# PRIMO WATER CORP /CN/

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 08/21/03

| | |
|---|---|
| Address | 4221 W. BOY SCOUT BLVD.<br>SUITE 400<br>TAMPA, FL, 33607 |
| Telephone | 813-313-1732 |
| CIK | 0000884713 |
| Symbol | PRMW |
| SIC Code | 2086 - Bottled and Canned Soft Drinks and Carbonated Waters |
| Industry | Non-Alcoholic Beverages |
| Sector | Consumer Non-Cyclicals |
| Fiscal Year | 12/02 |

# COTT CORP /CN/

## FORM S-8
(Securities Registration: Employee Benefit Plan)

## Filed 8/21/2003

| | |
|---|---|
| Address | 207 QUEENS QUAY W SUITE 340 |
| | TORONTO ONTARIO CANA, 00000 |
| Telephone | 416-203-3898 |
| CIK | 0000884713 |
| Industry | Beverages (Non-Alcoholic) |
| Sector | Consumer/Non-Cyclical |
| Fiscal Year | 12/31 |

As filed with the Securities and Exchange Commission on August 21, 2003
Registration No. 333- _____

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

# FORM S-8

**REGISTRATION STATEMENT**
**UNDER**
**THE SECURITIES ACT OF 1933**

# COTT CORPORATION

(Exact Name of Registrant as Specified in its Charter)

| CANADA | NOT APPLICABLE |
|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification Number) |

COTT CORPORATION
207 QUEEN'S QUAY WEST, SUITE 340
TORONTO, ONTARIO, CANADA M5J 1A7
(Address of Principal Executive Offices) (Zip Code)

**THE RESTATED COTT USA 401(K) SAVINGS & RETIREMENT PLAN**
**AND**
**COTT BEVERAGES SAN BERNARDINO SAVINGS & RETIREMENT PLAN**
(Full Title of the Plans)

**COTT USA CORP.**
4211 W. Boy Scout Blvd.
Suite #290
**TAMPA, FLORIDA 33607**
(Name and Address of Agent For Service)

(813) 313-1800
(Telephone Number, Including Area Code, of Agent For Service)

**Copies To:**

| | |
|---|---|
| Mark R. Halperin, Esq.<br>SVP, General Counsel & Secretary<br>Cott Corporation<br>207 Queen's Quay West, Suite 340<br>Toronto, Ontario, Canada M5J 1A7 | Diana E. McCarthy, Esq.<br>Drinker Biddle & Reath LLP<br>One Logan Square<br>18th and Cherry Streets<br>Philadelphia, PA 19103-6996 |

**CALCULATION OF REGISTRATION FEE**

| Title of Securities To Be Registered | Amount To Be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee (2) |
|---|---|---|---|---|
| Common Shares, No Par Value | 600,000 | $23.15 | $13,890,000 | $1,123.70 |

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plans described herein.

(2) Pursuant to 457(h) under the Securities Act of 1933, the proposed maximum offering price per share and the proposed maximum aggregate offering price are estimated solely for the purposes of calculating the registration fee required under Section 6(b) of the Securities Act of 1933 and are based upon the average of the high and low prices for a share of common stock of Cott Corporation on the New York Stock Exchange on August 19, 2003.

## EXPLANATORY NOTE

This registration statement relates to shares of common stock of Cott Corporation that may be acquired (1) under the Cott USA 401(k) Savings & Retirement Plan by employees of Cott Beverages Inc. and Cott Beverages Wyomissing Inc., both indirect wholly owned subsidiaries of Cott Corporation, and Northeast Retailer Brands LLC, an entity in which Cott Corporation indirectly owns a majority interest, and (2) under the Cott Beverages San Bernardino Savings & Retirement Plan by those employees of Cott Beverages, Inc., an indirect wholly owned subsidiary of Cott Corporation, who are covered by the collective bargaining agreement between Cott Beverages Inc. and the United Industrial Workers Service, Transportation, Professional and Governmental of North American Sub Region B. Shares of Cott Corporation's common stock acquired under these plans are obtained from time-to-time by the plan administrators through open market purchases at prevailing market prices. Such transactions do not involve the original issuance by Cott Corporation of any new shares of its common stock or result in a change in the number of outstanding shares of its common stock.

## PART I
## INFORMATION REQUIRED IN THE SECTION 10 (a) PROSPECTUS

The information specified in Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the Plan covered by this registration statement as required by Rule 428(b). Such documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II below, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933.

## PART II
## INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

**Item 3.**

The following documents, which are on file with the Securities and Exchange Commission, are incorporated herein by reference:

a) Cott Corporation's Annual Report on Form 10-K for the year ended December 28, 2002, filed March 17, 2003.

b) Cott Corporation's Quarterly Report on Form 10-Q for the quarter ended March 29, 2003, filed May 13, 2003, and for the quarter ended June 28, 2003, filed August 12, 2003.

c) Cott Corporation's Current Report on Form 8-K filed on April 16, 2003 and July 17, 2003.

d) The description of Cott Corporation's common shares contained in its registration statement on Form 8-A12B (No. 001-31410) filed on July 25, 2002.

In addition, all documents subsequently filed by Cott Corporation or either of the plans pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all

securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part of this registration statement from the date of filing of such documents.

**Item 4. Description of Securities.**

Not Applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not Applicable.

**Item 6. Indemnification of Directors and Officers.**

The corporation laws of Canada and the by-laws of Cott Corporation include provisions designed to provide for the indemnity of the corporation's officers and directors against certain liabilities. These provisions are designed to encourage qualified individuals to serve as officers and directors of Cott Corporation.

Under the Canada Business Corporations Act (the "CBCA"), a corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him or her in respect of certain civil, criminal, administrative, investigative or other proceedings in which he or she is involved because of that association with the corporation or other entity.

The CBCA permits indemnification and monetary advances only if the indemnifiable person acted honestly and in good faith with a view to the best interests of the corporation (in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing his or her conduct to be lawful). An indemnifiable person is entitled to the indemnity if, in addition to the foregoing, such indemnifiable person was not adjudged by a court or other competent authority to have committed any fault or omitted to do anything that the indemnifiable person ought to have done. With the approval of the court, a corporation may also indemnify an indemnifiable person in respect of an action by or on behalf of the corporation.

Sections 7.02 to 7.04 of Cott Corporation's by-laws provide, without in any manner derogating from or limiting the mandatory provisions of the CBCA but subject to the conditions contained therein, for the indemnity of Cott Corporation's directors or officers, former directors or officers, or a person who acts or acted at Cott Corporation's request as a director or officer or in a similar capacity of another entity substantially in accordance with the provisions set out in the CBCA.

Section 7.05 of the corporation's by-laws states that subject to the limitations contained in the CBCA, Cott Corporation may purchase and maintain insurance for the benefit of its directors and officers as such, as the board may from time to time determine.

In addition, Cott Corporation has entered into indemnification agreements with certain directors and officers which embody, in all material respects, the indemnity provisions contained in the CBCA and Cott Corporation's by-laws and subject to the limitations contained therein.

**Item 7. Exemption from Registration Claimed.**

Not Applicable.

**Item 8. Exhibits.**

| Exhibit No. | Title |
|---|---|
| Exhibit 4.1 | The Restated Cott USA 401(K) Savings & Retirement Plan |
| Exhibit 4.2 | First Amendment to the Restated Cott USA 401(k) Savings and Retirement Plan |
| Exhibit 4.3 | Second Amendment to the Restated Cott USA 401(k) Savings and Retirement Plan |
| Exhibit 4.4 | Third Amendment to the Restated Cott USA 401(k) Savings and Retirement Plan |
| Exhibit 4.5 | Fourth Amendment to the Restated Cott USA 401(k) Savings and Retirement Plan |
| Exhibit 4.6 | Fifth Amendment to the Restated Cott USA 401(k) Savings and Retirement Plan |
| Exhibit 4.7 | Wachovia Bank, National Association Defined Contribution Master Plan and Trust Agreement |
| Exhibit 4.8 | Adoption Agreement #005 Nonstandardized 401(k) Profit Sharing Plan for the Cott Beverages San Bernardino Savings & Retirement Plan |
| Exhibit 4.9 | EGTRRA Amendment to the Cott Beverages San Bernardino Savings & Retirement Plan |
| Exhibit 5.1 | IRS opinion letter regarding the Cott Beverages San Bernardino Savings & Retirement Plan |
| Exhibit 23 | Consent of PricewaterhouseCoopers LLP |
| Exhibit 24 | Power of Attorney (included in the signature page) |

The registrant hereby undertakes that it will submit or has submitted the Restated Cott USA 401(k) Savings & Retirement Plan and any amendments thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the Restated Cott USA
401(k) Savings & Retirement Plan under Section 401 of the Internal Revenue Code.

**Item 9. Undertakings.**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales or being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth the "Calculation of Registration Fee" table in the effective registration statement and;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15 (d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, in Toronto, Ontario, Canada, on this 21st day of August, 2003.

**COTT CORPORATION**

*By: /s/ Frank E. Weise*
*Frank E. Weise, Chairman and Chief Executive Officer*

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Mark R. Halperin as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to the registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or a substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

| | | |
|---|---|---|
| /s/ Frank E. Weise III<br>Frank E. Weise III | Chairman and Chief Executive Officer<br>(Principal Executive Officer) | Date: August 21, 2003 |
| /s/ John K. Sheppard<br>John K. Sheppard | Director, President and Chief Operating Officer | Date: August 21, 2003 |
| /s/ Raymond P. Silcock<br>Raymond P. Silcock | Executive Vice President and Chief Financial Officer<br>(Principal Financial Officer) | Date: August 21, 2003 |
| /s/ Tina Dell'Aquila<br>Tina Dell'Aquila | Vice-President, Controller and Assistant Secretary<br>(Principal Accounting Officer) | Date: August 21, 2003 |
| /s/ Serge Gouin<br>Serge Gouin | Director | Date: August 21, 2003 |

| | | |
|---|---|---|
| /s/ Colin J. Adair<br>Colin J. Adair | Director | Date: August 21, 2003 |
| /s/ W. John Bennett<br>W. John Bennett | Director | Date: August 21, 2003 |
| /s/ C. Hunter Boll<br>C. Hunter Boll | Director | Date: August 21, 2003 |
| /s/ Thomas M. Hagerty<br>Thomas M. Hagerty | Director | Date: August 21, 2003 |
| /s/ Stephen H. Halperin<br>Stephen H. Halperin | Director | Date: August 21, 2003 |
| /s/ David V. Harkins<br>David V. Harkins | Director | Date: August 21, 2003 |
| /s/ Christine A. Magee<br>Christine A. Magee | Director | Date: August 21, 2003 |
| /s/ Donald G. Watt<br>Donald G. Watt | Director | Date: August 21, 2003 |
| /s/ Philip B. Livingston<br>Philip B. Livingston | Director | Date: August 21, 2003 |

**THE PLANS**

Pursuant to the requirements of the Securities Act of 1933, the plan administrators have duly caused this registration statement to be signed on behalf of the undersigned, thereunto duly authorized, in the city of Columbus, state of Georgia, on August 21, 2003.

Cott USA 401(k) Savings & Retirement Plan, by the Administrative Committee

*/s/ Linda Marie Holliday*
*Linda Marie Holliday, Member*

*/s/ Vince Vaccaro*
*Vince Vaccaro, Member*

*/s/ Kimberly Helton*
*Kimberly Helton, Member*

*/s/ Charlotte Pope*
*------------------*
*Charlotte Pope, Member*

*/s/ Jeff Blade*
*--------------*
*Jeff Blade, Member*

*/s/ Jim Peacock*
*---------------*
*Jim Peacock, Member*

*/s/ Sher Zaman*
*--------------*
*Sher Zaman, Member*

Cott Beverages San Bernardino Savings & Retirement Plan, by the Administrative Committee

*/s/ Linda Marie Holliday*
*------------------------*
*Linda Marie Holliday, Member*

*/s/ Vince Vaccaro*
*-----------------*
*Vince Vaccaro, Member*

*/s/ Kimberly Helton*
*-------------------*
*Kimberly Helton, Member*

*/s/ Charlotte Pope*
*------------------*
*Charlotte Pope, Member*

*/s/ Jeff Blade*
*--------------*
*Jeff Blade, Member*

*/s/ Jim Peacock*
*---------------*
*Jim Peacock, Member*

*/s/ Sher Zaman*
*--------------*
*Sher Zaman, Member*

**AUTHORIZED REPRESENTATIVE**

Pursuant to the requirements of Section 6(a) of the Securities Act of 1933, the authorized representative has duly caused this registration statement to be signed on its behalf by the undersigned, solely in its capacity as the duly authorized representative of Cott Corporation in the United States, on the 21st day of August, 2003.

**Cott USA Corp.**
(Authorized Representative)

*By: /s/ Mark Halperin*
*----------*
*Mark Halperin, Senior Vice President and Secretary*

## EXHIBIT INDEX

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**Exhibit 4.1**

# THE RESTATED COTT USA 401(k)

# SAVINGS & RETIREMENT PLAN

**As Restated and Amended Effective January 1, 1997**

**THE RESTATED COTT USA 401(k)**

**SAVINGS & RETIREMENT PLAN**

WHEREAS, effective January 1, 1995, BCB USA Corp. (formerly named, Cott Beverages USA, Inc.) (the "Employer") established the Cott USA 401(k) Savings & Retirement Plan and Trust (the "Plan"), a profit sharing plan containing a section 401(k) cash or deferred feature;

WHEREAS, under Article 16 of the Plan, the Employer reserved the right to amend the provisions of the Plan;

WHEREAS, the Small Business Job Protection Act of 1996 and subsequent legislation and regulations ("employee benefit changes") have made numerous changes to the rules governing all qualified plans, including section 401(k) plans, thereby requiring all qualified plans to be amended to reflect these changes in order for such plans to retain their tax-qualified status;

WHEREAS, the Internal Revenue Service has extended the "remedial amendment period" for plans to be amended to comply with the employee benefit changes through the last day of the first plan year beginning after December 31, 2000; and

WHEREAS, in light of the amendments that have previously been made to the Plan, the need to amend the Plan to comply with the employee benefit changes, and the desire of the Employer to convert from a non-standardized prototype to an individually designed plan document, it has been decided to amend and entirely restate the Plan.

NOW, THEREFORE, except as otherwise provide in the Plan, effective January 1, 1997, the Plan is hereby amended and restated as set forth herein.

**TABLE OF CONTENTS**

**THE RESTATED COTT USA 401(k) SAVINGS & RETIREMENT PLAN**

## ARTICLE I

## DEFINITIONS

1.1 "Account Balance" shall mean the sum of the account balances in the Participant's Salary Deferral Account, Matching Account, Employer Account and Rollover Account.

1.2 "Adjusted Compensation" shall mean wages within the meaning of Section 3401(a) of the Code (without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or services performed) received by an Employee during a Plan Year and all other payments of compensation to the Employee during the Plan Year for which the Employer is required to furnish a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Code.

1.3 "Adjustment Factor" shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code, as applied to such items and in such manner as the Secretary shall provide.

1.4 "Affiliate" shall mean any corporation which is a member of a controlled group of corporations (as defined in Section 414(b) of the Code) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Section 414(c) of the Code) with the Employer; and any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Section 414(m) of the Code) which includes the Employer.

1.5 "Annual Additions" shall mean the total of all Salary Deferral Contributions, Matching Contributions and Employer Contributions credited to each Participant under this Plan for each Limitation Year. To the extent applicable, Annual Additions shall also include amounts

described in Sections 415(l) and 419A(d)(2) of the Code.

1.6 "Beneficiary" shall mean the person, legal representative, estate or trust designated under Article VIII to receive payments on account of the death of the Participant.

1.7 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.8 "Committee" shall mean the Administrative Committee appointed by the Company which administers the Plan pursuant to Article XI.

1.9 "Company" shall mean BCB USA Corp., and any successors thereto; provided, however, that prior to January 24, 2000 "Company" shall mean Cott Beverages USA, Inc.

1.10 "Company Stock" shall mean the common stock of Cott Corporation, as traded on the NASDAQ National Market.

1.11 "Compensation" shall mean salary, wages, bonuses, overtime, gratuities, commissions and other remuneration received by a Participant for personal services actually rendered in the course of employment with the Employer during a Plan Year for the period of time during which he was a Participant during such Plan Year. Compensation shall include Salary Deferral Contributions hereunder, and any pre-tax salary reduction contributions under a Code Section 125 plan but shall exclude all other employer contributions to this Plan and to any other pension or profit sharing plan, or contributions made under any insurance or welfare plan, reimbursement or other expense allowances, moving expenses, fringe benefits, welfare benefits, car allowances and any employer contributions to the Cott Beverages USA, Inc. Employee Stock Purchase Plan.

1.12 "Disability" shall mean a physical or mental condition of a Participant which in the opinion of the Committee and based on medical evidence is believed to be permanent and to render the Participant unfit to perform the duties of an Employee, and for which he is either

eligible for disability benefits under the Social Security Act or would have been eligible for disability benefits under the Social Security Act if he had satisfied the minimum employment requirements under such Act. In making its determination, the Committee may employ a doctor who is licensed and qualified to practice medicine in any state to examine the Participant and/or the appropriate medical records, and then issue an opinion as to the disability of the Participant involved.

1.13 "Effective Date" of this Plan shall mean January 1, 1995.

1.14 "Eligible Employee" shall mean, except as provided herein, any Employee of the Employer who has reached age 18 and has completed a three-month (six-month for individuals hired on or after July 1, 1999) Period of Service (without regard to the number of Hours of Service completed during those months). For purposes of the Plan, an Eligible Employee shall not include: (a) any Employee who is included in a unit covered by a collective bargaining agreement between Employee representatives and the Employer unless the bargaining agreement specifically requires participation in this Plan; (b) any Employee who is a non-resident alien and who receives no earned income from the Employer which constitutes income from U.S. sources; or (c) any individual retained directly or through a third party agency, including a leasing organization within the meaning of Code Section 414(n)(2), to perform services for the Employer (for either a definite or indefinite duration) in the capacity of a temporary service worker, leased worker, independent contractor, consultant or any similar capacity, to the extent that such individual is or has been determined by a governmental entity, court, arbitrator, or other third party, to be an employee of the Employer for any purpose, including tax withholding, employment tax, employment law or for purposes of any other employee benefit plan of the Employer.

1.15 "Employee" shall mean any individual hired by the Employer as an employee. For purposes of this Plan, an Employee shall not include any individual retained directly or through a third party agency, including a leasing organization within the meaning of Code Section 414(n)(2), to perform services for the Employer (for either a definite or indefinite duration) in the capacity of a temporary service worker, leased worker, independent contractor, consultant or any similar capacity.

1.16 "Employer" shall mean the Company and any Affiliate which adopts the Plan.

1.17 "Employer Account" shall mean the separate account of a Participant established and maintained in accordance with Section 3.5.

1.18 "Employer Contribution" shall mean the employer contribution made by the Employer in accordance with Section 3.3.

1.19 "Employment Commencement Date" shall mean the first date on which an Employee (or a returning Employee) completes an Hour of Service.

1.20 "Entry Date" shall mean January 1, April 1, July 1 and October 1 of each calendar year.

1.21 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.22 "Fund" shall mean all funds and assets held and administered by the Trustee at any time under the Trust, out of which payments under this Plan shall be made.

1.23 "Highly Compensated Employee" shall mean, with respect to the Employer, an Employee who performed services for the Employer during the "determination year" and at any time during the "determination year" or the "look-back year" was a 5% owner of the Employer or any Affiliate, or who, during the "look-back year," received Adjusted Compensation from the

Employer or any Affiliate in excess of $80,000 (as adjusted pursuant to Section 415(d) of the Code).

For purposes of this Section: (a) the "determination year" shall be the Plan Year for which compliance is being tested, (b) the "look-back year" shall be the 12-month period immediately preceding the determination year, and (c) "Adjusted Compensation" shall include Salary Deferral Contributions and any pre-tax salary reduction contributions under a Code Section 125 plan.

If the Employer makes an election for any year in determining whether an Employee is a Highly Compensated Employee for such year, the first paragraph shall be applied by substituting "$80,000 (as adjusted pursuant to Section 415(d) of the Code) and who was a member of the 'top-paid group' for such year" for "$80,000 (as adjusted pursuant to Section 415(d) of the Code)" therein. The "top-paid group" for a look-back year shall consist of the top 20% of Employees ranked on the basis of compensation received during the year excluding Employees described in Section 414(q)(5) of the Code and Treasury Regulations thereunder.

1.24 "Hour of Service" shall mean:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty or military duty. Notwithstanding the preceding sentence, no more than 501 Hours of Service shall be credited under this paragraph (b) to an Employee on account of any single continuous period during which the Employee performs no duties. The determination of Hours of Service for reasons other than the

performance of duties, and the crediting of such hours, shall be made in accordance with the rules provided by Department of Labor Reg. Sections 2530.200b-2(b) and (c).

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in paragraph (b) shall be subject to the limitations set forth in that paragraph.

1.25 "Investment Funds" means the investment funds provided for in Section 12.2.

1.26 "Limitation Year" shall mean the 12 month period corresponding with the Plan Year.

1.27 "Matching Account" shall mean the separate account of a Participant established and maintained in accordance with Section 3.5.

1.28 "Matching Contribution" shall mean the matching contribution made by the Employer in accordance with Section 3.2.

1.29 "Nonhighly Compensated Employee" shall mean an Employee of the Employer who is not a Highly Compensated Employee.

1.30 "Normal Retirement Date" shall mean the Participant's 65th birthday.

1.31 (a) "One-Year Break in Service" means a Plan Year during which an Employee fails to complete more than 500 Hours of Service.

(b) Solely for purposes of determining whether an Employee has incurred a One-Year Break in Service, an Employee who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such Employee but for such absence, or in any case in which such hours cannot be

determined, 8 Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence: (i) by reason of the pregnancy of the Employee; (ii) by reason of a birth of a child of the Employee; (iii) by reason of the placement of a child with the employee in connection with the adoption of such child by such Employee; or (iv) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited (A) in the Plan Year in which the absence begins if the crediting is necessary to prevent a One-Year Break in Service in that period, or (B) in all other cases, in the following Plan Year. This paragraph shall not apply unless the Employee furnishes to the Committee such timely information as the Committee may require to establish that the absence from employment is for the reasons described above.

1.32 (a) "One-Year Period of Severance" shall mean a twelve-month period beginning on the Severance from Service Date and ending on the first anniversary of such Date during which the Employee fails to perform an Hour of Service.

(b) Solely for purposes of determining whether an Employee has incurred a One-Year Period of Severance, an Employee who is absent from work for maternity or paternity reasons shall not attain a Severance from Service Date until the second anniversary of the first date of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence: (i) by reason of the pregnancy of the Employee, (ii) by reason of a birth of a child of the Employee, (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee, or (iv) for purposes of caring for such child for a period beginning immediately following such birth or placement. This paragraph shall not apply unless such Employee furnishes to the Committee such timely

information as the Committee may require to establish that the absence from employment is for the reasons described above and to establish the period for which there was such an absence.

1.33 "Participant" shall mean any Eligible Employee who participates in the Plan as provided in Section 2.3 hereof. A Participant shall continue to be a Participant as long as he has an Account Balance hereunder.

1.34 "Period of Absence" shall mean an absence from service of 12 months or less, with or without pay, for any reason other than a quit, discharge, Retirement or death.

1.35 (a) "Period of Service" shall mean a period of time commencing on the Employee's Employment Commencement Date and ending on his Severance from Service Date. A Period of Service shall include a Period of Absence within such Period of Service.

(b) All Periods of Service (and all Periods of Severance which are counted as Periods of Service) shall, if noncontinuous, be aggregated and less than three-month Periods of Service (whether or not consecutive) shall be aggregated on the basis that three months of service shall equal a three-month (or six-month, if applicable) Period of Service. For purposes of this determination, a Period of Severance shall be counted as a Period of Service if:

(i) an Employee severs from service by reason of a quit, discharge or Retirement and then performs an Hour of Service within 12 months of the Severance from Service Date; or

(ii) an Employee severs from service by reason of a quit, discharge, or Retirement during a Period of Absence, and he performs an Hour of Service within 12 months of the date on which he was first absent from service.

(c) Except as otherwise provided in Section 2.4(b):

(i) Any period during which an Employee was employed by Cott Distributors USA, Inc. on or after July 1, 1992, BCB Manufacturing USA, Inc. on or after May 31, 1994, Choice Brands USA, Inc. on or after May 31, 1994, and Lakeport Brewing USA, Inc. on or after August 2, 1992 shall be treated as employment as an Employee for purposes of calculating a "Period of Service";

(ii) If on August 2, 1992 an Employee was employed by Cott Distributors USA, Inc., any period during which such individual was employed by Comstock Michigan Fruit/Curtice Burns shall be treated as employment as an Employee for purposes of calculating a "Period of Service";

(iii) If on October 18, 2000 an Employee was employed by Concord Beverage Company and on October 19, 2000 such Employee was employed by Concord Beverage L.P., any period during which such individual was employed by Concord Beverage Company shall be treated as employment as an Employee for purposes of calculating a "Period of Service"; and

(iv) Any period during which an individual is employed by an Affiliate shall be treated as employment as an Employee for purposes of calculating a "Period of Service".

1.36 "Period of Severance" shall mean the period of time commencing on the Severance from Service Date and ending on the date on which the Employee again performs an Hour of Service.

1.37 "Plan" shall mean The Restated Cott USA 401(k) Savings & Retirement Plan. The Plan is intended to be a profit sharing plan as described in Section 401(a)(27) of the Code.

1.38 "Plan Administrator" shall mean the Committee.

1.39 "Plan Year" shall mean the calendar year.

1.40 "Restatement Effective Date" shall mean, except as otherwise provided herein, January 1, 1997.

1.41 "Retirement" shall mean retirement by a Participant on or after attaining his Normal Retirement Date.

.42 "Rollover Account" shall mean the separate account of a Participant established and maintained in accordance with Section 3.5.

1.43 "Rollover Contribution" shall mean any rollover contributions made by a Participant in accordance with Section 3.4.

1.44 "Salary Deferral Account" shall mean the separate account of a Participant established and maintained in accordance with Section 3.5.

1.45 "Salary Deferral Contribution" shall mean the salary deferral contribution contributed to the Plan in accordance with Section 3.1.

1.46 (a) "Severance from Service Date" shall mean the earliest of (i) the day on which an Employee quits, retires, is discharged or dies or (ii) the first anniversary of a Period of Absence.

(b) An Employee who is absent on account of an Approved Absence shall not be considered to have attained a Severance from Service Date as a result of such absence; provided, however, that this paragraph shall not apply unless the Employee returns to work on the first working day following the expiration of such Approved Absence.

(c) For purposes of paragraph (b) of this Section 1.46, an "Approved Absence" shall mean a leave of absence granted by the Employer under rules uniformly applicable to all Employees similarly situated. An Approved Absence shall be granted for such

purposes as vacation, military service in the Armed Forces of the United States, layoff or sickness. An Approved Absence shall not exceed 24 consecutive months, or, in the case of a Participant in military service of the Armed Forces of the United States, that period during which his re-employment rights are protected by law.

1.47 "Termination of Employment" shall mean the voluntary severance of employment of an Employee, or the involuntary severance of employment of an Employee by the Employer, other than severance of employment by reason of death, Disability or Retirement under this Plan. For purposes of this Plan, an Employee shall not be considered to have a Termination of Employment until such Employee is no longer employed by the Employer or any Affiliate.

1.48 "Trust" shall mean the instrument executed pursuant to Article XII by the Employer and the Trustee.

1.49 "Trustee" shall mean the trustee designated as such under the Trust.

1.50 "Valuation Date" shall mean each business day.

1.51 "Vested Percentage shall mean the portion of a Participant's Account Balance that is nonforfeitable.

1.52 (a) "Year of Service" shall mean any Plan Year during which an Employee is credited with at least 1,000 Hours of Service.

(b) Except as otherwise provided in paragraph (c) of this Section 1.52:

(i) Any period during which an Employee was employed by Cott Distributors USA, Inc. on or after July 1, 1992, BCB Manufacturing USA, Inc. on or after May 31, 1994, Choice Brands USA, Inc. on or after May 31, 1994, and Lakeport Brewing USA, Inc. on or after August 2, 1992 shall be treated as employment as an Employee for purposes of calculating a "Year of Service";

(ii) If on August 2, 1992 an Employee was employed by Cott Distributors USA, Inc., any period during which such individual was employed by Comstock Michigan Fruit/Curtice Burns shall be treated as employment as an Employee for purposes of calculating a "Year of Service";

(iii) If on October 18, 2000 an Employee was employed by Concord Beverage Company and on October 19, 2000 such Employee was employed by Concord Beverage L.P., any period during which such individual was employed by Concord Beverage Company shall be treated as employment as an Employee for purposes of calculating a "Year of Service"; and

(iv) Any period during which an individual is employed by an Affiliate shall be treated as employment as an Employee for purposes of calculating a "Year of Service".

(c) If a Participant (i) ceases to be an Employee on account of his Termination of Employment, (ii) has not made any Salary Deferral Contributions under the Plan, (iii) has a Vested Percentage in his Matching Account and Employer Account equal to zero percent (0%), (iv) incurs five (5) consecutive One Year Breaks in Service, and (v) is reemployed by the Employer, in determining such Participant's Years of Service under the Plan, Years of Service shall be computed without regard to any Years of Service prior to the five (5) consecutive One-Year Breaks in Service.

## ARTICLE II

## ELIGIBILITY AND PARTICIPATION

2.1 Any Eligible Employee who is a Participant in the Plan on the Restatement Effective Date shall continue as a Participant subject to the terms hereunder.

2.2 (a) Any Eligible Employee who is not a Participant on the Restatement Effective Date may become a Participant hereunder on any future Entry Date (or on a subsequent date) in accordance with Section 2.3.

(b) Each Employee who becomes an Eligible Employee after the Restatement Effective Date may become a Participant hereunder on any Entry Date after which such Employee becomes an Eligible Employee (or on a subsequent date) in accordance with Section 2.3.

2.3 An Eligible Employee shall become a Participant (i) by authorizing Salary Deferral Contributions to the Plan in accordance with Section 3.1, or
(ii) if Employer Contributions are made by the Employer on such Eligible Employee's behalf in accordance with Section 3.3.

2.4 (a) Except as otherwise provided in paragraph (b) of this Section 2.4, a Participant, or an Eligible Employee, who ceases to be an Eligible Employee or who has a Termination of Employment with the Employer, shall again become eligible to participate in the Plan as of the first date on which he completes an Hour of Service as an Eligible Employee.

(b) If a Participant or Eligible Employee (i) ceases to be an Employee on account of his Termination of Employment, (ii) has not made any Salary Deferral Contributions under the Plan, (iii) has a Vested Percentage in his Matching Account and Employer Account equal to zero percent (0%), (iv) incurs five (5) consecutive One-Year Periods of Severance, and

(v) is reemployed by the Employer, in determining the date on which such Employee shall again become an Eligible Employee eligible to participate in the Plan, such Employee's Period of Service shall be computed without regard to any Period of Service prior to the five (5) consecutive One-Year Periods of Severance.

2.5 Notwithstanding anything contained herein, if an individual was a participant in the CBC 401(k) Plan on October 18, 2000 and was an Employee other than an Employee described in clauses (a)-(c) of Section 1.14 on October 19, 2000, such individual may become a Participant hereunder on October 19, 2000 or any Entry Date thereafter (or on a subsequent date) in accordance with Section 2.3.

## ARTICLE III

## CONTRIBUTIONS

3.1 Salary Deferral Contributions.

(a) (i) Each Eligible Employee may elect to become a Participant as of any Entry Date after becoming an Eligible Employee by authorizing the Employer (on the appropriate election form) to reduce his Compensation for a Plan Year by an amount equal to from one percent (1%) to fifteen percent (15%) (in whole percentages) of such Compensation and to have such amount deposited to the Plan as a Salary Deferral Contribution hereunder.

(ii) Each Eligible Employee shall file such election with the Committee prior to the Entry Date as of which he elects to become a Participant. The Eligible Employee's election shall specify the percentage of his Compensation for each payroll period that is to be contributed to the Plan as a Salary Deferral Contribution. The amount contributed to the Plan shall be credited to the Participant's Salary Deferral Account. The election of the Participant shall remain in effect unless a new election is made by the Participant in accordance with paragraph (b) of this Section or Salary Deferral Contributions are suspended in accordance with paragraph (c) of this Section.

(b) A Participant may increase or decrease his Salary Deferral Contributions, effective as soon as practicable but no earlier than the next Entry Date, in the manner prescribed by the Committee.

(c) A Participant may suspend his Salary Deferral Contributions, effective as soon as practicable but no earlier than the first day of any payroll period, in the manner prescribed by the Committee. Salary Deferral Contributions so suspended may not be subsequently

made up. A Participant may recommence Salary Deferral Contributions to the Plan, effective as of any subsequent Entry Date but no earlier than ninety days after the date Salary Deferral Contributions were suspended, in the manner prescribed by the Committee. A Participant may only make one suspension of Salary Deferral Contributions in any twelve-month period. Salary Deferral Contributions shall cease automatically when a Participant ceases to be an Employee.

3.2 Matching Contributions.

For each payroll period, the Employer may make a Matching Contribution to the Plan on behalf of each Participant who makes Salary Deferral Contributions during such payroll period. The amount of such Matching Contribution to be made for a payroll period shall be equal to one hundred percent (100%) of the Salary Deferral Contributions made on behalf of the Participant for that payroll period; provided, however, that in all cases, a Participant's Salary Deferral Contributions for any payroll period in excess of five percent (5%) of such Participant's Compensation for such payroll period shall not be taken into account hereunder. If no Salary Deferral Contributions are made on behalf of a Participant for a payroll period, no Matching Contribution shall be made for such Participant for that payroll period. Any Matching Contributions made hereunder shall be credited to the Participant's Matching Account.

3.3 Employer Contributions.

(a) In addition to any Salary Deferral Contributions and Matching Contributions to be made for a Plan Year, the Employer may elect to make an Employer Contribution to the Plan for the Plan Year for each Eligible Employee who is eligible for an allocation under paragraph (b) of this Section, in an amount determined in the sole discretion of the Board of Directors of the Company.

(b) An Eligible Employee shall be eligible to receive an allocation of an Employer Contribution for a Plan Year only if:

(i) such Eligible Employee is an Eligible Employee on the last day of the Plan Year; and

(ii) such Eligible Employee has been credited with at least 1,000 Hours of Service during such Plan Year.

(c) Any Employer Contribution made for a Plan Year shall be allocated as of the last day of such Plan Year to the Employer Account of each Participant who is eligible for an allocation under paragraph (b) of this
Section in the proportion that each such Participant's Compensation for the Plan Year bears to the total Compensation of all such Participants for the Plan Year.

3.4 Rollover Contributions.

(a) For the purpose of this Section, the term "Rollover Contribution" shall mean any "rollover amount" described in Section 402(c) of the Code (including any direct transfers within the meaning of Section 401(a)(31) of the Code) and any "rollover contribution" described in Section 408 (d)(3)(A)(ii) of the Code.

(b) Upon the written request of a Participant, the Committee shall direct the Trustee to receive and accept funds constituting a Rollover Contribution from or on behalf of such Participant. Such request shall set forth the amount of the Rollover Contribution and the facts establishing that such amount constitutes a Rollover Contribution within the meaning of paragraph (a) of this Section. In no event shall the Trustee be obliged to (i) accept any funds as a Rollover Contribution if, upon advice of counsel, the receipt thereof could jeopardize the qualified or exempt status of the Plan or Trust, or (ii) accept property as a Rollover Contribution.

(c) A Rollover Contribution shall become part of the Trust Fund, as of the date such contribution is made, subject to the following provisions:

(i) A Rollover Contribution shall be credited to the Rollover Account of the Participant on whose behalf such contribution is made. Such account shall be maintained as a separate account in addition to any other accounts for such Participant.

(ii) A Participant shall be fully vested at all times in the his Rollover Account.

(iii) A Participant's interest in the Fund represented by his Rollover Account shall be distributed in full or segregated at the same time and in the same manner as such Participant's interest in the Fund as provided in Article VII.

(d) The Committee may direct the Trustee to accept as part of a Participant's Rollover Contribution any outstanding loan(s) that such Participant may have under the qualified plan from which such Rollover Contribution is being transferred; provided, however, that in the event that a loan(s) is transferred to the Plan as part of a Participant's Rollover Contribution, such loan(s) will continue to be held on the same terms as those contained in the loan agreement between the Participant and the qualified plan from which the loan(s) is rolled over, except that the Plan will be substituted as the obligee of the loan(s).

(e) For purposes of this Section 3.4, the term Participant shall also include an Employee of the Employer, other than an Employee not eligible for the Plan under clauses (a), (b) and (c) of Section 1.14.

3.5 Maintenance of Accounts for Each Participant.

The Committee shall maintain a separate Salary Deferral Account, Matching Account, Employer Account, and Rollover Account in the name of each Participant. The maintenance of separate accounts shall not require a segregation of assets and shall not in any way limit the powers of the Trustee or the Committee with respect to the operation of the Fund. Such accounts shall at all times reflect the Account Balance of such Participant (or of his Beneficiary); and the Account Balance of a Participant on any date shall equal the sum of the balances in his accounts as of such date.

3.6 Irrevocable Divestiture by the Employer.

(a) Except as provided in Article IV and paragraphs (b) and (c) of this Section, and notwithstanding any other provision of this Plan or of the Trust to the contrary, the Employer irrevocably divests itself of any interest or reversion whatsoever in any sums contributed by the Employer to the Fund, and it shall be impossible for any portion of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants or their Beneficiaries and for payment of reasonable administrative expenses as provided in Section 14.4.

(b) If a contribution is made to the Plan due to a mistake of fact, such contribution shall be refunded to the Employer within one year of such contribution.

(c) All contributions by the Employer are conditioned upon their deductibility under Section 404 of the Code, and if part or all of the deduction for any contribution is disallowed, the contribution, to the extent disallowed, shall be returned to the Employer within one year after the disallowance of the deduction.

(d) Refunds of contributions due to a mistake of fact or disallowance of a deduction shall be governed by the following requirements:

(i) Earnings attributable to the amount being refunded shall remain in the Plan, but losses thereto must reduce the amount to be refunded.

(ii) In no event may a refund be made that would cause the Account Balance of any Participant to be reduced to less than what the Participant's Account Balance would have been had the mistaken or nondeductible amount not been contributed.

3.7 Payment of Contributions to Trust Fund. The Employer shall make payment of the Salary Deferral Contributions to the Fund under the terms hereof not later than the 15th business day of the month after the month during which such amounts would otherwise have been paid to the Employee or such other time period permitted by applicable regulations. The Employer shall make the Matching Contributions and Employer Contributions to the Fund under the terms hereof not later than the due date for filing the Employer's Federal Income Tax Return for its fiscal tax year, including any extensions thereto.

## ARTICLE IV

## STATUTORY LIMITATIONS ON CONTRIBUTIONS

4.1 Maximum Dollar Amount of Salary Deferral Contributions. For any calendar year, a Participant shall not be permitted to make total Salary Deferral Contributions to this Plan, which, when added to any other amounts previously contributed as elective deferrals pursuant to Section 401(k) of the Code to any other tax2 qualified plans maintained by the Employer or an Affiliate, would exceed the maximum statutory limit of Section 402(g) of the Code for that calendar year, as adjusted from time to time by the Adjustment Factor. For purposes of this Section, Excess Deferrals that are distributed in accordance with Section 4.2 shall be disregarded.

4.2 Distribution of Excess Deferrals.

(a) In General. Notwithstanding any other provision of the Plan, Excess Deferrals and the income or loss allocable thereto shall be distributed, where practicable, within the calendar year made, but in no event later than April 15 of the following calendar year to Participants who either file timely statements claiming such allocable Excess Deferrals, or who are deemed to have claimed such allocable Excess Deferrals, for the preceding calendar year. Any such distribution on or before the last day of the calendar year shall be made after the date on which the Plan received the Excess Deferral. Such distributions of Excess Deferrals and the income allocable thereto shall be considered distributions of the Salary Deferral Contributions of the affected Participants and, if returned after the end of the calendar year in which they were contributed, shall be considered distributions of such contributions for the preceding calendar year. Any Excess Deferrals and income allocable thereto which are distributed pursuant to this Section 4.2 shall be distributed in the following order of priority:

(i) First, from the portion of the Salary Deferral Contributions made during the calendar year in which the Excess Deferral was made that was not subject to a Matching Contribution under
Section 3.2; and

(ii) second, from the portion of the Salary Deferral Contributions made during the calendar year in which the Excess Deferral was made that was subject to a Matching Contribution under
Section 3.2.

(b) Definition. For purposes of this Article IV:

(i) "Excess Deferrals" shall mean the excess of the total of the Participant's Salary Deferral Contributions made under this Plan and any other tax qualified plan maintained by the Employer or an Affiliate for any calendar year over the maximum statutory limit of Code Section 402(g) for such calendar year. Any such Excess Deferrals shall be deemed to have been claimed by the Participant as allocable Excess Deferrals and shall be distributed in accordance with paragraph (a) of this Section.

(ii) If the Participant also makes before-tax contributions for the calendar year to plans or arrangements described in Code Sections 401(k), 408 (k) or 403(b) that are not maintained by the Employer or an Affiliate, then Excess Deferrals shall be the amount of excess Salary Deferral Contributions for such calendar year that the Participant allocates to this Plan pursuant to the claim procedures set forth in paragraph (c) of this Section.

(c) Excess Deferrals Claims Procedure. The Participant's claim shall be in writing; shall be submitted to the Committee no later than March 1; shall specify the Participant's Excess Deferrals for the preceding calendar year; and shall be accompanied by the Participant's written statement that if such amounts are not distributed, such Salary Deferral Contributions,

when added to the before-tax contributions made under other plans or arrangements described in Code Sections 401(k), 408(k) or 403(b) that are not maintained by the Employer or any Affiliate exceed the limit imposed on the Participant by Section 402(g) of the Code for the calendar year in which the deferrals occurred. Any Excess Deferrals under this paragraph shall be distributed in accordance with paragraph (a) of this Section.

(d) Determination of Income or Loss. Distributions of Excess Deferrals shall be adjusted for income or loss by a reasonable method in accordance with regulations prescribed by the Secretary of the Treasury; provided, however, that no adjustment shall be made for any income or loss for the period between the end of the calendar year and the date of distribution.

(e) Reduction For Excess Salary Deferral Contributions Distributed. The amount of Excess Deferrals to be distributed with respect to any Participant for the calendar year shall be reduced by the amount of Excess Salary Deferral Contributions (as defined in Section 4.4(b)) previously distributed to the Participant pursuant to Section 4.4(a) for the Plan Year beginning with or within such calendar year. In the event of a reduction pursuant to the terms of the preceding sentence, the amount of Excess Salary Deferral Contributions includible in the gross income of the Participant and reported by the Employer as a distribution of Excess Salary Deferral Contributions shall be reduced by the amount of such reduction.

(f) Forfeiture of Matching Contributions. Any Matching Contributions which are attributable to Salary Deferral Contributions required to be distributed under paragraph (a) of this Section shall be forfeited as of the date of the distribution of such Excess Deferrals.

4.3 Limitations on Salary Deferral Contributions. Salary Deferral Contributions of Eligible Employees who are Highly Compensated Employees for a Plan Year shall be subject to

the limitations of this Section. For purposes of this Section 4.3 and Section 4.4, Eligible Employees shall be those Eligible Employees who are eligible to participate in the Plan for the applicable Plan Year.

(a) Average Actual Deferral Percentage. The Average Actual Deferral Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year must satisfy one of the following tests:

(i) The Average Actual Deferral Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Deferral Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 1.25; or

(ii) The excess of the Average Actual Deferral Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year over the Average Actual Deferral Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for such prior Plan Year shall not exceed 2 percentage points, and the Average Actual Deferral Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Deferral Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for such prior Plan Year multiplied by 2.

(iii) For the Plan Years beginning January 1, 1997, January 1, 1998, January 1, 1999 and January 1, 2000, in performing tests set forth in (i) and (ii) of this Section 4.3(a), the Average Actual Deferral Percentage for the prior

Plan Year for Eligible Employees who were Nonhighly Compensated Employees for the prior Plan Year shall be the Average Actual Deferral Percentage for the current Plan Year for Eligible Employees who are Nonhighly Compensated Employees for the current Plan Year.

