, the Trustees, pursuant to the election of the Participant, shall direct the distribution to a Participant or the Participant's Beneficiary of all or any portion of the benefit to which the Participant is entitled to under the Plan in one or any combination of the following methods:

- i. Lump sum payment (full or partial);
- ii. Payments in monthly, quarterly, semi-annual or annual installments over a period of time not to exceed the joint life expectancy of the Participant and the Participant's Beneficiary, with any balance remaining upon the death of a Participant payable to the Participant's Beneficiary.

b. The Trustees may elect to have any benefits under the Plan provided by the distribution or purchase of an insurance contract issued by an Insurer. In the event such an election is made by the Trustees, any affected Participant shall be given the option to select the insurance contract (with such endorsements thereon as the Trustees may require) to be purchased.

c. For purposes of this Section, the life expectancy of a Participant and the Participant's Beneficiary shall not be re-determined.

d. In addition to the distributions permissible or required under this Section 6.03, a Retired Participant may request a distribution of an amount not more than the parsonage (as defined in Code Section 107) previously certified and approved by the Trustees for that Plan Year.

e. Notwithstanding the foregoing, a Participant who is receiving benefit distributions from the Plan may elect to suspend such distributions by notice to the Trustees, subject to Section 6.10.

#### **6.05 DISTRIBUTION OF BENEFITS UPON DEATH**

a. The death benefit payable pursuant to Section 6.02(a) shall be paid to the Participant's Beneficiary in the form of an annuity over the life of the Beneficiary with benefit payments guaranteed for a term of ten (10) years (i.e., a life annuity with a 10 year term certain). In lieu thereof, the Trustees, pursuant to the election of the Beneficiary, shall direct a distribution to the Beneficiary of any amount to which he is entitled under the Plan in one or more of the following methods:

- i. One lump-sum.
- ii. Payments in monthly, quarterly, semi-annual or annual installments over a period not to exceed the life expectancy of the Beneficiary, with any balances remaining upon the death of the Beneficiary payable to the Beneficiary designated by the Participant's Beneficiary as, if no such designation is in effect at the Beneficiary's death, to the Beneficiary's estate.

The Trustees may elect to have any benefits under this Section 6.04(a) provided by the distribution or purchase of an insurance contract issued by an Insurer. In the event such an election is made by the Trustees, any affected Beneficiary shall be given the option to select the insurance contract (with such endorsements thereon as the Trustees may require) to be purchased.

Notwithstanding any other provision in this Section 6.04(a), if an annuity contract is held under the Plan on the deceased Participant's behalf and the deceased Participant had selected any option or benefit under the annuity contract, the terms and provisions of the annuity contract shall apply to the benefit provided by the annuity contract.

b. The death benefit payable pursuant to Section 6.02(b) shall be paid to the Participant's Beneficiary as required under the distribution method selected by the deceased Participant prior to his death.

c. Notwithstanding the foregoing, any distribution to a Participant or Beneficiary under this Section 6.05 must meet the requirements of Code Section 401(a)(9) and the Regulations thereunder to the extent the same are consistent with the provisions of Code Section 403(b).

- i. If it is determined pursuant to Regulations that the distribution of a Participant's interest has begun and the Participant dies before his entire interest has been distributed to him, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 6.04 as of his date of death.
- ii. If a Participant dies before he has begun to receive any distributions of his interest under the Plan or before distributions are deemed to have begun pursuant to Regulations, then his death benefit shall be distributed to his Beneficiaries in accordance with the following:
  - A. The entire death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year immediately following the calendar year in which the fifth anniversary of the Participant's death occurs.
  - B. The 5-year distribution requirement of (i) above shall not apply, if elected by the designated Beneficiary pursuant to Section 6.05(d), to any portion of the deceased Participant's interest which is payable to or for the benefit of a designated Beneficiary. In such event, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such designated Beneficiary) provided such distribution begins not later than December 31st of the calendar year immediately following the calendar year in which the Participant died.
- iii. However, in the event the Participant's spouse (determined as of the date of the Participant's death) is his designated Beneficiary, a spousal election may be made to delay the time at which distributions must commence until the later of: (A) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (B) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If the surviving spouse dies before distributions to

such spouse begin, then the 5-year distribution requirement of this Section shall apply as if the spouse was the Participant.

This Section 6.05(c) shall not be construed to make Code Section 401(a) (9) applicable to any benefits to which it would not otherwise apply, and shall take effect January 1, 1987.

d. For the purpose of Section 6.05(c)(ii), the election by a designated Beneficiary to be excepted from the 5-year distribution requirement must be made no later than December 31st of the calendar year following the calendar year of the Participant's death. Except, however, with respect to a designated Beneficiary who is the Participant's surviving spouse; the election must be made by the earlier of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died or, if later, the calendar year in which the Participant would have attained age 70 1/2; or (2) December 31st of the calendar year which contains the fifth anniversary of the date of the Participant's death. An election by a designated Beneficiary must be in writing and shall be irrevocable as of the last day of the election period stated herein. In the absence of an election by the designated Beneficiary, the 5-year distribution requirement shall apply.

e. For purposes of this Section, the life expectancy of a Participant and the Participant's Beneficiary shall not be re-determined.

#### **6.06      DISTRIBUTION FOR MINOR BENEFICIARY**

In the event a distribution is to be made to a minor, then the Trustees may direct that such distribution be paid to the legal guardian or, if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustees, Trustees, ACC and Plan from further liability on account thereof.

#### **6.07      LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of a distribution payable to a Participant or his Beneficiary hereunder remains unpaid for a period of seven (7) years solely by reason of the inability of the Trustees, after sending such payment check to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his Beneficiary, the amount so distributable shall become a forfeiture and used by the Trustees, in its discretion, to reduce future expenses of administering the Plan. In the event a Participant or Beneficiary is located subsequent to his benefit being forfeited, such benefit shall be restored.



## **6.08     ADVANCE DISTRIBUTION FOR HARDSHIP**

Subject to the conditions set forth in this Section 6.08, at the election of the Participant, the Trustees shall distribute up to the lesser of 100% of that Participant's Account (valued as of the last valuation date prior to the request) or, if less, the amount necessary to satisfy the immediate and heavy financial need of the Participant.

Such distribution shall be limited to that portion of the Participant's Account comprised of Employer non-elective contributions made to the Plan at least two years prior to the effective date of withdrawal (provided that the foregoing limitation shall not apply if the Participant has participated in the Plan for at least five years) and income allocated thereto, plus the Participant's Deferred Compensation, and any income allocated thereto credited to the Participant's Elective Account as of December 31, 1988, except that amounts attributable to assets that were held as of the close of the last year beginning before January 1, 1989 shall be available for distribution provided separate accounting is maintained for such amounts.

Provided that sufficient documentation is provided to the Trustees, the Trustees shall approve distributions on account of an immediate and heavy financial need for the following reasons:

- a. Uninsured medical expenses previously incurred by the Participant, the Participant's spouse or dependents, or necessary for these persons to obtain medical care;
- b. Costs related to the purchase of the Participant's primary residence (excluding mortgage payments);
- c. Payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant, the Participant's spouse, or the Participant's dependents;
- d. Amounts that must be paid to prevent eviction from, or foreclosure on the mortgage of the Participant's principal residence;
- e. Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents; or
- f. Expenses for the repair of damage of the Participant's principal residence that would qualify for the casualty deduction under section 165 of the Internal Revenue Code (determined without regard to whether the loss exceeds 10% of adjusted gross income).

A Participant who receives a distribution from the Participant's Account on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution.

## **6.09     LIMITATIONS ON BENEFITS AND DISTRIBUTIONS**

- a. All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution to an "alternate payee" shall be permitted if such distribution

is authorized by a “qualified domestic relations order,” even if the affected Participant has not reached the “earliest retirement age” under the Plan. For the purposes of this Section, “alternate payee”, “qualified domestic relations order” and “earliest retirement age” shall have the meaning set forth under Code Section 414(p).

b. Except as provided in this Section 6.09, that portion of the Participant’s Account which was paid to or invested in “custodial accounts” (as defined in Code Section 403(b) (7) may be distributable as permitted under the Plan, but in no event prior to the earlier of the Participant’s termination of employment, disability within the meaning of Code Section 72(m) (7), death, attainment of age 59 1/2 or, in the case of salary reduction contributions, financial hardship. Notwithstanding the foregoing, that portion of the account that is attributable to assets that were held as of the close of the last year beginning before January 1, 1989 shall be available for distribution on account of financial hardship provided separate accounting is maintained for such amount.