(b) Definitions. For purposes of this Section, the following definitions shall be used:

(i) "Actual Deferral Percentage" shall mean the ratio (expressed as a percentage) of Salary Deferral Contributions made on behalf of an Eligible Employee for a Plan Year (including Excess Deferrals of Highly Compensated Employees) to the Eligible Employee's ADP Compensation for such Plan Year.

(ii) "Average Actual Deferral Percentage" shall mean, for a specified group of Eligible Employees for a Plan Year, the average (expressed as a percentage) of the Actual Deferral Percentages of the Eligible Employees in such group for a Plan Year.

(iii) "ADP Compensation" shall mean for any Plan Year, Adjusted Compensation received during the Plan Year by an Eligible Employee; provided, however, that at the election of the Committee, ADP Compensation may be limited to Adjusted Compensation received by an Eligible Employee for the portion of the Plan Year in which such Eligible Employee was eligible to participate in the Plan. For purposes of this Section, Adjusted Compensation shall include Salary Deferral Contributions and any pre-tax salary reduction contributions under a Code Section 125 plan.

(c) Special Rules.

(i) Except as provided below, if, in addition to this Plan, an Eligible Employee who is a Highly Compensated Employee participates in one or more cash or deferred arrangements of the Employer or an Affiliate for a Plan Year, all of such arrangements shall be treated as one cash or deferred arrangement for purposes of the determining the Actual Deferral Percentage of such Eligible Employee. However, if the cash or deferred arrangements have different plan years, this subparagraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement. Notwithstanding the foregoing, plans that are not permitted to be aggregated are not required to be aggregated for purposes of this subparagraph.

(ii) In the event that this Plan is aggregated with one or more other plans for purposes of Sections 401(a)(4) and 410(b) of the Code (other than for purposes of the average benefits percentage test), this Section 4.3 shall then be applied by determining the Average Actual Deferral Percentage of Eligible Employees as if all of such plans were a single plan. Plans may be aggregated under this subparagraph only if they have the same plan year.

(iii) If during a Plan Year the projected aggregate amount of Salary Deferral Contributions to be allocated to all Participants who are Highly Compensated Employees under this Plan would cause the Plan to fail to satisfy the tests set forth in Section 4.3(a), the Committee may then automatically reduce or restrict Highly Compensated Employees' deferral elections made pursuant to

Section 3.1 by the amount necessary to satisfy one of the tests set forth in Section 4.3(a)

(iv) The determination and treatment of the Salary Deferral Contributions and the Actual Deferral Percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

4.4 Distribution of Excess Salary Deferral Contributions.

(a) In General. Notwithstanding any other provision of the Plan, Excess Salary Deferral Contributions and income or loss allocable thereto shall be distributed to those Participants on whose behalf such Salary Deferral Contributions were made for a Plan Year based on the amount of contributions made by such Participants in accordance with the provisions of Section 401(k)(8)(C) of the Code. Such distributions shall, to the extent practicable, be made within 2-1/2 months after the close of such Plan Year (in order to avoid the 10 percent excise tax under Section 4979 of the Code) and in no event later than the last day of the Plan Year immediately following the Plan Year for which such excess Salary Deferral Contributions were made. Such distributions of Excess Salary Deferral Contributions and the income or loss allocable thereto shall be considered distributions of the Salary Deferral Contributions of the affected Participants for such Plan Year. Any Excess Salary Deferral Contributions and income allocable thereto which are required to be distributed pursuant to this Section 4.4 shall be distributed in the following order of priority:

(i) First, from the portion of the Salary Deferral Contributions for the preceding Plan Year that was not subject to a Matching Contribution under Section 3.2; and

(ii) second, from the portion of the Salary Deferral Contributions for the preceding Plan Year that was subject to a Matching Contribution under Section 3.2.

(b) Excess Salary Deferral Contributions. For purposes of this Section, "Excess Salary Deferral Contributions" shall mean, with respect to any Plan Year, the excess of:

(i) The aggregate amount of Salary Deferral Contributions actually taken into account in computing the Actual Deferral Percentages of Highly Compensated Employees for such Plan Year, over

(ii) the maximum amount of such contributions permitted by the Average Actual Deferral Percentage test described in Section 4.3(a) (determined by reducing contributions made on behalf of Highly Compensated Employees in order of the Actual Deferral Percentages, beginning with the highest of such percentages).

Excess Salary Deferral Contributions shall be considered as Annual Additions for purposes of Section 4.7 even if they are distributed from the Plan.

(c) Determination of Income or Loss. Excess Salary Deferral Contributions shall be adjusted for income or loss by a reasonable method in accordance with regulations prescribed by the Secretary of the Treasury; provided, however, that no adjustment shall be made for any income or loss attributable to the period between the end of the Plan Year for which the Excess Salary Deferral Contributions are being distributed and the date of distribution.

(d) Reduction for Excess Deferrals Distributed. The amount of Excess Salary Deferral Contributions to be distributed to the Participant pursuant to this Section shall be re-

duced by the amount of the Excess Deferrals previously distributed to the Participant pursuant to Section 4.2 above for the Participant's taxable year ending with or within the Plan Year.

(e) Forfeiture of Matching Contribution. Any Matching Contributions which are attributable to Excess Salary Deferral Contributions required to be distributed under paragraph (a) of this Section shall be forfeited as of the date of the distribution of such Excess Salary Deferral Contributions.

4.5 Limitations on Matching Contributions. Matching Contributions of Eligible Employees who are Highly Compensated Employees for a Plan Year shall be subject to the limitations of this Section. For purposes of this Section 4.5 and Section 4.6, Eligible Employees shall be those Employees who are eligible to participate in the Plan for the applicable Plan Year.

(a) Average Actual Contribution Percentage. The Average Actual Contribution Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year must satisfy one of the following tests:

(i) The Average Actual Contribution Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Contribution Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for the prior Plan Year multiplied by 1.25; or

(ii) The excess of the Average Actual Contribution Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year over the Average Actual Contribution Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for such prior Plan Year shall not exceed 2 percentage points, and the Average

Actual Contribution Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Contribution Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for such prior Plan Year multiplied by 2.

(iii) For the Plan Years beginning January 1, 1997, January 1, 1998, January 1, 1999 and January 1, 2000, in performing the tests set forth in (i) and (ii) of this Section 4.5(a), the Average Actual Contribution Percentage for the prior Plan Year for Eligible Employees who were Nonhighly Compensated Employees for the prior Plan Year shall be the Average Actual Contribution Percentage for the current Plan Year for Eligible Employees who are Nonhighly Compensated Employees for the current Plan Year.

(b) Definitions. For purposes of this Section, the following definitions shall be used:

(i) "Actual Contribution Percentage" shall mean the ratio (expressed as a percentage) of Matching Contributions made on behalf of an Eligible Employee for a Plan Year to the Eligible Employee's ACP Compensation for such Plan Year.

(ii) "Average Actual Contribution Percentage" shall mean, for a specified group of Eligible Employees for a Plan Year, the average (expressed as a percentage) of the Actual Contribution Percentages of the Eligible Employees in such group for a Plan Year.

(iii) "ACP Compensation" shall mean for any Plan Year, Adjusted Compensation received during the Plan Year by an Eligible Employee;

provided, however, that at the election of the Committee, ACP Compensation may be limited to Adjusted Compensation received by an Eligible Employee for the portion of the Plan Year in which such Eligible Employee was eligible to participate in the Plan. For purposes of this Section, Adjusted Compensation shall include Salary Deferral Contributions and any pre-tax salary reduction contributions under a Code Section 125 plan.

(c) Special Rules.

(i) Except as provided below, if, in addition to this Plan, an Eligible Employee who is a Highly Compensated Employee participates in one or more cash or deferred arrangements of the Employer or an Affiliate for a Plan Year, all of such arrangements shall be treated as one cash or deferred arrangement for purposes of the determining the Actual Contribution Percentage of such Eligible Employee. However, if the cash or deferred arrangements have different plan years, this subparagraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement. Notwithstanding the foregoing, plans that are not permitted to be aggregated are not required to be aggregated for purposes of this subparagraph.

(ii) In the event that this Plan is aggregated with one or more other plans for purposes of Sections 401(a)(4) and 410(b) of the Code (other than for purposes of the average benefits percentage test), this Section 4.5 shall then be applied by determining the Average Actual Contribution Percentage of Eligible Employees as if all of such plans were a single plan. Plans may be aggregated under this subparagraph only if they have the same plan year.

(iii) In determining the Actual Contribution Percentage of Highly Compensated Employees and/or Nonhighly Compensated Employees, the Committee may elect to treat Salary Deferral Contributions as Matching Contributions, provided that (A) the Plan satisfies the Average Actual Deferral Percentage limitation set forth in Section 4.3(a) prior to the exclusion of any Salary Deferral Contributions which are treated as Matching Contributions and (B) the Plan continues to satisfy the Actual Deferral Percentage limitation after the exclusion of such Salary Deferral Contributions.

(iv) The determination and treatment of the Matching Contributions and the Actual Contribution Percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(d) Multiple Use Limitation.

(i) Notwithstanding any other provision contained in this Section 4.5, if the Average Actual Deferral Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees satisfies the alternative set forth in subparagraph (ii) of Section 4.3(a) but does not satisfy subparagraph (i) of Section 4.3(a), and the Average Actual Contribution Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees satisfies the alternative set forth in subparagraph (ii) of Section 4.5(a) but does not satisfy subparagraph (i) of Section 4.5(a), a special limitation shall apply. Under this limitation, the sum of the Average Actual Deferral Percentages for a Plan Year for the Eligible Employees who are Highly Compensated Employees plus the

Average Actual Contribution Percentages for such Plan Year for such Eligible Employees may not exceed the greater of:

(A) the sum of the maximum Average Actual Deferral Percentage permissible for Eligible Employees who are Highly Compensated Employees under subparagraph (i) of Section 4.3(a) plus the maximum Average Actual Contribution Percentage for such Eligible Employees under subparagraph (ii) of Section 4.5(a); or

(B) the sum of the maximum Average Actual Deferral Percentage permissible for Eligible Employees who are Highly Compensated Employees under subparagraph (ii) of
Section 4.3(a) plus the maximum Average Actual Contribution Percentage permissible for such Eligible Employees under subparagraph (i) of Section 4.5(a).

(ii) In determining whether the Plan satisfies the multiple use limitation set forth in this paragraph (d), the Committee may elect to apply the rules set forth in subparagraph (iii) of Section 4.5(c).

(iii) If the multiple use limitation set forth in this paragraph (d) is not satisfied, either Salary Deferral Contributions shall be distributed in accordance with the provisions of
Section 4.4, or Matching Contributions shall be distributed or forfeited in accordance with the provisions of Section 4.6, to the extent necessary to satisfy such limitation.

4.6 Distribution or Forfeiture of Excess Matching Contributions.

(a) In General. Notwithstanding any other provision of the Plan, Excess Matching Contributions and income or loss allocable thereto shall either be forfeited, if

forfeitable under the provisions of Section 7.3, or distributed to those Participants on whose behalf such Matching Contributions were made for a Plan Year based on the amount of contributions made by such Participants in accordance with the provisions of Section 401(m)(6)(C) of the Code. Such distributions shall, to the extent practicable, be made within 2-1/2 months after the close of such Plan Year (in order to avoid the 10 percent excise tax under Section 4979 of the Code) and in no event later than the last day of the Plan Year immediately following the Plan Year for which such excess Matching Contributions were made. Such distributions of Excess Matching Contributions and the income or loss allocable thereto shall be considered distributions of the Matching Contributions of the affected Participants for such Plan Year.

(b) Excess Matching Contributions. For purposes of this Section, "Excess Matching Contributions" shall mean, with respect to any Plan Year, the excess of:

(i) The aggregate amount of Matching Contributions actually made on behalf of Highly Compensated Employees for such Plan Year, over

(ii) the maximum amount of Matching Contributions permitted by the Average Actual Contribution Percentage test described in Section 4.5(a) (determined by reducing contributions made on behalf of Highly Compensated Employees in order of the Actual Contribution Percentages, beginning with the highest of such percentages).

Excess Matching Contributions shall be considered as Annual Additions for purposes of Section 4.7 even if they are distributed from the Plan.

(c) Determination of Income or Loss. Excess Matching Contributions shall be adjusted for income or loss by a reasonable method in accordance with regulations prescribed

by the Secretary of the Treasury; provided, however, that no adjustment shall be made for any income or loss attributable to the period between the end of the calendar year and the date of distribution.

4.7 Limitation on Contributions.

(a) The Annual Additions credited to a Participant under this Plan for any Limitation Year shall not exceed the lesser of (i) 25 percent of the Participant's Adjusted Compensation or (ii) $30,000 (as adjusted by the Adjustment Factor).

(b) Notwithstanding the foregoing, the compensation limitation referred to in subsection (a)(i) shall not apply to:

(i) Any amount otherwise treated as an Annual Addition under Section 415(l)(1) of the Code, or

(ii) Any contribution for medical benefits otherwise treated as an Annual Addition under Section 419A(d)(2).

(c) In applying the limitations of paragraph (a):

(i) All "defined contribution plans" of the Employer or its Affiliates shall be aggregated with this Plan.

(ii) If "annual additions" (within the meaning of
Section 415(c)(2) of the Code) are credited to a Participant's accounts under any other qualified defined contribution plan maintained by the Employer or any Affiliate that is required to be aggregated under subparagraph (i), the maximum amount of Annual Additions that may be credited to such Participant under this Plan shall be limited to the excess of the limitations described in paragraph (a) over the amount

of the annual additions credited to the Participant under such other qualified defined contribution plans.

(d) For purposes of this Section: (i) "defined contribution plan" shall mean a plan which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the accounts of the Participant, and any income, expenses, gains and losses which may be credited to such Participant's accounts; (ii) the definition of "Affiliate" shall be modified by Section 415(h) of the Code; and (iii) effective January 1, 1998, "Adjusted Compensation" shall include Salary Deferral Contributions and any pre-tax salary reduction contributions under a Code
Section 125 plan.

(e) Subject to paragraph (f), in no event shall Annual Additions be made under this Plan for any Participant in a Limitation Year to the extent that there is an amount credited to such Participant's accounts in excess of the maximum amount permitted under this Section.

(f) If the amount of Annual Additions which are credited to a Participant under this Plan for any Limitation Year exceeds the maximum amount permitted under this Section ("Excess Annual Additions"), and if such excess was caused by the allocation of forfeitures, by a reasonable error in estimating the Participant's Adjusted Compensation, by a reasonable error in determining the amount of Salary Deferral Contributions that may be made with respect to the Participant under the limitations of this Section, or by other limited facts and circumstances, the Excess Annual Additions may be reduced for such Limitation Year in the following manner:

(i) Salary Deferral Contributions (and any income attributable thereto) shall be distributed to the extent that such distributions reduce the Excess

Annual Additions. Any Salary Deferral Contributions that are so distributed shall not be considered as an Annual Addition for the Limitation Year and shall be disregarded for purposes of Sections 4.1, 4.3 and 4.5.

(ii) If there remains any Excess Annual Additions after the application of subparagraph (i) of this paragraph, such Excess Annual Additions shall be used to reduce Matching Contributions for the next Limitation Year (and succeeding limitation Years, as necessary) for the Participant. However, if the Participant is not participating in the Plan for the applicable Limitation Year, the Excess Annual Additions shall be held in a suspense account for that Limitation Year and credited to the next Limitation Year to all remaining Participants in the same proportion as the Compensation paid to such Participants during such Limitation Year. Furthermore, the Excess Annual Additions shall be used to reduce Matching Contributions for the next Limitation Year (and succeeding Limitation Years, as necessary) for all of such Participants. Any Excess Annual Additions that are treated in accordance with this subparagraph (iii) for the Limitation Year shall not be considered as Annual Additions for such Limitation Year.

(iii) If there remains any Excess Annual Additions after the application of subparagraphs (i) and (ii) of this paragraph, such Excess Annual Additions shall be used to reduce Employer Contributions for the next Limitation Year (and succeeding limitation Years, as necessary) for the Participant. However, if the Participant is not participating in the Plan for the applicable Limitation Year, the Excess Annual Additions shall be held in a suspense account

for that Limitation Year and credited to the next Limitation Year to all remaining Participants in the same proportion as the Compensation paid to such Participants during such Limitation Year. Furthermore, the Excess Annual Additions shall be used to reduce Employer Contributions for the next Limitation Year (and succeeding Limitation Years, as necessary) for all of such Participants. Any Excess Annual Additions that are treated in accordance with this subparagraph (iii) for the Limitation Year shall not be considered as Annual Additions for such Limitation Year.

(iv) If a suspense account is in existence at any time during the Limitation Year, investment gains and losses and other income and expenses shall not be allocated to the suspense account.

(v) If this Plan is terminated and at the time of such termination a balance remains in the suspense account which, because of the limitations imposed by this Section, cannot be credited to any Participant, such balance shall revert to the Employer.

4.8 Limitation on Compensation. For purposes of this Plan, Compensation, ADP Compensation and ACP Compensation (collectively "Contribution Compensation") of a Participant for a Plan Year in excess of $160,000 (as adjusted by the Adjustment Factor under Section 401 (a)(17)(B) of the Code) shall not be taken into account.

## ARTICLE V

## INVESTMENT OF TRUST ASSETS

5.1 Investment Funds.

(a) Except as provided in paragraph (b) of this Section, each Participant's Accounts under the Plan shall be invested in the Investment Funds in the proportions and amounts as determined by the Participant pursuant to Section 5.2.

(b) Twenty-five percent (25%) of each Participant's Matching Contributions shall be automatically invested in Company Stock and shall not be transferred to any other Investment Funds under the Plan.

5.2 Investment Options of Participants.

(a) Except as provided in 5.1(b), each Participant shall elect to invest his Accounts in the Investment Funds maintained by the Trustee under Section 12.2 in such proportions as the Participant shall indicate, up to the sum of the account balances in the Accounts. Each Participant's initial investment directions shall be given in writing to the Committee and shall be signed by the Participant. All investment directions, including requests for changes or transfers, shall be subject to such rules and regulations as the Committee shall determine in a uniform and nondiscriminatory manner.

(b) The Trustee shall take such steps as are necessary to make the investments in accordance with the designations, changes in designations, or transfer request made by Participants.

(c) The selection of any Investment Fund is the sole and exclusive responsibility of each Participant and it is intended that the selection of an Investment Fund by each Participant be within the parameters of Section 404(c) of ERISA and the regulations

thereunder. None of the Employer, nor the Trustee, nor any Committee member, nor any of the directors, officers, agents or Employees of the Employer are empowered to or shall be permitted to advise a Participant as to the manner in which his accounts shall be invested or changed. No liability whatsoever shall be imposed upon the Employer, the Trustee, any Committee member, or any director, officer, agent or Employee of the Employer for any loss resulting to a Participant's account because of any sale or investment directed by a Participant under this Section or because of the Participant's failure to take any action regarding an investment acquired pursuant to such elective investment.

## ARTICLE VI

## VALUATION OF TRUST ASSETS

6.1 Time and Manner of Valuation. As of each Valuation Date, the Trustee shall value all of the assets in each Investment Fund maintained under
Section 12.2 for the purpose of determining the amount, if any, of the net increase or net decrease in the fair market value of each such Fund. The fair market value of each Investment Fund shall represent the fair market value of all securities or other property held thereunder, plus cash and accrued earnings, less accrued expenses and proper charges against each Fund as of the Valuation Date. The Trustee's determination shall be final and conclusive for all purposes of this Plan.

6.2 Allocation of Net Increase and Net Decrease to Accounts of Participants. The Trustee shall allocate as of such Valuation Date a part of each such net increase or net decrease for each Fund to the Salary Deferral Account, Matching Account, Employer Account and Rollover Account of each Participant in the ratio that the balance in each such account bears to all such accounts invested in such Fund. Any dividends paid with respect to the Company Stock held in a Participant's Matching Account shall be used to purchase additional shares of Company Stock for such Participant.

## ARTICLE VII

## DISTRIBUTION OF ACCOUNT BALANCES

7.1 Payments on Account of Retirement or Disability.

(a) A Participant who ceases to be an Employee due to his Retirement or Disability shall be entitled to receive a distribution under the Plan of his entire Account Balance in the form of, except as provided in paragraph (e) of this Section, a lump sum cash payment.

(b) (i) Except as otherwise provided in subparagraph (ii) of this paragraph (and subject to the provisions of Section 7.4, if applicable), any distribution under this Section on account of Retirement shall be made as soon as practicable after the Participant's Retirement, but in no event later than 60 days after the close of the Plan Year in which his Retirement occurred.

(ii) A Participant who ceases to be an Employee due to his Retirement shall be entitled to defer receipt of any distribution to be made under this paragraph until he elects to receive such distribution; provided, however, that such distribution must be made not later than April 1 of the calendar year following the calendar year in which such Participant attains the age of 70-1/2. Except as provided in paragraph (e) of this Section, any distribution under this subparagraph shall be made in the form of a lump sum cash payment as soon as practicable following the Participant's election to receive the distribution, but in no event later than the April 1 of the calendar year following the calendar year in which such Participant attains the age of 70-1/2.

(c) Any distributions under this Section 7.1 on account of Disability shall be made or commence in accordance with the provisions of paragraph (b) and (c) of Section 7.3

(d) Whether or not a Participant retires upon attaining his Normal Retirement Date, the Participant's interest in his Matching Account and Employer Account shall be fully vested as of such date.

(e) Notwithstanding paragraphs (a) and (b) of this Section 7.1, any Participant who ceases to be an Employee on account of his Retirement or Disability and whose Account Balance exceeds $3,500 (effective January 1, 1998, $5,000) may elect, in lieu of a lump sum cash payment, to receive his distribution in the form of substantially equal monthly installments over a period not to exceed the shorter of fifteen years or the Participant's life expectancy.

7.2 Payment upon Death of Participant.

(a) If a Participant ceases to be an Employee on account of his death, or if a Participant dies after his Retirement or Disability but before receiving or commencing to receive his Account Balance hereunder, the Participant's Beneficiary shall be entitled to receive a distribution of the Participant's entire Account Balance in the form of a lump sum cash payment. Any distribution under this Section shall be made to the Participant's Beneficiary as soon as practicable after the Participant's death.

(b) If a Participant who ceased to be an Employee on account of his Retirement or Disability dies after commencing to receive a distribution of his Account Balance in the form of installment payments but prior to the completion of the distribution of the entire Account Balance, the Participant's Beneficiary shall receive a distribution of such Participant's remaining Account Balance in a lump sum cash payment. Any distribution shall be made as soon as practicable after the Participant's death.

7.3 Payments on Account of Termination of Employment.

(a) (i) A Participant who ceases to be an Employee on account of his Termination of Employment shall be entitled to receive 100% of the balance in his Salary Deferral Account and Rollover Account, plus the Vested Percentage of the balance in his Matching Account and Employer Account. (For purposes of this Article VII, the balance in a Participant's Salary Deferral Account and Rollover Account and the Vested Percentage of the balance in such Participant's Matching Account and Employer Account shall be referred to as the "Vested Account Balance".)

(ii) The Vested Percentage of the balance in a Participant's Matching Account and Employer Account shall be based upon such Participant's Years of Service as of the date of his Termination of Employment in accordance with the following vesting schedule:

| Years of Service | ("Vested Percentage") |
|---|---|
| Less than 1 year | 0% |
| 1 but less than 2 | 20% |
| 2 but less than 3 | 40% |
| 3 but less than 4 | 60% |
| 4 but less than 5 | 80% |
| 5 or more | 100% |

(iii) In determining a Participant's Vested Percentage in his Matching Account and Employer Account under subparagraph (ii) of this paragraph, Years of Service shall be computed without regard to any Years of Service after five consecutive One Year Breaks in Service; i.e., Years of Service completed after five (5) consecutive One Year Breaks in Service shall not be taken into account for purposes of determining a Participant's Vested Percentage

in his Matching Account and Employer Account derived from Matching Contributions and Employer Contributions which were made before such five-year period.

(v) In the event that the Plan is amended to change the vesting schedule, each Participant who has completed at least three (3) Years of Service and whose Vested Percentage is determined under the new vesting schedule may elect, within a reasonable period after the adoption of the amendment, to have his Vested Percentage determined under the vesting schedule in effect prior to the amendment.

(b) The Participant's Vested Account Balance to which he shall be entitled under paragraph (a) of this Section shall be distributed as follows:

(i) If the value of the Participant's Vested Account Balance under paragraph (a) of this Section does not exceed $3,500 (effective January 1, 1998, $5,000) such Participant (or his Beneficiary should the Participant die before receiving any payments hereunder) shall receive a distribution of such Vested Account Balance in a lump sum cash payment as soon as practicable following his Termination of Employment.

(ii) If the value of the Participant's Vested Account Balance under paragraph (a) of this Section exceeds $3,500 (effective January 1, 1998, $5,000), such Participant shall receive a distribution of such Vested Account Balance in a lump sum cash payment as soon as practicable following his Termination of Employment, provided that the Participant elects to receive such immediate distribution of his Vested Account Balance by filing an election with

the Committee. If such Participant should die prior to receiving a distribution of his Vested Account Balance, the Participant's Beneficiary shall receive a distribution of such Participant's Vested Account Balance in a lump sum cash payment as soon as practicable following the Participant's date of death.

(iii) If the value of the Participant's Vested Account Balance under paragraph (a) of this Section exceeds $3,500 (effective January 1, 1998, $5,000) and if such Participant does not elect to receive an immediate distribution of such Vested Account Balance in a lump sum cash payment, such Participant (hereinafter referred to as a "Terminated Vested Participant") shall receive a distribution of his Vested Account Balance in accordance with paragraph
(c) of this Section. If the value of a Participant's Vested Account Balance, determined at the time of a distribution to the Participant, exceeds $3,500 (effective January 1, 1998, $5,000), then, for purposes of this paragraph (b), the value of such Vested Account Balance at any subsequent time shall be deemed to exceed $3,500 (effective January 1, 1998, $5,000).

(c) The payment of a Terminated Vested Participant's Vested Account Balance under this paragraph (c) shall be made in the form of a lump sum cash payment no later than 60 days after the end of the Plan Year in which such Participant reaches age 65; provided, however, that the Participant may elect to receive an earlier payment of such Account Balance. If the Participant makes such an election, payment shall be made in a lump sum cash payment no later than 60 days after the end of the Plan Year in which the election is made.

(d) Notwithstanding anything contained in this Section 7.3, if a Participant whose Vested Account Balance exceeds $3,500 (effective January 1, 1998, $5,000) ceases to be

an Employee on account of his Termination of Employment, such Participant may elect, in lieu of a lump sum cash payment, to receive his Vested Account Balance in the form of substantially equal monthly installments over a period not to exceed the shorter of fifteen years or the Participant's life expectancy.

(e) In the case of a Participant who receives a distribution pursuant to either paragraph (b)(i) or (b)(ii) of this Section in connection with his Termination of Employment, the balance of such Participant's interest in his Matching Account and Employer Account in excess of his vested interest in such accounts shall be forfeited as of the date that the distribution is made to the Participant. In the case of a Terminated Vested Participant, the balance of such Participant's interest in his Matching Account and Employer Accounts in excess of his vested interest in such accounts shall be forfeited as of the earlier of (i) the last day of the Plan Year in which such Participant incurs five (5) consecutive One-Year Breaks in Service or (ii) the date that the Participant receives payment of his Vested Account Balance pursuant to paragraph (c) of this Section. Except as otherwise provided under paragraph (f), the amount of any forfeitures described in this paragraph for the Plan Year, as well as any forfeitures under Sections 4.2(f), 4.4(e), 4.6(a) and 7.8 for the Plan Year, shall be used to pay administrative expenses of the Plan pursuant to Section 14.4. Any remaining forfeitures may be applied as a credit towards any Matching Contributions or Employer Contributions to be made by the Employer.

(f) If a Participant who has forfeited any amounts in accordance with the provisions of this Section pursuant to his Termination of Employment shall return to the employ of the Employer prior to completing five (5) consecutive One-Year Breaks in Service, the amount so forfeited shall be restored to the Participant only if such Participant repays the full amount previously distributed to him within five years of the date he is reemployed by the

Employer. In the event of such repayment, a Matching Account and Employer Account shall be reestablished on behalf of such Participant and the amount forfeited shall be added to the balance of such Matching Account and Employer Account as of the time of his return to the employ of the Employer. Any forfeiture to be used to pay administrative expenses of the Plan or applied as a credit towards any Matching Contributions or Employer Contributions to be made by the Employer under paragraph (e) of this Section may, in the sole discretion of the Committee, be used for the purpose of restoring, as required under this paragraph, the amounts forfeited in accordance with the provisions of this Section. To the extent such forfeitures are insufficient, the Employer shall make a special contribution to restore the forfeiture.

7.4 Special Distribution Rules.

(a) (i) Notwithstanding anything to the contrary in this Article, as required by Section 401(a)(9) of the Code and the Treasury Regulations thereunder, with respect to any Participant who is a "five percent owner" (as defined in Code Section 416), the distribution of such Participant's Account Balance shall be made (or commence) in accordance with subparagraph (ii) of this paragraph no later than April 1 of the year following the calendar year in which the Participant reaches age 70-1/2, regardless of whether such Participant is still actively employed as of such date. If the Participant continues to participate in the Plan, any additional amounts credited to the Participant's Account Balance shall be distributed each year in accordance with subparagraph (ii) of this paragraph so as to satisfy the requirements of Section 401(a)(9) of the Code and the Treasury Regulations thereunder.

(ii) At the election of the Participant, the Participant's Account Balance shall either be distributed in its entirety to the Participant in accordance with Code Section 401(a)(9)(A)(i) and the Treasury Regulations thereunder, or distributed to the Participant over a period not extending beyond the life expectancy of the Participant or the life expectancy of such Participant and a designated beneficiary in accordance with Code Section 401(a)(9)(A)(ii) and the Treasury Regulations thereunder.

(b) Notwithstanding any provision to the contrary and except as provided in paragraph (a) of this Section, the payment of benefits under this Plan to a Participant or his Beneficiary shall in all events commence within 60 days after the close of the Plan Year in which the latest of the following events occurs:

(i) the attainment by the Participant of age 65;

(ii) the tenth anniversary of the year in which the Participant first became a Participant in the Plan; or

(iii) except as otherwise provided in Section 7.1(b), the Participant's Retirement or Termination of Employment with the Employer.

(c) Notwithstanding any provision to the contrary in this Article VII, a Participant shall be entitled to receive a distribution of his Account Balance upon the termination of the Plan, provided that the Employer or Affiliate does not establish or maintain a successor plan (as defined in Treas. Reg. Section 1.401(k)-1(d)(3)). Any distributions made pursuant to this paragraph (c) shall be made in accordance with Section 13.2.

(d) Notwithstanding any provision to the contrary in this Article, a Participant shall be entitled to receive a distribution of his Vested Account Balance upon the occurrence of either:

(i) The disposition by the Company to an unrelated corporation of substantially all of the assets (within the meaning of Section 409(d)(2) of the Code) used in a trade or business of the Company if the Company continues to maintain this Plan after the disposition, but only with respect to Employees who continue employment with the corporation acquiring such assets; or

(ii) the disposition by the Company to an unrelated entity of the Company's interest in a subsidiary (within the meaning of Section 409(d)(3) of the Code) if the Company continues to maintain this Plan, but only with respect to Employees who continue employment with such subsidiary.

The occurrence of any event described in this paragraph (d) shall be treated as a Termination of Employment and any distribution made as a result of the occurrence of such event shall be made in accordance with the provisions of Section 7.3.

(e) Notwithstanding any other provision of this Article VII, any distributions of Company Stock shall be paid in shares of Company Stock (except to the extent of any fractional shares); provided, however, that the Participant or Beneficiary may elect to receive payment of such amounts in cash.

7.5 Hardship Distributions. A Participant shall be entitled to receive a hardship distribution of the total amount of the Participant's Salary Deferral Account (excluding the amount of any income attributable to Salary Deferral Contributions after December 31, 1988), if

the distribution is necessary to defray an immediate and severe financial hardship incurred by the Participant. The amount of the distribution may not exceed the amount required to meet the immediate financial need created by the hardship and not reasonably available from other resources of the Participant. The existence of an immediate and heavy financial need and the amount necessary to meet such need, will be determined by the Committee in accordance with the standards set forth below.

(a) Immediate and Heavy Financial Need. For purposes hereof, an immediate and heavy financial need shall be limited to a need for funds for any of the following purposes:

(i) Unreimbursed medical expenses described in
Section 213(d) of the Code incurred by the Participant, the Participant's spouse, or any dependents of the Participant (as defined in Section 152 of the Code);

(ii) Purchase (excluding mortgage payments) of a principal residence for the Participant;

(iii) Payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant or his spouse, children, or dependents;

(iv) Prevention of the eviction of the Participant from his principal residence or foreclosure on the mortgage on his principal residence; and

(v) Any other reason recognized by the Commissioner of Internal Revenue Service in a revenue ruling, notice or other document of general applicability to constitute an immediate and heavy financial need.

A Participant requesting a hardship withdrawal must represent that he has an emergency need for funds for one of the reasons specified above. The Participant shall provide

the Committee with any information and evidence which the Committee considers necessary in order to determine whether such a hardship exists and the amount of the withdrawal from the Plan that is necessary to meet the hardship.

(b) Distribution Necessary to Satisfy the Financial Need. A hardship withdrawal shall be considered to be necessary to meet such an immediate and heavy financial need only under the following circumstances:

(i) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (that cannot be satisfied by distributions and/or non-taxable loans of the types described in subparagraph (ii) below). This distribution may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.

(ii) The Participant has obtained (or requested) all distributions (including distributions after attaining age 59-1/2 and distributions of Rollover Contributions), other than hardship distributions, and all non-taxable loans currently available under all plans maintained by the Employer or any Affiliate.

In the event of any hardship distribution to a Participant hereunder, such Participant may not make Salary Deferral Contributions (or comparable contributions) to the Plan or to any other deferred compensation plans maintained by the Employer or any Affiliate during the 12 calendar months immediately following the date of such hardship withdrawal. The Participant also may not make Salary Deferral Contributions (or comparable contributions) to the Plan or to any other tax-qualified retirement plan maintained by the Employer or any Affiliate, for the calendar year immediately following the calendar year of the hardship withdrawal, in

excess of the applicable limit under Section 402(g) of the Code for such next calendar year less the amount of such Participant's Salary Deferral Contributions (or comparable contributions) made on his behalf to the Plan or to any other tax-qualified retirement plan maintained by the Employer or any Affiliate for the calendar year of the hardship distribution.

The foregoing provisions shall be applied on a uniform and nondiscriminatory basis and shall be subject to such changes as the Committee may deem to be necessary at any time to comply with Treasury Regulations or other rules issued under Section 401(k) of the Code.

(c) Additional Operating Rules. The following rules shall apply to each request for a hardship distribution by a Participant:

(i) The Participant's request for a hardship distribution shall be made on such forms as are provided from time to time by the Committee and the Participant shall furnish the Committee with such information as the Committee requests in its evaluation of the Participant's request.

(ii) The amount of any hardship distribution shall in no event exceed the value of the Participant's Salary Deferral Account.

(iii) Only one hardship withdrawal may be made in any twelve-month period.

7.6 Withdrawals of Rollover Contributions.

(a) As of the first day of any calendar quarter, a Participant may withdraw all or a portion of his Rollover Contributions. The request for such withdrawal must be submitted in writing to the Committee. Any such withdrawal shall be made from the Investment Fund(s), consisting of Rollover Contributions, on a pro rata basis.

(b) In the event of a withdrawal under this Section, the Participant may continue his participation in the Plan without interruption and shall not, because of such withdrawal, be penalized under the Plan in any way.

(c) The minimum amount that may be withdrawn under this
Section is $500, or if less, the entire value of the Participant's Rollover Account.

(d) The withdrawal of all or a portion of the Participant's Rollover Contributions shall be paid to the Participant as soon as practicable after the Participant's request is submitted to and approved by the Committee.

7.7 Withdrawals After Attainment of Age 59-1/2.

(a) A Participant may apply in writing to the Committee for a withdrawal of all or a portion of (i) his Vested Employer Account, (ii) the vested portion of his Matching Account that is not invested in Company Stock and
(iii) his Salary Deferral Account, at any time after attaining age 59-1/2.

(b) In the event of a withdrawal under this Section, the Participant may continue his participation in the Plan without interruption and shall not, because of such withdrawal, be penalized under the Plan in any way.

(c) The minimum withdrawal by a Participant under this Section 7.7 shall be $500 or, if less, the value of (i) the Participant's Vested Employer Account, (ii) the vested portion of his Matching Account that is not invested in Company Stock and (ii) his Salary Deferral Account.

(d) The withdrawal shall be paid to the Participant as soon as practicable after the Participant's request is submitted to and approved by the Committee.

7.8 Rollovers to Other Plans or IRAs.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under the Plan, the Participant may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover.

(b) Definitions:

For purposes of this Section 7.8, the following definitions shall apply:

(i) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the Participant's Vested Account Balance, except that an Eligible Rollover Distribution does not include:

(A) 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 Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more;

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and

(D) effective January 1, 2000, any distribution of Salary Deferral Contributions made pursuant to Section 7.5 on account of hardship.

(ii) "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Participant's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan shall mean only an individual retirement account or individual retirement annuity.

(iii) "Participant" shall mean a Participant within the meaning of Section 1.33 who is entitled to receive a distribution under the Plan. In addition, the Participant's surviving spouse and the Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code, shall be considered a Participant with regard to the interest of the spouse or former spouse.

(iv) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Participant.

7.9 Lost Participant. If payment of a Participant's Vested Account Balance is unable to be made under this Article VII because the Committee is unable to find the Participant or Beneficiary to whom payment is to be made, such Participant's Vested Account Balance shall be forfeited as of the last Valuation Date of the Plan Year in which the Committee determines that it is unable to find the Participant or Beneficiary. If the Participant or Beneficiary later makes a claim for such payment and the Committee determines that the claim is valid, the amount previ-

ously forfeited shall be restored and payment shall be made as soon as practicable following such determination.

## ARTICLE VIII

## DESIGNATION OF BENEFICIARY

8.1 Right to Designate Beneficiary. Subject to the provisions of Section 8.3, each Participant may designate in a writing filed with the Committee, a Beneficiary to whom, in the event of the Participant's death, all benefits shall be payable. The Beneficiary so designated may be changed by the Participant (subject to the provisions of Section 8.3) at any time or from time to time during his life by signing and filing a new beneficiary designation form. The records of the Committee at the time of death shall be conclusive as to the identity of the proper Beneficiary and the amount properly payable, and payment made in accordance with such facts shall constitute a complete discharge of any and all obligations hereunder.

8.2 Applicable Rules if No Beneficiary Designation is Made. If no Beneficiary designation is on file with the Committee at the time of death of the Participant, or if such designation is not effective for any reason, then such death benefit shall be payable to the deceased Participant's spouse, if living. If such spouse does not survive him, payment shall be made to the Participant's issue per stirpes, or if no issue survive him, to his estate.

8.3 Payment of Account Balance to Spouse upon Death of Participant. If the Beneficiary designated by the Participant to receive the benefits payable hereunder in the event of his death is not his spouse, then, notwithstanding the applicable provisions of Sections 7.1, 7.2, 7.3 and Section 8.1, such benefits shall be payable to the Participant's surviving spouse unless (a) there is no surviving spouse; (b) the spouse consents, in the manner required under Section 417(a)(2)(A) of the Code, to the payment of such benefits to the designated Beneficiary; or (c) it is established to the satisfaction of the Committee that the spousal consent may not be

obtained because of the conditions specified in Section 417(a)(2)(B) of the Code or in regulations promulgated under such Section of the Code.

## ARTICLE IX

## LOANS

9.1 Availability of Loans

(a) Upon the application of any Participant, the Committee may direct the Trustee to make a loan to such Participant.

(b) The terms and conditions on which the Committee will approve loans under the Plan will be applied on a reasonably equivalent basis and loans shall not be available to any Highly Compensated Employee in an amount equal to a percentage of his Account Balance which is greater than the percentage made available to other Participants.

(c) The minimum loan shall be $1,000. Only one loan shall be made to a Participant during any Plan Year and only one loan may be outstanding at any time; provided, however, that for this purpose, any loan(s) that is rolled over into the Plan in accordance with Section 3.4(d) shall not be considered an outstanding loan(s) under the Plan.

9.2 Limitations on Loans.

(a) In no event shall the total amount of a loan made to any Participant pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) exceed the lesser of:

(i) 50 percent of the Participant's Vested Account Balance (as defined in Section 7.3(a)) excluding any amounts invested in Company Stock or

(ii) $50,000.

(b) The $50,000 limitation set forth in paragraph (a) will be reduced by the excess, if any, of the highest outstanding loan balance from the Plan during the one year period

ending on the day before the date on which the loan was made over the outstanding loan balance from the Plan on the date that such loan was made.

9.3 Interest Rate. The interest rate charged on any loan made pursuant to this Section shall be determined by the Committee and shall be at least equivalent to the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. Furthermore, the Participant's Account Balance may be charged a set-up fee and/or maintenance fee (as determined by the Committee).

9.4 Security for Loan. Any loan made pursuant to this Section shall be secured by the Participant's Vested Account Balance excluding any amounts invested in Company Stock.

9.5 Term of Loan.

(a) The term of any loan shall not be for more than five (5) years; provided, however, that the term of a loan used for the purpose of acquiring a dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the Participant may be for a period of up to fifteen (15) years.

(b) Notwithstanding the foregoing, the Committee shall require any such loan to be immediately repaid as of the date the Participant ceases to be an Employee. If the loan is not repaid as of such date, the Committee shall use the remedies provided under Section 9.8 to recover such loan.

9.6 Loan Agreement. Each Participant to whom a loan is made under this
Section shall enter into an agreement with the Committee. Such agreement shall set forth the principal amount of the loan, the repayment terms (subject to the provisions of Section 9.7), the interest rate and the provisions for securing the loan in accordance with Section 9.4.

9.7 Repayment of Loan.

(a) Payments of principal and interest shall be made by payroll deduction or in any other manner agreed to by the Participant and the Committee; provided, however, that in all cases, loan repayments of principal and interest shall be made in substantially level amounts and shall be made no less frequently than quarterly over the term of the loan.

(b) Principal and interest payments with respect to the loan shall be credited solely to the appropriate account of the borrowing Participant from which the loan was made based upon the Participant's current investment elections. Any loss caused by nonpayment or other default on a Participant's loan obligations shall be borne solely by such Participant's appropriate account.

(c) If a Participant is on an unpaid leave of absence, such Participant shall be obligated to repay the loan in the manner agreed to by such Participant and the Committee.

(d) A loan may be repaid in full as of any date without penalty.

9.8 Collection of Loan. In the event that the Participant does not repay such loan within the time and manner prescribed by the repayment terms, in addition to any legal remedies the Committee may have, the Committee shall offset the unpaid amount of such loan against any distribution payable to such Participant or Beneficiary under Article VII no earlier than at the time such distribution would first become payable thereunder and the Participant shall be considered to having consented to a deemed distribution of the unpaid loan amount. In the event that the amount of any such offset is not sufficient to repay the remaining balance of any such loan, such Participant shall be liable for and continue to make payments on any balance still due from him.

9.9 Loan Guidelines. The Committee may issue loan guidelines, which shall form part of the Plan, describing the procedures and conditions for making and repaying loans, and the administrative fees due from Participants to take a loan, and may revise those guidelines at any time and for any reason.

## ARTICLE X

## TOP HEAVY RULES

10.1 Notwithstanding anything contained herein to the contrary, the provisions of this Article X shall become effective only for Plan Years in which the Plan is a Top-Heavy Plan.

10.2 The following words and phrases as used in this Article X shall have the meanings specified below:

(a) "Aggregation Group" shall mean the Plan and any other plan of the Employer or Affiliate intended to qualify under Section 401(a) of the Code:

(i) in which a Key Employee is a participant;

(ii) which enables a plan in which a Key Employee is a participant to meet the requirements of Section 401(a) or Section 410 of the Code.

The Aggregation Group shall also include any plan that is not described above, but which is designated by the Employer to be part of such Group, provided that the Group continues to meet the requirements of Code Sections 401(a)(4) and 410 with such plan being taking into account.

(b) "Compensation" shall mean the term as defined in Section 1.11.