## **6.10 MINIMUM DISTRIBUTIONS**

This Section 6.10 will apply for purposes of determining required minimum distributions beginning January 1, 2003; except that distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Code Section 242(b)(2) of TEFRA.

All distributions required under this article will be determined and made in accordance with the Treasury Regulations under section 401(a)(9).

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

- i. **Required Beginning Date.** The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or retires. Due to the nature of this Plan, the rule that a “five percent owner” must commence by April 1 of the calendar year in which he attains age 70½ does not apply.
- ii. **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:
  - A. If the Participant's surviving spouse is the Participant’s sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died or, if the surviving spouse satisfies the criteria of the Defense of Marriage Act, the distribution may be delayed by the spouse to December 31 of the calendar year in which the Participant would have attained age 70½, if later.

- B. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- C. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- D. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.10(a)(ii), other than Section 6.10(a)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this Section 6.10(a)(ii) and Section 6.10(d), distributions are considered to begin on the Participant's required beginning date (or, if Section 6.10(a)(ii)(D) applies, the date distributions are required to begin to the surviving spouse under section 6.10(a)(ii)(A). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 509(a)(ii)(A), the date distributions are considered to begin is the date distributions actually commence.

- iii. Form of Distribution. Distributions will be made in accordance with subsections (b), (c), and (d) of this Section 6.10. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and the Treasury Regulations that apply to individual accounts.

b. Determination of Amount to be Distributed Each Year.

- i. General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
  - A. the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - B. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsections (c) and (d) of this Section 6.10;

- C. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- D. payments will either be non-increasing or increase only as follows:
  - I. by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  - II. to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 6.10(c) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p)
  - III. to provide cash refunds of employee contributions upon the Participant's death; or
  - IV. to pay increased benefits that result from a plan amendment.
- ii. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under section 6.10(a)(ii)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- iii. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

c. Requirements For Annuity Distributions That Commence During Participant's Lifetime.

- i. Joint Life Annuities Where the Beneficiary Is Not the Participant's spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.
- ii. Period Certain Annuities. Unless the Participant's spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this section 6.10(c), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

d. Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

- i. Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 6.10(a)(ii) or (iii), over the life of the designated Beneficiary or over a period certain not exceeding:

- A. unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
  - B. if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.
- ii. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - iii. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 6.10(d) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 6.10(a)(ii)(A).

e. Definitions.

- i. Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- ii. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 6.10(a)(ii).
- iii. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

f. Incorporation By Reference. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2003, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Treasury Regulations

under Code Section 401(a)(9) that were finalized on June 15, 2004, notwithstanding any provision of the Plan or this amendment to the contrary.

g. Notwithstanding the foregoing, a Participant may elect, in accordance with procedures established for this purpose by the Plan Administrator, to suspend any required minimum distributions that would otherwise be paid with respect to calendar year 2009 other than required minimum distributions due to be paid not later than April 1, 2009 on account of having attained age 70½ in 2008.

## ARTICLE VII

### TRUST AND TRUSTEES

#### **7.01 TRUST**

All assets of the Plan Fund shall be held in trust by the Trustees, appointed from time to time by the Executive Board, in accordance with the provisions of this Plan.

#### **7.02 BASIC RESPONSIBILITIES OF THE TRUSTEES,**

The Trustees shall have the following categories of responsibilities:

a. Consistent with any “funding policy and method” determined by the Executive Board, to invest, manage and control the Plan assets subject, however, to the direction of an Investment Manager if the Trustees should appoint such manager as to all or a portion of the assets of the Plan;

b. At the direction of the Trustees, to pay benefits required under the Plan to be paid to Participants or, in the event of their death, to their Beneficiaries;

c. To maintain records of receipts and disbursements and furnish to the Executive Board and/or Trustees for each Fiscal Year a written annual report pursuant to Section 7.07; and

d. Such administrative responsibilities as set forth in Article II.