(c) "Determination Date" shall mean, with respect to any Plan Year, the last day of the preceding Plan Year or, in the case of the first Plan Year, the last day thereof.

(d) "Key Employee" shall mean any person described in Section 416(i)(l) of the Code (which is herein incorporated by this reference) and shall, with respect to a Key Employee's cumulative accrued benefits and aggregated account balances, include any Beneficiary of such Key Employee.

(e) "Non-Key Employee" shall mean any Employee who is not a Key Employee and shall, with respect to a Non-Key Employee's cumulative accrued benefits and aggregated account balances, include a Beneficiary of such Non-Key Employee.

(f) "Top-Heavy Group" shall mean the Aggregation Group if the sum, as of the Determination Date, of:

(i) the present value of the cumulative accrued benefits for Key Employees under all defined benefit plans in such Aggregation Group, plus

(ii) the aggregate of the accounts of Key Employees under all defined contribution plans included in such Aggregation Group, exceed sixty percent (60%) of a similar sum determined for all employees.

(g) "Top-Heavy Plan" shall mean with respect to any Plan Year, the Plan if, as of the Determination Date, the Plan is not part of an Aggregation Group and the aggregate of the accounts under the Plan of all Key Employees exceeds sixty percent (60%) of the aggregate of the accounts under the Plan of all employees, or if, as of the Determination Date, the Plan is part of a Top-Heavy Group. In determining the amount of the account or the cumulative accrued benefit of any employee for purposes of determining if the Plan is a Top-Heavy Plan, including the determination of whether the Aggregation Group is a Top-Heavy Group, the present value of the cumulative accrued benefit for the employee and the amount of the account of the employee, as the case may be with respect to any plan, shall be increased by the aggregate distributions made with respect to such employee under such plan during the Plan Year that includes the Determination Date or during the four preceding Plan Years; and the credit balance of any employee who has not received any Compensation from the Employer at any time during the 5-year period ending on the Determination Date shall be disregarded.

10.3 Notwithstanding the provisions of Article III hereof, for each Plan Year in which this Plan is a Top-Heavy Plan, the Employer shall make a contribution (not including Salary Deferral Contributions) on behalf of each Eligible Employee who is a Non-Key Employee and is employed by the Employer on the last day of such Plan Year (regardless of the Hours of Service credited to such Eligible Employee for such Plan Year), in an amount equal to the lesser of
(a) 3 percent of such Eligible Employee's Compensation for such Plan Year or (b) the largest percentage contribution amount (including Salary Deferral Contributions) allocated to any Key Employee for such Plan Year.

## ARTICLE XI

## ADMINISTRATION OF THE PLAN

11.1 Definitions. For purposes of this Plan:

(a) "Fiduciary" shall mean any person who exercises any discretionary authority or discretionary control respecting the management or disposition of Plan assets, renders any investment advice for a fee or other compensation with respect to Plan assets, or exercises any discretionary authority or responsibility for Plan administration, and includes the Named Fiduciaries.

(b) "Named Fiduciaries or Named Fiduciary" shall mean:

(i) The Committee established to administer the Plan. The Committee shall have no responsibility relating to the management and control of the assets of the Plan, other than the responsibility to reconsider the policy and method of funding the Plan as provided in this Article.

(ii) The Trustee who shall be a Named Fiduciary only with respect to the management and control of the assets of the Plan.

11.2 Administration.

(a) The Committee shall have the authority to control and manage the operation and administration of the Plan in accordance with the responsibilities set forth in this Article, and shall have sole authority and discretion to determine all questions arising in the administration of the Plan, including questions relating to eligibility for, and the amount of, benefits under the Plan. The Committee shall consist of one or more individuals appointed by the Company. In the absence of any such appointment, the Company shall serve as the Committee.

(b) A majority of the Committee members serving at the time shall constitute a quorum for the transaction of business of the Committee. All resolutions or other actions taken by the members at any meeting shall be by a vote of a majority of those present at such meeting. Except when reconsidering the policy and method of funding the Plan under this Article, upon concurrence in writing of the majority of the Committee members at the time in office, they may take action otherwise than at a meeting of the Committee provided that detailed records of such action shall be kept.

(c) The Committee may authorize any one or more individuals to execute any documents on behalf of the Committee, and any such documents so executed shall be accepted and relied upon as representing action by the Committee until the Committee shall revoke such authorization.

(d) The Committee may from time to time establish rules and regulations to implement the provisions of this Plan. The records of the Employer, as certified to the Committee, shall be conclusive with respect to any and all factual matters dealing with the employment of a Participant. The Committee shall interpret the Plan and shall have sole authority and discretion to determine all questions arising in the administration, interpretation and application of the Plan, and all such determinations by the Committee shall be conclusive and binding on all persons subject, however, to the provisions of the Code and ERISA.

(e) The Committee shall direct the Trustee to make payments from the Fund to Participants or Beneficiaries who qualify for such payments hereunder. Such order to the Trustee shall specify the name of the Participant or Beneficiary, his Social Security number, his address, and the amount and frequency of such payments.

(f) The Trustee may request instructions in writing from the Committee on any matters affecting the Trust and may rely and act thereon.

(g) The Committee shall be the agent for receipt of service of process by the Plan.

11.3 Allocation and Delegation of Responsibilities.

(a) The Committee may allocate among its members and may delegate to persons who are not members of the Committee any of its duties and responsibilities other than the responsibility to reconsider the policy and method of funding the Plan as provided in this Article.

(b) The Committee may employ or engage accountants, legal counsel, actuaries, custodians, agents or other persons to render advice or perform ministerial duties with regard to any responsibility or duty which the Committee has under the Plan. To the extent permitted by law, a member of the Committee shall not be precluded from rendering such advice in his individual capacity, and shall be entitled to rely upon and be fully protected in any action taken by him in good faith in reliance upon any opinions or reports which shall be furnished to him by such accountants, legal counsel, actuaries, custodians, agents or other persons.

(c) The Company may appoint an Investment Manager or Managers to manage, acquire and dispose of any assets of the Plan. Any such Investment Manager shall be an investment adviser registered under the Investment Advisers Act of 1940, a bank as defined in that Act, or an insurance company qualified to perform investment services under the laws of at least two States. The appointment of any such Investment Manager shall not be effective until such Investment Manager has acknowledged in writing that it is a Fiduciary with respect to the Plan.

(d) The Committee shall periodically, but at least annually, review the performance of any persons to whom any duties or responsibilities have been allocated or delegated, and any persons who are employed or engaged to render advice or perform ministerial services. The Committee may require such formal or informal reports from such persons as it shall deem prudent and appropriate, and shall promptly terminate such allocation, delegation, employment, or engagement upon its determination that any such person or persons have failed to discharge their obligations to the satisfaction of the Committee or with the standard of care which would be imposed upon the Committee in the absence of such allocation, delegation, employment, or engagement.

(e) The Plan may purchase insurance for any Fiduciary to cover liability or losses occurring by reason of the act or omission of such Fiduciary, but such insurance shall permit recourse by the insurer against such Fiduciary in the case of a breach of a fiduciary obligation.

(f) The Company shall indemnify any Committee member, director, officer, shareholder or Employee against any and all claims, losses, damages, expenses and liabilities arising from their responsibilities in connection with the Plan, unless the same is determined to be due to gross negligence or willful misconduct.

(g) Nothing herein shall prevent any person or group of persons from serving in more than one fiduciary capacity with respect to the Plan, nor prevent an Employee or Participant from serving as a Fiduciary with respect to the Plan.

11.4 Standard of Conduct.

(a) In discharging their duties, the Fiduciaries shall act with the skill, care, prudence and diligence under the circumstances then prevailing that a prudent man acting in a

like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. All Fiduciaries shall discharge their duties with respect to this Plan solely in the interests of the Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and paying reasonable expenses of administering the Plan; provided that contributions (or the assets attributable thereto) may be returned to the Employer under Section 3.6 of this Plan.

The foregoing paragraph is not intended as a comprehensive statement of all responsibilities and duties of Fiduciaries under ERISA or any other applicable law, and the Fiduciaries shall be subject to all other duties and responsibilities which may be imposed by ERISA or other applicable law.

(b) Acquisition and holding by the Plan of "qualifying employer securities" and "qualifying employer real property", as defined in ERISA, shall be permitted in accordance with the provisions of Section 407 of ERISA. For this purpose, stock of Cott Corporation shall be considered qualifying employer securities.

(c) The Committee shall periodically, but at least annually, reconsider the policy and method of funding the Plan and shall take such action as it deems necessary and advisable to implement its determinations. Such reconsideration shall take into account the short and long term financial needs of the Plan.

11.5 Resignation and Removal.

(a) A member of the Committee may resign by delivering to the Company a written notice of his resignation to take effect not less than sixty (60) days after the delivery thereof, unless notice of a shorter duration shall be accepted as adequate.

(b) Any member of the Committee may be removed by the Company by delivering to such member or by mailing to him via registered mail at his last known address, a written notification of such removal duly executed by the Company, which shall take effect not less than sixty (60) days after delivery thereof, unless notice of a shorter duration shall be accepted as adequate.

(c) When any member of the Committee shall cease to serve because of resignation, death, removal or otherwise, if no Committee members would continue to serve, the Company shall fill the vacancy; if one or more Committee members would otherwise continue to serve, the Company may, but need not, fill the vacancy.

11.6 Bonding Requirement. All Fiduciaries and any other persons who handle assets of the Plan shall serve under such bond as may be required by ERISA, or other applicable law, but in the absence of any such requirement, shall serve without bond. The Plan shall purchase the bond for any Committee member, director, officer, shareholder or Employee who is required to serve under bond.

11.7 Benefit Claims and Appeals. The claim of any person (hereinafter referred to as the "Claimant") with respect to any benefits to which such Claimant may be entitled under the Plan shall be considered in accordance with the following procedure:

(a) Any Claimant may make written application to the Committee for benefits to which he believes he is entitled, at the time the application is made, under the Plan. Such application shall set forth all information necessary to determine whether the claim should be approved or denied. The Committee shall furnish to the Claimant an acknowledgment of his application, including a notice of the time limits set forth in this Section 11.7.

(b) The Committee shall either approve the claim and take any appropriate action, or deny the claim. Such approval or denial shall be accomplished within an initial period of ninety (90) days after receipt of the claim by the Committee unless special circumstances require an extension of time for processing the claim. If such an extension is required, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial ninety (90) day period. Any such extension shall expire no later than ninety (90) days after the end of the initial period. The extension notice shall describe the special circumstances requiring the extension of time and the expected date of decision.

(c) If a claim is denied, the Committee shall furnish a written notice of such action to the Claimant within the applicable time limit described in paragraph (b). Such notice shall set forth, in a manner calculated to be understood by the Claimant:

(i) the specific reason or reasons for the denial;

(ii) specific reference to the pertinent provisions of this Plan on which the denial is based,

(iii) a description of any additional material or information necessary for the Claimant to perfect his claim and an explanation of why such material or information is necessary; and

(iv) an explanation of the review procedure, as set forth in paragraph (d).

(d) A Claimant whose claim has been denied (or to whom no written notice of denial has been furnished within the applicable time limit described in paragraph (b)) may appeal by written notice to the Committee requesting a review of the denial. The Claimant's written

request for review must be submitted to the Committee within sixty (60) days after his receipt of the notice of the denial. A Claimant who wishes to appeal or has appealed a denial may:

(i) review all pertinent documents relating to his claim; and

(ii) submit issues and comments in writing for consideration by the Committee.

(e) The Committee shall render the decision on review within an initial period of sixty (60) days after receipt of the Claimant's written request for review, unless special circumstances (including the need to hold a hearing, if the Committee has provided a procedure for holding hearings) require an extension of time. Any such extension shall expire no later than sixty (60) days after the end of the initial period. If such an extension is required, written notice thereof shall be furnished to the Claimant before the end of the initial period. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the Claimant with specific references to the pertinent provisions of the Plan on which the decision is based.

(f) Any claim, request for review or other action which may be made or taken by the Claimant under this Section may be made or taken by the Claimant's duly authorized representative.

11.8 Records and Reports. The Committee shall keep a record of all proceedings and acts and shall keep such books of account, records, and other data as may be necessary for proper administration of the Plan. The Committee shall make the records available for examination during business hours to the Employer or any person who may be entitled to benefits under the terms of this Plan, except that any such person shall examine only such records as pertain exclusively to such person, the Plan and Trust Agreement as currently in effect or hereafter

amended, and any other documents which such person may be entitled to examine under ERISA or any other applicable law. The Committee shall also furnish to any person who may be entitled to benefits under the terms of this Plan such reports, descriptions, notifications or other materials as may be required under ERISA, the Code or other applicable law.

11.9 Expenses and Compensation of Fiduciaries.

(a) All Fiduciaries, except those receiving full time pay from the Employer may receive from the Plan such reasonable compensation for services rendered to the Plan as shall be determined by the Company.

(b) All Fiduciaries may be reimbursed for expenses reasonably incurred in performance of their duties upon request, unless the contract, if any, for services by such fiduciaries does not provide for the requested reimbursement.

(c) The Plan may make advances to a Fiduciary to cover expenses to be properly and actually incurred by such Fiduciary in the performance of that Fiduciary's duties with respect to the Plan, provided that

(i) the amount of the advance shall be reasonable with respect to the amount of the expense which is to be incurred, and

(ii) the Fiduciary must account to the Committee at the end of the period covered by the advance for the expenses actually incurred.

(d) Nothing shall preclude a Fiduciary from receiving any benefit to which he may be entitled under the terms of the Plan, provided that such benefit shall be computed and paid on a basis which is consistent with the terms of the Plan as applied to all other Participants and Beneficiaries.

(e) The Committee shall not be bound by any notice or other communication unless and until it shall have been received in writing addressed to the Company at:

Human Resources Department 5650 Whitesville Road - Suite 201 Columbus, GA 31904

## ARTICLE XII

## THE TRUST FUND

12.1 Trust Agreement. The Company has entered into an Agreement of Trust (the "Trust Agreement") with the Trustee, providing for the administration of the Fund by the Trustee, in such form and containing such provisions as are deemed appropriate. The Trust Agreement shall be deemed to form a part of this Plan, and any and all rights and benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of said Trust Agreement.

12.2 Investment Funds. The Fund shall be composed of (i) Investment Funds designated by the Committee consisting of amounts in Participants' Salary Deferral Accounts, Matching Accounts, Employer Accounts and Rollover Accounts and the earnings thereon that accrue from time to time and (ii) amounts invested in Company Stock.

12.3 No Segregation of Participants' Interests. Each Investment Fund may be maintained on an unallocated, undivided basis with no segregation of the interests of the Participants.

## ARTICLE XIII

## AMENDMENT, TERMINATION AND DISCONTINUANCE OF CONTRIBUTIONS

13.1 (a) The provisions of this Plan may be amended at any time and from time to time, by the Company or by the Committee to the extent authority to make amendments to the Plan has been delegated to the Committee by the Company's Board of Directors. No such amendment, however, shall:

(i) vest in the Company any interest or control over the funds accumulated in accordance with this Plan or the benefits provided hereunder, except as provided in Section 3.6;

(ii) operate to deprive a Participant of any rights or benefits irrevocably vested in him under the Plan prior to such amendment; provided, however, that if any amendment shall be necessary to conform the Plan to the provisions and requirements of the Code, any regulation issued pursuant thereto, or any other pertinent provisions of federal or state law, no such amendment shall be considered prejudicial to the interest of a Participant or his Beneficiary, or a diversion of any part of the Fund to a purpose other than for their exclusive benefit; or

(iii) increase the powers, duties or liabilities of the Trustee without the Trustee's written consent.

(b) Any modification or amendment of the Plan may be made retroactive, if the Company, on the advice of counsel, deems such retroactivity to be necessary in order for the Plan to conform to, or satisfy the conditions of any law, governmental regulations or ruling, or to meet the requirements of the applicable sections of the Code.

13.2 (a) This Plan may be terminated by the Company through action of the Company's Board of Directors. In the event of the termination or partial termination of the Plan, or if there is a complete discontinuance of contributions under the Plan, each affected Participant's interest in the Fund shall be fully vested as of the date of such termination, partial termination or complete discontinuance of contributions under the Plan.

(b) If the operations of the Employer continue after termination, the Fund shall either (i) continue to be held for distribution in precisely the same time and manner as set forth in Article VII hereof or (ii) shall be held for distribution by the Trustee who shall distribute to the Participants then participating in the Fund the full amount standing to their credit, less the administrative costs to the Trustee for such distribution, in a lump sum cash payment in accordance with Article VII; provided, however, that subparagraph (ii) shall apply only if the distribution is permitted under
Section 401(k)(10) of the Code and the Regulations thereunder.

(c) If the Plan is terminated and the Employer dissolves or ceases operation, the Fund shall be held for distribution by the Trustee who shall distribute to the Participants then participating in the Fund the full amount standing to their credit, less the administrative costs to the Trustee for such distribution, in a lump sum cash payment in accordance with Article VII, provided that such distribution is permitted under Section 401(k)(10) of the Code and the Regulations thereunder.

## ARTICLE XIV

## MISCELLANEOUS

14.1 Nothing contained in this Plan or in the Trust shall be held or construed to create any liability upon the Employer to retain any Employee in its employ. The Employer reserves the right to discontinue the services of any Employee without any liability except for salary or wages that may be due and unpaid whenever, in its judgment, its best interests so require.

14.2 This Plan and the Trust is for the exclusive benefit of the Participants and their Beneficiaries. This Plan should be interpreted in a manner consistent with this intent and with the intention that the Trust satisfy those provisions of the Code relating to qualified employee plans.

14.3 The Employer shall have no liability in respect to the payment of benefits or otherwise under the Plan; and the Employer shall have no liability in respect to the administration of the Trust or of the Fund held by the Trustees, and each Participant and/or Beneficiary shall look solely to the Fund for any payments or benefits under the Plan.

14.4 The Employer may pay all administrative expenses of the Plan and Trust, including the compensation of consultants, auditors and counsel, but the Employer shall not be obligated to pay such expenses. If the Employer elects not to pay such expenses, the expenses shall be paid from the Fund. Any expenses directly relating to the investments of the Fund, such as taxes, commissions, and registration charges, shall be paid from the Fund.

14.5 Except as may otherwise be provided under Section 401(a)(13)(B) and
(C) of the Code, no benefit under this Plan shall be subject in any manner to anticipation, pledge, encumbrance, alienation or assignment, and any attempt to anticipate, pledge, encumber, alienate or assign any such benefit shall be void, nor shall any such benefits be in any way subject to

seizure, attachment or other legal or equitable process for the debts, contracts or liabilities of any Participant or Beneficiary. For purposes of this Section 14.5, payments may be made under this Plan to an "alternative payee" (as defined in Code Section 414(p)(8)) prior to the Participant's "earliest retirement age" (within the meaning of Code Section 414(p)(4)(B)) to the extent that such payments are consistent with the qualified domestic relations order.

14.6 In the case of any merger or consolidation of the Plan with, or transfer of Plan assets or liabilities to, any other plan, provisions shall be made so that each Participant in the Plan on the date thereof (if the Plan then terminated) would receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately prior to the merger, consolidation or transfer if the Plan had then terminated.

14.7 If an Employee transfers from employment with the Employer to employment with an Affiliate, his employment shall be deemed terminated for purposes of the Plan at such time as he shall be employed by neither Employer nor Affiliate.

14.8 Effective December 12, 1994, notwithstanding any provision of the Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

14.9 This Plan shall be construed and administered in complete accordance with ERISA and, to the extent not preempted by such Act, the laws of the State of Georgia.

14.10 Pronouns shall be interpreted so that the masculine pronoun shall include the feminine, and the singular shall include the plural.

14.11 Headings of sections and subsections of this Plan are inserted for convenience of reference. They constitute no part of this Plan and are not to be considered in the construction thereof.

14.12 If any provision of this Plan is held to be illegal, invalid or unenforceable for any reason, this shall not affect any other provision of the Plan, and this Plan shall be construed as if said illegal, invalid or unenforceable provision had never been inserted herein.

14.13 The Plan set forth herein shall amend and restate, effective as of January 1, 1997, unless otherwise provided herein, all provisions of the Plan, as in effect on December 31, 1996, except that the rights of former Employees who terminated employment, died or retired prior to January 1, 1997, shall be governed by the terms of such Plan as in effect at the time of the termination of employment, death or retirement.

IN WITNESS WHEREOF, BCB USA Corp. has executed this Plan on this 22nd day of December, 2000.

*Attest:*

*/s/ Jennifer Sears*
*----------*

*BCB USA CORP.*

*By: /s/ Colin D. Walker*
*----------*
*Title: Senior Vice President*

**Exhibit 4.2**

**FIRST AMENDMENT**
**TO THE RESTATED COTT USA**

401(K) SAVINGS & RETIREMENT PLAN

WHEREAS, the Restated Cott USA 401(k) Savings & Retirement Plan (the "Plan") was adopted on December 22, 2000;

WHEREAS, under Section XIII of the Plan, BCB USA Corp. reserved the right to amend the provisions of the Plan; and

WHEREAS, it has become necessary to amend the Plan in order to (i) provide certain provisions pertaining to employees of RC Cola into the Plan and (ii) make certain other changes to the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Section 1.52(b) is amended by adding a new paragraph (v) at the end thereof to read:

"(v) If on July 19, 2001 an Employee was employed by Royal Crown, Dr. Pepper/Seven Up Inc. or Dr. Pepper/Seven Up Manufacturing Co. and on July 20, 2001 such Employee was employed by BCB USA Corp., any period during which such individual was employed by Royal Crown, Dr. Pepper/Seven Up Inc. and/or Dr. Pepper/Seven Up Manufacturing Co. shall be treated as employment as an Employee for purposes of calculating a "Year of Service."

2. Article II is amended by adding a new Section 2.6 at the end thereof to read:

"2.6 Notwithstanding anything contained herein, if an individual was a participant in the CBI Holdings Inc. Employees' Savings Plan on July 19, 2001 and was an Employee other than an Employee described in clauses
(a)-(c) of Section 1.14 on July 20, 2001, such individual may become a Participant hereunder on July 20, 2001 or any Entry Date thereafter (or on a subsequent date) in accordance with Section 2.3.

3. Section 7.3(a)(ii) is amended by adding the following clause to the end thereof to read:

"; provided, however, that a Participant who was a participant in the CBI Holdings Inc. Employees' Savings Incentive Plan on July 19, 2001 and was an Employee on July 20, 2001, shall be one-hundred percent (100%) vested in his Matching Account and Employer Account at all times."

4. Section 9.1(c) shall be amended to read as follows:
"(c) The minimum loan shall be $1,000 and except as otherwise provided in this paragraph (c), only one loan may be outstanding at any time. Effective October 1, 2001 two loans may be outstanding at any time provided one of such loans is used to solely purchase the Participant's primary residence. For purposes of this paragraph, any loan(s) that is rolled over into the Plan in accordance with Section 3.4(d) shall not be considered an outstanding loan(s) under the Plan.

5. Effective Dates.

(a) The amendments made by paragraphs 1, 2 and 3 shall be effective as of July 20, 2001.

(b) The amendments made by paragraph 4 shall be effective October 1, 2001.

IN WITNESS WHEREOF, BCB USA Corp. has executed this First Amendment to the Plan on this 16th day of August, 2001.

**BCB USA CORP.**

*By: /s/ Colin D. Walker*
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*Title: Senior Vice President*
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**Exhibit 4.3**

**SECOND AMENDMENT**
**TO THE RESTATED COTT USA**

401(K) SAVINGS & RETIREMENT PLAN

WHEREAS, the Restated Cott USA 401(k) Savings & Retirement Plan (the "Plan") was adopted on December 22, 2000;

WHEREAS, under Section XIII of the Plan, BCB USA Corp. reserved the right to amend the provisions of the Plan; and

WHEREAS, the First Amendment to the Plan was adopted on August 16, 2001;

WHEREAS, it has become necessary to amend the Plan in order to (i) reflect the change of the name of BCB USA Corp. to Cott Beverages Inc., (ii) provide for Northeast Retailer Brands LLC to become a participating employer under the Plan and add certain provisions pertaining to employees of Northeast Retailer Brands LLC, (iii) provide for a change in the matching contributions made under the Plan, (iv) provide for the transfer of assets from the Texas Beverage Packers Profit Sharing Plan and Trust to the Plan, and (v) make certain other changes to the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Section 1.9 is amended to read as follows:

"1.9 'Company' shall mean (a) prior to January 24, 2000 Cott Beverages USA, Inc., (b) from January 24, 2000 through August 16, 2001 BCB USA Corp. and (c) from August 17, 2001 and thereafter Cott Beverages Inc."

2. Section 1.16 is amended to read as follows:

"1.16 'Employer' shall mean the Company, any Affiliate which adopts the Plan and any other entity which adopts the Plan. Appendix A sets forth the names of the Employers under the Plan."

3. Section 1.35(c) is amended by adding a new paragraph (v) at the end thereof to read:

"(v) If on September 30, 2001 an Employee was employed by Polar Inc. or any of its affiliates, and if on October 1, 2001 such Employee was employed by Northeast Retailer Brands LLC, any period during which such individual was employed by Polar Inc. or any of its affiliates shall be treated as employment as an Employee for purposes of calculating a "Period of Service."

4. Section 1.52(b) is amended by adding a new paragraph (vi) at the end thereof to read:

"(vi) If on September 30, 2001 an Employee was employed by Polar Inc. or any of its affiliates, and if on October 1, 2001 such Employee was employed by Northeast Retailer Brands LLC, any period during which such individual was employed by Polar Inc. or any of its affiliates shall be treated as employment as an Employee for purposes of calculating a "Year of Service."

5. Article II is amended by adding a new Section 2.7 at the end thereof to read:

"2.7 Notwithstanding anything contained herein, if an individual was employed by Polar Inc. or any of its affiliates on September 30, 2001 and was an Employee other than an Employee described in clauses (a)-(c) of
Section 1.14 on October 1, 2001, such individual may become a Participant hereunder on October 1, 2001 or any Entry Date thereafter (or on a subsequent date) in accordance with Section 2.3."

6. Section 3.2 is amended to read as follows:

"3.2 Matching Contributions.

(a) For Plan Years beginning prior to December 31, 2000, for each payroll period, the Employer may make a Matching Contribution to the Plan on behalf of each Participant who makes Salary Deferral Contributions during such payroll period. The amount of such Matching Contribution to be made for a payroll period shall be equal to one hundred percent (100%) of the Salary Deferral Contributions made on behalf of the Participant for that payroll period; provided, however, that in all cases, a Participant's Salary Deferral Contributions for any payroll period in excess of five percent (5%) of such Participant's Compensation for such payroll period shall not be taken into account hereunder. If no Salary Deferral Contributions are made on behalf of a Participant for a payroll period, no Matching Contribution shall be made for such Participant for that payroll period. Any Matching Contributions made hereunder shall be credited to the Participant's Matching Account.

(b) For Plan Year beginning on or after January 1, 2001, for each Plan Year, the Employer may make a Matching Contribution to the Plan on behalf of each Participant who makes Salary Deferral Contributions during such Plan Year. The amount of such Matching Contribution to be made for a Plan Year shall be equal to one hundred percent (100%) of the Salary Deferral Contributions made on behalf of the Participant for

that Plan Year; provided, however, that in all cases, a Participant's Salary Deferral Contributions for any Plan Year in excess of five percent (5%) of such Participant's Compensation for such Plan Year shall not be taken into account hereunder. Any Matching Contributions made hereunder shall be credited to the Participant's Matching Account."

7. Section 4.3 is amended by adding a new subparagraph (v) at the end thereof to read:

"(v) The Actual Deferral Percentage limitations of this Section shall, pursuant to Treas. Reg.' 1.401(k)-1(g)(11), be applied separately to each Employer (after application of the rules of Code Sections 414(b), (c) and (m) to all of such Employers)."

8. Section 4.5 is amended by adding a new subparagraph (v) at the end thereof to read:

"(v) The Actual Contribution Percentage limitations of this
Section shall, pursuant to Treas. Reg.' 1.401(m)-1(f)(14), be applied separately to each Employer (after application of the rules of Code Sections 414(b), (c) and (m) to all of such Employers)."

9. The following new Article XV is added to the Plan immediately following Article XIV to read:

**"ARTICLE XV**
**SPECIAL PROVISIONS PERTAINING**
**TO TRANSFERS FROM THE TBP PLAN**

15.1 Transfer of Account Balances. Amounts transferred from accounts under the Texas Beverage Packers Profit Sharing Plan and Trust (The "TBP Plan") shall be accounted for in accordance with the following rules:

(a) Amounts transferred from the TBP Plan to this Plan consisting of (A) a Participant's "Elective Deferrals" (as such term is defined in the TBP Plan) and any earnings thereon and (B) a Participant's "Qualified Non-Elective Employer Contributions" (as such term is defined in the TBP Plan) and any earnings thereon, shall be credited to such Participant's Salary Deferral Account under this Plan.

(b) Amounts transferred from the TBP Plan to this Plan consisting of (A) a Participant's "Matching Contributions" (as such term is

defined in the TBP Plan) and any earnings thereon, and (B) a Participant's "Discretionary Contributions" (as such term is defined in the TBP Plan) and any earnings thereon, shall be credited to a separate subaccount established under such Participant's Matching Account under this Plan called the "TBP Subaccount". Notwithstanding the provisions of Section 7.3, a Participant shall be fully vested at all times in his TBP Subaccount.

(c) Amounts transferred from the TBP Plan to this Plan consisting of (A) a Participant's "Rollover Contributions" (as such term is defined in the TBP Plan) and any earnings thereon and (B) A Participant's "Transfer Contributions" (as such term is defined in the TBP Plan) and any earnings thereon, shall be credited to such Participant's Rollover Account under this Plan.

15.2 Distributions. Except as provided in Section 15.5, the provisions of Article VII shall apply to any individual who has an account balance transferred from the TBP Plan to this Plan pursuant to this Article XV.

15.3 Benefit Options. All applicable "benefit options" (within the meaning of Section 411(d)(6)(B)(ii) of the Code and the Treasury Regulations thereunder) that are attributable to any amounts transferred from the TBP Plan shall continue to apply with respect to such transferred amounts held under this Plan.

15.4 Restoration of Forfeitures. The provisions of Section 7.3(f), relating to the restoration of forfeitures, shall apply to any individual who: (i) was a participant in the TBP Plan, (ii) terminated employment with Texas Beverage Packers, Inc., Cott Beverages, Inc. or its affiliate prior to the time such individual's accounts under the TBP Plan are transferred to this Plan, (iii) received a distribution of his vested interest under the TBP Plan, (iv) was reemployed by the Employer prior to completing five (5) consecutive One Year Breaks in Service (including, for this purpose, any one year breaks in service that might have occurred under the TBP Plan), and (v) repays the full amount previously distributed to him within five years of the date he is reemployed by the Employer.

15.5 Special Rules Pertaining to Distributions of Amounts Transferred from the TBP Plan to the Plan.

(a) A Participant (i) whose Vested Account Balance exceeds $5,000 and (ii) who had amounts transferred from the TBP Plan to this Plan ("TBP Amounts") pursuant to this Article XV ("TBP Participant") may elect in lieu of a lump sum cash payment to receive payment of his TBP Amounts pursuant to Sections 7.1, 7.2 or 7.3 of the Plan in any of the following forms:

(i) if the Participant is married, a fixed annuity with payments over the lifetime of the Participant with a survivor annuity for the life of the spouse of the Participant equal to fifty percent (50%) of the

amount of the annuity payable during the joint lives of the Participant and his spouse;

(ii) if the Participant is not married, a fixed annuity with payments over the lifetime of the Participant; or

(iii) substantially equal monthly, quarterly, semi annual or annual installment payments over a period not to exceed the joint life expectancy of the Participant and his Beneficiary.

(b) If the TBP Participant shall die after commencing to receive a distribution of his TBP Amounts in one of the forms described in 15.5(a)(iii) but prior to the completion of the distribution of his entire TBP Amounts, the TBP Participant's Beneficiary shall continue to receive a distribution of such TBP Participant's remaining TBP Amounts in the form selected by the TBP Participant.

(c) If the TBP Participant is married and dies prior to commencing to receive payment of his TBP Amounts, then, unless the TBP Participant's surviving spouse elects to receive payment of the TBP Participant's TBP Amounts in a lump sum cash payment or installment payments such surviving spouse shall receive a distribution of the TBP Participant's TBP Amounts in the form of an annuity for the life of the surviving spouse.

(d) Notwithstanding anything contained herein, effective March 1, 2002, in accordance with Treas. Reg.' 1.411(d)-4, Q&A-2(e), the provisions of this Section 15.5 shall no longer apply and a TBP Participant shall be entitled to receive payment of his TBP Amounts only in the form of a lump sum payment pursuant to Sections 7.1, 7.2 and 7.3; provided, however, that a TBP Participant who would be entitled to receive a distribution of his TBP Amounts under the foregoing provisions of this
Section 15.5 but for the provisions of this paragraph (d) may receive (or commence to receive) payment of his TBP Amounts in accordance with the foregoing provisions of this Section 15.5 if such TBP Participant requests such payment prior to June 1, 2002."

10. The following new Appendix A is added to the end of the Plan to read:

**"APPENDIX A**
**NAMES OF EMPLOYERS**

| | |
|---|---|
| Plan Sponsor: | Cott Beverages Inc. (f/k/a BCB USA Corp. f/k/a Cott Beverages USA, Inc.) |
| Employers: | Effective October 19, 2000, Concord Beverage L.P. |

Effective October 1, 2001, Northeast Retailer Brands LLC."

11. Effective Dates.

(a) The amendment made by paragraph 6 shall be effective as of January 1, 2001.

(b) The amendment made by paragraph 1 shall be effective as of August 17, 2001.

(c) The amendments made by paragraphs 2, 3, 4, 5, 7, 8, 9 and 10 shall be effective as of October 1, 2001.

IN WITNESS WHEREOF, Cott Beverages Inc. has executed this Second Amendment to the Plan on this 26th day of October, 2001.

**COTT BEVERAGES INC.**

*By: /s/ Colin D. Walker*
*Title: Senior Vice President*

**Exhibit 4.4**

**THIRD AMENDMENT**
**TO THE RESTATED COTT USA**

401(K) SAVINGS & RETIREMENT PLAN

WHEREAS, the Restated Cott USA 401(k) Savings & Retirement Plan (the "Plan") was adopted on December 22, 2000;

WHEREAS, under Section XIII of the Plan, the Company reserved the right to amend the provisions of the Plan;

WHEREAS, the First Amendment to the Plan was adopted on August 16, 2001;

WHEREAS, the Second Amendment to the Plan was adopted on October 26, 2001;

WHEREAS, it has become necessary to further amend the Plan in order (i) for the Internal Revenue Service to issue a favorable determination letter with respect to the Plan, (ii) to change the method used in performing the nondiscrimination testing under the Plan, (iii) to eliminate installment payments as an optional form of benefit available under the Plan, and (iv) to make certain other changes to the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. The last sentence of Section 1.11 is amended to read as follows:

"Compensation shall include Salary Deferral Contributions hereunder, any pre-tax salary reduction contributions under a Code Section 125 plan and any pre-tax salary reduction amounts under a Code Section 132(f)(4) transportation program, but shall exclude all other employer contributions to this Plan and to any other pension or profit sharing plan, or contributions made under any insurance or welfare plan, reimbursement or other expense allowances, moving expenses, fringe benefits, welfare benefits, car allowances and any employer contributions to the Cott Beverages USA, Inc. Employee Stock Purchase Plan."

2. Section 1.14 is amended to read as follows:

"1.14 'Eligible Employee' shall mean, except as provided herein, any Employee of the Employer who has reached age 18 and has completed a three-month (six-month for individuals hired on or after July 1, 1999) Period of Service (without regard to the number of Hours of Service completed during those months). For purposes of the Plan, an Eligible Employee shall not include: (a) any Employee who is included in a unit covered by a collective bargaining agreement between Employee representatives and the Employer unless the bargaining agreement specifically requires participation in this Plan; (b) any Employee who is a non-resident alien and who receives no earned income from the Employer which constitutes income from U.S. sources; or (c)(x) any individual retained directly or through a third party agency to perform services for the Employer (for either a definite or indefinite duration) in the capacity of a temporary service worker, leased worker, independent contractor, consultant or any similar capacity, or (y) any Leased Employee, to the extent that any such individual is or has been determined by a governmental entity, court, arbitrator, or other third party, to be an employee of the Employer for any purpose, including tax withholding, employment tax, employment law or for purposes of any other employee benefit plan of the Employer."

3. Section 1.15 is amended to read as follows:

"1.15 'Employee' shall mean any individual hired by the Employer as an employee. For purposes of this Plan, an Employee shall not include (i) any individual retained directly or through a third party agency, to perform services for the Employer (for either a definite or indefinite duration) in the capacity of a temporary service worker, leased worker, independent contractor, consultant or any similar capacity, or (ii) any Leased Employee."

4. Clause (c) of the second paragraph of Section 1.23 is amended to read as follows:

"(c) 'Adjusted Compensation' shall include Salary Deferral Contributions, any pre-tax salary reduction contributions under a Code Section 125 plan and any pre-tax salary reduction amounts under a Code Section 132(f)(4) transportation program."

5. The third paragraph of Section 1.23 is deleted in its entirety.

6. Section 1.35(c) is amended by adding the following new paragraph (vi) at the end thereof to read:

"(vi) If an individual was an Employee on the date that Texas Beverage Packers, Inc. was acquired by the Company, any period during which a Employee was employed by Texas Beverage Packers, Inc. prior to the date on which Texas Beverage Packers, Inc. was acquired by the Company shall be treated as employment for purposes of calculating a 'Period of Service'."

7. Section 1.52(b) is amended by adding the following new paragraph (vii) at the end thereof to read:

"(vii) If an individual was an Employee on the date that Texas Beverage Packers, Inc. was acquired by the Company, any period during which an Employee was employed by Texas Beverage Packers, Inc. prior to the date on which Texas Beverage Packers, Inc. was acquired by the Company shall be treated as employment for purposes of calculating a 'Year of Service'."

8. Article I is amended by adding the following new Section 1.53 at the end thereof to read:

"1.53 'Leased Employee' shall mean any individual who is not an Employee and who provides services to the Employer if (i) such services are provided pursuant to an agreement between the Employer and a leasing organization; (ii) such individual has performed services for the Employer on a substantially full time basis for a period of at least one year; and (iii) such services are performed under the primary direction and control by the Employer."

9. The third sentence of Section 3.1(c) is amended to read as follows:

"A Participant may recommence Salary Deferral Contributions to the Plan, effective as of any subsequent Entry Date, in the manner prescribed by the Committee."

10. Section 4.3(a) is amended to read as follows:

"(a) Average Actual Deferral Percentage. The Average Actual Deferral Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year must satisfy one of the following tests:

(i) The Average Actual Deferral Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Deferral Percentage for the Plan Year for Eligible Employees who are Nonhighly Compensated Employees for such Plan Year multiplied by 1.25; or

(ii) The excess of the Average Actual Deferral Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year over the Average Actual Deferral Percentage for the Plan Year for Eligible Employees who are Nonhighly Compensated Employees for such Plan Year shall not exceed 2 percentage points, and the Average Actual Deferral Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Deferral Percentage for the Plan Year for

Eligible Employees who are Nonhighly Compensated Employees for such Plan Year multiplied by 2."

11. The last sentence of Section 4.3(b)(iii) is amended to read as follows:

"For purposes of this Section, Adjusted Compensation shall include Salary Deferral Contributions, any pre-tax salary reduction contributions under a Code Section 125 plan and any pre-tax salary reduction amounts under a Code Section 132(f)(4) transportation program."

12. The first sentence of Section 4.4(a) is amended to read as follows:

"Notwithstanding any other provision of the Plan, Excess Salary Deferral Contributions and income or loss allocable thereto shall be distributed to those Participants on whose behalf such Salary Deferral Contributions were made for a Plan Year, using the "dollar leveling method" starting with the Highly Compensated Employee with the greatest dollar amount of Salary Deferral Contributions, and other contributions treated as Salary Deferral Contributions for the Plan Year, until the amount of Excess Contributions has been accounted for, in accordance with the provisions of Section 401(k)(8)(C) of the Code."

13. Section 4.5(a) is amended to read as follows:

"(a) Average Actual Contribution Percentage. The Average Actual Contribution Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year must satisfy one of the following tests:

(i) The Average Actual Contribution Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Contribution Percentage for the Plan Year for Eligible Employees who are Nonhighly Compensated Employees for such Plan Year multiplied by 1.25; or

(ii) The excess of the Average Actual Contribution Percentage for a Plan Year for Eligible Employees who are Highly Compensated Employees for the Plan Year over the Average Actual Contribution Percentage for the Plan Year for Eligible Employees who are Nonhighly Compensated Employees for such Plan Year shall not exceed 2 percentage points, and the Average Actual Contribution Percentage for Eligible Employees who are Highly Compensated Employees for the Plan Year shall not exceed the Average Actual Contribution Percentage for the Plan Year for Eligible Employees who are Nonhighly Compensated Employees for such Plan Year multiplied by 2."

14. The last sentence of Section 4.5(b)(iii) is amended to read as follows:

"For purposes of this Section, Adjusted Compensation shall include Salary Deferral Contributions, any pre-tax salary reduction contributions under a Code Section 125 plan and any pre-tax salary reduction amounts under a Code Section 132(f)(4) transportation program."

15. The first sentence of Section 4.6(a) is amended to read a follows:

"Notwithstanding any other provision of the Plan, Excess Matching Contributions and income or loss allocable thereto shall either be forfeited, if forfeitable under the provisions of Section 7.3, or distributed to those Participants on whose behalf such Matching Contributions were made for a Plan Year using the "dollar leveling method" starting with the Highly Compensated Employee with the greatest dollar amount of Matching Contributions, and other contributions treated as Matching Contributions, for the Plan Year and continuing until the amount of Excess Aggregate Contributions has been accounted for, in accordance with the provisions of Section 401(m)(6)(C) of the Code."

16. Clause (iii) of Section 4.7(d) is amended to read as follows:

"(iii) effective January 1, 1998, 'Adjusted Compensation' shall include Salary Deferral Contributions, any pre-tax salary reduction contributions under a Code Section 125 plan and any pre-tax salary reduction amounts under a Code Section 132(f)(4) transportation program."

17. Section 7.1(e) is amended to read as follows:

"(e) (i) Notwithstanding paragraphs (a) and (b) of this Section 7.1, any Participant who ceases to be an Employee on account of his Retirement or Disability and whose Account Balance exceeds $3,500 (effective January 1, 1998, $5,000) may elect, in lieu of a lump sum cash payment, to receive his distribution in the form of substantially equal monthly installments over a period not to exceed the shorter of fifteen years or the Participant's life expectancy.

(ii) Notwithstanding anything contained in paragraph (e)(i) of this Section 7.1, effective August 1, 2002, in accordance with Treas. Reg.' 1.411 (d)-4, Q&A-2(e), the provisions of Section 7.1(e)(i) shall no longer apply and a Participant shall be entitled to receive payment of his Account Balance only in the form of a lump sum payment; provided, however, that a Participant who would be entitled to receive a distribution of his Account Balance under the provisions of Section 7.1(e)(i) but for the provisions of this
Section 7.1(e)(ii) may receive (or commence to receive) payment of his Account Balance in accordance with the provisions of Section 7.1(e)(i) if such Participant requests such payment prior to November 1, 2002."

18. Section 7.3(d) is amended to read a follows:

"(d) (i) Notwithstanding anything contained in this Section 7.3, if a Participant whose Vested Account Balance exceeds $3,500 (effective January 1, 1998, $5,000) ceases to be an Employee on account of his Termination of Employment, such Participant may elect, in lieu of a lump sum cash payment, to receive his Vested Account Balance in the form of substantially equal monthly installments over a period not to exceed the shorter of fifteen years or the Participant's life expectancy.

(ii) Notwithstanding anything contained in paragraph (d)(i) of this Section 7.3, effective August 1, 2002, in accordance with Treas. Reg.' 1.411(d)-4, Q&A-2(e), the provisions of Section 7.3(d)(i) shall no longer apply and a Participant shall be entitled to receive payment of his Account Balance only in the form of a lump sum payment; provided, however, that a Participant who would be entitled to receive a distribution of his Account Balance under the provisions of Section 7.3(d)(i) but for the provisions of this Section 7.3(d)(ii) may receive (or commence to receive) payment of his Account Balance in accordance with the provisions of Section 7.3(d)(i) if such Participant requests such payment prior to November 1, 2002."

19. Section 7.6(a) is amended to read as follows:

"(a) Once during each calendar quarter, a Participant may withdraw all or a portion of his Rollover Contributions. The request for such withdrawal must be submitted in writing to the Committee. Any such withdrawal shall be made from the Investment Fund(s), consisting of Rollover Contributions, on a pro rata basis."

20. Section 9.7 is amended by adding the following new paragraph (e) to the end thereof to read:

"(e) Loan repayments may be suspended under the Plan to the extent permitted under Code Section 414(u)."

21. Effective Dates.

(a) The amendment made by paragraphs 2, 3, 5, 8, 12, 15 and 20 shall be effective as of January 1, 1997.

(b) The amendment made by paragraphs 1, 4, 11, 14 and 16 shall be effective as of January 1, 1998.

(c) The amendments made by paragraphs 10 and 13 shall be effective as of January 1, 2001.

(d) The amendments made by paragraphs 6 and 7 shall be effective as of January 1, 2002.

(e) The amendments made by paragraphs 9 and 19 shall be effective as of April 1, 2002.

(f) The amendments made by paragraphs 17 and 18 shall be effective as of August 1, 2002.

IN WITNESS WHEREOF, Cott Beverages Inc. has executed this Third Amendment to the Plan on this 23rd day of July, 2002.

**COTT BEVERAGES INC.**

*By: /s/ Colin D. Walker*
*Title: Senior Vice President*

**Exhibit 4.5**

**FOURTH AMENDMENT**
**TO THE**
**RESTATED COTT USA 401(k)**
**SAVINGS & RETIREMENT PLAN**

WHEREAS, the Restated Cott USA 401(k) Savings & Retirement Plan (the "Plan") was adopted on December 22, 2000;

WHEREAS, under Article XIII of the Plan, the Company reserved the right to amend the provisions of the Plan;

WHEREAS, the First Amendment to the Plan was adopted on August 16, 2001;

WHEREAS, the Second Amendment to the Plan was adopted on October 26, 2001;

WHEREAS, the Third Amendment to the Plan was adopted on July 23, 2002; and

WHEREAS, it has become necessary to amend the Plan in order to (i) incorporate certain provisions intended to be good faith compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and (ii) provide for Premium Beverage Packers, Inc. to become a participating employer under the Plan and add certain provisions pertaining to employees of Premium Beverage Packers, Inc. and (iii) make certain other design changes to the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Section 1.1 is amended to read as follows:

"1.1 'Account Balance' shall mean the sum of the account balances in the Participant's Salary Deferral Account, Matching Account, Employer Account, Catch-Up Account and Rollover Account."

2. Section 1.47 is amended to read as follows:

"1.47 'Termination of Employment' shall mean the voluntary severance from employment of an Employee, or the involuntary severance from employment of an Employee by the Employer, other than severance from employment by reason of death, Disability or Retirement under this Plan. For purposes of this Plan, an Employee shall not be considered to have a Termination of Employment until such Employee is no longer employed by the Employer or any Affiliate."

3. Section 1.52(b) is amended by adding a new paragraph (viii) at the end thereof to read:

"(viii) If on June 26, 2002, an Employee was employed by Premium Beverage Packers, Inc., any period during which such individual was employed by Premium Beverage Packers, Inc. prior to such date shall be treated as employment as an Employee for purposes of calculating a "Year of Service."

4. Article I is amended by adding new Sections 1.54 and 1.55 at the end to read:

"1.54 'Catch-Up Contribution' shall mean the amount contributed to the Plan in accordance with Section 3.8.

1.55 'Catch-Up Account' shall mean the separate account of a Participant established and maintained in accordance with Section 3.5."

5. Article II is amended by adding a new Section 2.8 at the end thereof to read:

"2.8 Notwithstanding anything contained herein, if an individual was employed by Premium Beverage Packers, Inc. on December 31, 2002 and is an Employee other than an Employee described in clauses (a)-(c) of Section 1.14 on January 1, 2003, such individual shall be eligible to participate and may become a Participant hereunder on January 1, 2003 or any Entry Date thereafter (or on a subsequent date) in accordance with Section 2.3."

6. Section 3.1(a)(i) is amended by adding the following new sentence at the end thereof to read:

"The fifteen percent (15%) limitation described above shall not apply to any Catch-Up Contributions made pursuant to Section 3.8."

7. Section 3.4(a) is amended to read as follows:

"(a) The term "Rollover Contribution" shall mean:

(i) a distribution from a plan or annuity contract described in Sections 401(a), 403(a), 403(b) or 457(b) of the Code; or

(ii) a distribution from an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code; provided, however, a Rollover Contribution shall not include any distribution from such an arrangement which is not includible in gross income."

8. The first sentence of Section 3.5 is amended to read as follows:

"The Committee shall maintain a separate Salary Deferral Account, Matching Account, Employer Account, Rollover Account and Catch-Up Account in the name of each Participant."

9. Article III is amended by adding the following new Section 3.8 at the end thereof to read.

"3.8 Catch-Up Contributions. Effective July 1, 2002, each Eligible Employee who is eligible to make Salary Deferral Contributions to the Plan pursuant to Section 3.1 who has attained age 50 before the end of a Plan Year shall be eligible to make a Catch-Up Contribution in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such Catch-Up Contributions shall not be taken into account for purposes of the limitations provided in Sections 4.1 and 4.7 of the Plan. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Sections 401(k)(3), 401(k)(11),
401(k)(12), 410(b) or 416 of the Code, as applicable, by reason of the making of such Catch-Up Contributions. Any Catch-Up Contributions made under the Plan on behalf of a Participant shall be credited to such Participant's Catch-Up Account. A Participant shall be fully vested at all times in his Catch-Up Account."

10. Section 4.1 is amended by adding the following new sentence at the end thereof to read:

"The maximum dollar amount limitation described in this Section 4.1 shall not apply to any Catch-Up Contributions made pursuant to Section 3.8."

11. Section 4.3(c)(iii) is amended to read as follows:

"(iii) The Committee may in its sole discretion reduce or restrict Highly Compensated Employees' deferral elections made pursuant to Section 3.1 by the amount necessary to satisfy one of the tests set forth in
Section 4.3(a)."

12. Section 4.5(d) shall be amended by adding a new subparagraph (iv) at the end thereof to read:

"(iv) For Plan Years beginning on or after January 1, 2002, the foregoing provisions of this Section 4.5(d) shall no longer apply."

13. Section 4.7(a) is amended to read as follows:

"(a) The Annual Additions credited to a Participant under the Plan for any Limitation Year shall not exceed the lesser of (i) 25 percent of the Participant's Adjusted Compensation or (ii) $30,000 (as adjusted by the Adjustment Factor). Effective January 1, 2002, except to the extent permitted under Section 3.8 and Section 414(v) of the Code, the Annual Additions credited to a Participant under this Plan for any Limitation Year shall not exceed the lesser of (i) 100 percent of the Participant's Adjusted Compensation or (ii) $40,000 (as adjusted by the Adjustment Factor)."

14. Section 4.8 is amended to read as follows:

"4.8 Limit on Compensation. For purposes of this Plan, Compensation, ADP Compensation and ACP Compensation of a Participant for a Plan Year in excess of $160,000 (as adjusted by the Adjustment Factor under Section 401(a)(17)(B) of the Code) shall not be taken into account. Effective January 1, 2002, for purposes of this Plan, Compensation, ADP Compensation and ACP Compensation of a Participant for a Plan Year in excess of $200,000 (as adjusted by the Adjustment Factor under Section 401(a)(17)(B) of the Code) shall not be taken into account."

15. The first sentence of Section 6.2 is amended to read as follows:

"The Trustee shall allocate as of such Valuation Date a part of each such net increase or net decrease for each Fund to the Salary Deferral Account, Matching Account, Catch-Up Account, Employer Account and Rollover Account

of each Participant in the ratio that the balance in each such account bears to all such accounts invested in such Fund."

16. Section 7.3(a)(i) is amended to read as follows:

"(a) (i) A Participant who ceases to be an Employee on account of his Termination of Employment shall be entitled to receive 100% of the balance in his Salary Deferral Account, Rollover Account and Catch-Up Account, plus the Vested Percentage of the balance in his Matching Account and Employer Account. (For purposes of this Article VII, the balance in a Participant's Salary Deferral Account, Rollover Account and Catch-Up Account and the Vested Percentage of the balance in such Participant's Matching Account and Employer Account shall be referred to as the 'Vested Account Balance'.)"

17. The last clause of Section 7.3(a)(ii) is amended to read as follows:

"; provided, however, that (a) a Participant who was a participant in the CBI Holdings Inc. Employees' Savings Incentive Plan on July 19, 2001 and was an Employee on July 20, 2001 and (b) a Participant who was a participant in the Premium Beverage Packers, Inc. 401(k) Plan on December 31, 2002 and is a Participant in the Plan on January 1, 2003, shall be one-hundred percent (100%) vested in his Matching Account and Employer Account at all times."

18. Section 7.4 is amended by deleting paragraph (d) in its entirety.

19. The first sentence of Section 7.5 is amended to read as follows:

"A Participant shall be entitled to receive a hardship distribution of the total amount of the Participant's Salary Deferral Account and Catch-Up Account (excluding the amount of any post-December 31, 1998 income attributable to Salary Deferral Contributions and Catch-Up Contributions), if the distribution is necessary to defray an immediate and severe financial hardship incurred by the Participant."

20. Section 7.5(b) is amended to read as follows:

"(b) Distribution Necessary to Satisfy the Financial Need. A hardship withdrawal shall be considered to be necessary to meet such an immediate and heavy financial need only under the following circumstances:

(i) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (that cannot be satisfied by distributions and/or non-taxable loans of the types described in subparagraph (ii) below). This distribution may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.

(ii) The Participant has obtained (or requested) all distributions (including distributions after attaining age 59-1/2 and distributions of Rollover Contributions), other than hardship distributions, and all non-taxable loans currently available under all plans maintained by the Employer or any Affiliate.

In the event of any hardship distribution to a Participant hereunder, such Participant may not make Salary Deferral Contributions or Catch-Up Contributions (or comparable contributions) to the Plan or to any other deferred compensation plans maintained by the Employer or any Affiliate during the 12 calendar months immediately following the date of such hardship withdrawal. Effective January 1, 2002, the 12 calendar month suspension provided for in the preceding sentence shall be 6 calendar months. The Participant also may not make Salary Deferral Contributions (or comparable contributions) to the Plan or to any other tax-qualified retirement plan maintained by the Employer or any Affiliate, for the calendar year immediately following the calendar year of the hardship withdrawal, in excess of the applicable limit under Section 402(g) of the Code for such next calendar year less the amount of such Participant's Salary Deferral Contributions (or comparable contributions) made on his behalf to the Plan or to any other tax-qualified retirement plan maintained by the Employer or any Affiliate for the calendar year of the hardship distribution. Effective January 1, 2002, the post-hardship contribution limit provided for in the preceding sentence shall no longer apply.

The foregoing provisions shall be applied on a uniform and nondiscriminatory basis and shall be subject to such changes as the Committee may deem to be necessary at any time to comply with Treasury Regulations or other rules issued under Section 401(k) of the Code."

21. Sections 7.8(b)(i) and (ii) are amended to read as follows:

"(i) 'Eligible Rollover Distribution' shall mean any distribution of all or any portion of the Participant's Vested Account Balance, except that an Eligible Rollover Distribution does not include:

(A) 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 Participant or the joint lives (or joint life

expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more.

(B) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

(C) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan as described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(D) Effective January 1, 2000, any distribution of a Participant's Salary Deferral Contributions made pursuant to Section 7.5 on account of hardship and, effective January 1, 2002, any distribution of a Participant's Vested Account Balance made pursuant to Section 7.5 on account of hardship.

(ii) 'Eligible Retirement Plan' shall mean an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Participant's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan shall mean only an individual retirement account or individual retirement annuity. Effective for distributions made on or after January 1, 2002 'Eligible Retirement Plan' shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This 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)."

22. Section 10.2(g) is amended to read as follows:

"(g) 'Top-Heavy Plan' shall mean with respect to any Plan Year, the Plan if, as of the Determination Date, the Plan is not part of an Aggregation Group and the aggregate of the accounts under the Plan of all Key Employees exceeds sixty percent (60%) of the aggregate of the accounts under the Plan of all employees, or if, as of the Determination Date, the Plan is part of a Top-Heavy Group. In determining the amount of the account or the cumulative accrued benefit of any employee for purposes of determining if the Plan is a Top-Heavy Plan, including the determination of whether the Aggregation Group is a Top-Heavy Group the following rules shall apply:

(i) The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the employee under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Code during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting '5-year period' for '1-year period.'

(ii) The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account."

23. Section 10.3 is amended by adding the following new sentence at the end thereof to read:

"In determining whether the Employer has made any contribution required under this Section 10.3, any Matching Contributions made by the Employer under Section 3.2 (or any similar contributions made under any other plan maintained by the Employer or an Affiliate) shall be taken into account."

24. Effective Dates.

(a) The amendment made by paragraph 11 shall be effective as of January 1, 2002.

(b) Except otherwise provided, the amendments made by paragraphs 1, 2, 4, 6 through 10, 12 through 16 and 18 through 23 shall be effective as of January 1, 2002. The amendments made by such paragraphs shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of the amendment. The amendments made by such paragraphs are adopted to reflect certain provisions of EGTRRA and are intended as good faith compliance with the requirements of EGTRRA and guidance issued thereunder.

(c) The amendments made by paragraphs 3, 5 and 17 shall be effective January 1, 2003.

IN WITNESS WHEREOF, Cott Beverages Inc. has executed this Fourth Amendment to the Plan on this 11th day of November, 2002.

*ATTEST:*

*/s/ Kim Helton*

*Cott Beverages Inc.*

*By: /s/ Colin D. Walker*

*Title: Senior Vice President*

**Exhibit 4.6**

**FIFTH AMENDMENT**
**TO THE**
**RESTATED COTT USA 401(k)**
**SAVINGS & RETIREMENT PLAN**

WHEREAS, the Restated Cott USA 401(k) Savings & Retirement Plan (the "Plan") was adopted on December 22, 2000;

WHEREAS, under Article XIII of the Plan, the Company reserved the right to amend the provisions of the Plan;

WHEREAS, the First Amendment to the Plan was adopted on August 16, 2001;

WHEREAS, the Second Amendment to the Plan was adopted on October 26, 2001;

WHEREAS, the Third Amendment to the Plan was adopted on July 23, 2002;

WHEREAS, the Fourth Amendment to the Plan was adopted on November 13, 2002; and

WHEREAS, it has become necessary to amend the Plan in order to provide for common stock of Cott Corporation as an investment option under the Plan.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Section 5.1(a) is amended to read as follows:

"(a) Each Participant's Accounts under the Plan shall be invested in the Investment Funds in the proportions and amounts as determined by the Participant pursuant to Sections 5.2 and 5.3."

2. Section 5.1(b) is amended by adding the following new sentence at the end thereof to read:

"Effective September 1, 2003, the provisions of this paragraph (b) shall no longer apply."

3. The first sentence of Section 5.2 (a) is amended to read as follows:

"Except as provided in Section 5.3, each Participant shall elect to invest his Accounts in the Investment Funds maintained by the Trustee under Section 12.2 in such proportions as the Participant shall indicate, up to the sum of the account balances in the Accounts."

4. Article V is amended by adding the following new Sections 5.3 and 5.4 at the end thereof to read:

"5.3 Investments in Company Stock. Notwithstanding any other provision of the Plan:

(a) a Participant may not invest in excess of twenty-five percent (25%) of the Salary Deferral Contributions and Matching Contributions made on his behalf for any payroll period in Company Stock;

(b) a Participant may not invest in excess of twenty-five percent (25%) of any Rollover Contributions made on his behalf in Company Stock;

(c) a Participant may not redirect any amounts in his Account Balance into Company Stock which would result in the portion of such Participant's Account Balance invested in Company Stock at the time of the redirection to exceed twenty-five percent (25%) of such Participant's total Account Balance at the time of such redirection; and

(d) a Participant may redirect any amounts in his Account Balance which are invested in Company Stock into any of the other Investments Funds under the Plan.

The provisions of this Section 5.3 shall be effective September 1, 2003.

5.4 Special Rules Pertaining to the Voting and Tendering of Company Stock. Each Participant who has invested a portion of his Account Balance in Company Stock shall be entitled to direct the Trustee as to the manner in which to vote or tender the shares of Company Stock owned by the Participant as of the record date of such vote. The Committee shall supply to each Participant entitled to direct such vote or tender any proxy statements and other materials supplied to non- Participant shareholders of Cott Corporation with respect to such vote or tender of such stock."

5. Section 7.7(a) is amended to read as follows:

"(a) A Participant may take a withdrawal of all or a portion of his Vested Account Balance at any time after attaining age 59-1/2."

6. Section 9.2(a)(i) is amended to read as follows:

"(i) 50 percent of the Participant's Vested Account Balance (as defined in Section 7.3(a)) or"

7. The foregoing amendments shall be effective September 1, 2003.

IN WITNESS WHEREOF, Cott Beverages Inc. has executed this Fifth Amendment to the Plan on this 21st day of August, 2003.

**Cott Beverages Inc.**

*By: /s/ Colin D. Walker*
*---------------------------------------*

*Title: Senior Vice President*
*---------------------------------*

**EXHIBIT 4.7**

**WACHOVIA BANK, NATIONAL ASSOCIATION**
**DEFINED CONTRIBUTION MASTER PLAN AND TRUST AGREEMENT**

**Defined Contribution Plan**

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# WACHOVIA BANK, NATIONAL ASSOCIATION
# DEFINED CONTRIBUTION MASTER PLAN AND TRUST AGREEMENT
# BASIC PLAN DOCUMENT # 01

Wachovia Bank, National Association, in its capacity as Prototype Plan Sponsor, establishes this Prototype Plan intended to conform to and qualify under Section 401 and Section 501 of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan and Trust under this Prototype Plan by executing an Adoption Agreement. If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee whose employment with the Employer terminates on or after the restated Effective Date of the Plan. If an Employee's employment with the Employer terminates prior to the restated Effective Date, that Employee is entitled to benefits under the Plan as the Plan existed on the date of the Employee's termination of employment.

## ARTICLE I
## DEFINITIONS

1.01 "ACCOUNT" means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant.

1.02 "ACCOUNT BALANCE" OR "ACCRUED BENEFIT" means the amount standing in a Participant's Account(s) as of any date derived from Employer contributions and from Participant contributions, if any.

1.03 "ACCOUNTING DATE" means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.04 "ADOPTION AGREEMENT" means the document executed by each Employer adopting this Plan. References to Adoption Agreement within this basic plan document are to the Adoption Agreement as completed and executed by a particular Employer unless the context clearly indicates otherwise. An adopting Employer's Adoption Agreement and this basic plan document together constitute a single Plan and Trust of the Employer. Each elective provision of the Adoption Agreement corresponds (by its parenthetical section reference) to the section of the Plan which grants the election. Each Adoption Agreement offered under this Plan is either a Nonstandardized Plan or a Standardized Plan, as identified in that Adoption Agreement. The provisions of this Plan apply in the same manner to Nonstandardized Plans and to Standardized Plans unless otherwise specified. All section references within an Adoption Agreement are Adoption Agreement section references unless the context clearly indicates otherwise.

1.05 "BENEFICIARY" means a person designated by a Participant or by the Plan who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Trustee has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.06 "CODE" means the Internal Revenue Code of 1986, as amended and includes applicable Treasury regulations.

1.07 "COMPENSATION" means a Participant's W-2 wages, Code Section 3401 (a) wages, or 415 compensation except, in the case of a Self-Employed Individual, Compensation means Earned Income as defined in Section 1.09. The Employer in its Adoption Agreement must specify which definition of Compensation (Section 1.07(A), (B) or (C)) applies under the Plan and any modifications thereto, for purposes of contribution allocations under Article III.

Any reference in the Plan to Compensation is a reference to the definition in this Section 1.07, unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. The Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306. Compensation, unless otherwise specified in the Adoption Agreement, does not include any form of remuneration (including severance pay and vacation pay) paid to the Participant after the Participant incurs a Separation from Service.

(A) W-2 WAGES. W-2 wages means wages for federal income tax withholding purposes, as defined under Code Section 3401 (a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code Sections 6041, 6051 and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(B) CODE SECTION 3401(a) WAGES. Code Section 3401(a) wages means wages within the meaning of Code Section 3401 (a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(C) CODE SECTION 415 COMPENSATION (CURRENT INCOME DEFINITION). Code Section 415 compensation means the Employee's wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services

on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. Section 1.62-2(c)).

Code Section 415 compensation does not include:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the Employee for the taxable year in which contributed, Employer contributions on behalf of an Employee to a Simplified Employee Pension Plan to the extent such contributions are excludable from the Employee's gross income, and any distributions from a plan of deferred compensation, regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a stock option described in Part II, Subchapter D, Chapter 1, Subtitle A of the Code.

(d) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee), or contributions made by an Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are excludible from the gross income of the Employee).

(D) ELECTIVE CONTRIBUTIONS. Compensation under Sections 1.07(A), 1.07(B) and 1.07(C) includes Elective Contributions unless the Employer in its Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code Sections 125,
132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code Section 457 plan. Notwithstanding the preceding sentence, amounts described in Section 132(f)(4) are not Elective Contributions until Plan Years beginning on or after January 1, 2001, unless the Plan Administrator operationally has included such amounts effective as of an earlier Plan Year beginning no earlier than January 1, 1998.

(E) COMPENSATION DOLLAR LIMITATION. For any Plan Year, the Plan Administrator in allocating contributions under Article III or in testing the Plan for nondiscrimination, cannot take into account more than $150,000 (or such larger or smaller amount as the Commissioner of Internal Revenue may prescribe) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 401(k) arrangement may make elective deferrals with respect to Compensation which exceeds the Plan Year Compensation limitation, provided such deferrals otherwise satisfy Code Section 402(g) and other applicable limitations.

(F) NONDISCRIMINATION. For purposes of determining whether the Plan discriminates in favor of Highly Compensated Employees, Compensation means Compensation as defined in this Section 1.07, except: (1) the Employer annually may elect operationally to include or to exclude Elective Contributions, irrespective of the Employer's election in its Adoption Agreement regarding Elective Contributions; and (2) the Plan Administrator will disregard any elections made in the "modifications to Compensation definition" section of Adoption Agreement Section 1.07. The Employer's election described in clause (1) must be consistent and uniform with respect to all Employees and all plans of the Employer for any particular Plan Year. The Employer, irrespective of clause
(2), may elect to exclude from this nondiscrimination definition of Compensation any items of Compensation excludible under Code Section 414(s) and the applicable Treasury regulations, provided such adjusted definition conforms to the nondiscrimination requirements of those regulations. Furthermore, for nondiscrimination purposes, including the computation of an Employee's actual deferral percentage ("ADP") or actual contribution percentage ("ACP"), the Plan Administrator may limit Compensation taken into account to Compensation received only for the portion of the Plan Year in which the Employee was a Participant and only for the portion of the Plan Year in which the Plan or the 401 (k) arrangement was in effect.

1.08 "DISABILITY" means the Participant, because of a physical or mental disability, will be unable to perform the duties of his/her customary position of employment (or is unable to engage in any substantial gainful activity) for an indefinite period which the Plan Administrator considers will be of long continued duration. A Participant also is disabled if he/she incurs the permanent loss or loss of use of a member or function of the body, or is permanently disfigured, and incurs a Separation from Service. A Participant is disabled on the date the Plan Administrator determines the Participant satisfies the definition of Disability. The Plan Administrator may require a Participant to submit to a physical examination in order to confirm Disability. The Plan Administrator will apply the provisions of this Section 1.08 in a nondiscriminatory, consistent and uniform manner. The Employer may provide an alternative definition of Disability in an Addendum to its Adoption Agreement.

1.09 "EARNED INCOME" means net earnings from self-employment in the trade or business with respect to which the Employer has established the Plan, provided personal services of the Self-Employed Individual are a material income producing factor. The Plan Administrator will determine net earnings without regard to items excluded from gross income and the deductions allocable to those items. The Plan Administrator will determine net earnings after the deduction allowed to the Self-Employed Individual for all contributions made by the Employer to a qualified plan and after the deduction allowed to the Self-Employed Individual under Code Section 164(f) for self-employment

taxes.

**Defined Contribution Plan**

1.10 "EFFECTIVE DATE" of this Plan is the date specified in the Adoption Agreement unless otherwise for a specified purpose provided within this basic plan document or within (as part of the Adoption Agreement) a Participation Agreement, an Addendum, or within Appendices A or B.

1.11 "EMPLOYEE" means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of the Employer for purposes of the Employer's qualified plan. The Employer in its Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "excluded Employee").

(A) COLLECTIVE BARGAINING EMPLOYEES. If the Employer elects in its Adoption Agreement to exclude collective bargaining Employees from eligibility to participate, the exclusion applies to any Employee included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if: (1) retirement benefits were the subject of good faith bargaining; and (2) two percent or less of the employees covered by the agreement are "professionals" as defined in Treas. Reg. Section 1.410(b)-9, unless the collective bargaining agreement requires the Employee to be included within the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

(B) NONRESIDENT ALIENS. If the Employer elects in its Adoption Agreement to exclude nonresident aliens from eligibility to participate, the exclusion applies to any nonresident alien Employee who does not receive any earned income, as defined in Code Section 911(d)(2), from the Employer which constitutes United States source income, as defined in Code Section 861(a)(3).

(C) RECLASSIFIED EMPLOYEES. If the Employer elects in its Adoption Agreement to exclude reclassified Employees from eligibility to participate, the exclusion applies to any person the Employer does not treat as an Employee (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code Section 3401 (a), but for whom there is a binding determination the individual is an Employee or a Leased Employee of the Employer.

1.12 "EMPLOYER" means each employer who establishes a Plan under this Prototype Plan by executing an Adoption Agreement and includes to the extent described in Section 1.26 a Related Employer and a Participating Employer. The Employer for purposes of acting as Plan Administrator, making Plan amendments, terminating the Plan or performing other ERISA settlor functions, means the signatory Employer to the Adoption Agreement Execution Page and does not include any Related Employer or Participating Employer.

1.13 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and includes applicable Department of Labor regulations.

1.14 "HIGHLY COMPENSATED EMPLOYEE" means an Employee who:

(a) during the Plan Year or during the preceding Plan Year, is a more than 5% owner of the Employer (applying the constructive ownership rules of Code
Section 318, and applying the principles of Code Section 318, for an unincorporated entity); or

(b) during the preceding Plan Year had Compensation in excess of $80,000 (as adjusted by the Commissioner of Internal Revenue for the relevant year) and:
if the Employer under its Adoption Agreement Appendices A or B, makes the top-paid group election, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

For purposes of this Section 1.14, "Compensation" means Compensation as defined in Section 1.07, except any exclusions from Compensation the Employer elects in Adoption Agreement Section 1.07 do not apply, and Compensation specifically includes Elective Contributions. The Plan Administrator must make the determination of who is a Highly Compensated Employee, including the determinations of the number and identity of the top-paid 20% group, consistent with Code Section 414(q) and regulations issued under that Code section. The Employer in its Adoption Agreement Appendices A or B may make a calendar year data election to determine the Highly Compensated Employees for the Plan Year, as prescribed by Treasury regulations or by other guidance published in the Internal Revenue Bulletin. A calendar year data election must apply to all plans of the Employer which reference the highly compensated employee definition in Code Section 414(q). For purposes of this Section 1.14, if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

1.15 "HOUR OF SERVICE" means:

(a) Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits Hours of Service under this Paragraph (a) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid;

(b) Each Hour of Service for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has

received an award. The Plan Administrator credits Hours of Service under this Paragraph (b) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made; and

(c) Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the

performance of duties during a computation period, such as leave of absence, vacation, holiday, sick leave, illness, incapacity (including disability), layoff, jury duty or military duty. The Plan Administrator will credit no more than 501 Hours of Service under this Paragraph (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). The Plan Administrator credits Hours of Service under this Paragraph (c) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this Paragraph (c).

The Plan Administrator will not credit an Hour of Service under more than one of the above Paragraphs (a), (b) or (c). A computation period for purposes of this Section 1.15 is the Plan Year, Year of Service period, Break in Service period or other period, as determined under the Plan provision for which the Plan Administrator is measuring an Employee's Hours of Service. The Plan Administrator will resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

(A) METHOD OF CREDITING HOURS OF SERVICE. The Employer must elect in its Adoption Agreement the method the Plan Administrator will use in crediting an Employee with Hours of Service and the purpose for which the elected method will apply.

(B) ACTUAL METHOD. Under the Actual Method as determined from records, an Employee receives credit for Hours of Service for hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

(C) EQUIVALENCY METHOD. Under an Equivalency Method, for each equivalency period for which the Plan Administrator would credit the Employee with at least one Hour of Service, the Plan Administrator will credit the Employee with: (i) 10 Hours of Service for a daily equivalency; (ii) 45 Hours of Service for a weekly equivalency; (iii) 95 Hours of Service for a semimonthly payroll period equivalency; and (iv) 190 Hours of Service for a monthly equivalency.

(D) ELAPSED TIME METHOD. Under the Elapsed Time Method, an Employee receives credit for Service for the aggregate of all time periods (regardless of the Employee's actual Hours of Service) commencing with the Employee's Employment Commencement Date, or with his/her Re- employment Commencement Date, and ending on the date a Break in Service begins. An Employee's Employment Commencement Date or his/her Re-employment Commencement Date begins on the first day he/she performs an Hour of Service following employment or re-employment. In applying the Elapsed Time Method, the Plan Administrator will credit an Employee's Service for any Period of Severance of less than 12-consecutive months and will express fractional periods of Service in days.

Under the Elapsed Time Method, a Break in Service is a Period of Severance of at least 12 consecutive months. A Period of Severance is a continuous period of time during which the Employee is not employed by the Employer. The continuous period begins on the date the Employee retires, quits, is discharged, or dies or if earlier, the first 12-month anniversary of the date on which the Employee otherwise is absent from Service for any other reason (including disability, vacation, leave of absence, layoff, etc.). In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date the Employee is otherwise absent from Service does not constitute a Break in Service.

(E) MATERNITY/PATERNITY LEAVE/FAMILY AND MEDICAL LEAVE ACT. Solely for purposes of determining whether an Employee incurs a Break in Service under any provision of this Plan, the Plan Administrator must credit Hours of Service during the Employee's unpaid absence period: (i) due to maternity or paternity leave; or
(ii) as required under the Family and Medical Leave Act. An Employee is on maternity or paternity leave if the Employee's absence is due to the Employee's pregnancy, the birth of the Employee's child, the placement with the Employee of an adopted child, or the care of the Employee's child immediately following the child's birth or placement. The Plan Administrator credits Hours of Service under this Section 1.15 (E) on the basis of the number of Hours of Service for which the Employee normally would receive credit or, if the Plan Administrator cannot determine the number of Hours of Service the Employee would receive credit for, on the basis of 8 hours per day during the absence period. The Plan Administrator will credit only the number (not exceeding 501) of Hours of Service necessary to prevent an Employee's Break in Service. The Plan Administrator credits all Hours of Service described in this Section 1.15(E) to the computation period in which the absence period begins or, if the Employee does not need these Hours of Service to prevent a Break in Service in the computation period in which his/her absence period begins, the Plan Administrator credits these Hours of Service to the immediately following computation period.

(F) QUALIFIED MILITARY SERVICE. Hour of Service also includes any Service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code Section 414(u). The provisions of this
Section 1.15(F) apply beginning December 12, 1994, or if the Employer's Plan is effective after that date, as of the Plan's Effective Date.

1.16 "LEASED EMPLOYEE" means an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code Section
144(a)(3)) on a substantially full time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code Section 414(n)(2). Except as described in Section 1.16(A), a Leased Employee is an Employee for purposes of the Plan. If a Leased Employee is an Employee, "Compensation" includes Compensation from the leasing organization which is attributable to services performed for the Employer.

(A) SAFE HARBOR PLAN EXCEPTION. A Leased Employee is not an Employee if the leasing organization covers the employee in a safe harbor plan and, prior to application of this safe harbor plan exception, 20% or less of the Employer's Employees (other than Highly Compensated Employees) are Leased Employees. A safe harbor plan is a money purchase pension plan providing immediate participation, full and immediate vesting, and a nonintegrated contribution formula equal to at least 10% of the employee's compensation, without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the 10% contribution on the basis of compensation as defined in Code
Section 415(c)(3) including Elective Contributions.

(B) OTHER REQUIREMENTS. The Plan Administrator must apply this Section 1.16 in a manner consistent with Code Sections 414(n) and 414(o) and the regulations issued under those Code sections. If a Participant is a Leased Employee covered by a plan maintained by the leasing organization, the Plan Administrator will determine the allocation of Employer contributions and Participant forfeitures on behalf of the Participant under the Employer's Plan without taking into account the Leased Employee's allocation, if any, under the leasing organization's plan.

1.17 "NONHIGHLY COMPENSATED EMPLOYEE" means any Employee who is not a Highly Compensated Employee.

1.18 "NONTRANSFERABLE ANNUITY" means an annuity contract which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Plan distributes an annuity contract, the contract must be a Nontransferable Annuity.

1.19 "PAIRED PLANS" means the Employer has adopted two Standardized Plan Adoption Agreements offered with this Prototype Plan, one Adoption Agreement being a Paired Profit Sharing Plan and one Adoption Agreement being a Paired Pension Plan. A Paired Profit Sharing Plan may include a 401(k) arrangement. A Paired Pension Plan must be a money purchase pension plan, defined benefit plan or a target benefit pension plan. Paired Plans must be the subject of a favorable opinion letter issued by the National Office of the Internal Revenue Service. If an Employer adopts paired plans, only one of the plans may provide for permitted disparity.

1.20 "PARTICIPANT" means an eligible Employee who becomes a Participant in accordance with the provisions of Section 2.01. An eligible Employee means an Employee who is not an excluded Employee under Adoption Agreement Section 1.11.

1.21 "PLAN" means the retirement plan established or continued by the Employer in the form of this Prototype Plan, including the Adoption Agreement under which the Employer has elected to establish this Plan. The Employer must designate the name of the Plan in its Adoption Agreement. An Employer may execute more than one Adoption Agreement offered under this Plan, each of which will constitute a separate Plan and Trust established or continued by that Employer. The Plan and the Trust created by each adopting Employer is a separate Plan and a separate Trust, independent from the plan and the trust of any other employer adopting this Prototype Plan. All section references within this basic plan document are Plan section references unless the context clearly indicates otherwise. The Plan includes any Addendum or Appendix permitted by the basic plan document or by the Employer's Adoption Agreement and which the Employer attaches to its Adoption Agreement. An Addendum must correspond by section reference to the section of the basic plan document or Adoption Agreement permitting the Addendum.

1.22 "PLAN ADMINISTRATOR" means the Employer unless the Employer designates another person or persons to hold the position of Plan Administrator. Any person(s) the Employer appoints as Plan Administrator may or may not be Participants in the Plan. In addition to its other duties, the Plan Administrator has full responsibility for the Plan's compliance with the reporting and disclosure rules under ERISA.

1.23 "PLAN ENTRY DATE" means the date(s) the Employer elects in Adoption Agreement Section 2.01.

1.24 "PLAN YEAR" means the consecutive month period the Employer specifies in its Adoption Agreement. The Employer also must specify in its Adoption Agreement the "Limitation Year" applicable to the limitations on allocations described in Article III. If the Employer maintains Paired Plans, each Plan must have the same Plan Year.

1.25 "PROTECTED BENEFIT" means any accrued benefit described in Treas. Reg.
Section 1.411(d)-4, including any optional form of benefit provided under the Plan which may not (except in accordance with such Regulations) be reduced, eliminated or made subject to Employer discretion.

1.26 "RELATED GROUP"/"RELATED EMPLOYER" A Related Group is a controlled group of corporations (as defined in Code Section 414 (b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code
Section 414(c)), an affiliated service group (as defined in Code Section 414(m)) or an arrangement otherwise described in Code Section 414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service and Hours of Service, determining Years of Service and Breaks in Service under Articles II and V, determining Separation from Service, applying the Coverage Test under
Section 3.06(E), applying the limitations on allocations in Part 2 of Article III, applying the top-heavy rules and the minimum allocation requirements of Article XII, applying the definitions of Employee, Highly Compensated Employee, Compensation and Leased Employee, applying the safe harbor 401(k) provisions of

Section 14.02(D), applying the SIMPLE 401(k) provisions of Section 14.02(E) and for any other purpose the Code or the Plan require.

(A) PARTICIPATING EMPLOYER. An Employer may contribute to the Plan only by being a signatory to the Execution Page of the Adoption Agreement or to a Participation Agreement to the Adoption Agreement. If a

Related Employer executes a Participation Agreement to the Adoption Agreement, the Related Employer is a Participating Employer. A Participating Employer is an Employer for all purposes of the Plan except as provided in Section 1.12.

(B) STANDARDIZED/NONSTANDARDIZED PLAN. If the Employer's Plan is a Standardized Plan, all Employees of the Employer or of any Related Employer, are eligible to participate in the Plan, irrespective of whether the Related Employer directly employing the Employee is a Participating Employer. Notwithstanding the immediately preceding sentence, individuals who become Employees of a Related Employer as a result of a transaction described in Code Section 410(b)(6)(C) are not eligible to participate in the Plan during the Plan Year in which such transaction occurs nor in the following Plan Year, unless the Related Employer which employs such Employees becomes during such period a Participating Employer, by executing a Participation Agreement to the Adoption Agreement. If the Plan is a Nonstandardized Plan, the Employees of a Related Employer are not eligible to participate in the Plan unless the Related Employer is a Participating Employer.

1.27 "SELF-EMPLOYED INDIVIDUAL"/ "OWNER- EMPLOYEE"/"SHAREHOLDER-EMPLOYEE" "Self-Employed Individual" means an individual who has Earned Income (or who would have had Earned Income but for the fact that the trade or business did not have net profits) for the taxable year from the trade or business for which the Plan is established. "Owner-Employee" means a Self-Employed Individual who is the sole proprietor in the case of a sole proprietorship. If the Employer is a partnership, or a limited liability company taxed for federal income tax purposes as a partnership, "Owner-Employee" means a Self-Employed Individual who is a partner or member and owns more than 10% of either the capital or the profits interest of the partnership or of the limited liability company. "Shareholder-Employee" means an employee or officer of an "S" corporation who owns (or is considered as owning under Code Section 318(a)(l)) more than 5% of the outstanding stock of the corporation on any day of the corporation's taxable year.

1.28 "SEPARATION FROM SERVICE" means an event after which the Employee no longer has an employment relationship with the Employer maintaining this Plan or with a Related Employer.

1.29 "SERVICE" means any period of time the Employee is in the employ of the Employer, including any period the Employee is on an unpaid leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees.

1.30"SERVICE WITH A PREDECESSOR EMPLOYER" If the Employer maintains the plan of a predecessor employer, service of the Employee with the predecessor employer is Service with the Employer. If the Employer does not maintain the plan of a predecessor employer, the Plan does not credit service with the predecessor employer, unless the Employer in its Adoption Agreement (or in a Participation Agreement, if applicable) elects to credit designated predecessor employer service and specifies the purposes for which the Plan will credit service with that predecessor employer.

Unless the Employer under its Adoption Agreement Section 2.01 provides for this purpose specific Plan Entry Dates, an Employee who satisfies the Plan's eligibility condition(s) by reason of the crediting of predecessor service will enter the Plan in accordance with the provisions of Section 2.04 as if the Employee were a re-employed Employee on the first day the Plan credits predecessor service.

1.31 "TRUST" means the separate Trust created under the Plan.

1.32 "TRUST FUND" means all property of every kind acquired by the Plan and held by the Trust, other than incidental benefit insurance contracts.

1.33 "TRUSTEE" means the person or persons who as Trustee execute the Adoption Agreement, or any successor in office who in writing accepts the position of Trustee. The Employer must designate in its Adoption Agreement whether the Trustee will administer the Trust as a discretionary Trustee or as a nondiscretionary Trustee. If a person acts as a discretionary Trustee, the Employer also may appoint a Custodian. See Article X. If the Prototype Plan Sponsor is a bank, savings and loan association, credit union, mutual fund, insurance company, or other institution qualified to serve as Trustee, a person other than the Prototype Plan Sponsor (or its affiliate) may not serve as Trustee or as Custodian of the Plan without the written consent of the Prototype Plan Sponsor.

1.34 "VESTED" means a Participant or a Beneficiary has an unconditional claim, legally enforceable against the Plan, to the Participant's Account Balance or Accrued Benefit.

## ARTICLE II
## ELIGIBILITY AND PARTICIPATION

2.01 ELIGIBILITY. Each eligible Employee becomes a Participant in the Plan in accordance with the eligibility provisions the Employer elects in its Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the restated Plan, unless the Employer provides otherwise in its Adoption Agreement. If the Employer contributes to the Plan under a Davis-Bacon contract, except as the contract provides, the Employer's Adoption Agreement elections imposing age and service eligibility conditions do not apply with respect to an Employee performing Davis-Bacon contract Service.

2.02 AGE AND SERVICE CONDITIONS. For purposes of an Employee's participation in the Plan, the Plan: (1) may not impose an age condition exceeding age 21; and
(2) takes into account all of the Employee's Years of Service with the Employer, except as provided in Section 2.03. "Year of Service" for purposes of an Employee's participation in the Plan, means a 12- consecutive month eligibility computation period during which the Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement.

The initial eligibility computation period is the first 12-consecutive month period measured from the Employee's Employment Commencement Date. The Plan measures succeeding 12-consecutive month eligibility computation periods in accordance with the Employer's election in its Adoption Agreement. If the Employer elects to measure subsequent periods on a Plan Year basis, an Employee who receives credit for the required number of Hours of Service during the initial eligibility computation period and also during the first applicable Plan Year receives credit for two Years of Service under Article II. "Employment Commencement Date" means the date on which the Employee first performs an Hour of Service for the Employer.

If the Employer under Adoption Agreement Section 2.01 elects an alternative Service condition to one Year of Service or two Years of Service, the Employer must elect in the Adoption Agreement the Hour of Service and any other requirement(s), if any, after the Employee completes one Hour of Service. Under any alternative Service condition election, the Plan may not require an Employee to complete more than one Year of Service (1,000 Hours of Service in 12-consecutive months) or two Years of Service if applicable.

If the Employer in its Adoption Agreement elects to apply the Equivalency Method or the Elapsed Time Method in applying the Plan's eligibility Service condition, the Plan Administrator will credit Service in accordance with Sections 1.15(D) and (D).

2.03 BREAK IN SERVICE - PARTICIPATION. An Employee incurs a "Break in Service" if during any applicable 12-consecutive month period he/she does not complete more than 500 Hours of Service with the Employer. The "12-consecutive month period" under this Section 2.03 is the same 12-consecutive month period for which the Plan measures a "Year of Service" under Section 2.02. If the Plan applies the Elapsed Time Method of crediting Service under Section 1.15(D), a Participant incurs a "Break in Service" if the Participant has a Period of Severance of at least 12 consecutive months.

(A) TWO YEAR ELIGIBILITY. If the Employer under Adoption Agreement Section 2.01 elects a two Years of Service condition for eligibility purposes, an Employee who incurs a one year Break in Service prior to completing two Years of Service is a new Employee on the date he/she first performs an Hour of Service for the Employer after the Break in Service, and the Employee establishes a new Employment Commencement Date for purposes of the initial eligibility computation period under Section 2.02.

(B) ONE YEAR HOLD-OUT RULE. The Employer must elect in its Adoption Agreement whether to apply the one year hold-out rule under Code Section 410(a)(5)(C). Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a one year Break in Service and the Plan disregards a Participant's Service completed prior to a Break in Service until the Participant completes one Year of Service following the Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the Plan Year following the Plan Year in which the Participant incurs the Break in Service. If the Participant completes one Year of Service following his/her Break in Service, the Plan restores that Participant's pre-Break Service (and the Participant resumes active participation in the Plan) retroactively to the first day of the computation period in which the Participant first completes one Year of Service following his/her Break in Service. The initial computation period under this Section 2.03(B) is the 12-consecutive month period measured from the date the Participant first receives credit for an Hour of Service following the one year Break in Service. The Plan measures any subsequent computation periods, if necessary, in a manner consistent with the Employer's eligibility computation period election in Adoption Agreement Section 2.02. If the Employer elects to apply the one year hold-out rule, the Employer also must elect in its Adoption Agreement whether to limit application of the rule only to a Participant who has incurred a Separation from Service.