#### **7.03 INVESTMENT POWERS AND DUTIES OF THE TRUSTEES**

The Trustees shall invest and reinvest the Plan Fund without distinction between principal and income. Plan investments shall include any securities or property, wherever situated, as the Trustees shall deem advisable including, but not limited to, stocks, common or preferred, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustees shall at all times in making investments of the Plan Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Trustees. In making such investments, the Trustees shall be restricted to securities or other property of the character expressly authorized by the applicable law for investments of employee plans which meet the requirements of Code Section 403(b).

#### **7.04 OTHER POWERS OF THE TRUSTEES**

The Trustees, in addition to all powers and authorities under common law, statutory authority, including Code Section 403(b) and other applicable provisions of the Code, and other provisions of the Plan, shall have the following powers and authorities, to be exercised in the Trustee’s sole discretion:



a. To purchase, or subscribe for, any contracts, securities or other property and to retain the same;

b. To sell, exchange, convey, transfer, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

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

d. To cause any securities or other property to be registered in the Trustee's own name or any Participant's name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustees shall at all times show that all such investments are part of the Plan Fund;

e. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

f. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal administrative proceedings, and to represent the Plan in all suits and legal administrative proceedings;

g. To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be agent or counsel for the ACC;

h. To apply for and procure from responsible insurance companies, to be selected by the Trustees, as an investment of the Plan Fund such annuity, or other Contracts (on the life of any Participant) as the Trustees shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;

i. To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary to carry out the purposes of the Plan.

## **7.05 DUTIES OF THE TRUSTEES REGARDING PAYMENTS**

The Trustees shall, from time to time, in accordance with the terms of the Plan, authorize or make payments out of the Plan Fund. The Trustees shall not be responsible in any way for the application of such payments.

## **7.06 ANNUAL REPORT OF THE TRUSTEES**

Within seventy-five (75) days following the close of a Plan Year, the Trustees shall furnish to the Executive Board a written statement of account with respect to such Plan Year setting forth:

- a. the net income, or loss, of the Plan Fund;
- b. gains or losses realized by the Plan Fund upon sales or other disposition of the assets;
- c. the increase, or decrease, in the value of the Plan Fund;
- d. all payments and distributions made from the Plan Fund; and

e. Such further information as the Trustees and/or Trustees deems appropriate. The Executive Board, forthwith upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustees and/or Trustees of its approval or disapproval thereof. Failure by the Executive Board to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Executive Board of any statement of account shall be binding as to all matters embraced therein as between the Executive Board and the Trustees to the same extent as if the account of the Trustees had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustees, all Employers and all persons having or claiming an interest in the Plan were parties; provided, however, that nothing herein contained shall deprive the Trustees of their right to have their accounts judicially settled if the Trustees so desire.

## **7.07 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEES**

a. Any Trustee may resign at any time by delivering to the Executive Board, at least thirty (30) days before its effective date, a written notice of his resignation.

b. The Executive Board may remove any Trustee by mailing by registered or certified mail, addressed to such Trustee at his last known address, at least thirty (30) days before its effective date, a written notice of his removal.

c. The Executive Board or Trustee may waive the 30 day notice requirements of Section 7.08(a) and 7.08(b).

d. Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Executive Board; and such successor, upon accepting such appointment in writing and delivering same to the Executive Board, shall without further act become vested with

all the estate, rights, power, discretion, and duties of his predecessor with like respect as if they were originally named as a Trustee herein. until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

e. The Executive Board may designate one or more successors prior to death, resignation, incapacity or removal of a Trustee. In the event a successor is so designated by the Executive Board and accepts such designation, the successor shall, without further act, become vested with all the estate, rights, powers, discretion and duties of his predecessor with the like effect as if they were originally named as a Trustee herein immediately upon the death, resignation, incapacity or removal of his predecessor.

f. Whenever any Trustee ceases to serve as such, he shall furnish to the Executive Board and Trustees a written statement of account with respect to the portion of the Plan Year during which he served as Trustee. This statement shall be either (1) included as part of the annual statement of account for the Plan Year required under Section 7.07 or (2) set forth in a special statement. Any such special statement of account should be rendered to the Executive Board no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.07 for the approval by the Executive Board of annual statement of account shall apply to any special statement of account rendered hereunder and approval by the Executive Board of any such special statement in the manner provided in Section 7.07 shall have the same effect upon the statement as the Executive Board's approval of an annual statement of account. No successor Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.07 and this subparagraph.