The Plan Administrator also will apply the one-year hold out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions but who incurs a Separation from Service and a one year Break in Service prior to becoming a Participant.

This Section 2.03(B) does not affect a Participant's vesting credit under Article V and, during a suspension period, the Participant's Account continues to share fully in Trust Fund allocations under Article IX. Furthermore, the Plan Administrator in applying this Section 2.03(B) does not restore any Service disregarded under the Break in Service rule of Section 2.03(A).

(C) NO APPLICATION TO 401(k) ARRANGEMENT. If the Plan

includes a 401(k) arrangement and the Employer in its Adoption Agreement elects to apply the Section 2.03(B) one year hold-out rule, the Plan Administrator will apply the provisions of Section 2.04 to the deferral contributions portion of the Plan without regard to Section 2.03(B).

(D) No RULE OF PARITY - PARTICIPATION. For purposes of Plan participation, the Plan does not apply the "rule of parity" under Code Section 410(a)(5)(D).

2.04 PARTICIPATION UPON RE-EMPLOYMENT. A Participant who incurs a Separation from Service will re-enter the Plan as a Participant on the date of his/her re-employment with the Employer, subject to the one year hold-out rule, if applicable, under Section 2.03(B). An Employee who satisfies the Plan's eligibility conditions but who incurs a Separation from Service prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Separation from Service or the date of his/her re-employment, subject to the one year hold-out rule, if applicable, under Section 2.03(B). Any Employee who incurs a Separation from Service prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with Adoption Agreement Section 2.01.

2.05 CHANGE IN EMPLOYMENT STATUS. The Employer in its Adoption Agreement
Section 1.11 may elect to exclude certain Employees from Plan participation ("excluded Employees"). If a Participant has not incurred a Separation from Service but becomes an excluded Employee, during the period of exclusion the excluded Employee will not share in the allocation of any Employer contributions or Participant forfeitures, and may not make deferral contributions if the Plan includes a 401(k) arrangement, with respect to Compensation paid to the excluded Employee during the period of exclusion. However, during such period of exclusion, the Participant, without regard to employment classification, continues to receive credit for vesting under Article V for each included Year of Service and the Participant's Account continues to share fully in Trust Fund allocations under Article IX. If a Participant who becomes an excluded Employee subsequently resumes status as an eligible Employee, the Participant will participate in the Plan immediately upon resuming eligible status, subject to the one year hold-out rule, if applicable, under Section 2.03(B).

If an excluded Employee who is not a Participant becomes an eligible Employee, he/she will participate immediately in the Plan if he/she has satisfied the eligibility conditions of Adoption Agreement Section 2.01 and would have been a Participant had he/she not been an excluded Employee during his/her period of Service. Furthermore, the excluded Employee receives credit for vesting under Article V for each included vesting Year of Service notwithstanding the Employee's excluded Employee status.

2.06 ELECTION NOT TO PARTICIPATE. If the Plan is a Standardized Plan, the Plan does not permit an otherwise eligible Employee nor any Participant to elect not to participate in the Plan ("opt-out"). If the Plan is a Nonstandardized Plan, the Employer in its Adoption Agreement must elect whether any eligible Employee may elect irrevocably to opt-out. The Employee prior to his/her Plan Entry Date must file an opt-out election in writing with the Plan Administrator on a form provided by the Plan Administrator for this purpose.

## ARTICLE III
## EMPLOYER CONTRIBUTIONS AND FORFEITURES

### PART 1. AMOUNT OF EMPLOYER CONTRIBUTIONS AND PLAN ALLOCATIONS: SECTIONS 3.01

### THROUGH 3.06

3.01 EMPLOYER CONTRIBUTIONS.

(A) AMOUNT AND TYPES OF CONTRIBUTION. The Employer in its Adoption Agreement will elect the amount and type(s) of Employer Plan contribution(s). The Employer will not make a contribution to the Trust for any Plan Year to the extent the contribution would exceed the Participants' Maximum Permissible Amounts. Unless otherwise provided in an Addendum to its Adoption Agreement, the Employer need not have net profits to make a contribution under the Plan. If the Employer's Plan is a money purchase pension plan and the Employer also maintains a defined benefit pension plan, notwithstanding the money purchase pension plan formula in the Employer's Adoption Agreement, the Employer's required contribution to its money purchase pension plan for a Plan Year is limited to the amount which the Employer may deduct under Code Section 404(a)(7). If the Employer under Code
Section 404(a)(7) must reduce its money purchase pension plan contribution, the Plan Administrator will reduce each Participant's allocation in the same ratio as the reduced total Employer contribution bears to the original (unreduced) Employer contribution.

(B) FORM OF CONTRIBUTION/RELATED EMPLOYER. Subject to the consent of the Trustee, the Employer may make its contribution in property instead of cash, provided the contribution of property is not a prohibited transaction under the Code or under ERISA. Unless the Employer in its Adoption Agreement makes a contrary election, the Plan Administrator will allocate all Employer contributions and forfeitures without regard to which contributing Related Employer directly employs the affected Participants.

(C) TIME OF PAYMENT OF CONTRIBUTION. The Employer may pay its contribution for any Plan Year in one or more installments without interest. Unless otherwise required by contract, by the Code or by ERISA, the Employer may make its contribution to the Plan for a particular Plan Year at such time(s) as the Employer in its sole discretion determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate in writing to the Trustee the Plan Year for which the Employer is making its contribution.

(D) RETURN OF EMPLOYER CONTRIBUTION. The Employer contributes to the Plan on the condition its contribution is not due to a mistake of fact and the Internal Revenue Service will not disallow the deduction of the Employer's contribution. The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution made by the Employer by mistake of fact or the amount of the Employer's contribution disallowed as a deduction under Code Section 404. The Trustee will not return any portion of the Employer's contribution under the provisions of this Section 3.01(D) more than one year after:

(1) The Employer made the contribution by mistake of fact; or

(2) The disallowance of the contribution as a deduction, and then, only to the extent of the disallowance.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 3.01(D) for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to the contribution. The Trustee may require the Employer to furnish the Trustee whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned, is properly returnable under ERISA.

3.02 DEFERRAL CONTRIBUTIONS. If the Plan includes a 401(k) arrangement, the Employer in its Adoption Agreement must elect the Plan limitations and restrictions, if any, which apply to deferral contributions or to cash or deferred contributions, if applicable. Under Adoption Agreement Section 3.02, for purposes of applying any Plan limit the Employer has elected on deferral contributions, the Employer must elect to take into account the Employee's entire Plan Year Compensation or to limit Compensation to the portion of the Plan Year in which the Employee actually is a Participant.

3.03 MATCHING CONTRIBUTIONS. If the Plan includes a 401(k) arrangement, the Employer in its Adoption Agreement must elect the type (s) of matching contributions, the time period applicable to any matching contribution formula, and as applicable, the amount of matching contributions and the Plan limitations and restrictions, if any, which apply to matching contributions.

3.04 EMPLOYER CONTRIBUTION ALLOCATION.

(A) METHOD OF ALLOCATION. The Employer in its Adoption Agreement must specify, subject to this Section 3.04, the manner of allocating Employer contributions to the Trust. For purposes of this Section 3.04, Employer contributions include as applicable, the Employer's nonelective contributions, money purchase pension and target benefit contributions, but do not include deferral contributions or, except under Section 3.04(B), matching contributions.

(B) COMPENSATION TAKEN INTO ACCOUNT. The Employer in its Adoption Agreement Section 1.07 must specify the Compensation the Plan Administrator is to take into account in allocating an Employer contribution to a Participant's Account. For the Plan Year in which the Employee first becomes a Participant in the Plan (or in any portion of the Plan), the Employer may elect to take into account the Employee's entire Plan Year Compensation or to limit Compensation to the portion of the Plan Year in which the Employee actually is a Participant. For all other Plan Years, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant. The Plan Administrator must take into account the Employee's entire Compensation for the Plan Year to determine whether the Plan satisfies the top-heavy minimum allocation requirements of Article XII. The

**Defined Contribution Plan**

Employer, in its Adoption Agreement, may elect to measure Compensation for allocating its Employer contribution for a Plan Year on the basis of a specified period other than the Plan Year.

(C) TOP-HEAVY MINIMUM ALLOCATION. Unless the Employer in an Addendum to its Adoption Agreement elects to satisfy any top-heavy minimum allocation requirement in another plan (not maintained under this basic plan document), the Employer in this Plan must satisfy the top-heavy requirements of Article XII.

(D) ALLOCATION CONDITIONS. Subject to any restoration allocation required under the Plan, the Plan Administrator will allocate and credit Employer contributions to the Account of each Participant who satisfies the allocation conditions of Section 3.06.

(E) ALTERNATIVE ALLOCATION FORMULAS. The Plan Administrator will allocate Employer contributions for the Plan Year or other applicable period in accordance with the allocation formula the Employer elects in its Adoption Agreement. The Plan Administrator, in allocating under any allocation formula which is based in whole or in part on Compensation, only will take into account Compensation of those Participants entitled to an allocation.

The Employer in its Adoption Agreement must elect, one or more as applicable of the following allocation formulas:

(1) NONINTEGRATED (PRO RATA) ALLOCATION FORMULA. The Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(2) TWO-TIERED PERMITTED DISPARITY ALLOCATION FORMULA. Under the first tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation (as defined in Adoption Agreement Section 3.04) for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this first tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (5.7%, 5.4% or 4.3%) listed under Section 3.04(D)(4).

Under the second tier, the Plan Administrator will allocate any remaining Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(3) FOUR-TIERED PERMITTED DISPARITY ALLOCATION FORMULA. Under the first tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Compensation. Solely for purposes of this first tier allocation, a "Participant" means, in addition to any Participant who satisfies the allocation conditions of Section 3.06 for the Plan Year, any other Participant entitled to a top-heavy minimum allocation under the Plan.

Under the second tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Excess Compensation (as defined in Adoption Agreement Section 3.04) for the Plan Year bears to the total Excess Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Excess Compensation.

Under the third tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this third tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (2.7%, 2.4% or 1.3%) listed under Section 3.04(D)(4).

Under the fourth tier, the Plan Administrator will allocate any remaining Employer contributions for a Plan Year, in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(4) MAXIMUM DISPARITY TABLE. For purposes of the permitted disparity allocation formulas under this Section 3.04, the applicable percentage is:

| Integration level % of taxable wage base | Applicable % for 2-tiered formula | Applicable % for 4-tiered formula |
|---|---|---|
| 100% | 5.7% | 2.7% |
| More than 80% but less than 100% | 5.4% | 2.4% |

| | | |
|---|---|---|
| More than 20% (but not less than $10,001) and not more than 80% | 4.3% | 1.3% |
| 20% (or $10,000, if greater) or less | 5.7% | 2.7% |

(5) OVERALL PERMITTED DISPARITY LIMITS.

(i) ANNUAL OVERALL PERMITTED DISPARITY LIMIT. Notwithstanding Sections 3.04(D)(2) and (3), for any Plan Year the Plan benefits any Participant who benefits under another qualified plan or under a simplified employee pension plan (as defined in Code Section 408 (k)) maintained by the Employer that provides for permitted disparity (or imputes disparity), the Plan Administrator will allocate Employer contributions to the Account of each Participant in the same ratio that each Participant's Compensation bears to the total

**Compensation of all Participants for the Plan Year.**

(ii) CUMULATIVE PERMITTED DISPARITY LIMIT. Effective for Plan Years beginning after December 31, 1994, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, the Plan Administrator will treat all years ending in the same calendar year as the same year. If the Participant has not benefited under a defined benefit plan or under a target benefit plan of the Employer for any year beginning after December 31, 1993, the Participant does not have a cumulative permitted disparity limit.

For purposes of this Section 3.04(D)(5), a Participant "benefits" under the Plan for any Plan Year during which the Participant receives, or is deemed to receive, a contribution allocation in accordance with Treas. Reg. Section 1.410(b)-3(a).

(6) UNIFORM POINTS ALLOCATION FORMULA. The Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's points (as elected in Adoption Agreement Section 3.04) bear to the total points of all Participants for the Plan Year.

(7) INCORPORATION OF CONTRIBUTION FORMULA. The Plan Administrator will allocate the Employer's contributions for a Plan Year in accordance with the contribution formula the Employer has elected under Section 3.01.

(8) TARGET BENEFIT ALLOCATION FORMULA. The Plan Administrator will allocate the Employer contributions for a Plan Year as provided in the Employer's target benefit Adoption Agreement.

(9) DAVIS-BACON CONTRACT ALLOCATION FORMULA. The Plan Administrator will allocate the Employer contributions for a Plan Year in accordance with the applicable Davis-Bacon contract pursuant to which the Employer has made its contributions for the Plan Year. The Employer's contributions will take into account each Participant's hourly rate, employment category, employment classification and such other factors the Davis-Bacon contract may specify. For purposes of the Plan, "Davis-Bacon contract" includes a contract under any state prevailing wage law.

(F) QUALIFIED NONELECTIVE CONTRIBUTIONS. The Employer operationally may designate all or any portion of its nonelective contributions as a qualified nonelective contribution. The Employer, to facilitate the Plan Administrator's correction of test failures under Sections 14.08, 14.09 and 14.10, also may make qualified nonelective contributions to the Plan irrespective of whether the Employer in its Adoption Agreement has elected to provide nonelective contributions. The Employer in its Adoption Agreement must elect whether the Plan Administrator will allocate the Employer contributions designated as a qualified nonelective contribution to all Participants or solely to Nonhighly Compensated Employee Participants. The Employer operationally must elect whether the Plan Administrator will allocate qualified nonelective contributions: (1) to eligible Participants pro rata in relation to Compensation; (2) to eligible Participants in the same amount without regard to Compensation (flat dollar); or
(3) under the reverse allocation or other similar method. Under the reverse allocation method, the Plan Administrator, subject to Section 3.06, will allocate a qualified nonelective contribution first to the Nonhighly Compensated Employee Participant(s) with the lowest Compensation for the Plan Year not exceeding the Maximum Permissible Amount for each Participant, with any remaining amounts allocated to the next highest paid Nonhighly Compensated Employee Participant(s) not exceeding his/her Maximum Permissible Amount and continuing in this manner until the Plan Administrator has fully allocated the qualified nonelective contribution.

(G) QUALIFIED REPLACEMENT PLAN. The Employer may establish or maintain this Plan as a qualified replacement plan as described in Code Section 4980 under which the Plan may receive a transfer from a terminating qualified plan the Employer also maintains. The Plan Administrator will credit the transferred amounts to a suspense account under the Plan and thereafter the Plan Administrator will allocate the transferred amounts under this Section 3.04(G) in the same manner as the Plan Administrator allocates Employer nonelective contributions, unless the Employer specifies in an Addendum to its Adoption Agreement: (1) to apply such transferred amounts to the Plan's administrative expenses; or (2) if the Plan includes a 401(k) arrangement, the Employer in its Addendum designates such transferred amounts as matching contributions.

3.05 FORFEITURE ALLOCATION. The amount of a Participant's Account forfeited under the Plan is a Participant forfeiture. The Plan Administrator, subject to
Section 3.06, will allocate Participant forfeitures at the time and in the manner the Employer specifies in its Adoption Agreement. The Plan Administrator will continue to hold the undistributed, non-Vested portion of the Account of a Participant who has separated from Service solely for his/her benefit until a forfeiture occurs at the time specified in Section 5.09 or if applicable, until the time specified in Section 9.11. Except as provided under Section 5.04, a Participant will not share in the allocation of a forfeiture of any portion of his/her Account. If the Plan includes a 401(k) arrangement, the Plan Administrator first will determine if a Participant's forfeitures are attributable to nonelective or to matching contributions, and the Plan Administrator then will allocate the forfeitures in the manner the Employer has elected in its Adoption Agreement. If the Employer elects to allocate forfeitures to reduce nonelective or matching contributions and the forfeitures exceed the amount of the contribution to which the Plan Administrator will apply the forfeitures, the Plan Administrator will allocate the remaining forfeitures as an additional discretionary nonelective or discretionary matching contribution or the Plan Administrator will apply

the forfeitures to the Employer's nonelective or matching contribution in the succeeding Plan Year. A Participant's forfeiture is attributable to matching contributions if the forfeiture is: (1) a non-Vested matching Account forfeited in accordance with Section 5.09 or, if applicable, Section 9.11; (2) a non-Vested excess aggregate contribution (adjusted for earnings) forfeited in correcting for nondiscrimination failures under Section 14.09 or Section 14.10; or (3) an "associated matching contribution," which includes any Vested or non-Vested matching contribution (adjusted for earnings) made with respect to elective deferrals or Employee contributions the Plan Administrator distributes in correction of Code Section 402(g), Code Section 415 or nondiscrimination failures under Sections 14.07, 14.08, 14.09 or 14.10. An Employee forfeits an associated matching contribution unless the matching contribution is a Vested excess aggregate contribution distributed in accordance with Sections 14.09 or 14.10.

3.06 ALLOCATION CONDITIONS. The Plan Administrator will determine the allocation conditions which apply to Employer contributions (including matching contributions) and Participant forfeitures on the basis of the Plan Year (or on any other basis representing a reasonable division of the Plan Year) in accordance with the Employer's elections in its Adoption Agreement. A Participant does not accrue an Employer contribution with respect to a Plan Year or other applicable period until the Participant satisfies the allocation conditions described in this Section 3.06. The Plan under a 401(k) arrangement may not impose any allocation conditions with respect to deferral contributions, safe harbor contributions or SIMPLE contributions.

(A) HOURS OF SERVICE REQUIREMENT. Except as required to satisfy the top-heavy minimum allocation requirement of Article XII, the Plan Administrator will not allocate any portion of an Employer contribution for a Plan Year to any Participant's Account if the Participant does not complete the applicable minimum Hours of Service or consecutive calendar days of employment requirement the Employer specifies in its Adoption Agreement for the relevant period. The Employer in its Standardized Adoption Agreement must elect whether to require a Participant to complete during a Plan Year 501 Hours of Service or to be employed for at least 91 consecutive calendar days under the Elapsed Time Method, to share in the allocation of Employer contributions for that Plan Year where the Participant is not employed by the Employer on the Accounting Date of that Plan Year, including the Plan Year in which the Employer terminates the Plan.

(B) "LAST DAY" EMPLOYMENT REQUIREMENT. If the Plan is a Standardized Plan, a Participant who is employed by the Employer on the Accounting Date of a Plan Year will share in the allocation of Employer contributions for that Plan Year without regard to the Participant's Hours of Service completed during that Plan Year. If the Plan is a Nonstandardized Plan, the Employer must specify in its Adoption Agreement whether the Participant will benefit under the Plan if the Participant is not employed by the Employer on the Accounting Date of the Plan Year or other specified date. If the Plan is a Nonstandardized money purchase Plan or target benefit Plan, the Plan conditions Employer contribution allocations on a Participant's employment with the Employer on the last day of the Plan Year for the Plan Year in which the Employer terminates the Plan.

(C) DEATH, DISABILITY OR NORMAL RETIREMENT AGE. Unless the Employer otherwise elects in its Adoption Agreement, any allocation condition elected under Adoption Agreement Section 3.06 does not apply for a Plan Year if a Participant incurs a Separation from Service during the Plan Year on account of the Participant's death, Disability or attainment of Normal Retirement Age in the current Plan Year or on account of the Participant's Disability or attainment of Normal Retirement Age in a prior Plan Year.

(D) OTHER CONDITIONS. In allocating Employer contributions under the Plan, the Plan Administrator will not apply any other conditions except those the Employer elects in its Adoption Agreement or otherwise as the Plan may require.

(E) SUSPENSION OF ALLOCATION CONDITIONS UNDER A NONSTANDARDIZED PLAN. The suspension provisions of this Section 3.06(E) do not apply unless the Employer elects in its Nonstandardized Adoption Agreement to apply them. If Section 3.06(E) applies, the Plan suspends for a Plan Year the Adoption Agreement
Section 3.06 allocation conditions if the Plan fails in that Plan Year to satisfy coverage under the Ratio Percentage Test, unless in an Addendum to its Adoption Agreement, the Employer specifies the Plan Administrator will apply this Section 3.06(E) using the Average Benefit Percentage Test described in Code
Section 410(b)(2). A Plan satisfies coverage under the Ratio Percentage Test if, on the last day of the Plan Year, the Plan's benefiting ratio of the Nonhighly Compensated Includible Employees is at least 70% of the benefiting ratio of the Highly Compensated Includible Employees.

The benefiting ratio of the Nonhighly Compensated Includible Employees is the number of Nonhighly Compensated Includible Employees benefiting under the Plan over the number of the Includible Employees who are Nonhighly Compensated Employees. "Includible" Employees are all Employees other than: (1) those Employees excluded from participating in the Plan for the entire Plan Year by reason of the collective bargaining unit or the nonresident alien exclusions under Code Section 410(b)(3) or by reason of the age and service requirements of Article II; and (2) those Employees who incur a Separation from Service during the Plan Year and for the Plan Year fail to complete more than 500 Hours of Service or at least 91 consecutive calendar days under the Elapsed Time Method.

For purposes of coverage, an Employee is benefiting under the Plan on a particular date if, under Section 3.04 of the Plan, he/she is entitled to an Employer contribution or to a Participant forfeiture allocation for the Plan Year.

If this Section 3.06(E) applies for a Plan Year, the Plan Administrator will suspend the allocation conditions for the Nonhighly Compensated Includible Employees who are Participants, beginning first with the Includible Employee(s) employed by the Employer on the last day of the Plan Year, then the Includible Employee(s) who have the latest Separation from Service during the Plan Year, and continuing to suspend the allocation conditions for each Includible Employee who incurred an earlier

Separation from Service, from the latest to the earliest Separation from Service date, until the Plan satisfies coverage for the Plan Year. If two or more Includible Employees have a Separation from Service on the same day, the Plan Administrator will suspend the allocation conditions for all such Includible Employees, irrespective of whether the Plan can satisfy coverage by accruing benefits for fewer than all such Includible Employees. If the Plan for any Plan Year suspends the allocation conditions for an Includible Employee, that Employee will share in the allocation for that Plan Year of the Employer contribution and Participant forfeitures, if any, without regard to whether he/she has satisfied the allocation conditions of this Section 3.06.

If the Plan includes Employer matching contributions subject to ACP testing, this Section 3.06(E) applies separately to the Code Section 401 (m) portion of the Plan.

## PART 2. LIMITATIONS ON ALLOCATIONS: SECTIONS 3.07 THROUGH 3.18

[Note: Sections 3.07 through 3.10 apply only to Participants in this Plan who do not participate, and who have never participated, in another qualified plan, individual medical account (as defined in Code Section 415(1)(2)), simplified employee pension plan (as defined in Code Section 408(k)) or welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, which provides an Annual Addition.]

3.07 ANNUAL ADDITIONS LIMITATION. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Maximum Permissible Amount. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account would for the Limitation Year exceed the Maximum Permissible Amount, the Plan Administrator will not allocate the Excess Amount, but will instead take any reasonable, uniform and nondiscriminatory action the Plan Administrator determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section
3.07. If the Plan includes a 401(k) arrangement, the Plan Administrator may apply this Section 3.07 in a manner which maximizes the allocation to a Participant of Employer contributions (exclusive of the Participant's deferral contributions). Notwithstanding any contrary Plan provision, the Plan Administrator, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee contributions or deferral contributions; (2) notify the Employer to reduce the Employer's future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer contribution previously made to the Plan (exclusive of deferral contributions) or of any Participant forfeiture. If an allocation of Employer contributions previously made (excluding a Participant's deferral contributions) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Administrator will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer contributions for the Plan Year in which the Limitation Year ends. The Plan Administrator will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount, is not eligible for an allocation of Employer contributions. If the Plan Administrator allocates to a Participant an Excess Amount, Plan Administrator must dispose of the Excess Amount in accordance with Section 3.10 (relating to certain "reasonable errors" and allocation of forfeitures) or, if Section 3.10 does not apply, the Plan Administrator will dispose of the Excess Amount under Section 9.12.

3.08 ESTIMATING COMPENSATION. Prior to the determination of the Participant's actual Compensation for a Limitation Year, the Plan Administrator may determine the Maximum Permissible Amount on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator must make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer contributions (including any allocation of forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior Limitation Years.

3.09 DETERMINATION BASED ON ACTUAL COMPENSATION. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Maximum Permissible Amount for the Limitation Year on the basis of the Participant's actual Compensation for such Limitation Year.

3.10 DISPOSITION OF ALLOCATED EXCESS AMOUNT. If, because of a reasonable error in estimating a Participant's actual Limitation Year Compensation, because of the allocation of forfeitures, because of a reasonable error in determining a Participant's deferral contributions or because of any other facts and circumstances the Internal Revenue Service ("Revenue Service") considers to constitute reasonable error, a Participant receives an allocation of an Excess Amount for a Limitation Year, the Plan Administrator will dispose of such Excess Amount as follows:

(a) The Plan Administrator first will return to the Participant any Employee contributions (adjusted for earnings) and then any Participant deferral contributions (adjusted for earnings) to the extent necessary to reduce or eliminate the Excess Amount.

(b) If, after the application of Paragraph (a), an Excess Amount still exists and the Plan covers the Participant at the end of the Limitation Year, the Plan Administrator then will use the Excess Amount(s) to reduce future Employer contributions (including any allocation of forfeitures) under the Plan for the next Limitation Year and for each succeeding Limitation Year, as is necessary, for the Participant. If the Employer's Plan is a profit sharing plan, a Participant who is a Highly Compensated Employee may elect to limit his/her Compensation for allocation purposes to the extent necessary to reduce his/her allocation for the Limitation Year to the Maximum Permissible Amount and to eliminate the Excess Amount.

(c) If, after the application of Paragraph (a), an Excess Amount still exists and the Plan does not cover

the Participant at the end of the Limitation Year, the Plan Administrator then will hold the Excess Amount unallocated in a suspense account. The Plan Administrator will apply the suspense account to reduce Employer Contributions (including the allocation of forfeitures) for all remaining Participants in the next Limitation Year, and in each succeeding Limitation Year if necessary. Neither the Employer nor any Employee may contribute to the Plan for any Limitation Year in which the Plan is unable to allocate fully a suspense account maintained pursuant to this Paragraph (c). Amounts held unallocated in a suspense account will not share in any allocation of Trust Fund net income, gain or loss.

(d) The Plan Administrator under Paragraphs (b) or (c) will not distribute any Excess Amount(s) to Participants or to former Participants.

[Note: Sections 3.11 through 3.15 apply only to Participants who, in addition to this Plan, participate in one or more M&P defined contribution plans (including Paired Plans), welfare benefit funds (as defined in Code Section 419(e)), individual medical accounts (as defined in Code Section 415(I)(2), or simplified employee pension plans (as defined in Code Section 408(k)) maintained by the Employer and which provide an Annual Addition during the Limitation Year (collectively "Code Section 415 aggregated plans").]

3.11 COMBINED PLANS ANNUAL ADDITIONS LIMITATION. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code Section 415 aggregated plans. If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 3.11 combined plans limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 3.07, so the Annual Additions under all of the Code Section 415 aggregated plans for the Limitation Year will equal the Maximum Permissible Amount. If the Plan Administrator allocates to a Participant an amount attributed to this Plan under Section 3.14 which exceeds this Section 3.11 combined plans limitation, the Plan Administrator must dispose of the Excess Amount in accordance with Section 3.15 (relating to certain "reasonable errors" and allocation of forfeitures) or, if Section 3.15 does not apply, the Plan Administrator will dispose of the Excess Amount under Section 9.12.

3.12 ESTIMATING COMPENSATION. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Section 3.11 combined plans limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years.

3.13 DETERMINATION BASED ON ACTUAL COMPENSATION. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Section 3.11 combined plans limitation on the basis of the Participant's actual Compensation for such Limitation Year.

3.14 ORDERING OF ANNUAL ADDITION ALLOCATIONS. If, because of a reasonable error in estimating a Participant's actual Limitation Year Compensation, because of the allocation of forfeitures, because of a reasonable error in determining a Participant's deferral contributions or because of any other facts and circumstances the Revenue Service considers to constitute reasonable error, a Participant's Annual Additions under this Plan and the Code Section 415 aggregated plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. The Plan Administrator will determine the Amounts last allocated by treating the Annual Additions attributable to a simplified employee pension as allocated first, followed by allocation to a welfare benefit fund or individual medical account, irrespective of the actual allocation date. If the Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement, the Excess Amount attributed to this Plan will equal the product of:

(a) the total Excess Amount allocated as of such date, multiplied by

(b) the ratio of (i) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (ii) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code Section 415 aggregated plans.

3.15 DISPOSITION OF ALLOCATED EXCESS AMOUNT ATTRIBUTABLE TO PLAN. The Plan Administrator will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 3.14 as provided in Section 3.10 or, as applicable under Section 9.12.

[Note: Section 3.16 applies only to Participants who, in addition to this Plan, participate in one or more qualified defined contribution plans maintained by the Employer during the Limitation Year, but which are not M&P plans described in Sections 3.11 through 3.15.]

3.16 OTHER DEFINED CONTRIBUTION PLANS LIMITATION. If a Participant is a participant in another defined contribution plan maintained by the Employer, but which plan is not an M&P plan described in Sections 3.11 through 3.15, the Plan Administrator must limit the allocation to the Participant of Annual Additions under this Plan as provided in Sections 3.11 through 3.15, as though the other defined

contribution plan were an M&P plan, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement.

3.17 DEFINED BENEFIT PLAN LIMITATION. If the Employer maintains a defined benefit plan, or has ever maintained a defined benefit plan which the Employer has terminated, then the sum of the defined benefit plan fraction and the defined contribution plan fraction for any Participant for any Limitation Year beginning before January 1, 2000, must not exceed 1.0. The 1.0 limitation of the immediately preceding sentence does not apply for Limitation Years beginning after December 31, 1999, unless the Employer in Appendix B to its Adoption Agreement specifies a later effective date. To the extent necessary to satisfy the 1.0 limitation, if the Employer still maintains the defined benefit plan as an active plan, the Employer in its Adoption Agreement Appendix B will elect whether to reduce the Participant's projected annual benefit under the defined benefit plan under which the Participant participates, or to reduce its contribution or allocation on behalf of the Participant to the defined contribution plan(s) under which the Participant participates. If the Employer has frozen or terminated the defined benefit plan, the Employer will reduce its contribution or allocation on behalf of the Participant to the defined contribution plan(s) under which the Participant participates. The Employer must provide in Appendix B to its Adoption Agreement the manner in which the Plan will satisfy the top-heavy requirements of Code Section 416 after taking into account the existence (or prior maintenance) of the defined benefit plan.

3.18 DEFINITIONS - ARTICLE III. For purposes of Article III:

(a) "Annual Additions" means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (i) all Employer contributions
(including Participant deferral contributions); (ii) all forfeitures; (iii) all Employee contributions; (iv) Excess Amounts reapplied to reduce Employer contributions under Section 3.10 or Section 3.15; (v) amounts allocated after March 31, 1984, to an individual medical account (as defined in Code
Section 415(1)(2)) included as part of a pension or annuity plan maintained by the Employer; (vi) contributions paid or accrued after December 31, 1985, for taxable years ending after December 31, 1985, attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer; (vii) amounts allocated under a Simplified Employee Pension Plan; and (viii) corrected excess contributions described in Code Section 401(k) and corrected excess aggregate contributions described in Code Section 401(m). Excess deferrals described in Code Section 402 (g), which the Plan Administrator corrects by distribution by April 15 of the following calendar year, are not Annual Additions.

(b) "Compensation" for purposes of applying the limitations of Part 2 of this Article III, means Compensation as defined in Section 1.07, except, for Limitation Years beginning after December 31, 1997, Compensation includes Elective Contributions, irrespective of whether the Employer has elected to include these amounts as Compensation under Section 1.07 of its Adoption Agreement and any exclusion the Employer has elected in Section 1.07 of the Adoption Agreement does not apply.

(c) "Employer" means the Employer and any Related Employer. Solely for purposes of applying the limitations of Part 2 of this Article III, the Plan Administrator will determine Related Employer by modifying Code Sections 414(b) and (c) in accordance with Code Section 415(h).

(d) "Excess Amount" means the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(e) "Limitation Year" means the period the Employer elects in its Adoption Agreement Section 1.24. All qualified plans of the Employer must use the same Limitation Year. If the Employer amends the Limitation Year to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year for which the Employer makes the amendment, creating a short Limitation Year.

(f) "M&P Plan" means a prototype plan the form of which is the subject of a favorable opinion letter (or prior to Revenue Procedure 2000-20, a favorable notification or favorable opinion letter) from the Revenue Service.

(g) "Maximum Permissible Amount" means the lesser of: (i) $30,000 (or, if greater, the $30,000 amount as adjusted under Code Section 415 (d)), or (ii) 25% of the Participant's Compensation for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year, the Plan Administrator will multiply the $30,000 (or adjusted) limitation by the following fraction:

Number of months in the short Limitation Year



The 25% limitation does not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or Code Section 419A (f)(2) which otherwise is an Annual Addition.

(h) "Defined contribution plan" means a retirement plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which the plan may allocate to such participant's account. The Plan Administrator must treat all defined contribution plans (whether or not terminated) maintained by the Employer as a single plan. Solely for purposes of the limitations of Part 2 of this Article III, employee contributions made to a defined benefit plan maintained by the Employer is a separate defined contribution plan. The Plan Administrator also will treat as a defined contribution plan an individual medical account (as defined in Code
Section 415(1)(2)) included as part of a defined benefit plan maintained by the Employer and, for taxable years ending after December 31, 1985, a welfare benefit fund under Code Section 419(e) maintained by the Employer to the extent there are post-retirement medical benefits

allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)).

(i) "Defined benefit plan" means a retirement plan which does not provide for individual accounts for Employer contributions. All defined benefit plans (whether or not terminated) maintained by the Employer are a single plan.

[Note: The definitions in Paragraphs (j), (k) and (1) apply only if the limitation described in Section 3.17 applies to the Plan.]

(j) "Defined benefit plan fraction" means the following fraction:

Projected annual benefit of the Participant under the defined benefit plan(s) The lesser of: (i) 125% (subject to the "100% limitation" in Paragraph (1)) of the dollar limitation in effect under Code
Section 415(b)(l)(A) for the Limitation Year, or
(ii) 140% of the Participant's average Compensation for his/her high three (3) consecutive Years of Service

To determine the denominator of this fraction., the Plan Administrator will make any adjustment required under Code Section 415(b) and will determine a Year of Service, unless the Employer provides otherwise in an Addendum to its Adoption Agreement, as a Plan Year in which the Employee completed at least 1,000 Hours of Service. The "projected annual benefit" is the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if the defined benefit plan expresses such benefit in a form other than a straight life annuity or qualified joint and survivor annuity) of the Participant under the terms of the defined benefit plan on the assumptions he/she continues employment until his/her normal retirement age (or current age, if later) as stated in the defined benefit plan, his/her compensation continues at the same rate as in effect in the Limitation Year under consideration until the date of his/her normal retirement age and all other relevant factors used to determine benefits under the defined benefit plan remain constant as of the current Limitation Year for all future Limitation Years.

CURRENT ACCRUED BENEFIT. If the Participant accrued benefits in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the dollar limitation used in the denominator of this fraction will not be less than the Participant's Current Accrued Benefit. A Participant's Current Accrued Benefit is the sum of the annual benefits under such defined benefit plans which the Participant had accrued as of the end of the 1986 Limitation Year (the last Limitation Year beginning before January 1, 1987), determined without regard to any change in the terms or conditions of the defined benefit plan made after May 5, 1986, and without regard to any cost of living adjustment occurring after May 5, 1986. This Current Accrued Benefit rule applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 as in effect at the end of the 1986 Limitation Year.

(k) "Defined contribution plan fraction" means the following fraction:

The sum, as of the close of the Limitation Year, of the Annual Additions for all Limitation Years to the Participant's Account under the defined contribution plan(s) The sum of the lesser of the following amounts determined for the Limitation Year and for each prior Limitation Year of service with the Employer: (i) 125%

(subject to the " 100% limitation" in Paragraph (1))

of the dollar limitation in effect under

Code Section 415(c)( 1)(A) for the Limitation Year (determined without regard to the special dollar limitations for employee stock ownership plans), or
(ii) 35% of the Participant's Compensation for the Limitation Year

For purposes of determining the defined contribution plan fraction, the Plan Administrator will not recompute Annual Additions in Limitation Years beginning prior to January 1, 1987, to treat all Employee contributions as Annual Additions. If the Plan satisfied Code Section 415 for Limitation Years beginning prior to January 1, 1987, the Plan Administrator will redetermine the defined contribution plan fraction and the defined benefit plan fraction as of the end of the 1986 Limitation Year, in accordance with this Section 3.18. If the sum of the redetermined fractions exceeds 1.0, the Plan Administrator will subtract permanently from the numerator of the defined contribution plan fraction an amount equal to the product of: (1) the excess of the sum of the fractions over 1.0, times (2) the denominator of the defined contribution plan fraction. In making the adjustment, the Plan Administrator must disregard any accrued benefit under the defined benefit plan which is in excess of the Current Accrued Benefit. This Plan continues any transitional rules applicable to the determination of the defined contribution plan fraction under the Plan as of the end of the 1986 Limitation Year.

(1) "100% limitation" means the limitation in Code Section 416(h) which applies if the plan is top-heavy. If the 100% limitation applies, the Plan Administrator must determine the denominator of the defined benefit plan fraction and the denominator of the defined contribution plan fraction by substituting 100% for 125%. If this Plan is a Standardized Plan, the 100% limitation applies in all Limitation Years, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement. If the Employer overrides the 100% limitation under a Standardized Plan, the Employer must specify in its Addendum the manner in which the Plan satisfies the extra minimum benefit requirement of Code Section 416(h) and the 100% limitation must continue to apply if the Plan's top-heavy ratio exceeds 90%. If this Plan is a Nonstandardized

Plan, the 100% limitation applies only if: (i) the Plan's top-heavy ratio exceeds 90%; or (ii) the Plan's top-heavy ratio is greater than 60%, and the Employer does not specify in its Adoption Agreement to provide extra minimum benefits which satisfy Code Section 416(h)(2).

## ARTICLE IV
## PARTICIPANT CONTRIBUTIONS

4.01 PARTICIPANT CONTRIBUTIONS. For purposes of this Article IV, Participant contributions means all Employee contributions described in Section 4.02, deductible Participant contributions described in Section 4.03 ("DECs") and rollover contributions described Section 4.04.

4.02 EMPLOYEE CONTRIBUTIONS. An Employee contribution is a nondeductible contribution which a Participant makes to the Trust as permitted under this
Section 4.02. A deferral contribution made by a Participant under a 401(k) arrangement is not an Employee contribution. Employee contributions must satisfy the nondiscrimination requirements of Code Section 401(m). See Section 14.09. An Employer must elect in its Adoption Agreement whether to permit Employee contributions. If the Employer elects to permit Employee contributions, the Employer also must specify in its Adoption Agreement any conditions or limitations which may apply to Employee contributions. If the Employer permits Employee contributions, the Employer operationally will determine if a Participant will make Employee contributions through payroll deduction or by other means.

The Employer must elect in its Adoption Agreement whether the Employer will make matching contributions with respect to any Employee contributions and any conditions or limitations which may apply to those matching contributions. Any matching contribution must satisfy the nondiscrimination requirements of Code
Section 401(m). See Section 14.09.

4.03 DECs. A DEC is a deductible Participant contribution made to the Plan for a taxable year commencing prior to 1987. If a Participant has made DECs to the Plan, the Plan Administrator must maintain a separate Account for the Participant's DECs as adjusted for earnings, including DECs which are part of a rollover contribution described in Section 4.04. The DECs Account is part of the Participant's Account for all purposes of the Plan, except for purposes of determining the top-heavy ratio under Article XII. The Plan Administrator may not use a Participant's DECs Account to purchase life insurance on the Participant's behalf.

4.04 ROLLOVER CONTRIBUTIONS. A rollover contribution is an amount of cash or property which the Code permits an eligible Employee or Participant to transfer directly or indirectly to this Plan from another qualified plan. A rollover contribution excludes Employee contributions, as adjusted for earnings. An Employer operationally and on a nondiscriminatory basis, may elect to permit or not to permit rollover contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a rollover contribution. If an Employer permits rollover contributions, any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a rollover contribution to the Trust. Before accepting a rollover contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan. The Trustee, in its sole discretion, may decline to accept a rollover contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust. A rollover contribution is not an Annual Addition under Part 2 of Article III.

If an eligible Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of Employer contributions nor Participant forfeitures and may not make deferral contributions if the Plan includes a 401(k) arrangement until he/she actually becomes a Participant in the Plan. If a limited Participant has a Separation from Service prior to becoming a Participant in the Plan, the Trustee will distribute his/her rollover contributions Account to him/her in accordance with Article VI as if it were an Employer contributions Account.

4.05 PARTICIPANT CONTRIBUTIONS-VESTING. A Participant's Participant contributions Account is, at all times, 100% Vested.

4.06 PARTICIPANT CONTRIBUTIONS-DISTRIBUTION. Subject to any contrary Employer election in its Adoption Agreement Appendix A, an Employee, after attaining age 70 1/2 may elect to receive distribution prior to Separation from Service ("in-service distribution") of all or any part of his/her Participant contributions Account. The Employer in its Adoption Agreement Section 6.01 must elect the additional in-service distribution election rights, if any, a Participant has with respect to his/her Participant contributions Account. For purposes of the Employer's Adoption Agreement elections regarding in-service distribution of Participant contributions, a Participant's Employee contributions also includes DECs. A Participant will not incur a forfeiture of any Account under the Plan solely as a result of the distribution of his/her Participant contributions.

The Trustee, following a Participant's Separation from Service, will distribute to the Participant his/her Participant contributions Account in accordance with Article VI in the same manner as the Trustee distributes the Participant's Employer contributions Account.

4.07 PARTICIPANT CONTRIBUTIONS-INVESTMENT AND ACCOUNTING. The Plan Administrator must maintain a separate Account in the name of each Participant to reflect his/her Participant contributions (including, if applicable, the different types of Participant contributions), as adjusted for earnings. The Trustee will invest all Participant contributions as part of the Trust Fund.

## ARTICLE V
## VESTING

5.01 NORMAL/EARLY RETIREMENT AGE. The Employer in its Adoption Agreement must specify the Plan's Normal Retirement Age. An Employer in its Adoption Agreement may specify an Early Retirement Age. A Participant's Account Balance derived from Employer contributions is 100% Vested upon and after his/her attaining Normal Retirement Age (or if applicable, Early Retirement Age) if the Participant is employed by the Employer on or after that date.

5.02 PARTICIPANT DEATH OR DISABILITY. Unless the Employer elects otherwise in its Adoption Agreement, a Participant's Account Balance derived from Employer contributions is 100% Vested if the Participant's Separation from Service is a result of his/her death or his/her Disability.

5.03 VESTING SCHEDULE. Except as provided in Sections 5.01 and 5.02, for each Year of Service as described in Section 5.06, a Participant's Vested percentage of his/her Account Balance derived from Employer contributions equals the percentage under the vesting schedule the Employer has elected in its Adoption Agreement.

For purposes of Adoption Agreement Section 5.03, "6-year graded," "3-year cliff," "7-year graded" or "5-year cliff' means an Employee's Vested percentage, based on each included Year of Service, under the following applicable schedule:

| 6-YEAR GRADED | |
|---|---|
| 0-1 year/ | 0% |
| 2 years/ | 20% |
| 3 years/ | 40% |
| 4 years/ | 60% |
| 5 years/ | 80% |
| 6 years/ | 100% |

| 7-YEAR GRADED | |
|---|---|
| 0-2 years/ | 0% |
| 3 years/ | 20% |
| 4 years/ | 40% |
| 5 years/ | 60% |
| 6 years/ | 80% |
| 7 years/ | 100% |

| 3-YEAR CLIFF | |
|---|---|
| 0-2 years/ | 0% |
| 3 years/ | 100% |

| 5-YEAR CLIFF | |
|---|---|
| 0-4 years/ | 0% |
| 5 years/ | 100% |

(A) "GROSSED-UP" VESTING FORMULA. If the Trustee makes a distribution (other than a cash-out distribution described in Section 5.04) to a partially-Vested Participant, and the Participant has not incurred a Forfeiture Break in Service at the relevant time, the provisions of this Section 5.03(A) apply to the Participant's Account Balance. At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance derived from Employer contributions in accordance with the following formula: P(AB + D)-D.

To apply this formula, "P" is the Participant's current vesting percentage at the relevant time, "AB" is the Participant's Employer-derived Account Balance at the relevant time and "D" is the amount of the earlier distribution. If, under a restated Plan, the Plan has made distribution to a partially-Vested Participant prior to its restated Effective Date and is unable to apply the cash-out provisions of Section 5.04 to that prior distribution, this special vesting formula also applies to that Participant's remaining Account Balance. The Employer, in an Addendum to its Adoption Agreement, may elect to modify this formula to read as follows: P(AB + (R x D)) - (R x D). For purposes of this alternative formula, "R" is the ratio of "AB" to the Participant's Employer-derived Account Balance immediately following the earlier distribution.

(B) SPECIAL VESTING ELECTIONS. The Employer in its Adoption Agreement may elect other specified vesting provisions which are consistent with Code Section 411 and applicable Treasury regulations.

5.04 CASH-OUT DISTRIBUTIONS TO PARTIALLY-VESTED PARTICIPANTS/ RESTORATION OF FORFEITED ACCOUNT BALANCE. If, pursuant to Article VI, a partially-Vested Participant receives a cash-out distribution before he/she incurs a Forfeiture Break in Service, the Participant will incur an immediate forfeiture of the non-Vested portion of his/her Account Balance. If a partially-Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which he/she otherwise would incur a forfeiture by reason of a cash-out distribution, the Plan Administrator will apply the cash-out forfeiture rule as if the partially-Vested Participant received a cash-out distribution on the first day of the immediately following Plan Year. A partially-Vested Participant is a Participant whose Vested percentage determined under Section 5.03 is more than 0% but is less than 100%. A cash-out distribution is a distribution to the Participant (whether involuntary or with required consent as described in Article VI), of his/her entire Vested Account Balance due to the Participant's Separation from Service.

(A) FORFEITURE RESTORATION AND CONDITIONS FOR RESTORATION. A partially-Vested Participant re-employed by the Employer after receiving a cash-out distribution of the Vested percentage of his/her Account Balance may repay to the Trust the entire amount of the cash-out distribution attributable to Employer contributions without any adjustment for gains and losses, unless the Participant no longer has a right to restoration under this Section 5.04(A). If a re-employed Participant repays his/her cash-out distribution, the Plan Administrator, subject to the conditions of this Section 5.04(A), must restore the Participant's Account Balance attributable to Employer contributions to the same dollar amount as the dollar amount of his/her Account Balance on the Accounting Date, or other valuation date, immediately preceding the date of the cash-out distribution, unadjusted for any gains or losses occurring subsequent to that Accounting Date, or other valuation date.

Restoration of the Participant's Account Balance includes restoration of all Protected Benefits with respect to that restored Account Balance, in accordance with applicable Treasury regulations. The Plan Administrator will not restore a re-employed Participant's Account Balance under this Section 5.04 (A) if:

(1) 5 years have elapsed since the Participant's first re-employment date with the Employer following the cash-out distribution;

(2) The Participant is not in the Employer's Service on the date the Participant repays his/her cash-out distribution; or

(3) The Participant has incurred a Forfeiture Break in Service. This condition also applies if the Participant makes repayment within the Plan Year in which he/she incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.

(B) TIME AND METHOD OF FORFEITURE RESTORATION. If none of the conditions in Section 5.04(A) preventing restoration of the Participant's Account Balance applies, the Plan Administrator will restore the Participant's Account Balance as of the Plan Year Accounting Date coincident with or immediately following the repayment. To restore the Participant's Account Balance, the Plan Administrator, to the extent necessary, will allocate to the Participant's Account:

(1) First, the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate under Section 3.05;

(2) Second, the amount, if any, of the Trust Fund net income or gain for the Plan Year; and

(3) Third, the Employer contribution for the Plan Year to the extent made under a discretionary formula.

In an Addendum to its Adoption Agreement, the Employer may eliminate as a means of restoration any of the amounts described in clauses (1), (2) and (3) or may change the order of priority of these amounts. To the extent the amounts described in clauses (1), (2) and (3) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Article III, the additional amount necessary to enable the Plan Administrator to make the required restoration. If, for a particular Plan Year, the Plan Administrator must restore the Account Balance of more than one re-employed Participant, the Plan Administrator will make the restoration allocations from the amounts described in clauses (1), (2) and (3) to each such Participant's Account in the same proportion that a Participant's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Participants. A cash-out restoration allocation is not an Annual Addition under Part 2 of Article III.

(C) DEEMED CASH-OUT OF 0% VESTED PARTICIPANT. Except as the Employer may provide in an Addendum to its Adoption Agreement, the deemed cash-out rule of this Section 5.04(C) applies to any 0% Vested Participant. A "0% Vested Participant" is a Participant whose Account Balance derived from Employer contributions is entirely forfeitable at the time of his/her Separation from Service. If a 0% Vested Participant's Account is not entitled to an allocation of Employer contributions for the Plan Year in which the Participant has a Separation from Service, the Plan Administrator will apply the deemed cash-out Rile as if the 0% Vested Participant received a cash-out distribution on the date of the Participant's Separation from Service. If a 0% Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which the Participant has a Separation from Service, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a cash-out distribution on the first day of the first Plan Year beginning after his/her Separation from Service. For purposes of applying the restoration provisions of this Section 5.04, the Plan Administrator will treat a re-employed 0% Vested Participant as repaying his/her cash-out "distribution" on the date of the Participant's re-employment with the Employer.

5.05 ACCOUNTING FOR CASH-OUT REPAYMENT. As soon as is administratively practicable, the Plan Administrator will credit to the Participant's Account the cash-out amount a Participant has repaid to the Plan. Pending the restoration of the Participant's Account Balance, the Plan Administrator under Section 9.08(B) may direct the Trustee to place the Participant's cash-out repayment in a temporary segregated investment Account. Unless the cash-out repayment qualifies as a Participant rollover contribution, the Plan Administrator will direct the Trustee to repay to the Participant as soon as is administratively practicable, the full amount of the Participant's cash-out repayment if the Plan Administrator determines any of the conditions of Section 5.04(A) prevents restoration as of the applicable Accounting Date, notwithstanding the Participant's repayment.

5.06 YEAR OF SERVICE - VESTING. For purposes of determining a Participant's vesting under Section 5.03, "Year of Service" means the 12-consecutive month vesting computation period the Employer elects in its Adoption Agreement during which an Employee completes the number of Hours of Service (not exceeding 1,000) specified in the Adoption Agreement or, if the Plan applies the Elapsed Time Method of crediting Vesting Service, the vesting computation period for which the Employee receives credit for a Year of Service under the Service crediting rules of Section 1.15(D). A Year of Service includes any Year of Service completed prior to the Effective Date of the Plan, except as provided in Section 5.08.

5.07 BREAK IN SERVICE AND FORFEITURE BREAK IN SERVICE - VESTING. For purposes of this Article V, a Participant incurs a "Break in Service" if during any vesting computation period he/she does not complete more than 500 Hours of Service or, if the Plan applies the Elapsed Time Method of crediting Service, the Participant has a Period of Severance of at least 12 consecutive months. If, pursuant to Section 5.06, the Plan does not require more than 500 Hours of Service to receive credit for a Year of Service, a Participant incurs a Break in Service in a vesting computation period in which he/she fails to complete a Year of Service. A Participant incurs a Forfeiture Break in Service when he/she incurs 5 consecutive Breaks in Service. The Plan does not apply the Break in Service (one year hold-out) rule for vesting under Code Section 411(a)(6)(B). Therefore, an Employee need not

complete a Year of Service after a Break in Service before the Plan takes into account the Employee's otherwise includible pre-Break Years of Service under this Article V.

5.08 INCLUDED YEARS OF SERVICE - VESTING. For purposes of determining "Years of Service" under Section 5.06, the Plan takes into account all Years of Service an Employee completes with the Employer except:

(a) For the sole purpose of determining a Participant's Vested percentage of his/her Account Balance derived from Employer contributions which accrued for his/her benefit prior to a Forfeiture Break in Service or receipt of a cash-out distribution, the Plan disregards any Year of Service after the Participant first incurs a Forfeiture Break in Service or receives a cash-out distribution (except where the Plan Administrator restores the Participant's Account under Section 5.04(A)).

(b) Consistent with Code Section 411(a)(4), any Year of Service the Employer elects to exclude under its Adoption Agreement.

5.09 FORFEITURE OCCURS. A Participant's forfeiture of his/her non-Vested Account Balance derived from Employer contributions occurs under the Plan on the earlier of:

(a) The last day of the vesting computation period in which the Participant first incurs a Forfeiture Break in Service; or

(b) The date the Participant receives a cash-out distribution.

The Plan Administrator determines the percentage of a Participant's Account Balance forfeiture, if any, under this Section 5.09 solely by reference to the vesting schedule the Employer elected in its Adoption Agreement. A Participant does not forfeit any portion of his/her Account Balance for any other reason or cause except as expressly provided by this Section 5.09 or as provided under Section 9.11.

5.10 RULE OF PARITY - VESTING. The Employer may elect in its Adoption Agreement to apply the "rule of parity" under Code Section 411 (a)(6)(D) for purposes of determining vesting Years of Service. Under the rule of parity, the Plan Administrator excludes a Participant's Years of Service before a Break in Service if: (a) the number of the Participant's consecutive Breaks in Service equals or exceeds 5; and (b) the Participant is 0% Vested in his/her Account Balance derived from Employer contributions at the time he/she has the Breaks in Service.

5.11 AMENDMENT TO VESTING SCHEDULE. The Employer under Section 13.02 may amend the Plan's vesting schedule(s) under Section 5.03 at any time. However, the Plan Administrator will not apply the amended vesting schedule to reduce any Participant's existing Vested percentage (determined on the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) in the Participant's existing and future Account Balance attributable to Employer contributions, to a percentage less than the Vested percentage computed under the Plan without regard to the amendment. Furthermore, an amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new vesting schedule becomes effective.

If the Employer amends the Plan's vesting schedule, each Participant having completed at least 3 Years of Service (as described in Section 5.06) with the Employer prior to the expiration of the election period described below, may irrevocably elect to have the Plan Administrator determine the Vested percentage of his/her Account Balance without regard to the amendment. The Participant must file his/her election with the Plan Administrator within 60 days of the latest of: (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) the Participant's receipt of a copy of the amendment. The Plan Administrator, as soon as practicable, must forward a true copy of any amendment to the vesting schedule to each affected Participant, together with a written explanation of the effect of the amendment, the appropriate form upon which the Participant may make an election to remain under the pre-amendment vesting schedule and notice of the time within which the Participant must make an election to remain under the pre-amendment vesting schedule. The election described in this Section 5.11 does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at any time as the vesting schedule in effect prior to the amendment. For purposes of this Section 5.11, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Vested percentage of a Participant's Account Balance. Furthermore, any shift in the Plan's vesting schedule under Article XII, due to a change in the Plan's top-heavy status, is an amendment to the vesting schedule for purposes of this Section 5.11.

5.12 DEFERRAL CONTRIBUTIONS TAKEN INTO ACCOUNT. If the Plan includes a 401(k) arrangement, the vesting rules described in Article V must take into account a Participant's deferral contributions for purposes of determining: (1) if a Participant's distribution is of his/her entire Vested Account balance as required for a cash-out distribution under Section 5.04; (2) if a Participant repays the entire amount of a prior cash-out distribution so the Participant is entitled to restoration under Section 5.04(A); and (3) if a Participant is 0% vested under Section 5.04 (C) and under Section 5.10.

## ARTICLE VI
## DISTRIBUTIONS

6.01 TIMING OF DISTRIBUTION. The Plan Administrator will direct the Trustee to commence distribution of a Participant's Vested Account Balance in accordance with this Section 6.01 upon the Participant's Separation from Service for any reason, or if the Participant exercises an in-Service distribution right under the Plan. The Trustee may make Plan distributions on any administratively practicable date during the Plan Year, consistent with the Employer's elections in its Adoption Agreement.

(A) DISTRIBUTION UPON SEPARATION FROM SERVICE (OTHER THAN DEATH).

(1) PARTICIPANT'S VESTED ACCOUNT BALANCE NOT EXCEEDING $5,000. Upon the Participant's Separation from Service for any reason other than death, the Plan Administrator (without any requirement of Participant or spousal consent) will direct the Trustee to distribute the Participant's Vested Account Balance (determined in accordance with Section 6.01(A)(6)) not exceeding $5,000 in a lump sum (without regard to Section 6.04), at the time specified in the Adoption Agreement, but in no event later than the 60th day following the close of the Plan Year in which the later of the following events occur: (a) the Participant attains Normal Retirement Age; or (b) the Participant Separates from Service.

(2) PARTICIPANT'S VESTED ACCOUNT BALANCE EXCEEDS $5,000. Upon the Participant's Separation from Service for any reason other than death, the Plan Administrator, subject to the Participant's election to postpone distribution under this Section 6.01(A)(2) and the consent requirements of Section 6.01(A)(5), will direct the Trustee to commence distribution of the Participant's Vested Account Balance (determined in accordance with Section 6.01(A)(6)) exceeding $5,000, at the time specified in the Adoption Agreement and in a form under Section 6.03 elected by the Participant. Any election under this Section 6.01(A)(2) is subject to the requirements of Section 6.02 and of Section 6.04.

A Participant eligible to make an election under this Section 6.01(A)(2) may elect to postpone distribution beyond the time the Employer has elected in its Adoption Agreement, to any specified date including, but not beyond the Participant's Required Beginning Date, unless the Employer, in its Adoption Agreement, specifically limits a Participant's right to postpone distribution of his/her Account Balance to the later of the date the Participant attains age 62 or Normal Retirement Age. The Plan Administrator will reapply the notice and consent requirements of Section 6.01(A)(4) and Section 6.01(A)(5) to any distribution postponed under this Section 6.01(A)(2).

In the absence of a Participant's consent and distribution election (as described in Section 6.01(A)(5)) or in the absence of the Participant's election to postpone distribution prior to his/her annuity starting date, the Plan Administrator, consistent with the Employer's elections in its Adoption Agreement, will treat the Participant as having elected to postpone his/her distribution until the 60th day following the close of the Plan Year in which the latest of the following events occurs: (a) the Participant attains Normal Retirement Age; (b) the Participant attains age 62; or (c) the Participant Separates from Service. At the applicable date, the Plan Administrator then will direct the Trustee to distribute the Participant's Vested Account Balance in a lump sum (or, if applicable, the annuity form of distribution required under Section 6.04).

(3) DISABILITY. If the Participant's Separation from Service is because of his/her Disability, the Plan Administrator will direct the Trustee to pay the Participant's Vested Account Balance in the same manner as if the Participant had incurred a Separation from Service without Disability.

(4) DISTRIBUTION NOTICE/ANNUITY STARTING DATE. AT least 30 days and not more than 90 days prior to the Participant's annuity starting date, the Plan Administrator must provide a written notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible to make an election under Section 6.01(A)(2) ("distribution notice"). The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in Section 6.01(A)(2). For all purposes of this Article VI, the term "annuity starting date" means the first day of the first period for which the Plan pays an amount as an annuity or in any other form but in no event is the "annuity starting date" earlier than a Participant's Separation from Service.

(5) CONSENT REQUIREMENTS/PARTICIPANT DISTRIBUTION ELECTION. A Participant must consent, in writing, following receipt of the distribution notice, to any distribution under this Section 6.01, if at the time of the distribution to the Participant, the Participant's Vested Account Balance exceeds $5,000 and the Participant has not attained the later of Normal Retirement Age or age 62. Accounts which are distributable prior to the foregoing applicable age are "immediately distributable." Furthermore, the Participant's spouse also must consent, in writing, to any distribution, for which Section 6.04 requires the spouse's consent. The Participant may reconsider his/her distribution election at any time prior to the annuity starting date and elect to commence distribution as of any other distribution date permitted under the Plan or under the Adoption Agreement. A Participant may elect to receive distribution at any administratively practicable time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days. However, if the requirements of Section 6.04 apply, the Participant may not elect to commence distribution less than 7 days following the Participant's receipt of the distribution notice. The consent requirements of this Section 6.01(A)(5) do not apply with respect to defaulted loans described in Section 10.03(E).

(6) DETERMINATION OF VESTED ACCOUNT BALANCE. For purposes of the consent requirements under this Article VI, the Plan Administrator determines a Participant's Vested Account Balance as of the most recent valuation date immediately prior to the distribution

date, and takes

into account the Participant's entire Account, including deferral contributions. The Plan Administrator in determining the Participant's Vested Account Balance at the relevant time, will disregard a Participant's Vested Account Balance existing on any prior date, except as the Code otherwise may require.

(7) CONSENT TO CASH-OUT/FORFEITURE. If a Participant is partially-Vested in his/her Account Balance, a Participant's election under Section 6.01(A)(2) to receive distribution prior to the Participant's incurring a Forfeiture Break in Service, must be in the form of a cash-out distribution as defined in Section 5.04.

(8) RETURN TO EMPLOYMENT. A Participant may not receive a distribution by reason of Separation from Service, or continue any installment distribution based on a prior Separation from Service, if, prior to the time the Trustee actually makes the distribution, the Participant returns to employment with the Employer.

(B) DISTRIBUTION UPON DEATH. In the event of the Participant's Separation from Service on account of death, the Plan Administrator will direct the Trustee, in accordance with this Section 6.01(B) and subject to Section 6.02(D), to distribute to the Participant's Beneficiary the Participant's Vested Account Balance remaining in the Trust at the time of the Participant's death.

The Plan Administrator, subject to the requirements of Sections 6.04 and 6.02(D) or to a Beneficiary's written election (if authorized by the next paragraph of this Section 6.01(B)), must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance, as soon as administratively practicable following the Participant's death or, if later, the date on which the Plan Administrator receives notification of, or otherwise confirms, the Participant's death. If the Participant's Vested Account Balance determined in accordance with Section 6.01 (A)(6) does not exceed $5,000, the Trustee will distribute the balance in a lump sum without regard to Section 6.04. If the Participant's Vested Account Balance exceeds $5,000, the Trustee will distribute the balance subject to Section 6.02(D).

If the Participant's death benefit is payable in full to the Participant's surviving spouse, the surviving spouse may elect distribution at any time and in any form (except a joint and survivor annuity) the Plan would permit a Participant to elect upon Separation from Service. The Participant, on a form prescribed by the Plan Administrator, may (subject to the requirements of Section 6.04) elect the payment method or the payment term or both, which will apply to any Beneficiary, including his/her surviving spouse. The Participant's election may limit any Beneficiary's right to increase the frequency or the amount of any payments. Any payment term elected by the Participant must not exceed the payment term the Code otherwise would permit the Beneficiary to elect upon the Participant's death.

(C) IN-SERVICE DISTRIBUTION. The Employer must elect in its Adoption Agreement the distribution election rights, if any, a Participant has prior to his/her Separation from Service ("in-service distribution"). Subject to any contrary Employer election in Appendix A to its Adoption Agreement, a Participant upon attaining age 70 1/2, until he/she incurs a Separation from Service, has a continuing election to receive all or any portion of his/her Account Balance, including Employer contributions and Participant contributions. If the Employer elects in its Adoption Agreement additional in-service distribution of any Employer contribution (including deferral contributions), the Employer in its Adoption Agreement must specify events or conditions, if any, applicable to such in-service distributions. For special requirements regarding hardship distributions, see Section 6.09. The Employer also must elect in its Adoption Agreement the additional in-service distribution rights, if any, a Participant has with respect to Participant contributions as defined in Section 4.01. If a Participant receives an in-service distribution as to a partially-Vested Account, and the Participant has not incurred a Forfeiture Break in Service, the Plan Administrator will apply the vesting provisions of Section 5.03(A).

A Participant must make any permitted in-service distribution election under this Section 6.01(C) in writing and on a form prescribed by the Plan Administrator which specifies the percentage or dollar amount of the distribution and the Participant's Plan Account (Employer contributions or Participant contributions and type) to which the election applies. If the Plan permits in-service distributions, a Participant only may elect to receive one in-service distribution per Plan Year under this Section 6.01(C) unless the election form prescribed by the Plan Administrator provides for more frequent distributions. The Trustee, as directed by the Plan Administrator and subject to Sections 6.01(A)(4), 6.01(A)(5) and 6.04, will distribute the amount(s) a Participant elects in single sum, as soon as administratively practicable after the Participant files his/her in-service distribution election with the Plan Administrator. The Trustee will distribute the Participant's remaining Account Balance in accordance with the other provisions of this Article VI.

The Trustee, prior to a Participant's Normal Retirement Age or Disability may not make any in-service distribution to the Participant with respect to his/her Account Balance attributable to assets (including post-transfer earnings on those assets) and liabilities transferred, within the meaning of Code Section 414(1), to a profit sharing plan from a money purchase pension plan or from a target benefit plan qualified under Code Section 401 (a) (other than any portion of those assets and liabilities attributable to Employee contributions).

6.02 REQUIRED MINIMUM DISTRIBUTIONS.

(A) PRIORITY OF REQUIRED MINIMUM DISTRIBUTION. If any distribution under this Article VI (by Plan provision or by Participant election or nonelection), would commence later than the Participant's required beginning date ("RBD"), the Plan Administrator instead must direct the Trustee to make distribution on the Participant's RBD, subject only to the TEFRA election, if applicable, under Section 6.11. The Employer in its Adoption Agreement Appendix B may elect to apply a special effective date to the RBD definition or may elect in Appendix A to continue to apply the RBD definition in effect prior to 1997 ("pre-SBJPA RBD"). The Employer in its Adoption Agreement also may elect to require distribution earlier than the RBD.

**Defined Contribution Plan**

(1) RBD - MORE THAN 5% OWNER. A Participant's RBD is the April 1 following the close of the calendar year in which the Participant attains age 70 1/2 if the Participant is a more than 5% owner (as defined in Code Section 416) with respect to the Plan Year ending in that calendar year. If a Participant is a more than 5% owner at the close of the relevant calendar year, the Participant may not discontinue required minimum distributions notwithstanding the Participant's subsequent change in ownership status.

(2) RBD - NON 5% OWNERS. If the Participant is not a more than 5% owner, his/her RBD is the April 1 following the close of the calendar year in which the Participant incurs a Separation from Service or, if later, the April 1 following the close of the calendar year in which the Participant attains age 70 1/2. If a Participant is not a more than 5% owner, his/her pre-SBJPA RBD (if applicable) is April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(3) FORM OF DISTRIBUTION. The Trustee will make a required minimum distribution at the Participant's RBD in a lump sum (or, if applicable, the annuity form of distribution required under Section 6.04) unless the Participant, pursuant to the provisions of this Article VI, makes a valid election to receive an alternative form of payment.

(B) PARTICIPANT TRANSITIONAL ELECTIONS.

(1) ELECTION TO DISCONTINUE DISTRIBUTIONS. A Participant who: (a) is not a more than 5% owner; (b) had attained age 70 1/2 prior to 1997; (c) had commenced prior to 1997 required minimum distributions under the pre-SBJPA RBD; and (d) has not incurred a Separation from Service, has a continuing election to discontinue receiving distributions from the Plan (which previously were required minimum distributions under the Plan). A Participant who makes an election under this Section 6.02(B)(1) must establish a new annuity starting date when he/she recommences payment of his/her Account Balance under the Plan. A married Participant who is subject to Section 6.04 must obtain spousal consent: (a) to discontinue his/her distributions under this Section 6.04(B)(1) if distributions are in QJSA form; and (b) to recommence benefits in a form other than a QJSA. A Participant may not make any election under this Section 6.02(B)(1) which is inconsistent with any QDRO applicable to the Participant's Account.

(2) ELECTION TO POSTPONE DISTRIBUTIONS. A Participant who: (a) is not a more than 5% owner; and (b) attained age 70 1/2 after 1996 (or who attained age 70 1/2 in 1996, but who had not commenced his/her required minimum distributions in 1996) may elect under this Section 6.02(B)(2) to postpone distribution of required minimum distributions until the Participant's RBD established under Section 6.02(A). If the Participant attained age 70 1/2 in 1996, he/she must have elected under this Section 6.02(B)(2) to postpone distributions by December 31, 1997. If the Participant attained age 70 1/2 after 1996, he/she must make the election to postpone distribution under this Section 6.01(B)(2) not later than April 1 of the calendar year following the year in which the Participant attains age 70 1/2.

(3) ELECTION REQUIREMENTS. All Participant elections made under this Section 6.01(B) are subject to and must be consistent with the Employer's RBD elections in its Adoption Agreement Appendices A and B. A Participant makes his/her election under this Section 6.02(B) in writing on a form prescribed by the Plan Administrator.

(C) MINIMUM DISTRIBUTION REQUIREMENTS FOR PARTICIPANTS. The Plan Administrator may not direct the Trustee to distribute the Participant's Vested Account Balance, nor may the Participant elect to have the Trustee distribute his/her Vested Account Balance, under a method of payment which, as of the Participant's RBD, does not satisfy the minimum distribution requirements under Code Section 401(a)(9) and the applicable Treasury regulations.

(1) CALCULATION OF AMOUNT. The required minimum distribution for a calendar year ("distribution calendar year") equals the Participant's Vested Account Balance as of the latest valuation date preceding the beginning of the distribution calendar year (such valuation date being within the "valuation calendar year") divided by the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the Participant and his/her designated Beneficiary (as determined under Article VIII, subject to the requirements of Code Section 401(a)(9)). The Plan Administrator will increase the Participant's Vested Account Balance, as determined on the relevant valuation date, for contributions or forfeitures allocated after the valuation date and by December 31 of the valuation calendar year, and will decrease the valuation by distributions made after the valuation date and by December 31 of the valuation calendar year. For purposes of this valuation, any portion of the required minimum distribution for the first distribution calendar year made after the close of that year is a distribution occurring in that first distribution calendar year.

(2) RECALCULATION. In computing a required minimum distribution, the Plan Administrator must use the unisex life expectancy multiples under Treas. Reg. Section 1.72-9. The Plan Administrator, only upon the Participant's timely election, will compute the required minimum distribution for a distribution calendar year subsequent to the first distribution calendar year by redetermining ("recalculation" of) the Participant's life expectancy or the Participant's and spouse designated Beneficiary's life expectancies as elected. However, the Plan Administrator may not redetermine the joint life and last survivor expectancy of the Participant and a nonspouse designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A Participant must elect recalculation under this Section 6.02(C)(2) in writing and on a form the Plan Administrator prescribes, not later than the Participant's RBD.

(3) MINIMUM DISTRIBUTION INCIDENTAL BENEFIT (MDIB). If the Participant's spouse is not his/her designated Beneficiary, a method of payment to the Participant (whether by Participant election or by Plan Administrator direction) must satisfy the MDIB requirement under Code Section 401(a)(9) for distributions made on or after the Participant's RBD and before the Participant's death. To satisfy the MDIB

requirement, the Plan Administrator will compute the Participant's required

minimum distribution by substituting the applicable MDIB divisor for the applicable life expectancy factor, if the MDIB divisor is a lesser number; Following the Participant's death, the Plan Administrator will compute the minimum distribution required by Section 6.02(D) solely on the basis of the applicable life expectancy factor and will disregard the MDIB factor.

(4) PAYMENT DUE DATE. The required minimum distribution for the first distribution calendar year is due by the Participant's RBD. The required minimum distribution for each subsequent distribution calendar year, including the calendar year in which the Participant's RBD occurs, is due by December 31 of that year.

(5) NONTRANSFERABLE ANNUITY. If the Participant receives distribution in the form of a Nontransferable Annuity, the distribution satisfies this Section 6.02(C) if the contract complies with the requirements of Code Section 401(a)(9).

(D) MINIMUM DISTRIBUTION REQUIREMENTS FOR BENEFICIARIES. The method of distribution to the Participant's Beneficiary must satisfy Code Section 401(a)(9).

(1) DEATH AFTER RBD. If the Participant's death occurs after his/her RBD (or earlier, if the Participant had commenced an irrevocable annuity pursuant to
Section 6.04), the Trustee must distribute the Participant's remaining benefit to the Beneficiary at least as rapidly as under the method in effect for the Participant, determined without regard to the MDIB requirements of Section 6.02(C)(3).

(2) DEATH PRIOR TO RBD. If the Participant's death occurs prior to his/her RBD (and the Participant had not commenced an irrevocable annuity pursuant to
Section 6.04), the method of payment to the Beneficiary, subject to Section 6.04, must provide for completion of payment to the Beneficiary over a period not exceeding: (a) 5 years after the date of the Participant's death; or (b) if the Beneficiary is a designated Beneficiary, the designated Beneficiary's life expectancy. A designated Beneficiary is a Beneficiary designated by the Participant or determined under Section 8.02. The Plan Administrator may not direct payment of the Participant's Vested Account Balance over a period described in clause (b) unless the Trustee will commence payment to the designated Beneficiary no later than the December 31 following the close of the calendar year in which the Participant's death occurred or, if later, and the designated Beneficiary is the Participant's surviving spouse, December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Trustee will make distribution in accordance with clause (b) of this
Section 6.02(D)(2), the minimum distribution for a distribution calendar year equals the Participant's Vested Account Balance as of the latest valuation date preceding the beginning of the distribution calendar year divided by the designated Beneficiary's life expectancy. The Plan Administrator must use the unisex life expectancy multiples under Treas. Reg. Section 1.72-9 for purposes of applying this Section 6.02(D).

(3) RECALCULATION. The Plan Administrator, only upon the Participant's election (under Section 6.02(C)(2)) or the Participant's surviving spouse designated Beneficiary's election, will recalculate the life expectancy of the Participant's surviving spouse not more frequently than annually. However, the Plan Administrator may not recalculate the life expectancy of a nonspouse designated Beneficiary after the Trustee commences payment to the designated Beneficiary. The Plan Administrator will apply this Section 6.02(D) by treating any amount paid to the Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, as paid to the Participant's surviving spouse. A surviving spouse designated Beneficiary must elect recalculation under this Section 6.02(D)(3) in writing and on a form the Plan Administrator prescribes not later than the last day of the spouse's first distribution year.

(4) BENEFICIARY ELECTION. If the Participant under Section 6.01(B) had not elected the payment method or payment term, the Participant's Beneficiary must elect the method of distribution no later than the date specified above upon which the Trustee must commence distribution to the Beneficiary. If the Beneficiary fails to elect timely a distribution method, the Plan Administrator must commence distribution within the time required for a Participant who dies without a designated Beneficiary.

(E) MODEL AMENDMENT. The employer in Appendix B to its Adoption Agreement may elect to apply the following IRS Model Amendment:

With respect to distributions under the Plan made on or after the effective date the Employer specifies in Appendix B to its Adoption Agreement, for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401 (a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, (the "2001 Proposed Regulations"), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a Participant for 2001 prior to the Appendix B effective date are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such Participant for 2001 on or after such date. If the total amount of required minimum distributions made to a Participant for 2001 prior to the Appendix B effective date are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service.

6.03 METHOD OF DISTRIBUTION. Subject to any contrary requirements imposed by Sections 6.01 (including 6.01(C) regarding in-service distributions), 6.02 or 6.04, a Participant or a Beneficiary may elect distribution under one, or any combination, of the following methods: (a) by

payment in a lump sum; or (b) by payment in monthly, quarterly or annual installments over a fixed reasonable period of time, not exceeding the life expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and his/her designated Beneficiary. The Employer may elect in its Adoption Agreement to modify the methods of payment available under this Section 6.03. If the Employer's Plan is a restated Plan, the Employer in its Adoption Agreement and in accordance with Treas. Reg. Section 1.411(d)-4, may elect to eliminate from the prior Plan certain Protected Benefits. If the Employer elects or is required to provide an annuity, the annuity must: (1) be a Nontransferable Annuity; and (2) otherwise comply with the Plan terms.

The distribution options permitted under this Section 6.03 are available only if the Participant's Vested Account Balance, as determined under Section 6.01(A)(6), exceeds $5,000. To facilitate installment payments under this Article VI, the Plan Administrator under Section 9.08(B) may direct the Trustee to segregate all or any part of the Participant's Account Balance in a segregated investment Account. Under an installment distribution, the Participant or the Beneficiary, at any time, may elect to accelerate the payment of all, or any portion, of the Participant's unpaid Vested Account Balance.

Pending final accounting for a valuation date, the Plan Administrator may make a partial distribution to a Participant who has incurred a Separation from Service or to a Beneficiary.

6.04 ANNUITY DISTRIBUTIONS TO PARTICIPANTS AND TO SURVIVING SPOUSES.

(A) QUALIFIED JOINT AND SURVIVOR ANNUITY (QJSA). The Plan Administrator must direct the Trustee to distribute a married or unmarried Participant's Vested Account Balance in the form of a QJSA, unless the Participant, and spouse if the Participant is married, waive the QJSA in accordance with Section 6.05. If, as of the annuity starting date, the Participant is married (even if the Participant has not been married throughout the one year period ending on the annuity starting date), a QJSA is an immediate annuity which is purchasable with the Participant's Vested Account Balance and which provides a life annuity for the Participant and a survivor annuity payable for the remaining life of the Participant's surviving spouse equal to 50% of the amount of the annuity payable during the life of the Participant. If, as of the annuity starting date, the Participant is not married, a QJSA is an immediate life annuity for the Participant which is purchasable with the Participant's Vested Account Balance. A life annuity means an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

(B) QUALIFIED PRERETIREMENT SURVIVOR ANNUITY (QPSA). If a married Participant dies prior to his/her annuity starting date, the Plan Administrator will direct the Trustee to distribute a portion of the Participant's Vested Account Balance to the Participant's surviving spouse in the form of a QPSA, unless: (1) the Participant has a valid waiver election (as described in Section 6.06) in effect; or (2) the Participant and his/her spouse were not married throughout the one year period ending on the date of the Participant's death. The Employer in an Addendum to its Adoption Agreement may elect not to apply the one year of marriage requirement in clause (2). A QPSA is an annuity which is purchasable with 50% of the Participant's Vested Account Balance (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving spouse. The value of the QPSA is attributable to Employer contributions and to Participant contributions in the same proportion as the Participant's Vested Account Balance is attributable to those contributions. The portion of the Participant's Vested Account Balance not payable as a QPSA is payable to the Participant's Beneficiary, in accordance with the remaining provisions of this Article VI.

(C) SURVIVING SPOUSE ELECTIONS. If the Participant's Vested Account Balance which the Trustee would apply to purchase the QPSA exceeds $5,000, the Participant's surviving spouse may elect to have the Trustee commence payment of the QPSA at any time following the date of the Participant's death, but not later than the mandatory distribution periods described in Section 6.02, and may elect any of the forms of payment described in Section 6.03, in lieu of the QPSA. In the absence of an election by the surviving spouse, the Plan Administrator must direct the Trustee to distribute the QPSA on the earliest administratively practicable date following the close of the Plan Year in which the latest of the following events occurs: (1) the Participant's death; (2) the date the Plan Administrator receives notification of or otherwise confirms the Participant's death; (3) the date the Participant would have attained Normal Retirement Age; or (4) the date the Participant would have attained age 62.

(D) EFFECT OF WAIVER. If the Participant has in effect a valid waiver election regarding the QJSA or the QPSA, the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(E) LOAN OFFSET. The Plan Administrator will reduce the Participant's Vested Account Balance by any security interest (pursuant to any offset rights authorized by Section 10.03(E)) held by the Plan by reason of a Participant loan, to determine the value of the Participant's Vested Account Balance distributable in the form of a QJSA or QPSA, provided the loan satisfied the spousal consent requirement described in Section 10.03(E).

(F) EFFECT OF QDRO. For purposes of applying this Article VI, a former spouse (in lieu of the Participant's current spouse) is the Participant's spouse or surviving spouse to the extent provided under a QDRO described in Section 6.07. The provisions of this Section 6.04, and of Sections 6.05 and 6.06, apply separately to the portion of the Participant's Vested Account Balance subject to a QDRO and to the portion of the Participant's Vested Account Balance not subject to the QDRO.

(G) VESTED ACCOUNT BALANCE NOT EXCEEDING $5,000. The Trustee must distribute in a lump sum, a Participant's Vested Account Balance which the Trustee otherwise under Section 6.04 would apply to provide a QJSA or QPSA benefit, where the Participant's Vested

Account Balance determined under Section 6.01(A)(6) does not exceed $5,000.

(H) PROFIT SHARING PLAN EXCEPTION. If this Plan is a profit sharing plan, the Employer in its Adoption Agreement must elect the extent to which the preceding provisions of Section 6.04 apply. The Employer may elect to exempt from the provisions of Section 6.04, all Participants ("Exempt Participants") except the following Participants to whom Section 6.04 must be applied: (1) a Participant as respects whom the Plan is a direct or indirect transferee from a plan subject to the Code Section 417 requirements and the Plan received the transfer after December 31, 1984, unless the transfer is an elective transfer described in
Section 13.07; (2) a Participant who elects a life annuity distribution (if
Section 13.02 of the Plan requires the Plan to provide a life annuity distribution option); and (3) a Participant whose benefits under a defined benefit plan maintained by the Employer are offset by benefits provided under this Plan. If the Employer elects to apply this Section 6.04 to all Participants, the preceding provisions of this Section 6.04 apply to all Participants without regard to the limitations of this Section 6.04(H). Sections 6.05 and 6.06 only apply to Participants to whom the provisions of this Section 6.04 apply.

6.05 WAIVER ELECTION - QJSA. At least 30 days and not more than 90 days before the Participant's annuity starting date, the Plan Administrator must provide the Participant a written explanation of the terms and conditions of the QJSA, the Participant's right to make, and the effect of, an election to waive the QJSA benefit, the rights of the Participant's spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election ("QJSA notice"). The Plan does not limit the number of times the Participant may revoke a waiver of the QJSA or make a new waiver during the election period. The Participant (and his/her spouse, if the Participant is married), may revoke an election to receive a particular form of benefit at any time until the annuity starting date.

A married Participant's QJSA waiver election is not valid unless: (a) the Participant's spouse (to whom the survivor annuity is payable under the QJSA), after the Participant has received the QJSA notice, has consented in writing to the waiver election, the spouse's consent acknowledges the effect of the election, and a notary public or the Plan Administrator (or his/her representative) witnesses the spouse's consent; (b) the spouse consents to the alternative form of payment designated by the Participant or to any change in that designated form of payment; and (c) unless the spouse is the Participant's sole primary Beneficiary, the spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation. The spouse's consent to a waiver of the QJSA is irrevocable, unless the Participant revokes the waiver election. The spouse may execute a blanket consent to the Participant's future payment form election or Beneficiary designation, if the spouse acknowledges the right to limit his/her consent to a specific designation but, in writing, waives that right.

The Plan Administrator will accept as valid a waiver election which does not satisfy the spousal consent requirements if the Plan Administrator establishes the Participant does not have a spouse, the Plan Administrator is not able to locate the Participant's spouse, the Participant is legally separated or has been abandoned (within the meaning of applicable state law) and the Participant has a court order to that effect, or other circumstances exist under which the Secretary of the Treasury will excuse the spousal consent requirement. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

6.06 WAIVER ELECTION - QPSA. The Plan Administrator must provide a written explanation of the QPSA to each married Participant ("QPSA notice"), within the following period which ends last: (1) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (2) a reasonable period after an Employee becomes a Participant; (3) a reasonable period after
Section 6.04 of the Plan becomes applicable to the Participant; or (4) a reasonable period after the Plan no longer satisfies the requirements for a fully subsidized benefit. A "reasonable period" described in clauses (2), (3) and (4) is the period beginning one year before and ending one year after the applicable event. If the Participant separates from Service before attaining age 35, clauses (1), (2), (3) and (4) do not apply and the Plan Administrator must provide the QPSA notice within the period beginning one year before and ending one year after the Separation from Service. The QPSA notice must describe, in a manner consistent with Treasury regulations, the terms and conditions of the QPSA and of the waiver of the QPSA, comparable to the QJSA notice required under
Section 6.05. The Plan does not limit the number of times the Participant may revoke a waiver of the QPSA or make a new waiver during the election period. The election period for waiver of the QPSA ends on the date of the Participant's death.

A Participant's QPSA waiver election is not valid unless: (a) the Participant makes the waiver election after the Participant has received the QPSA notice and no earlier than the first day of the Plan Year in which he/she attains age 35; and (b) the Participant's spouse (to whom the QPSA is payable) satisfies or is excused from the consent requirements as described in Section 6.05, except the spouse need not consent to the form of benefit payable to the designated Beneficiary. The spouse's consent to the waiver of the QPSA is irrevocable, unless the Participant revokes the waiver election. The spouse also may execute a blanket consent as described in Section 6.05. Irrespective of the time of election requirement described in clause (a), if the Participant separates from Service prior to the first day of the Plan Year in which he/she attains age 35, the Plan Administrator will accept a waiver election as respects the Participant's Account Balance attributable to his/her Service prior to his/her Separation from Service. Furthermore, if a Participant who has not separated from Service makes a valid waiver election, except for the timing requirement of clause (a), the Plan Administrator will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35.

6.07 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO). Notwithstanding any other provision of this Plan, the Trustee, in accordance with the direction of the Plan Administrator, must comply with the provisions of a QDRO, as defined in Code Section 414(p), which is issued with respect to the Plan. This Plan specifically permits

distribution to an alternate payee under a QDRO at any time, irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code Section 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds $5,000, and the QDRO requires, the alternate payee consents to any distribution occurring prior to the Participant's attainment of earliest retirement age. Nothing in this Section 6.07 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor does Section 6.07 authorize the alternate payee to receive a form of payment the Plan does not permit.

The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with DOL regulations.

If any portion of the Participant's Vested Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator under Section 9.08(B) may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Trustee will make any payments or distributions required under this Section 6.07 by separate benefit checks or other separate distribution to the alternate payee(s).

6.08 DEFAULTED LOAN - TIMING OF OFFSET. If a Participant or a Beneficiary defaults on a Plan loan, the Plan Administrator will determine the timing of the reduction (offset) of the Participant's Vested Account Balance in accordance with this Section 6.08 and the Plan Administrator's loan policy. If, under the loan policy a loan default also is a distributable event under the Plan, the Trustee, at the time of the loan default, will offset the Participant's Vested Account Balance by the lesser of the amount in default (including accrued interest) or the Plan's security interest in that Vested Account Balance. If the loan is from a money purchase pension plan or from a target benefit plan and the loan default is a distributable event under the loan policy, the Trustee will offset the Participant's Account Balance in the manner described above, only if the Participant has incurred a Separation from Service or has attained Normal Retirement Age. If the loan is under a 401 (k) arrangement, to the extent the loan is attributable to the Participant's deferral contributions Account, qualified matching contributions Account, qualified nonelective contributions Account or safe harbor contributions Account, the Trustee will not offset the Participant's Vested Account Balance unless the Participant has incurred a Separation from Service or unless the Participant has attained age 59 1/2.

6.09 HARDSHIP DISTRIBUTION. For purposes of this Plan, unless the Employer in its Adoption Agreement Section 6.01 elects otherwise, a hardship distribution is a distribution on account of one or more of the following immediate and heavy financial needs: (1) expenses for medical care described in Code Section 213(d) incurred by the Participant, by the Participant's spouse, or by any of the Participant's dependents, or necessary to obtain such medical care; (2) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant; (3) payment of post-secondary education tuition and related educational fees (including room and board), for the next 12-month period, for the Participant, for the Participant's spouse, or for any of the Participant's dependents (as defined in Code Section 152); (4) payments necessary to prevent the eviction of the Participant from his/her principal residence or the foreclosure on the mortgage of the Participant's principal residence; or (5) any need the Revenue Service prescribes in a revenue ruling, notice or other document of general applicability which satisfies the safe harbor definition of hardship under Treas. Reg. Section 1.401(k)-l(d)(2)(iv)(A). See Section 14.11 (A) if a hardship distribution is from a Participant's elective deferral Account in a 401(k) arrangement. The Employer in its Adoption Agreement Section 6.01 may elect to apply Section 14.11 (A) to all Plan hardship distributions. If the Plan permits a hardship distribution from more than one Account type, the Plan Administrator may determine any ordering of a Participant's hardship distribution from the hardship distribution eligible Accounts.