#### **7.08     IMMUNITY OF TRUSTEE**

The Trustees may from time to time consult with counsel (who may be counsel for the ACC) and shall be fully protected in acting upon the advice of counsel. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, nor for any loss to, or diminution of, the Plan Fund, except due to their own gross negligence or willful misconduct. The ACC shall indemnify and hold the Trustees harmless against any liability they may incur in relation to the Plan, except each Trustee shall be individually liable for his own gross negligence and willful misconduct. This Section shall be construed in all cases to provide protection to the Trustees which is supplemental to, and not in lieu of, that provided by any other provision of this Plan and any insurance covering the Trustees, and shall be applied accordingly.

#### **7.09     LOANS TO PARTICIPANTS**

a. The Trustees may, upon the application of any Participant or Beneficiary, direct the Trustees to make loans to Participants and Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) shall provide for repayment over a reasonable period of time.

b. Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) shall be limited to the lesser of:

- i. \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
- ii. one-half (1/2) of the present value of the nonforfeitable accrued benefit of the Participant under the Plan.

For purposes of this limit, all plans of the Employer shall be considered one plan.

c. Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years.

d. A Participant loan program shall be established which must include, but need not be limited to, the following:

- i. the identity of the person or persons authorized to administer the Participant loan program;
- ii. a procedure for applying for loans;
- iii. the basis on which loans will be approved or denied;
- iv. limitations, if any, on the types and amounts of loans offered;
- v. the procedure under the program for determining a reasonable rate of interest;
- vi. the types of collateral which may secure a Participant loan; and
- vii. the events constituting default and the steps that will be taken to preserve Plan assets.

Such Participant loan program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the Plan. Furthermore, such Participant loan program may be modified or amended in writing from time to time without the necessity of amending this Section.

e. Effective October 1, 2003, a Participant shall not have outstanding more than two loans from the Plan at a time. If a Participant borrows amounts under this and one or more qualified plans maintained by the Employer, all the plans are treated as one plan for purposes of

the borrowing restrictions outlined in this Section. Moreover, no distribution shall be made to a Participant or his Beneficiary unless and until all unpaid loans, including accrued interest thereon, have been paid.

f. The provisions of this Section 7.10 shall apply to any loans granted or renewed after the date of this amendment and restatement.

#### **7.10 DIRECT ROLLOVER**

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

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

- i. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a) (9); the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV) after December 31, 1999; and any other distribution that is reasonably expected to total less than \$200 during a year. Notwithstanding the foregoing, a distribution to a distributee who is a non-spouse beneficiary shall only be treated as an eligible rollover distribution to the extent that the distribution is made in the form of a direct rollover to an individual retirement plan described in Code sections 402(c)(8)(B)(i) or (ii) established for the purposes of receiving the distribution on behalf of such Distributee.
- ii. An "eligible retirement plan" is (a) an individual retirement account described in section 408(a) of the Code, (b) an individual retirement annuity described in section 408(b) of the Code, (c) an annuity plan described in section 403(a) of the Code, (d) a qualified trust described in section 401(a) of the Code, (e) an annuity described in section 403(b) of the Code (f) an eligible plan under section 457(b) of the Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, which, in each such case, agrees to separately account for amounts transferred into such eligible retirement plan from the Plan, and (g) for distributions after

December 31, 2007, a Roth IRA described in Section 408(b) of the Code. 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 an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

- iii. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. In addition, effective for distributions after December 31, 2009, a deceased Employee's or former Employee's non-spouse beneficiary is a distributee with regard to the interest of the Employee or former Employee.
- iv. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- v. For purposes of this Section, "spouse" is defined under the Federal Defense of Marriage Act.