6.10 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(A) PARTICIPANT ELECTION. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this Section 6.10, a Participant includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) ROLLOVER AND WITHHOLDING NOTICE. At least 30 days and not more than 90 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice"). If applicable, the rollover notice also must explain the availability of income averaging and the exclusion of net unrealized appreciation. A recipient of an eligible rollover distribution (whether he/she elects a direct rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days (but not less than 7 days if Section 6.04 applies) following receipt of the rollover notice.

(C) DEFAULT ROLLOVER. The Plan Administrator, in the case of a Participant who does not respond timely to the notice described in Section 6.10(B), may make a direct rollover of the Participant's Account (as described in Revenue Ruling 2000-36 or in any successor guidance) in lieu of distributing the Participant's Account.

(D) DEFINITIONS. The following definitions apply to this Section 6.10:

(1) ELIGIBLE ROLLOVER DISTRIBUTION. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Participant, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more; (b) any Code Section 401(a)(9) required minimum distribution; (c) the portion of any distribution which is not includible in gross income (determined without regard to the exclusion of net unrealized appreciation with respect to employer securities); (d) any hardship distribution made after December 31, 1998, from a Participant's deferral contributions Account (except where the Participant also satisfies a non-hardship distribution event described in Section 14.03(d)); and (e) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than $200.

(2) ELIGIBLE RETIREMENT PLAN. 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), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401 (a), which accepts the Participant's or alternate payee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is either an individual retirement account or individual retirement annuity.

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

6.11 TEFRA ELECTIONS. Notwithstanding the provisions of Sections 6.01, 6.02 and 6.03, if the Participant (or Beneficiary) signed a written distribution designation prior to January l, 1984, ("TEFRA election") the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with that election, subject however, to the survivor annuity requirements, if applicable, of Sections 6.04, 6.05 and 6.06. This Section 6.11 does not apply to a TEFRA election, and the Plan Administrator will not comply with that election, if any of the following applies: (1) the elected method of distribution would have disqualified the Plan under Code Section 401(a)(9) as in effect on December 31, 1983; (2) the Participant did not have an Account Balance as of December 31, 1983; (3) the election does not specify the timing and form of the distribution and the death Beneficiaries (in order of priority); (4) the substitution of a Beneficiary modifies the distribution payment period; or, (5) the Participant (or Beneficiary) modifies or revokes the election. In the event of a revocation, the Trustee must distribute, no later than December 31 of the calendar year following the year of revocation, the amount which the Participant would have received under Section 6.02 if the distribution designation had not been in effect or, if the Beneficiary revokes the distribution designation, the amount which the Beneficiary would have received under Section 6.02 if the distribution designation had not been in effect. The Plan Administrator will apply this Section 6.11 to rollovers and transfers in accordance with Part J of the Code Section 401(a)(9) Treasury regulations.

## ARTICLE VII
## EMPLOYER ADMINISTRATIVE PROVISIONS

7.01 INFORMATION TO PLAN ADMINISTRATOR. The Employer must supply current information to the Plan Administrator as to the name, date of birth, date of employment, Compensation, leaves of absence, Years of Service and date of Separation from Service of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary to administer properly the Plan. The Employer's records as to the current information the Employer furnishes to the Plan Administrator are conclusive as to all persons.

7.02 NO RESPONSIBILITY FOR OTHERS. Except as required under ERISA, the Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act (unless the Employer also serves in such capacities) required of the Plan Administrator, the Trustee, the Custodian, or of any other service provider to the Plan.

7.03 INDEMNITY OF CERTAIN FIDUCIARIES. The Employer will indemnify, defend and hold harmless the Plan Administrator from and against any and all loss resulting from liability to which the Plan Administrator may be subjected by reason of any act or omission (except willful misconduct or gross negligence) in its official capacities in the administration of this Trust or Plan or both, including attorneys' fees and all other expenses reasonably incurred in the Plan Administrator's defense, in case the Employer fails to provide such defense. The indemnification provisions of this Section 7.03 do not relieve the Plan Administrator from any liability the Plan Administrator may have under ERISA for breach of a fiduciary duty. Furthermore, the Plan Administrator and the Employer may execute a written agreement further delineating the indemnification agreement of this Section 7.03, provided the agreement is consistent with and does not violate ERISA. The indemnification provisions of this Section 7.03 extend to any Trustee, third party administrator, Custodian or other Plan service provider solely to the extent provided by a written agreement executed by such persons and the Employer.

7.04 EMPLOYER DIRECTION OF INVESTMENT. The Employer has the right to direct the Trustee with respect to the investment and re-investment of assets comprising the Trust Fund only if and to the extent the Trustee consents in writing to permit such direction.

7.05 EVIDENCE. Anyone including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Administrator and the Trustee are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

7.06 PLAN CONTRIBUTIONS. The Employer is solely responsible to determine the proper amount of any Employer contribution it makes to the Plan and for the timely deposit to the Trust of the Employer's Plan contributions.

7.07 EMPLOYER ACTION. The Employer must take any action under the Plan in accordance with applicable Plan provisions and with proper authority such that the action is valid and under applicable law and is binding upon the Employer.

7.08 FIDUCIARIES NOT INSURERS. The Trustee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Employer, the Plan Administrator and the Trustee to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

7.09 PLAN TERMS BINDING. The Plan is binding upon the Employer, Trustee, Plan Administrator, Custodian (and all other service providers to the Plan), upon Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons.

7.10 WORD USAGE. Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural. Titles of Plan and Adoption Agreement sections are for reference only.

7.11 STATE LAW. The law of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of the Plan, except to the extent superseded by ERISA or other federal law. The Employer in an Addendum to its Adoption Agreement and subject to applicable law, may elect to apply the law of another state.

7.12 PROTOTYPE PLAN STATUS. If the Plan fails initially to qualify or to maintain qualification or if the Employer makes any amendment or modification to a provision of the Plan (other than a proper completion of an elective provision under the Adoption Agreement or the attachment of an Addendum authorized by the Plan or by the Adoption Agreement), the Employer no longer may participate under this Prototype Plan. The Employer also may not participate (or continue to participate) in this Prototype Plan if the Trustee or Custodian does not have the written consent of the Prototype Plan Sponsor required under Section 1.33 to serve in the capacity of Trustee or Custodian. If the Employer is not entitled to participate under this Prototype Plan, the Plan is an individually-designed plan and the reliance procedures specified in the applicable Adoption Agreement no longer apply.

7.13 EMPLOYMENT NOT GUARANTEED. Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or any amendment to the Plan or Trust, or in the creation of any Account, or with respect to the payment of any benefit, gives any Employee, Participant or any Beneficiary any right to employment or to continued employment by the Employer, or any legal or equitable right against the Employer, the Trustee, the Plan Administrator or any employee or agent thereof, except as expressly provided by the Plan, the Trust, ERISA or other applicable law.

## ARTICLE VIII
## PARTICIPANT ADMINISTRATIVE PROVISIONS

8.01 BENEFICIARY DESIGNATION. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Trustee will pay the Participant's Vested Account Balance (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the form and method of payment of his/her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form effectively revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (1) the decree or a QDRO provides otherwise; or (2) the Employer provides otherwise in an Addendum to its Adoption Agreement. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes this Plan, unless the Employer in its Adoption Agreement specifies a different effective date.

(A) COORDINATION WITH SURVIVOR ANNUITY REQUIREMENTS. If Section 6.04 applies to the Participant, this Section 8.01 does not impose any special spousal consent requirements on the Participant's Beneficiary designation unless the Participant waives the QJSA or QPSA benefit. If the Participant waives the QJSA or QPSA benefit without spousal consent to the Participant's Beneficiary designation: (1) any waiver of the QJSA or of the QPSA is not valid; and (2) if the Participant dies prior to his/her annuity starting date, the Participant's Beneficiary designation will apply only to the portion of the death benefit which is not payable as a QPSA. Regarding clause (2), if the Participant's surviving spouse is a primary Beneficiary under the Participant's Beneficiary designation, the Trustee will satisfy the spouse's interest in the Participant's death benefit first from the portion which is payable as a QPSA.

(B) PROFIT SHARING PLAN EXCEPTION. If the Plan is a profit sharing plan, the Beneficiary designation of a married Exempt Participant, as described in Section 6.04(H), is not valid unless the Participant's spouse consents (in a manner described in Section 6.05) to the Beneficiary designation. The spousal consent requirement in this Section 8.01(B) does not apply if the Participant's spouse is the Participant's sole primary Beneficiary, or if the Exempt Participant and his/her spouse are not married throughout the one-year period ending on the date of the Participant's death.

(C) INCAPACITY OF BENEFICIARY. If, in the opinion of the Plan Administrator, a Beneficiary is not able to care for his/her affairs because of a mental condition, physical condition or by reason of age, the Plan Administrator will apply the provisions of Section 10.09.

8.02 NO BENEFICIARY DESIGNATION/DEATH OF BENEFICIARY. If a Participant fails to name a Beneficiary in accordance with Section 8.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Trustee will pay the Participant's Vested Account Balance in accordance with Section 6.03 in the following order of priority (unless the Employer specifies a different order of priority in an Addendum to its Adoption Agreement), to:

(a) The Participant's surviving spouse (without regard to the one-year marriage rule of Sections 6.04(B) and 8.01(B); and if no surviving spouse to

(b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendents); and if none to

(c) The Participant's surviving parents, in equal shares; and if none to

(d) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Vested Account Balance, the Trustee will pay the remaining Vested Account Balance to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; (2) the Beneficiary has properly designated a beneficiary; or (3) the Employer provides otherwise in an Addendum to its Adoption Agreement. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. If the Plan is a profit sharing plan, and the Plan includes Exempt Participants, the Employer may not specify a different order of priority in an Addendum unless the Participant's surviving spouse will be the sole primary Beneficiary in the different order of priority. The Plan Administrator will direct the Trustee as to the method and to whom the Trustee will make payment under this Section 8.02.

8.03 ASSIGNMENT OR ALIENATION. Except as provided in Code Section 414(p) relating to QDROs and in Code Section 401(a)(13) relating to certain voluntary, revocable assignments, judgments and settlements, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee will not recognize any such anticipation, assignment or alienation. Furthermore, except as provided by Code
Section 401(a)(13) or other applicable law, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

8.04 INFORMATION AVAILABLE. Any Participant or Beneficiary may examine copies of the Plan description, latest annual report, any bargaining agreement, this Plan and Trust, and any contract or any other instrument which relates to the establishment or administration of the Plan or Trust. The Plan Administrator will maintain all of the items listed in this Section 8.04 in its office, or in such other place or places as it may designate from time to time in

order to comply with the regulations issued under ERISA, for examination during reasonable business hours. Upon the written request of a Participant or a Beneficiary, the Plan Administrator must furnish the Participant or Beneficiary with a copy of any item listed in this Section 8.04. The Plan Administrator may make a reasonable copying charge to the requesting person.

8.05 CLAIMS PROCEDURE FOR DENIAL OF BENEFITS. A Participant or a Beneficiary may file with the Plan Administrator a written claim for benefits, if the Participant or the Beneficiary disputes the Plan Administrator's determination regarding the Participant's or Beneficiary's Plan benefit. However, the Plan will distribute only such Plan benefits to Participants or Beneficiaries as the Plan Administrator in its discretion determines a Participant or Beneficiary is entitled to. The Plan Administrator will maintain a separate written document as part of (or which accompanies) the Plan's summary plan description explaining the Plan's claims procedure. This Section 8.05 specifically incorporates the written claims procedure as from time to time published by the Plan Administrator as a part of the Plan. If the Plan Administrator pursuant to the Plan's written claims procedure makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary to preserve the claim must file an action with respect to the denied claim not later than 180 days following the date of the Plan Administrator's final determination.

8.06 PARTICIPANT DIRECTION OF INVESTMENT. A Participant's direction of the investment of his/her Account is subject to the provisions of this Section 8.06. For purposes of this Section 8.06, a Participant shall also include a Beneficiary where the Beneficiary has succeeded to the Participant's Account and the Plan affords the Beneficiary the same self-direction or loan rights as a Participant.

(A) TRUSTEE AUTHORIZATION AND PROCEDURES. A Participant has the right to direct the Trustee with respect to the investment or re-investment of the assets comprising the Participant's individual Account only if the Trustee consents in writing to permit such direction. If the Trustee consents to Participant direction of investment, the Trustee only will accept direction from each Participant on a written direction of investment form the Plan Administrator provides for this purpose. The Trustee, or with the Trustee's consent, the Plan Administrator, may establish written procedures relating to Participant direction of investment under this Section 8.06, including procedures or conditions for electronic transfers or for changes in investments by Participants. The Plan Administrator will maintain, or direct the Trustee to maintain, an appropriate individual investment Account to the extent a Participant's Account is subject to Participant self-direction.

(B) ERISA SECTION 404(c). No Plan fiduciary (including the Employer and Trustee)
is liable for any loss or for any breach resulting from a Participant's direction of the investment of any part of his/her directed Account to the extent the Participant's exercise of his/her right to direct the investment of his/her Account satisfies the requirements of ERISA Section 404(c).

(C) PARTICIPANT LOANS. The Plan Administrator, to the extent provided in a written loan policy adopted under Section 9.04, will treat a Plan loan made to a Participant as a Participant direction of investment under this Section 8.06, even if the Plan otherwise does not permit a Participant to direct his/her Account investments. Where a loan is treated as a directed investment, the borrowing Participant's Account alone shares in any interest paid on the loan, and it alone bears any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in a segregated Account (as described in Section 9.08(B)) on behalf of the borrowing Participant until the Trustee (or the Named Fiduciary, in the case of a nondiscretionary Trustee) deems it appropriate to add the loan payments to the Participant's Account under the Plan.

(D) COLLECTIBLES. If the Trustee consents to Participant direction of investment of his/her Account, any post-December 31, 1981, investment by a Participant's directed Account in collectibles (as defined by Code Section 408(m)) is a deemed distribution to the Participant for Federal income tax purposes.

## ARTICLE IX
## PLAN ADMINISTRATOR

9.01 COMPENSATION AND EXPENSES. The Plan Administrator (and any individuals serving as Plan Administrator) will serve without compensation for services as such, but the Employer will pay all expenses of the Plan Administrator, except to the extent the Trustee properly pays for such expenses, pursuant to Article X.

9.02 RESIGNATION AND REMOVAL. If the Employer appoints one or more persons to serve as Plan Administrator, such person(s) shall serve until they resign by written notice to the Employer or until the Employer removes them by written notice. In case of a vacancy in the position of Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

9.03 GENERAL POWERS AND DUTIES. The Plan Administrator has the following general powers and duties which are in addition to those the Plan otherwise accords to the Plan Administrator:

(a) To determine the rights of eligibility of an Employee to participate in the Plan, all factual questions that arise in the course of administering the Plan, the value of a Participant's Account Balance (based on the value of the Trust assets, as determined by the Trustee) and the Vested percentage of each Participant's Account Balance;

(b) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of the Plan, the Code, ERISA or other applicable law;

(c) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the basic plan document, the Adoption Agreement and any document related to the Plan's operation;

(d) To direct the Trustee regarding the crediting and distribution of the Trust Fund and to direct the Trustee to conduct interim valuations under Section 10.15;

(e) To review and render decisions regarding a claim for (or denial of a claim for) a benefit under the Plan;

(f) To furnish the Employer with information which the Employer may require for tax or other purposes;

(g) To engage the service of agents whom the Plan Administrator may deem advisable to assist it with the performance of its duties;

(h) To engage the services of an Investment Manager or Managers (as defined in ERISA Section 3(38)), each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such Manager's control;

(i) To make any other determinations and undertake any other actions the Plan Administrator believes are necessary or appropriate for the administration of the Plan; and

(j) To establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code.

The Plan Administrator must exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner. The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person.

9.04 PLAN LOANS. The Plan Administrator may, in its sole discretion, in accordance with Section 10.03(E) establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 9.04 is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to
Section 13.02.

9.05 FUNDING POLICY. The Plan Administrator will review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan

Administrator must communicate periodically, as it deems appropriate, to the Trustee and to any Plan Investment Manager the Plan's short-term and long-term financial needs for the coordination of the Plan's investment policy with Plan financial requirements.

9.06 INDIVIDUAL ACCOUNTS. The Plan Administrator will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan.

(A) FORFEITURES. If a Participant re-enters the Plan subsequent to his/her having a Forfeiture Break in Service, the Plan Administrator, or the Trustee, must maintain a separate Account for the Participant's pre-Forfeiture Break in Service Account Balance and a separate Account for his

post-Forfeiture Break in Service Account Balance, unless the Participant's entire Account Balance under the Plan is 100% Vested.

If the Plan is subject to Participant direction of investment under Section 8.06, the Plan Administrator may maintain, or may direct the Trustee to maintain, a separate temporary forfeiture Account in the name of the Plan to account for Participant forfeitures which occur during the Plan Year. The Trustee will direct the investment of any separate temporary forfeiture Account. As of each Accounting Date, or interim valuation date, if applicable, the Plan Administrator will allocate the net income, gain or loss from the temporary forfeiture Account, if any, to the Accounts of the Participants in accordance with the provisions of Section 9.08.

(B) Net INCOME, GAIN OR LOSS. The Plan Administrator will make its allocations of net income, gain or loss or request the Trustee to make its allocations, to the Accounts of the Participants in accordance with the provisions of Section 9.08. The Plan Administrator may direct the Trustee under Section 9.08(B) to maintain a temporary segregated investment Account in the name of a Participant to prevent a distortion of income, gain or loss allocations. The Plan Administrator must maintain records of its activities.

9.07 VALUE OF PARTICIPANT'S ACCOUNT BALANCE. If any or all Plan investment accounts are pooled, each Participant's Account has an undivided interest in the assets comprising the pooled account. In a pooled account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his/her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant's life. If any or all Plan investment accounts are Participant directed, the directing Participant's Account Balance is comprised of the assets held within the Account and the value of the Account is the fair market value of such assets. For purposes of a distribution under the Plan, the value of a Participant's Account Balance is its value as of the valuation date immediately preceding the date of the distribution.

9.08 ALLOCATION AND DISTRIBUTION OF NET INCOME, GAIN OR LOSS. This Section 9.08 applies solely to the allocation of net income, gain or loss of the Trust Fund. The Plan Administrator will allocate Employer contributions and Participant forfeitures, if any, in accordance with Article III.

A "valuation date" under this Plan is each: (1) Accounting Date; (2) valuation date the Employer elects in its Adoption Agreement Section 10.15; or (3) valuation date the Plan Administrator establishes under Section 9.03. The Employer in its Adoption Agreement Section 10.15 or the Plan Administrator may elect alternative valuation dates for the different Account types which the Plan Administrator maintains under the Plan. As of each valuation date, the Plan Administrator must adjust Accounts to reflect net income, gain or loss since the last valuation date. The valuation period is the period beginning on the day after the last valuation date and ending on the current valuation date.

The Plan Administrator will allocate net income, gain or loss to the Participant Accounts in accordance with the daily valuation method, balance forward method, weighted average method, or other method the Employer elects under its Adoption Agreement. The Employer in its Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the net income, gain or loss to the different Account types which the Plan Administrator maintains under the Plan. If the Employer in its Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the valuation period. The weighted portion is a fraction, the numerator of which is the number of months in the valuation period, excluding each month in the valuation period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the valuation period. The Employer in its Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation. If the Employer in its Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate the net income, gain or loss on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. If the Employer in its Adoption Agreement elects to apply the balance forward method, the Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current valuation period, by reducing the Accounts for any forfeitures arising under the Plan, for amounts charged during the valuation period to the Accounts in accordance with Section 9.10 (relating to distributions and to loan disbursement payments) and Section 11.01 (relating to insurance premiums), and for the cash value of incidental benefit insurance contracts. The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate the net income, gain or loss pro rata to the adjusted Participant Accounts. The allocable net income, gain or loss is the net income (or net loss), including the increase or decrease in the fair market value of assets, since the last valuation date.

(A) TRUST FUND (POOLED) INVESTMENT ACCOUNTS. A pooled investment account is an Account which is not a segregated investment Account or an individual investment Account.

(B) SEGREGATED INVESTMENT ACCOUNTS. A segregated investment Account receives all income it earns and bears all expense or loss it incurs. Pursuant to the Plan Administrator's direction, the Trustee may establish for a Participant a segregated investment Account to prevent a distortion of Plan income, gain or loss allocations or for such other purposes as the Plan Administrator may direct. The Trustee will invest the assets of a segregated investment Account consistent with such purposes. As of each valuation date, the Plan Administrator must reduce a segregated Account for any forfeiture arising under Section 5.09 after the Plan Administrator has made all other

allocations, changes or adjustments to the Account for the valuation period.

(C) INDIVIDUAL (DIRECTED) INVESTMENT ACCOUNTS. AN individual investment Account is an Account which is subject to Participant or Beneficiary self-direction under Section 8.06. An individual investment Account receives all income it earns and bears all expense or loss it incurs. As of each valuation date, the Plan Administrator must reduce an individual Account for any forfeiture arising from Section 5.09 after the Plan Administrator has made all other allocations, changes or adjustment to the Account for the valuation period.

(D) CODE SECTION 415 EXCESS AMOUNTS. An Excess Amount or suspense account described in Part 2 of Article III does not share in the allocation of net income, gain or loss described in this Section 9.08.

(E) INTEREST ADJUSTMENT. Any distribution (other than a distribution from a segregated or individual Account) made to a Participant or Beneficiary more than 90 days after the most recent valuation date may include interest on the amount of the distribution as an expense of the Trust Fund. The interest, if any, accrues from such valuation date to the date of the distribution at the rate the Employer specifies in its Adoption Agreement.

(F) CONTRIBUTIONS PRIOR TO ACCRUAL. If the Employer in its Adoption Agreement elects to impose one or more allocation conditions under Section 3.06 and the Employer contributes to the Plan amounts which at the time of the contribution have not accrued under the Plan terms ("pre-accrual contributions"), the Trustee will hold the pre-accrual contributions in the Trust and will invest such contributions as the Trustee determines, pending accrual and allocation to Participant Accounts. When the Plan Administrator allocates to Participants who have satisfied the Plan's allocation conditions the Employer's pre-accrual contributions, the Plan Administrator also will allocate the net income, gain or loss thereon pro rata in relation to each Participant's share of the pre-accrual contribution.

9.09 INDIVIDUAL STATEMENT. As soon as practicable after the Accounting Date of each Plan Year, but within the time prescribed by ERISA and the regulations under ERISA, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the condition of his/her Account Balance in the Trust as of that date and such other information ERISA requires be furnished the Participant or the Beneficiary. No Participant, except the Plan Administrator, has the right to inspect the records reflecting the Account of any other Participant.

9.10 ACCOUNT CHARGED. The Plan Administrator will charge a Participant's Account for all distributions made from that Account to the Participant, to his/her Beneficiary or to an alternate payee, including a disbursement payment for a Participant loan. The Plan Administrator, except as prohibited by the Code or ERISA, also will charge a Participant's Account for any reasonable administrative expenses incurred by the Plan directly related to that Account.

9.11 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable under Article VI or under Section 13.06 (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 9.11.

(A) ATTEMPT TO LOCATE. The Plan Administrator will use one or more of the following methods to attempt to locate a lost Participant: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use of the IRS letter forwarding program under Rev. Proc. 94-22; (3) use of a commercial locator service, the internet or other general search method; or (4) use of the Social Security Administration search program.

(B) FAILURE TO LOCATE. If a lost Participant remains unlocated for 6 months following the date of the Plan Administrator first attempts to locate the lost Participant using one or more of the methods described in Section 9.11(A), the Plan Administrator may forfeit the lost Participant's Account. If the Plan Administrator will forfeit the lost Participant's Account, the forfeiture occurs at the end of the above-described 6 month period and the Plan Administrator will allocate the forfeiture in accordance with Section 3.05. If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account. The Plan Administrator under this Section 9.11(B) will forfeit the entire Account of the lost Participant, including deferral contributions and Participant contributions.

(C) NONEXCLUSIVITY AND UNIFORMITY. The provisions of Section 9.11 are intended to provide permissible but not exclusive means for the Plan Administrator to administer the Accounts of lost Participants. The Plan Administrator may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 6.10(C) and such other methods as the Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administrator will apply Section 9.11 in a reasonable, uniform and nondiscriminatory manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under

this Section 9.11 and which are associated with the lost Participant's Account.

9.12 PLAN CORRECTION. The Plan Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Plan Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under ERISA. Without limiting the Plan Administrator's authority under the prior sentence, the Plan Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Plan Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC. If the Plan includes a 401(k) arrangement, the Plan Administrator to correct an operational error may require the Trustee to distribute from the Plan elective deferrals or vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code Section 415, Code Section 402(g), a failure of the ADP or ACP tests, or a failure of the multiple use limitation.

9.13 NO RESPONSIBILITY FOR OTHERS. Except as required under ERISA, the Plan Administrator has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act (unless the Plan Administrator also serves in such capacities) required of the Employer, the Trustee, the Custodian or of any other service provider to the Plan. The Plan Administrator is not responsible to collect any required plan contribution or to determine the correctness or deductibility or any Employer contribution. The Plan Administrator in administering the Plan is entitled to, but is not required to rely upon, information which a Participant, Beneficiary, Trustee, Custodian, the Employer, a Plan service provider or representatives thereof provide to the Plan Administrator.

9.14 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code or ERISA.

## ARTICLE X
## TRUSTEE AND CUSTODIAN, POWERS AND DUTIES

10.01 ACCEPTANCE. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee must provide bond for the faithful performance of its duties under the Trust to the extent required by ERISA.

10.02 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the Plan contributions made by the Employer, but the Trustee does not have any duty to ensure that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the Employer, nor is the Trustee obliged to ensure that funds deposited with it are deposited according to the provisions of the Plan.

10.03 INVESTMENT POWERS.

(A) DISCRETIONARY TRUSTEE DESIGNATION. If the Employer, in its Adoption Agreement, designates the Trustee to administer the Trust as a discretionary Trustee, then the Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or the direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Employer, or to Participant direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Administrator. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

(a) To invest consistent with and subject to applicable law any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent person would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a diversification considered by law suitable for trust investments.

(b) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a state, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code
Section 414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code Section 584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code Section 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

(e) To credit and distribute the Trust Fund as directed by the Plan Administrator. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator.

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.

(g) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion.

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights.

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship.

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.

(1) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

(m) To file all information and tax returns required of the Trustee.

(n) To furnish to the Employer and to the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer of the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which ERISA authorizes a longer period within which to object.

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

(B) NONDISCRETIONARY TRUSTEE DESIGNATION/ APPOINTMENT OF CUSTODIAN. If the Employer, in its Adoption Agreement, designates the Trustee to administer the Trust as a nondiscretionary Trustee, then the Trustee will not have any discretion or authority with regard to the investment of the Trust Fund, but must act solely as a directed trustee of the funds contributed to it. A nondiscretionary Trustee, as directed trustee of the funds held by it under the Plan, is authorized and empowered, by way of limitation, with the following powers, rights and duties, each of which the nondiscretionary Trustee exercises solely as directed trustee in accordance with the written direction of the Named Fiduciary (except to the extent a Plan asset is subject to the control and the management of a properly appointed Investment Manager or subject to Employer or Participant direction of investment):

(a) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Named Fiduciary deems appropriate.

(b) To retain in cash so much of the Trust Fund as the Named Fiduciary may direct in writing to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code
Section 414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code Section 584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code Section 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.

(d) To sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Named Fiduciary directs in writing.

(e) To credit and distribute the Trust Fund as directed by the Plan Administrator. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or the direction of the Plan Administrator.

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge in accordance with and at the written direction of the Named Fiduciary.

(g) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights, provided the exercise of any such powers is in accordance with and at the written direction of the Named Fiduciary.

(h) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil,

gas and

other minerals; and to enter into operating agreements and to execute division and transfer orders, provided the exercise of any such powers is in accordance with and at the written direction of the Named Fiduciary,

(i) To hold any securities or other property in the name of the nondiscretionary Trustee or its nominee, with depositories or agent depositories or in another form as the Named Fiduciary may direct in writing, with or without disclosing the custodial relationship.

(j) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or properly until a court of competent jurisdiction makes final adjudication.

(k) To file all information and tax returns required of the Trustee.

(l) To furnish to the Named Fiduciary, the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the nondiscretionary Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Named Fiduciary, the Employer and the Plan Administrator, except as to any act or transaction concerning which the Named Fiduciary, the Employer or the Plan Administrator files with the nondiscretionary Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which ERISA authorizes a longer period within which to object.

(m) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

APPOINTMENT OF CUSTODIAN. The Employer may appoint a Custodian under the Plan, the acceptance by the Custodian indicated on the execution page of the Adoption Agreement. If the Employer appoints a Custodian, the Plan must have a discretionary Trustee, as described in Section 10.03(A). A Custodian has the same powers, rights and duties as a nondiscretionary Trustee, as described in this Section 10.03(B). The Custodian accepts the terms of the Plan and Trust by executing the Adoption Agreement. Any reference in the Plan to a Trustee also is a reference to a Custodian where the context of the Plan dictates. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the Custodian's liability. Any action taken by the Custodian at the discretionary Trustee's direction satisfies any provision in the Plan referring to the Trustee's taking that action.

MODIFICATION OF POWERS/LIMITED RESPONSIBILITY. The Employer and the nondiscretionary Trustee (or the Custodian), in writing, may limit the powers of the Custodian or the nondiscretionary Trustee to any combination of powers listed within this Section 10.03 (B). If there is a Custodian or a nondiscretionary Trustee under the Plan, then the Employer, in adopting this Plan acknowledges the Custodian or the nondiscretionary Trustee does not have any discretion with respect to the investment or the re-investment of the Trust Fund and the Custodian or the nondiscretionary Trustee is acting solely as a custodian or as a directed trustee with respect to the assets comprising the Trust Fund.

(C) LIMITATION OF POWERS OF CERTAIN CUSTODIANS. IF A Custodian is a bank which, under its governing state law, does not possess trust powers, then Paragraphs
(a), (c) as it relates to common trust funds or collective investment funds,
(d), (f), (g) and (h) of Section 10.03(B), Section 10.17 and Article XI do not apply to that bank and that bank only has the power and the authority to exercise the remaining powers, rights and duties under Section 10.03(B).

(D) NAMED FIDUCIARY/LIMITATION OF LIABILITY OF NONDISCRETIONARY TRUSTEE OR CUSTODIAN. The Named Fiduciary under the Plan has the sole responsibility for the management and the control of the Trust Fund, except with respect to a Plan asset under the control or the direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Participant or Employer direction of investment. If the Employer appoints a discretionary Trustee, the Named Fiduciary is the discretionary Trustee. If the Employer appoints a Custodian, the Named Fiduciary is the discretionary Trustee. Under a nondiscretionary Trustee designation, unless the Employer designates in writing another person or persons to serve as Named Fiduciary, the Named Fiduciary under the Plan is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer or the sole proprietor, as appropriate. The Named Fiduciary will exercise its management and control of the Trust Fund through its written direction to the nondiscretionary Trustee or to the Custodian, whichever applies to the Plan.

The nondiscretionary Trustee or the Custodian does not have any duty to review or to make recommendations regarding investments made at the written direction of the Named Fiduciary. The nondiscretionary Trustee or the Custodian must retain any investment obtained at the written direction of the Named Fiduciary until further directed in writing by the Named Fiduciary to dispose of such investment. The nondiscretionary Trustee or the Custodian is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any written direction of the Named Fiduciary. The Employer will indemnify, defend and hold the nondiscretionary Trustee or the Custodian harmless from any damages, costs or expenses, including reasonable attorneys' fees, which the nondiscretionary Trustee or the Custodian may incur as a result of any claim asserted against the nondiscretionary Trustee, the Custodian or the Trust arising out of the nondiscretionary Trustee's or Custodian's full and timely compliance with any written direction of the Named Fiduciary.

(E) PARTICIPANT LOANS. This Section 10.03(E) specifically authorizes the Trustee to make loans on a nondiscriminatory basis to a

Participant or to a Beneficiary in accordance with the loan policy established by the Plan Administrator, provided: (1) the loan policy satisfies the requirements of Section 9.04; (2) loans are available to all

Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for Highly Compensated Employees than for Nonhighly Compensated Employees; (3) any loan is adequately secured and bears a reasonable rate of interest; (4) the loan provides for repayment within a specified time (however, the loan policy may suspend loan payments pursuant to Code Section 414(u)(4)) or otherwise in accordance with applicable Treasury Regulations); (5) the default provisions of the note permit offset of the Participant's Vested Account Balance only at the time when the Participant has a distributable event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 6.01(A)(5); (6) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Vested Account Balance; and (7) the loan otherwise conforms to the exemption provided by Code Section 4975(d)(l). The loan policy may provide a Participant's loan default is a distributable event with respect to the defaulted amount, irrespective of whether the Participant otherwise has incurred a distributable event at the time of default, except as to amounts which the Participant used to secure his/her loan which remain subject to distribution restrictions under Section 14.11 or are money purchase pension plan or target benefit plan balances which may not be distributed in-service at the time of default. If the joint and survivor requirements of Article VI apply to the Participant, the Participant may not pledge any portion of his/her Account Balance as security for a loan unless, within the 90 day period ending on the date the pledge becomes effective, the Participant's spouse, if any, consents (in a manner described in Section 6.05 other than the requirement relating to the consent of a subsequent spouse) to the security or, by separate consent, to an increase in the amount of security.

A Participant who is an Owner-Employee (including other persons described in Code Section 4975(f)(6)), or who is a Shareholder-Employee may not receive a loan from the Plan, unless he/she has obtained a prohibited transaction exemption from the DOL.

(F) INVESTMENT IN QUALIFYING EMPLOYER SECURITIES AND QUALIFYING EMPLOYER REAL PROPERTY. The Trustee (or as applicable, Investment Manager, Employer or Participant) may invest in qualifying Employer securities or in qualifying Employer real property, as defined in and as limited by ERISA. If the Employer's Plan is a profit sharing plan, the aggregate investments in qualifying Employer securities and in qualifying Employer real property may exceed 10% of the value of Plan assets, unless the Employer elects in its Adoption Agreement to restrict such investments to 10% (or to some other percentage which is less than 100%). Notwithstanding the foregoing, except where permitted under ERISA Section
407(b)(2), if the Plan includes a 401(k) arrangement, a participant's Deferral Contributions Account accumulated in Plan Years beginning after December 31, 1998, including earnings thereon, may not be invested more than 10% in qualifying employer securities and qualifying employer real property, unless such investments are directed by the Participant or the Participant's Beneficiary.

(G) MODIFICATIONS TO OR SUBSTITUTION OF TRUST. The Employer in its Standardized Adoption Agreement may not amend any provision of Article X (or any other provision of the Plan related to the Trust) except to specify the Trust year, the names of the Plan, the Employer, the Trustee, the Custodian, the Plan Administrator, other fiduciaries or the name of any pooled trust in which the Trust will participate. The Employer in its Nonstandardized Adoption Agreement, in addition to the foregoing amendments, may amend or override the administrative provisions of Article X (or any other provision of the Plan related to the Trust), including provisions relating to Trust investment and Trustee duties. Any such amendment: (1) must not conflict with any other provisions of the Plan (except as expressly are intended to override an existing Trust provision); (2) must not cause the Plan to violate Code Section 401(a); and (3) must be made in accordance with Rev. Proc. 2000-20 or any successor thereto. The Employer using either a Standardized or Nonstandardized Adoption Agreement to establish its Plan, subject to the conditions (1), (2) and (3) described above, may elect to substitute in place of Article X and the remaining trust provisions of the basic plan document, any other trust or custodial account agreement. All Section 10.03(G) Trust modifications or substitutions are subject to Section 13.02 and require the written consent or signature of the Trustee.

(H) COFIDUCIARY LIABILITY. Each fiduciary under the Plan is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary's breach of fiduciary responsibility with respect to the Plan and the Trust unless the fiduciary: (1) participates knowingly in or undertakes to conceal the breach; (2) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or
(3) through negligence in performing his/her or its own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter's fiduciary responsibility.

10.04 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator with whatever information relating to the Trust Fund the Plan Administrator considers necessary to perform its duties as Plan Administrator.

10.05 FEES AND EXPENSES FROM FUND. A Trustee or a Custodian will receive reasonable compensation as may be agreed upon from time to time between the Employer and the Trustee or the Custodian. No person who is receiving full pay from the Employer may receive compensation (except for reimbursement of Plan expenses) for services as Trustee or as Custodian. The Trustee will pay from the Trust Fund all fees and reasonable expenses incurred by the Plan, to the extent such fees and expenses are for the ordinary and necessary administration and operation of the Plan and are not "settlor expenses" as determined by the DOL unless the Employer pays such fees and expenses. Any fee or expense paid, directly or indirectly, by the Employer is not an Employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

10.06 PARTIES TO LITIGATION. Except as otherwise provided by ERISA, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment entered in any such proceeding will be binding upon the Employer, the Plan Administrator, the Trustee, Custodian, Participants and Beneficiaries and upon their successors and assigns.

10.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee reasonably may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may reasonably act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee will make Plan distributions in the form of cash except where: (1) the required form of distribution is a QJSA or QPSA which has not been waived; (2) the Plan is a restated Plan and under the prior Plan, distribution in the form of property ("in-kind distribution") is a Protected Benefit (3) the Plan Administrator adopts a written policy which provides for in-kind distribution; or (4) the Employer is terminating the Plan, and in the reasonable judgement of the Trustee, some or all Plan assets may not within a reasonable time for making final distribution of Plan assets, be liquidated to cash or may not be so liquidated without undue loss in value. The Plan Administrator's policy under clause (3) may restrict in-kind distributions to certain types of Trust investments or specify any other reasonable and nondiscriminatory condition or restriction applicable to in-kind distributions. Under clause (4), the Trustee will make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Trustee.

10.09 PARTICIPANT OR BENEFICIARY INCAPACITATED. If, in the opinion of the Plan Administrator or of the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, at the direction of the Plan Administrator the Trustee may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

10.10 DISTRIBUTION DIRECTIONS. The Trustee must promptly notify the Plan Administrator of any unclaimed Plan distribution and then dispose of the distribution in accordance with the Plan Administrator's subsequent direction.

10.11 THIRD PARTY RELIANCE. A person dealing with the Trustee is not obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan is conclusive in favor of any person relying on the certificate.

10.12 MULTIPLE TRUSTEES. If more than two persons act as Trustee, a decision of the majority of such persons controls with respect to any decision regarding the administration or the investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. If there is more than one Trustee, the Trustees jointly will manage and control the assets of the Trust Fund. However, the Trustees may allocate among themselves specific responsibilities or obligations or may authorize one or more of them, either individually or in concert, to exercise any or all of the powers granted to the Trustee under Article X. In addition, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.

10.13 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the effected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee. If state law prohibits the Employer from serving as successor Trustee, the appointed successor Trustee is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability

company Employer or the sole proprietor, as appropriate. If the Employer removes and does not replace a Custodian, the discretionary Trustee will assume possession of Plan assets held by the former Custodian.

10.14 SUCCESSOR TRUSTEE ACCEPTANCE. Each successor Trustee succeeds its predecessor Trustee by accepting in writing its appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Administrator without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under the Plan upon its predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under ERISA. With the approval of the Employer and the Plan Administrator, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without liability.

10.15 VALUATION OF TRUST. The Trustee must value the Trust Fund as of each Accounting Date to determine the fair market value of each Participant's Account Balance in the Trust. The Trustee also must value the Trust Fund on such other valuation dates as directed in writing by the Plan Administrator or as the Adoption Agreement may require.

10.16 LIMITATION ON LIABILITY - IF INVESTMENT MANAGER, ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY APPOINTED. The Trustee is not liable for the acts or omissions of any Investment Manager the Plan Administrator may appoint, nor is the Trustee under any obligation to invest or otherwise to manage any asset of the Trust Fund which is subject to the management of a properly appointed Investment Manager. The Plan Administrator, the Trustee and any properly appointed Investment Manager may execute a written agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

The limitation on liability described in this Section 10.16 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 10.18. However, if a discretionary Trustee, pursuant to the delegation described in Section 10.18, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with ERISA. The Employer, the discretionary Trustee and an ancillary trustee may execute a written agreement as a part of this Plan delineating any indemnification agreement among the parties.

10.17 INVESTMENT IN GROUP TRUST FUND. The Employer, by adopting this Plan, specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code
Section 401 (a). This authorization applies solely to a group trust fund exempt from taxation under Code Section 501 (a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100, or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund. The Employer must specify in an Addendum to its Adoption Agreement the group trust fund(s) to which this authorization applies. If the Trustee is acting as a nondiscretionary Trustee, the investment in the group trust fund is available only in accordance with a proper direction, by the Named Fiduciary, in accordance with Section 10.03(B). Pursuant to Paragraph (c) of Section 10.03(A), a Trustee has the authority to invest in certain common trust funds and collective investment funds without the need for the authorizing Addendum described in this Section 10.17.

Furthermore, at the Employer's direction, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Balance under the qualified plans in which he/she is a participant.

10.18 APPOINTMENT OF ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY. The Employer, in writing, may appoint any qualified person in any state to act as ancillary trustee with respect to a designated portion of the Trust Fund, subject to any consent required under Section 1.33. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status under ERISA. The ancillary trustee has the rights, powers, duties and discretion as the Employer may delegate, subject to any limitations or directions specified in the agreement appointing the ancillary trustee and to the terms of the Plan or of ERISA. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 10.03. The delegated investment powers may include the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code Section 584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a state and the ancillary trustee (or its affiliate, as defined in Code Section 1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Employer also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 10.17.

The ancillary trustee may resign its position and the Employer may remove an ancillary trustee as provided in Section 10.13 regarding resignation and removal of the Trustee or Custodian. In the event of such resignation or removal, the Employer may appoint another ancillary

trustee or may return the assets to the control and management of the Trustee. The Employer may delegate its responsibilities under this Section 10.18 to a discretionary Trustee under the Plan, but not to a nondiscretionary Trustee or to a Custodian, subject to the acceptance by the discretionary Trustee of that delegation.

If the DOL requires engagement of an independent fiduciary to have control or management of all or a portion of the Trust Fund, the Employer will appoint such independent fiduciary, as directed by the DOL. The independent fiduciary will have the duties, responsibilities and powers prescribed by the DOL and will exercise those duties, responsibilities and powers in accordance with the terms, restrictions and conditions established by the DOL and, to the extent not inconsistent with ERISA, the terms of the Plan. The independent fiduciary must accept its appointment in writing and must acknowledge its status as a fiduciary of the Plan.

## ARTICLE XI
## PROVISIONS RELATING TO INSURANCE AND INSURANCE COMPANY

11.01 INSURANCE BENEFIT. The Employer may elect to provide incidental life insurance benefits for insurable Participants who consent to life insurance benefits by executing the appropriate insurance company application form. The Trustee will not purchase any incidental life insurance benefit for any Participant prior to a contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustee will use all or any portion of the Participant's Employee contributions, if any, to pay insurance premiums covering the Participant's life. This Section 11.01 also authorizes (except if the Plan is a money purchase pension plan) the purchase of life insurance, for the benefit of the Participant, on the life of a family member of the Participant or on any person in whom the Participant has an insurable interest. However, if the policy is on the joint lives of the Participant and another person, the Trustee may not maintain that policy if the other person predeceases the Participant.

The Employer will direct the Trustee as to the insurance company and insurance agent through which the Trustee is to purchase the insurance contracts, the amount of the coverage and the applicable dividend plan. Each application for a policy, and the policies themselves, must designate the Trustee as sole owner, with the right reserved to the Trustee to exercise any right or option contained in the policies, subject to the terms and provisions of this Plan. The Trustee must be the named beneficiary for the Account of the insured Participant. Proceeds of insurance contracts paid to the Participant's Account under this Article XI are subject to the distribution requirements of Article VI. The Trustee will not retain any such proceeds for the benefit of the Trust.

The Trustee will charge the premiums on any incidental benefit insurance contract covering the life of a Participant against the Account of that Participant and will treat the insurance contract as a directed investment of the Participant's Account, even if the Plan otherwise does not permit a Participant to direct the investment of his/her own Account. The Trustee will hold all incidental benefit insurance contracts issued under the Plan as assets of the Trust created and maintained under the Plan.