## **ARTICLE VIII**

### **AMENDMENT; TERMINATION**

#### **8.01 AMENDMENT**

The Executive Board, on behalf of the ACC, reserves the right to alter, amend and/or modify the Plan, in whole or in part, at any time and from time to time. Any such alteration, amendment or modification shall be effected by a written instrument duly executed and shall become effective as provided therein upon its execution.

#### **8.02 TERMINATION**

The ACC expects and hopes to continue the Plan in force indefinitely, but continuance of the Plan is completely voluntary and is not assumed as a contractual obligation. The Executive Board, on behalf of the ACC, reserves the right to terminate the Plan at any time by duly executing a written instrument stating the effective date of termination. Upon termination of the Plan, the Trustees, by written notice to the Trustees, shall:

(a) reserve from the Plan Fund an amount sufficient to pay the Plan's expenses and charges, including any and all expenses incurred in the termination of the Plan; and

(b) direct a complete distribution of the balance of assets in the Plan Fund to Participants and their Beneficiaries in cash or in kind, through the purchase of Contracts or such other means as the Trustees shall direct.

## ARTICLE IX

### MISCELLANEOUS

#### **9.01 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in the Plan shall be deemed to give any Participant or Employee the right to be retained in the service of any Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon them as a Participant of this Plan.

#### **9.02 ALIENATION**

a. Subject to the exceptions provided below, no benefit which shall be payable out of the Plan Fund to any person (including a Participant or his Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustees, except to such extent as may be required by law.

b. This provision shall not apply to the extent a Participant or Beneficiary is indebted to the Plan, for any reason, under any provision of the Plan. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount distributed as shall equal such indebtedness shall be paid by the Trustees to the Trustees to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Trustees that such indebtedness is to be so paid in whole or part from his Participant's Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against his Participant's Account, they shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.11 and 2.12.

c. This Section shall not apply to any "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Trustees under the provisions of the Retirement Equity Act of 1984, provided that, any alienation for the benefit of a spouse or former spouse shall only apply to a spouse within the meaning of the Defense of Marriage Act.. The Trustees shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes of the Plan.

d. Notwithstanding any provision of this Section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay



to the Plan with respect to a judgment, order or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code Section 401(a)(13)(C) and (D) and to the extent otherwise permitted under Code Section 403(b).

### **9.03      CONSTRUCTION OF PLAN**

The Plan and Trust created hereby shall be administered, construed, and enforced according to the laws of the state of New York, and the Trustees and Trustees shall be liable to account only in the courts of that State. All transfers of funds or other property to the Trustee shall be deemed to take place in the state of New York. The Trustees may at any time initiate an action or proceeding for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions, and the only necessary parties defendant to such action or proceeding shall be the ACC and the Trustees, except that the Trustees may, if they so elect, bring in as parties defendant any other person or persons.

### **9.04      GENDER AND NUMBER**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### **9.05      LIMITATION OF LIABILITY; LEGAL ACTION**

It is expressly understood and agreed by each Employer and each person who becomes a Participant or Beneficiary hereunder that, except for its or their own gross negligence or willful misconduct, neither the ACC, the Trustees nor the Trustees shall be in any way subject to any suit or litigation, or to any legal liability for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such person hereby releases the ACC and all its officers and agents, the Trustees and the Trustees from any and all liability or obligation.

In any action or proceedings involving the Plan, or any property constituting part or all of the Plan Fund, or the administration thereof, the ACC, the Trustees and the Trustees shall be the only necessary parties. No Employer, Participant or Beneficiary, or any other person having or claiming to have an interest in or under the Plan, shall be entitled to any notice of process, nor shall such persons be entitled to participate in said action or proceedings.

In the event any claim, action or proceeding is brought regarding the Plan established hereunder to which the Trustees or the Trustees may be a party, and such claim, action or proceeding is resolved in favor of the Trustees or Trustees, and/or determines that the Trustees or Trustees were not grossly negligent or did not engage in willful misconduct, they shall be entitled to be reimbursed from the Plan Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

## **9.06 PROHIBITION AGAINST DIVERSION OF FUNDS**

a. Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or any other means, for any part of the corpus or income of any trust fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

b. In the event the Employer shall make an excessive contribution under a mistake of fact, the Employer may recover such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the excess contributions may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

## **9.07 BONDING**

Except as otherwise provided in this Plan, every Fiduciary shall be bonded in such amounts as may be required by any applicable laws, or as deemed desirable by the Executive Board. The Bond shall provide protection to the Plan against any loss by reason of acts of fraud or dishonesty by the Fiduciary alone or in connivance with others. The surety shall be a corporate surety company. Notwithstanding anything in the Plan to the contrary, the cost of such bonds shall be an expense of and may, at the election of the Trustees, be paid from the Plan Fund or by the Employers.

## **9.08 ACC, TRUSTEES AND TRUSTEES PROTECTIVE CLAUSE**

Neither the ACC, the Trustees, the Trustees nor their successors shall be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

## **9.09 INSURER'S PROTECTIVE CLAUSE**

Any Insurer who shall issue Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustees, and shall have no duty to see to the application of any funds paid to the Trustees, nor be required to question any actions directed by the Trustees. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

## **9.10 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, his legal representative, Beneficiary, or to any guardian or Trustees appointed for such Participant or Beneficiary, in accordance with the provision of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. This shall include any and all claims against the Trustees or the Trustees, either of whom may require such

Participant, legal representative, Beneficiary, guardian or Trustees, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustees.

### **9.11 ACTION BY AN EMPLOYER**

Whenever any Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

### **9.12 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY**

The “named Fiduciaries” of this Plan are (a) the Employers, (b) the Executive Board, (c) the Trustees, and (d) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.01. The Executive Board shall have the sole authority to appoint and remove the Trustees and any Investment Manager which may be provided for under the Plan, to formulate the Plan’s “funding policy and method”, and to amend or terminate, in whole or in part, the Plan. The Trustees shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. The Trustees shall have the sole responsibility of management of the assets held under the Plan, except those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provision of the Plan authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Plan Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

### **9.13 HEADINGS**

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provision hereof.

### **9.14 UNIFORMITY**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

## ARTICLE X

### PARTICIPATING EMPLOYERS

#### **10.01 ADOPTION BY EMPLOYERS**

An Employer may participate herein and be known as a “Participating Employer,” by executing the Appropriate Form evidencing said intent and will of such Participating Employer.

#### **10.02 DESIGNATION OF AGENT**

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustees and Trustees for the purposes of the Plan, each Participating Employer shall be deemed to have designated irrevocably the Executive Board as its agent. Unless the context of the Plan clearly indicates the contrary, the word “Employer” shall be deemed to include each Participating Employer as related to its adoption of the Plan.

#### **10.03 EMPLOYEE TRANSFERS**

It is anticipated that an Employee may be transferred between Participating Employers. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

#### **10.04 PARTICIPATING EMPLOYER’S CONTRIBUTION**

All contributions made by a Participating Employer, as provided for in this Plan, shall be determined separately by each Participating Employer, and shall be paid to and held by the Trustees for the exclusive benefit of the Employees of such Participating Employer and the Beneficiaries of such Employees, subject to all the terms and conditions of this Plan. The Trustees shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustees may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustees thereof.

#### **10.05 AMENDMENT**

Amendment of this Plan shall be by the written action of the Executive Board, and each Participating Employer, by adopting this Plan, consents to the authority of the Executive Board to amend such plan.

## **10.06 DISCONTINUANCE OF PARTICIPATION**

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustees. The Trustees shall thereafter transfer, deliver and assign Contracts and other Plan Fund assets allocable to the Participants of such Participating Employer to such new plan Trustees as shall have been designated by such Participating Employer in the event that it has established a separate 403(b) Plan for its Employees. If no successor is designated, the Trustees shall retain such assets for the Employees of said Participating Employer pursuant to the provisions hereof, unless otherwise directed by the Participating Employer. In no event shall any part of the corpus or income of the Trust as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.