(A) INCIDENTAL INSURANCE BENEFITS. The aggregate of life insurance premiums paid for the benefit of a Participant, at all times, may not exceed the following percentages of the aggregate of the Employer's contributions (including Deferral Contributions and forfeitures) allocated to any Participant's Account: (i) 49% in the case of the purchase of ordinary life insurance contracts; or (ii) 25% in the case of the purchase of term life insurance or universal life insurance contracts. If the Trustee purchases a combination of ordinary life insurance contract (s) and term life insurance or universal life insurance contract(s), then the sum of one-half of the premiums paid for the ordinary life insurance contract(s) and the premiums paid for the term life insurance or universal life insurance contract(s) may not exceed 25% of the Employer contributions allocated to any Participant's Account.

(B) EXCEPTION FOR CERTAIN PROFIT SHARING PLANS. If the Plan is a profit sharing plan, the incidental insurance benefits requirement does not apply to the Plan if the Plan purchases life insurance benefits only from Employer contributions accumulated in the Participant's Account for at least two years (measured from the allocation date).

(C) EXCEPTION FOR OTHER AMOUNTS. The incidental insurance benefits requirement does not apply to life insurance purchased with Employee contributions, rollover contributions, or earnings on Employer contributions.

11.02 LIMITATION ON LIFE INSURANCE PROTECTION. The Trustee will not continue any life insurance protection for any Participant beyond his/her annuity starting date as defined in Section 6.01(A)(4). If the Trustee holds any incidental benefit insurance contract(s) for the benefit of a Participant when he/she terminates his/her employment (other than by reason of death), the Trustee must proceed as follows:

(a) If the entire cash value of the contract(s) is Vested in the terminating Participant, or if the contract(s) will not have any cash value at the end of the policy year in which Separation from Service occurs, the Trustee will transfer the contract(s) to the Participant endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to restrictions as to surrender or payment of benefits as the issuing insurance company may permit and as the Plan Administrator directs;

(b) If only part of the cash value of the contract(s) is Vested in the terminating Participant, the Trustee, to the extent the Participant's interest in the cash value of the contract(s) is not Vested, may adjust the Participant's interest in the value of his/her Account attributable to Trust assets other than incidental benefit insurance contracts and proceed as in (a), or the Trustee must effect a loan from the issuing insurance company on the sole security of the contract(s) for an amount equal to the difference between the cash value of the contract(s) at the end of the policy year in which termination of employment occurs and the amount of the cash value that is Vested in the terminating Participant, and the Trustee must transfer the contract(s) endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to the restrictions as to surrender or payment of benefits as the issuing insurance company may permit and the Plan Administrator directs;

(c) If no part of the cash value of the contract(s) is Vested in the terminating Participant, the Trustee must surrender the contract(s) for cash proceeds as may be available.

In accordance with the written direction of the Plan Administrator, the Trustee will make any transfer of contract(s) under this Section 11.02 on the Participant's annuity starting date (or as soon as administratively practicable after that date). The Trustee may not transfer any contract

under this Section 11.02 which contains a method of payment not specifically authorized by Article VI or which fails to comply with the joint and survivor annuity requirements, if applicable, of Article VI. In this

regard, the Trustee either must convert such a contract to cash and distribute the cash instead of the contract, or before making the transfer, must require the issuing company to delete the unauthorized method of payment option from the contract.

11.03 DEFINITIONS. For purposes of this Article XI:

(a) "Policy" means an ordinary life, term life or universal life insurance contract issued by an insurer on the life of a Participant.

(b) "Issuing insurance company" is any life insurance company which has issued a policy upon application by the Trustee under the terms of this Plan.

(c) "Contract" or "Contracts" means a policy of insurance. In the event of any conflict between the provisions of this Plan and the terms of any contract or policy of insurance issued in accordance with this Article XI, the provisions of the Plan control.

(d) "Insurable Participant" means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

11.04 DIVIDEND PLAN. The dividend plan is premium reduction unless the Plan Administrator directs the Trustee to the contrary. The Trustee must use all dividends for a contract to purchase insurance benefits or additional insurance benefits for the Participant on whose life the insurance company has issued the contract. Furthermore, the Trustee must arrange, where possible, for all policies issued on the lives of Participants under the Plan to have the same premium due date and all ordinary life insurance contracts to contain guaranteed cash values with as uniform basic options as are possible to obtain. The term "dividends" includes policy dividends, refunds of premiums and other credits.

11.05 INSURANCE COMPANY NOT A PARTY TO AGREEMENT. No insurance company, solely in its capacity as an issuing insurance company, is a party to this Plan nor is the company responsible for its validity.

11.06 NO RESPONSIBILITY FOR OTHERS. Except as required by ERISA, an issuing insurance company has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act (unless the insurance company also serves in such capacities) required of the Employer, the Plan Administrator, the Trustee, the Custodian or any other service provider to the Plan. No insurance company, solely in its capacity as an issuing insurance company, need examine the terms of this Plan. For the purpose of making application to an insurance company and in the exercise of any right or option contained in any policy, the insurance company may rely upon the signature of the Trustee and is held harmless and completely discharged in acting at the direction and authorization of the Trustee. An insurance company is discharged from all liability for any amount paid to the Trustee or paid in accordance with the direction of the Trustee, and is not obliged to see to the distribution or further application of any moneys the insurance company so pays.

11.07 DUTIES OF INSURANCE COMPANY. Each insurance company must keep such records, make such identification of contracts, funds and accounts within funds, and supply such information as may be necessary for the proper administration of the Plan under which it is carrying insurance benefits.

Note: The provisions of this Article XI are not applicable, and the Plan may not invest in insurance contracts, if a Custodian signatory to the Adoption Agreement is a bank which does not have trust powers from its governing state banking authority.

## ARTICLE XII
## TOP-HEAVY PROVISIONS

12.01 DETERMINATION OF TOP-HEAVY STATUS. If this Plan is the only qualified plan maintained by the Employer, the Plan is top-heavy for a Plan Year if the top-heavy ratio as of the Determination Date exceeds 60%. The top-heavy ratio is a fraction, the numerator of which is the sum of the Account Balances of all Key Employees as of the Determination Date and the denominator of which is a similar sum determined for all Employees.

The Plan Administrator must include in the top-heavy ratio, as part of the Account Balances, any contribution not made as of the Determination Date but includible under Code Section 416 and the applicable Treasury regulations, and distributions made within the Determination Period. The Plan Administrator must calculate the top-heavy ratio by disregarding the Account Balance (and distributions, if any, of the Account Balance) of any Non-Key Employee who was formerly a Key Employee, and by disregarding the Account Balance (including distributions, if any, of the Account Balance) of an individual who has not received credit for at least one Hour of Service with the Employer during the Determination Period. The Plan Administrator must calculate the top-heavy ratio, including the extent to which it must take into account distributions, rollovers and transfers, in accordance with Code Section 416 and the regulations under that Code section.

If the Employer maintains other qualified plans (including a simplified employee pension plan), or maintained another such plan now terminated, this Plan is top-heavy only if it is part of the Required Aggregation Group, and the top-heavy ratio for the Required Aggregation Group and for the Permissive Aggregation Group, if any, each exceeds 60%. The Plan Administrator will calculate the top-heavy ratio in the same manner as required by the first two paragraphs of this Section 12.01, taking into account all plans within the Aggregation Group. To the extent the Plan Administrator must take into account distributions to a Participant, the Plan Administrator must include distributions from a terminated plan which would have been part of the Required Aggregation Group if it were in existence on the Determination Date. The Plan Administrator will calculate the present value of accrued benefits under defined benefit plans or the account balances under simplified employee pension plans included within the group in accordance with the terms of those plans, Code Section 416 and the regulations under that Code section.

If a Participant in a defined benefit plan is a Non-Key Employee, the Plan Administrator will determine his/her accrued benefit under the accrual method, if any, which is applicable uniformly to all defined benefit plans maintained by the Employer or, if there is no uniform method, in accordance with the slowest accrual rate permitted under the fractional rule accrual method described in Code Section 411 (b)(1)(C). If the Employer maintains a defined benefit plan, the Plan Administrator will use the actuarial assumptions (interest and mortality only) stated in that plan to calculate the present value of benefits from that defined benefit plan. If an aggregated plan does not have a valuation date coinciding with the Determination Date, the Plan Administrator must value the Account Balance in the aggregated plan as of the most recent valuation date falling within the twelve-month period ending on the Determination Date, except as Code Section 416 and applicable Treasury regulations require for the first and for the second plan year of a defined benefit plan. The Plan Administrator will calculate the top-heavy ratio with reference to the Determination Dates that fall within the same calendar year. The top-heavy provisions of the Plan apply only for Plan Years in which Code Section 416 requires application of the top-heavy rules.

12.02 DEFINITIONS. For purposes of applying the top-heavy provisions of the Plan:

(a) "Compensation" means Compensation as determined under Section 3.18(b) for Code Section 415 purposes and includes Compensation for the entire Plan Year.

(b) "Determination Date" means for any Plan Year, the Accounting Date of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the Accounting Date of that Plan Year.

(c) "Determination Period" means the 5-year period ending on the Determination Date.

(d) "Employer" means the Employer that adopts this Plan and any Related Employer.

(e) "Key Employee" means, as of any Determination Date, any Employee or former Employee (or Beneficiary of such Employee) who, at any time during the Determination Period: (i) has Compensation in excess of 50% of the dollar amount prescribed in Code Section 415(b)(l)(A) (relating to defined benefit plans) and is an officer of the Employer; (ii) has Compensation in excess of the dollar amount prescribed in Code Section 415(c)(1)(A) (relating to defined contribution plans), owns a more than 1/2% interest in the Employer and is one of the Employees owning the ten largest interests in the Employer; (iii) is a more than 5% owner of the Employer; or (iv) is a more than 1% owner of the Employer and has Compensation of more than $150,000. The constructive ownership rules of Code Section 318 (or the principles of that Code section, in the case of an unincorporated Employer,) will apply to determine ownership in the Employer. The number of officers taken into account under clause (i) will not exceed the greater of 3 or 10% of the total number (after application of the Code Section 414(q) exclusions) of Employees, but no more than 50 officers. The Plan Administrator will make the determination of who is a Key Employee in accordance with Code Section 416(i)(l) and the regulations under that Code section.

(f) "Non-Key Employee" means an Employee who does not meet the definition of Key Employee.

(g) "Participant" means any Employee otherwise eligible to participate in the Plan but who is not entitled to receive any allocation under the Plan (or would have received a lesser allocation) for the Plan Year because of his/her Compensation level or because of his/her failure: (i)

to make elective deferrals under a 401 (k) arrangement; (ii) to make Employee contributions; or (iii) to complete 1,000 Hours of Service or any other service requirement the Employer specifies in its Adoption Agreement as a condition to receive an allocation except for employment on the last day of the Plan Year.

(h) "Permissive Aggregation Group" means the Required Aggregation Group plus any other qualified plans maintained by the Employer, but only if such group would satisfy in the aggregate the nondiscrimination requirements of Code Section 401 (a)(4) and the coverage requirements of Code Section 410. The Plan Administrator will determine the Permissive Aggregation Group.

(i) "Required Aggregation Group" means: (i) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (including terminated plans); and (ii) any other qualified plan of the Employer which enables a plan described in clause (i) to meet the requirements of Code Section 401(a)(4) or of Code Section 410.

12.03 TOP-HEAVY MINIMUM ALLOCATION. The top-heavy minimum allocation requirement applies to the Plan only in a Plan Year for which the Plan is top-heavy. If the Plan is top-heavy in any Plan Year:

(a) Each Non-Key Employee who is a Participant (as described in Section 12.02(g)) and employed by the Employer on the last day of the Plan Year will receive a top-heavy minimum allocation for that Plan Year.

(b) The top-heavy minimum allocation is equal to the lesser of 3% of the Non-Key Employee's Compensation for the Plan Year or the highest contribution rate for the Plan Year made on behalf of any Key Employee. However, if a defined benefit plan maintained by the Employer which benefits a Key Employee depends on this Plan to satisfy the nondiscrimination rules of Code Section 401 (a)(4) or the coverage rules of Code Section 410 (or another plan benefiting the Key Employee so depends on such defined benefit plan), the top-heavy minimum allocation is 3% of the Non-Key Employee's Compensation regardless of the contribution rate for the Key Employees.

(c) If, for a Plan Year, there are no allocations of Employer contributions or of forfeitures for any Key Employee, the Plan does not require any top-heavy minimum allocation for the Plan Year, unless a top-heavy minimum allocation applies because of the maintenance by the Employer of more than one plan.

12.04 DETERMINING TOP-HEAVY CONTRIBUTION RATES. In determining under Section 12.03(b) the highest contribution rate for any Key Employee, the Plan Administrator takes into account all Employer contributions (including deferral contributions and including matching contributions but not including Employer contributions to Social Security) and forfeitures allocated to the Participant's Account for the Plan Year, divided by his/her Compensation for the entire Plan Year. For purposes of satisfying the Employer's top-heavy minimum allocation requirement, the Plan Administrator disregards the elective deferrals and matching contributions allocated to a Non-Key Employee's Account in determining the Non-Key Employee's contribution rate. However, the Plan Administrator operationally may include in the contribution rate of a Non-Key Employee any matching contributions not necessary to satisfy the nondiscrimination requirements of Code Section 401(k) or of Code Section 401(m).

To determine a Participant's contribution rate, the Plan Administrator must treat all qualified top-heavy defined contribution plans maintained by the Employer (or by any Related Employer) as a single plan.

12.05 PLAN WHICH WILL SATISFY TOP-HEAVY. The Plan will satisfy the top-heavy minimum allocation requirement in accordance with the following requirements:

(a) If the Employer makes the top-heavy minimum allocation to this Plan, the Employer will make any necessary additional contribution to this Plan. The Plan Administrator first will allocate the Employer contributions (and Participant forfeitures, if any) for the Plan Year in accordance with the provisions of Adoption Agreement Section 3.04. The Employer then will contribute an additional amount for the Account of any Participant entitled under Section 12.03 to a top-heavy minimum allocation and whose contribution rate for the Plan Year, under this Plan and any other plan aggregated under Section 12.02, is less than the top-heavy minimum allocation. The additional amount is the amount necessary to increase the Participant's contribution rate to the top-heavy minimum allocation. The Plan Administrator will allocate the additional contribution to the Account of the Participant on whose behalf the Employer makes the contribution.

(b) If the Employer makes the top-heavy minimum allocation under another plan, this Plan does not provide the top-heavy minimum allocation and the Plan Administrator will allocate the annual Employer contributions (and Participant forfeitures) under the Plan solely in accordance with the allocation method selected under Adoption Agreement Section 3.04.

12.06 TOP-HEAVY VESTING. If the Plan is top-heavy and the Employer in its Adoption Agreement does not elect immediate vesting, the Employer must elect a top-heavy (or modified top-heavy) vesting schedule. The specified top-heavy vesting schedule applies to the Plan's first top-heavy Plan Year and to all subsequent Plan Years, except as the Employer otherwise elects in its Adoption Agreement. If the Employer elects in its Adoption Agreement to apply the specified top-heavy vesting schedule only in Plan Years in which the Plan is top-heavy, any change in the Plan's vesting schedule resulting from this election is subject to Section 5.11.

## ARTICLE XIII
## EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION

13.01 EXCLUSIVE BENEFIT. Except as provided under Article III, the Employer does not have any beneficial interest in any asset of the Trust Fund and no part of any asset in the Trust Fund may ever revert to or be repaid to the Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Trust Fund, or any asset of the Trust Fund, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.

However, if the Commissioner of Internal Revenue, upon the Employer's application for initial approval of this Plan, determines the Trust created under the Plan is not a qualified trust exempt from Federal income tax, then (and only then) the Trustee, upon written notice from the Employer, will return the Employer's contributions (and the earnings thereon) to the Employer. The immediately preceding sentence applies only if the Employer makes the application for the determination by the time prescribed by law for filing the Employer's tax return for the taxable year in which the Employer adopted the Plan, or by such later date as the Internal Revenue Service may prescribe. The Trustee must make the return of the Employer contribution under this Section 13.01 within one year of a final disposition of the Employer's request for initial approval of the Plan. The Employer's Plan and Trust will terminate upon the Trustee's return of the Employer's contributions.

13.02 AMENDMENT BY EMPLOYER. The Employer, consistent with this Section 13.02 and other applicable Plan provisions, has the right, at any time:

(a) To amend the elective provisions of the Adoption Agreement in any manner it deems necessary or advisable;

(b) To add overriding language in the Adoption Agreement to satisfy Code Sections 415 or 416 because of the required aggregation of multiple plans; and

(c) To add model amendments published by the Revenue Service (the adoption of which the Revenue Service provides will not cause the Plan to be individually designed).

(A) AMENDMENT FORMALITIES. The Employer must make all Plan amendments in writing by means of substituted Adoption Agreement pages or by restatement of the Adoption Agreement. The Employer (and Trustee if the Trustee's written consent to the amendment is required under Section 10.03(G)), must execute a new Adoption Agreement Execution Page each time the Employer amends the Plan. Each amendment must specify the date as of which the amendment is either retroactively or prospectively effective. See Section 7.12 for the effect of certain amendments adopted by the Employer which will result in the Employer's Plan losing Prototype Plan status.

(B) IMPERMISSIBLE AMENDMENT/PROTECTED BENEFITS. AN amendment may not authorize or permit any of the Trust Fund (other than the part required to pay taxes and reasonable administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates. An amendment may not cause or permit any portion of the Trust Fund to revert to or become a property of the Employer. Furthermore, the Employer may not make any amendment which affects the rights, duties or responsibilities of the Trustee or of the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

An amendment (including the adoption of this Plan as a restatement of an existing plan) may not decrease a Participant's Account Balance, except to the extent permitted under Code Section 412(c)(8), and except as provided in Treasury regulations, may not reduce or eliminate Protected Benefits determined immediately prior to the adoption date (or, if later, the effective date) of the amendment. An amendment reduces or eliminates Protected Benefits if the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in Treasury regulations), or (2) except as provided by Treasury regulations, eliminating an optional form of benefit.

The Plan Administrator must disregard an amendment to the extent application of the amendment would fail to satisfy this Section 13.02(B). If the Plan Administrator must disregard an amendment because the amendment would violate clause (1) or clause (2), the Plan Administrator must maintain a schedule of the early retirement option or other optional forms of benefit the Plan must continue for the affected Participants.

13.03 AMENDMENT BY PROTOTYPE PLAN SPONSOR. The Prototype Plan Sponsor (or the mass submitter, as agent of the Prototype Plan Sponsor), without the Employer's consent, may amend the Plan and Trust, from time to time, in order to conform the Plan and Trust to any requirement for qualification of the Plan and Trust under the Internal Revenue Code. The Prototype Plan Sponsor may not amend the Plan in any manner which would modify any election made by the Employer under the Plan without the Employer's written consent. Furthermore, the Prototype Plan Sponsor may not amend the Plan in any manner which would violate the proscriptions of Section 13.02(B). If the Prototype Plan Sponsor does not adopt the amendments made by the mass submitter, it will no longer be the sponsor of an identical or minor modifier Prototype Plan of the mass submitter.

**Defined Contribution Plan**

13.04 PLAN TERMINATION OR SUSPENSION. The Employer subject to Section 13.02(B) and by proper Employer action has the right, at any time, to suspend or discontinue its contributions under the Plan and thereafter to continue to maintain the Plan (subject to such suspension or discontinuance) until the Employer terminates the Plan. The Employer subject to Section 13.02(B) and by proper Employer action has the right, at any time, to terminate this Plan and the Trust created and maintained under the Plan. The Plan will terminate upon the first to occur of the following:

(a) The date terminated by proper action of the Employer; or

(b) The dissolution or merger of the Employer, unless a successor makes provision to continue the Plan, in which event the successor must substitute itself as the Employer under this Plan. Any termination of the Plan resulting from this Paragraph (b) is not effective until compliance with any applicable notice requirements under ERISA.

13.05 FULL VESTING ON TERMINATION. Upon either full or partial termination of the Plan, or, if applicable, upon complete discontinuance of profit sharing plan contributions to the Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

13.06 POST TERMINATION PROCEDURE AND DISTRIBUTION.

(A) GENERAL PROCEDURE. Upon termination of the Plan, the distribution provisions of Article VI remain operative, with the following exceptions:

(1) if the Participant's Vested Account Balance does not exceed $5,000 (or exceeds $5,000 but is not "immediately distributable" in accordance with Section 6.01(A)(5)), the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 10.08) the Participant's Vested Account Balance to him/her in lump sum as soon as administratively practicable after the Plan terminates; and

(2) if the present value of the Participant's Vested Account Balance exceeds $5,000 and is immediately distributable, the Participant or the Beneficiary, may elect to have the Trustee commence distribution in cash (subject to Section 10.08) of his/her Vested Account Balance in a lump sum as soon as administratively practicable after the Plan terminates. If a Participant with consent rights under this paragraph (2) does not elect an immediate lump sum distribution with spousal consent if required, to liquidate the Trust, the Plan Administrator will purchase a deferred annuity contract for each Participant which protects the Participant's distribution rights under the Plan.

(B) PROFIT SHARING PLAN. If the Plan is a profit sharing plan, in lieu of applying Section 13.06(A) and the distribution provisions of Article VI. the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 10.08) each Participant's Vested Account Balance, in lump sum, as soon as administratively practicable after the termination of the Plan, irrespective of the Participant's Vested Account Balance, the Participant's age and whether the Participant consents to that distribution. This paragraph does not apply if: (1) the Plan at termination provides an annuity option which is a Protected Benefit and which the Employer may not eliminate by Plan amendment; or (2) as of the period between the Plan termination date and the final distribution of assets, the Employer maintains any other defined contribution plan (other than an ESOP). The Employer, in an Addendum to its Adoption Agreement, may elect not to have this paragraph apply.

(C) DISTRIBUTION RESTRICTIONS UNDER CODE Section 401(k). If the Plan includes a 401(k) arrangement or if the Plan holds transferred assets described in Section 13.07 such that in either case, the distribution restrictions of Sections 14.03(d) and 14.11 apply, a Participant's restricted balances are distributable on account of Plan termination, as described in this Section 13.06, only if: (a) the Employer does not maintain a successor plan and the Plan Administrator distributes the Participant's entire Vested Account Balance in a lump sum; or (b) the Participant otherwise is entitled under the Plan to a distribution of his/her Vested Account Balance.

A successor plan under clause (b) is a defined contribution plan (other than an ESOP) maintained by the Employer (or by a Related Employer) at the time of the termination of the Plan or within the period ending twelve months after the final distribution of assets. However, a plan is not a successor plan if less than 2% of the Employees eligible to participate in the terminating Plan are eligible to participate (beginning 12 months prior to and ending 12 months after the Plan's termination date) in the potential successor plan.

(D) "LOST PARTICIPANTS." If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable upon Plan termination, the Plan Administrator will apply Section 9.11 except Section 9.11(B) does not apply.

(E) CONTINUING TRUST PROVISIONS. The Trust will continue until the Trustee in accordance with the direction of the Plan Administrator has distributed all of the benefits under the Plan. On each valuation date, the Plan Administrator will credit any part of a Participant's Account Balance retained in the Trust with its share of the Trust net income, gains or losses. Upon termination of the Plan, the amount, if any, in a suspense account under Article III will revert to the Employer, subject to the conditions of the Treasury regulations permitting such a reversion. A resolution or an amendment to discontinue all future benefit accrual but otherwise to continue maintenance of this Plan, is not a termination for purposes of this Section 13.06.

13.07 MERGER/DIRECT TRANSFER. The Trustee possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code

Section 401 (a), including an elective transfer, and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement. Except as provided in Section 13.07(A), the Trustee may not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan (or from the other plan to this Plan), unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the transferring plan terminated immediately before the merger or the consolidation or the transfer. The Trustee will hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustee must maintain a separate Employer contribution Account for the benefit of the Employee on whose behalf the Trustee accepted the transfer in order to reflect the value of the transferred assets.

The Trustee may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions. If the Trustee accepts such a direct transfer of plan assets, the Plan Administrator and the Trustee must treat the Employee as a limited Participant as described in Section 4.04.

Sections 13.07(A) and (B) are effective for elective transfers made on or following September 6, 2000. Under an elective transfer which is made pursuant to Section 13.07(A) or (B), the Protected Benefits in the transferring plan are not required to be preserved under Section 13.02 (B), except as provided in
Section 13.07(B).

(A) DISTRIBUTABLE EVENT ELECTIVE TRANSFER. The Trustee may consent to, or be a party to, a merger, consolidation or transfer of assets with another qualified plan in accordance with this Section 13.07(A).

A transfer between qualified plans is a distributable event elective transfer if: (1) the Participant has a right to immediate distribution from the transferor plan; (2) the transfer is voluntary, under a fully informed election by the Participant; (3) the Participant has an alternative that retains his/her Protected Benefits (including an option to leave his/her benefit in the transferor plan, if that plan is not terminating); (4) the transferor plan satisfies applicable consent and joint and survivor annuity requirements of the Code; (5) the amount transferred, together with the amount of any contemporaneous direct rollover of the Participant's remaining Vested Account Balance, constitutes the Participant's entire Vested Account Balance; (6) the Participant has a 100% Vested interest in the transferred benefit in the transferee plan; and (7) if the transfer is from this Plan to a defined benefit plan, the transferee plan provides a benefit for the affected Participant equal to the benefit (expressed as an annuity payable at normal retirement age) derived solely with respect to the transferred assets.

An elective transfer under this Section 13.07(A) may occur between qualified plans of any type. Any direct transfer of assets from a defined benefit plan to this Plan which does not satisfy the requirements of this
Section 13.07(A) renders the Plan individually-designed. See Section 7.12.

Commencing January 1, 2002, the Trustee may not undertake an elective transfer of a Participant's Account under this Section 13.07(A) if the Participant is eligible to receive an immediate distribution of his/her entire Vested Account Balance which would consist entirely of an eligible rollover distribution as described in Section 6.10(D).

(B) TRANSACTION/EMPLOYMENT CHANGE ELECTIVE TRANSFER. The Trustee may consent to, or be a party to, a merger, consolidation or transfer of assets with another qualified defined contribution plan in accordance with this Section 13.07(B).

A transfer is a transaction or employment change transfer irrespective of whether the Participant has a right to an immediate distribution from the transferor plan provided: (1) the transfer satisfies requirements (2) and (3) of
Section 13.07(A); (2) the transfer only may occur as between plans described in applicable Treasury regulations; (3) the transfer must occur in connection with a merger, asset or stock acquisition, or change in employment resulting in the participant's loss of right to additional allocations in the transferor plan or in such other circumstances as described in applicable Treasury regulations; (4) the transfer must consist of the Participant's entire Vested and non-Vested Account Balance within the transferor plan; and (5) the transferee plan must protect the QJSA and QPSA benefits (if any) in the transferor plan.

(C) OTHER TRANSFERS. Any transfer which is not an elective transfer under Sections 13.07(A) or 13.07(B) and which includes Protected Benefits is subject to Section 13.02(B). The trustee of the transferee plan in receipt of assets which are Protected Benefits must preserve the Protected Benefits in accordance with applicable Treasury regulations. If the transferor plan contains a 401(k) arrangement with restricted balances as described in Section 14.11, such balances remain subject in the transferee plan to the distribution restrictions described in Section 14.03(d). Any transfer under this Section 13.07(C) from a defined benefit plan to this Plan must be in the form of the transfer of a paid up individual annuity contract which guarantees the payment of benefits in accordance with the transferor plan. Notwithstanding any Plan language to the contrary, if this Plan is a target benefit or money purchase pension plan, and the Trustee merges or the Employer converts by amendment the Plan into another type of defined contribution plan, the Employer operationally may elect whether to vest immediately the Participants' Account Balances.

## ARTICLE XIV
## CODE SECTION 401(k) AND CODE SECTION 401(m) ARRANGEMENTS

14.01 APPLICATION. This Article XIV applies to the Plan only if the Employer is maintaining its Plan under a Code Section 401(k) Adoption Agreement.

14.02 401(k) ARRANGEMENT. The Employer under Article III of its Adoption Agreement will elect the terms of the 401(k) arrangement as described in Code
Section 401(k)(2), if any, under the Plan. If the Plan is a Standardized Plan, the 401(k) arrangement must be a salary reduction arrangement. If the Plan is a Nonstandardized Plan, the 401(k) arrangement may be a salary reduction arrangement or a cash or deferred arrangement, or both.

(A) SALARY REDUCTION ARRANGEMENT. If the Employer in its Adoption Agreement
Section 3.01 elects a salary reduction arrangement, a Participant (or an Employee in anticipation of becoming a Participant) may file a salary reduction agreement with the Plan Administrator. The salary reduction agreement may not be effective earlier than the following date which occurs last: (1) the Participant's Plan Entry Date (or, in the case of a re-employed Employee, his/her re-participation date under Article II); (2) the execution date of the Participant's salary reduction agreement; (3) the date the Employer adopts the 401(k) arrangement by executing the Adoption Agreement; or (4) the effective date of the 401(k) arrangement, as specified in the Adoption Agreement.

A salary reduction agreement must specify the dollar amount of Compensation or percentage of Compensation the Participant wishes to defer. The salary reduction agreement will apply only to Compensation which becomes currently available to the Participant after the effective date of the salary reduction agreement. The Employer will apply a salary reduction election to the Participant's Compensation as determined under Section 1.07 (and to increases in such Compensation) unless the Participant elects in his/her salary reduction agreement to limit the reduction to certain Compensation. The Plan Administrator in the Plan's salary reduction agreement form, subject to the Plan terms and applicable Revenue Service guidance, will specify additional rules and restrictions applicable to a Participant's salary reduction agreement.

(B) CASH OR DEFERRED ARRANGEMENT. If the Employer in its Adoption Agreement
Section 3.02 elects a cash or deferred arrangement, a Participant may elect to make a cash election against his/her proportionate share of the Employer's cash or deferred contribution, in accordance with the Employer's Adoption Agreement elections. A Participant's proportionate share of the Employer's cash or deferred contribution is the percentage of the total cash or deferred contribution which bears the same ratio that the Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year. For purposes of determining each Participant's proportionate share of the cash or deferred contribution, a Participant's Compensation is his/her Compensation as determined under Section 1.07, excluding any effect the proportionate share may have on the Participant's Compensation for the Plan Year. The Plan Administrator will determine the proportionate share prior to the Employer's actual contribution to the Trust, to provide the Participants the opportunity to file cash elections. The Employer will pay directly to the Participant the portion of his/her proportionate share the Participant has elected to receive in cash.

(C) NEGATIVE ELECTION. The Employer in its Adoption Agreement may elect to apply prospectively to its Plan the negative election provisions of this Section
14.02(C). Under a negative election, the Employer automatically will reduce the Compensation of each Participant who is not deferring an amount at least equal to the negative election amount, by the required election amount, except those Participants who timely make a contrary election under Section 14.02(C)(1). Participants deferring an amount equal to or greater than the negative election amount are not subject to the Plan's negative election provisions. Amounts deferred under negative election are treated as elective deferrals for all purposes under the Plan. An Employer in its Adoption Agreement must elect whether the negative election applies to all Participants as of the effective date of the negative election or only to Employees whose Plan Entry Date is on or following the effective date of the negative election.

(1) PARTICIPANT'S CONTRARY ELECTION. A Participant may at any time elect not to defer any Compensation or to defer an amount which is less than the negative election amount ("contrary election"). A Participant's contrary election generally is effective as of the first payroll period for the month which follows the Participant's contrary election. However, a Participant may make a contrary election which is effective: (1) for the first payroll period in which he/she becomes a Participant if the Participant makes a contrary election within a reasonable period following the Participant's Entry Date and before the Compensation to which the election applies becomes currently available; or (2) for the first payroll period following the effective date of the Employer's adoption of the negative election, if the Participant makes contrary election not later than the effective date of the negative election. A Participant's contrary election continues in effect until the Participant subsequently changes his/her Salary Reduction Agreement.

(2) NEGATIVE ELECTION NOTICE. If the Employer in its Adoption Agreement adopts the negative election provision, the Plan Administrator must provide a notice to each Eligible Employee which explains the effect of the negative election and a Participant's right to make a contrary election, including the procedure and timing applicable to the contrary election. The Plan Administrator must provide the notice to an Eligible Employee a reasonable period prior to that Employee's commencement of participation in the Plan subject to the negative election. A Plan Administrator also must notify annually those Participants then subject to the negative election of the existing negative election deferral percentage and the Participant's right to make a contrary election, including the procedure and timing applicable to the contrary election.

(D) SAFE HARBOR 401 (k) PLAN. The Employer in its Adoption Agreement may elect to apply to its Plan the safe harbor provisions of this

Section 14.02(D). Except as otherwise provided in this Plan, in the Code or in other

applicable guidance, an Employer must elect the safe harbor plan provisions of this Section 14.02(D) and must satisfy the applicable notice requirements prior to the beginning of the Plan Year to which the safe harbor provisions apply. In addition, except as otherwise indicated, the electing Employer must apply the safe harbor provisions for the entire safe harbor Plan Year, including any short Plan Year. The provisions of this Section 14.02(D) apply to an electing Employer notwithstanding any contrary provision of the Plan and all other remaining Plan terms continue to apply to the Employer's safe harbor plan. An Employer which elects and operationally satisfies the safe harbor provisions of this Section 14.02(D) is not subject to the nondiscrimination provisions of Section 14.08 (ADP test). An electing Employer which provides additional matching contributions as described in Section 14.02(D)(3) is subject to the nondiscrimination provisions of Section 14.09 (ACP test), unless the additional matching contributions satisfy the ACP test safe harbor described in Section 14.02(D)(3).

(1) SAFE HARBOR - COMPENSATION. For purposes of this Section 14.02(D), Compensation is limited as described in Section 1.07(E) and for purposes of allocating the Employer's safe harbor contribution and safe harbor matching contribution, the Employer must elect under its Adoption Agreement a nondiscriminatory definition of Compensation as described in Section 1.07(F). An Employer in its Adoption Agreement also may elect to limit the amount of Compensation which is subject to deferral to any reasonable definition which:
(a) permits a Participant to receive the maximum matching contribution, if any, available under the Plan; or (b) limits deferrals under the Plan to a whole percentage or dollar amount.

(2) SAFE HARBOR CONTRIBUTIONS/ADP TEST SAFE HARBOR. An Employer which elects under this Section 14.02(D) to apply the safe harbor provisions, must make a contribution to the Plan which will satisfy the ADP test safe harbor ("safe harbor contribution"). The Employer in its Adoption Agreement must elect whether the Employer will make its safe harbor contribution in the form of: (a) a safe harbor nonelective contribution; (b) a basic matching contribution; or
(c) an enhanced matching contribution. A safe harbor nonelective contribution is a fixed nonelective contribution in an amount the Employer elects in its Adoption Agreement and must equal at least 3% of each Participant's Compensation. A basic matching contribution is a fixed matching contribution equal to 100% of a Participant's elective deferrals which do not exceed 3% of Compensation, plus 50% of elective deferrals which exceed 3%, but which do not exceed 5% of Compensation. An enhanced matching contribution is a fixed matching contribution made in accordance with any formula the Employer elects in its Adoption Agreement under which, at any rate of elective deferrals, a Participant receives a matching contribution which is at least equal to the match the Participant would receive under the basic matching contribution formula and under which the rate of match does not increase as the rate of deferrals increases. Under a basic or enhanced safe harbor match, a Highly Compensated Employee may not receive a greater rate of match than any Nonhighly Compensated Employee. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's safe harbor basic or enhanced matching contributions. The Plan Administrator must allocate the Employer's safe harbor contribution without regard to the Section 3.06 allocation conditions, but the Plan Administrator will not allocate a safe harbor contribution where the allocation would exceed a Participant's Code Sections 415 or 402(g) limitation or where the Participant is suspended from making deferrals under Section 14.11(A)(1). The Plan Administrator must allocate the safe harbor contribution to all Participants unless the Employer in an Addendum to its Adoption Agreement elects to limit the safe harbor allocation to Nonhighly Compensated Employees. A Participant's Account Balance attributable to safe harbor contributions at all times 100% Vested and subject to the distribution restrictions described in Section 14.03(d). An Employer's safe harbor contribution is not subject to nondiscrimination testing under Section 14.08 (ADP test) and if the safe harbor contribution is in the form of a basic matching contribution, it is not subject to nondiscrimination testing under Section 14.09 (ACP test). The Employer in its Adoption Agreement must elect whether to satisfy the ACP test safe harbor Section 14.02(D)(3)(a) amount limitation with respect to the Employer's enhanced matching contributions or to test, using current year testing, its enhanced matching contributions under Section 14.09 (ACP test).

An Employer electing Section 14.02(D) which in its Adoption Agreement also elects to apply permitted disparity in allocating the Employer's nonelective contributions, may not include within the permitted disparity formula allocation, any of the Employer's safe harbor contributions. An Employer in its Adoption Agreement may elect to make the safe harbor contribution to another defined contribution plan maintained by the Employer provided: (i) the Employer maintains its safe harbor 401(k) Plan using a Nonstandardized 401(k) Adoption Agreement; or (ii) the Employer makes its safe harbor contribution to another defined contribution plan paired with the Employer's safe harbor 401 (k) Plan.

(3) ADDITIONAL MATCHING CONTRIBUTIONS/ACP TEST SAFE HARBOR. An Employer which satisfies the ADP test safe harbor under Section 14.02(D)(2), in its Adoption Agreement may elect to make matching contributions to the Plan which are in addition to the Employer's safe harbor contributions and which the Employer does not use to satisfy the ADP test safe harbor ("additional matching contributions"). The Employer in its Adoption Agreement must elect whether to subject the additional matching contributions to the ACP test safe harbor requirements of this Section 14.02(D)(3), or for the Plan Administrator to test, using current year testing, the additional matching contributions for nondiscrimination under Section 14.09 (ACP test). Under the ACP test safe harbor: (a) the Employer may not make matching contributions with respect to a Participant's deferral contributions which exceed 6% of Plan Year Compensation;
(b) the amount of any discretionary matching contribution allocated to any Participant in Plan Years commencing after 1999 may not exceed 4% of the Participant's Plan Year Compensation; (c) the rate of matching contributions may not increase as the rate of deferrals increases; and (d) subject to application of any Section 3.06 allocation conditions, a Highly Compensated Employee may not receive a greater rate of match than any Nonhighly Compensated Employee. The Employer must elect in its Adoption Agreement the vesting schedule, allocation conditions and distribution provisions

applicable to the Employer's additional matching contributions described in this Section 14.02(D)(3). If the Employer in its Adoption Agreement has elected to permit Employee contributions under the Plan: (i) any Employee contributions do not satisfy the ACP test safe harbor and the Plan Administrator must test the Employee contributions under Section 14.09 (ACP test) using current year testing; and (ii) if the Employer in its Adoption Agreement elects to match the Employee contributions, the Plan Administrator in applying the 6% amount limit in clause (a) must aggregate a Participant's deferral contribution and Employee contributions which are subject to the 6% limit.

(4) SAFE HARBOR NOTICE. The Plan Administrator annually must provide a safe harbor notice to each Participant a reasonable period prior to each Plan Year for which the Employer in its Adoption Agreement has elected to apply the safe harbor provisions. For this purpose, the Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the safe harbor notice at least 30 days and not more than 90 days prior to the beginning of the safe harbor Plan Year. The safe harbor notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant. If an Employee becomes eligible to participate in the Plan after the Plan Administrator has provided the annual safe harbor notice, the Plan Administrator must provide the safe harbor notice no later than the Employee's Plan Entry Date. A Participant may make or modify a salary reduction agreement under the Employer's safe harbor 401(k) Plan for 30 days following receipt of the safe harbor notice, or if greater, for the period the Plan Administrator specifies in the salary reduction agreement.

(5) MID-YEAR CHANGES IN SAFE HARBOR STATUS. The Employer may amend its 401(k) Plan during any Plan Year to become a safe harbor plan under this Section 14.02(D) for that Plan Year, provided: (a) the Plan then is using current year testing; (b) the Employer amends the Plan to add the safe harbor provisions not later than 30 days prior to the end of the Plan Year and to apply the safe harbor provisions for the entire Plan Year; (c) the Employer elects to satisfy the safe harbor contribution requirement using the safe harbor nonelective contribution; and (d) the Plan Administrator provides a notice to Participants prior to the beginning of the Plan Year for which the safe harbor amendment may become effective, that the Employer later may amend the Plan to a safe harbor plan for that Plan Year using the safe harbor nonelective contribution and if the Employer so amends the Plan, the Plan Administrator will provide a supplemental notice to Participants at least 30 days prior to the end of that Plan Year informing Participants of the amendment. The Plan Administrator then must timely provide any supplemental notice required under this Section 14.02(D)(5). Except as otherwise specified, the Participant notices described in this Section 14.02(D)(5) also must satisfy the requirements applicable to safe harbor notices under Section 14.02(D)(4).

The Employer may amend its safe harbor 401(k) Plan during a Plan Year to reduce or eliminate prospectively, any safe harbor contribution which is a basic matching or enhanced matching contribution (under Section 14.02(D)(2)) provided: (i) the Plan Administrator provides a notice to the Participants which explains the effect of the amendment, specifies the amendment's effective date and informs Participants they will have a reasonable opportunity to modify their salary reduction agreements, and if applicable, Employee contributions; (ii) Participants have a reasonable opportunity and period prior to the effective date of the amendment to modify their salary reduction agreements, and if applicable, Employee contributions; and (iii) the amendment is not effective earlier than the later of: (a) 30 days after the Plan Administrator gives notice of the amendment; or (b) the date the Employer adopts the amendment. An Employer which amends its safe harbor Plan to eliminate or reduce the safe harbor matching contribution under this Section 14.02(D)(5), or which terminates the Plan under Section 13.04 effective during the Plan Year, must continue to apply all of the safe harbor requirements of this Section 14.02(D) until the amendment or termination becomes effective and also must apply for the entire Plan Year, using current year testing, the nondiscrimination test under Section 14.08 (ADP test), and if applicable, the nondiscrimination test under Section 14.09 (ACP test).

An Employer maintaining a profit sharing plan, stock bonus plan or pre-ERISA money purchase pension plan may during a Plan Year amend prospectively its Plan to become a safe harbor 401(k) plan provided: (a) the Employer's Plan is not a successor plan as described in Notice 98-1 or any subsequent applicable guidance; (b) the 401(k) arrangement is in effect for at least 3 months during the Plan Year; (c) the Plan Administrator provides the safe harbor notice described in Section 14.02(D)(4) a reasonable time prior to and not later than the effective date of the amendment; and (d) the Plan satisfies commencing on the effective date of the amendment, all of the safe harbor requirements of this Section 14.02(D).

(E) SIMPLE 401(k) PLAN. The Employer in its Standardized Code Section 401(k) Adoption Agreement may elect to apply prospectively to its Plan the SIMPLE 401(k) provisions of this Section 14.02(E) if: (1) the Plan Year is the calendar year; (2) the Employer (including Related Employers under Section 1.26) has no more than 100 Employees who received Compensation of at least $5,000 in the immediately preceding calendar year; and (3) the Employer does not maintain any other plan as described in Code Section 219(g)(5), with respect to which contributions were made or benefits were accrued for Service by an eligible Employee in the Plan Year to which the SIMPLE 401(k) provisions apply. If an electing Employer fails for any subsequent calendar year to satisfy all of the foregoing requirements, including where the Employer is involved in an acquisition, disposition or similar transaction under which the Employer satisfies Code Section 410(b)(6)(C)(l), the Employer remains eligible to maintain the SIMPLE 401(k) Plan for two additional calendar years following the last year in which the Employer satisfied the requirements. The provisions of this Section 14.02(E) apply to an electing Employer notwithstanding any contrary provision in the Plan.

(1) SIMPLE - COMPENSATION. For purposes of this Section 14.02(E), Compensation is limited as described in Section 1.07(E) and: (a) in the case of an Employee, means W-2 wages but increased by the Employee's elective

deferrals under a 401(k) arrangement, SIMPLE IRA, SARSEP or 403(b) annuity; and
(b) in the case of a Self Employed Individual, means Earned Income determined without regard to contributions made to this Plan.

(2) PARTICIPANT DEFERRAL CONTRIBUTIONS. Each eligible Employee may enter into a salary reduction agreement to make deferral contributions into the SIMPLE
401(k) Plan in an amount not exceeding $6,000 per calendar year, or such other amount as in effect under Code Section 408(p)(2)(E). A Participant may elect to make deferral contributions or modify a salary reduction agreement at any time in accordance with the Plan Administrator's SIMPLE 401(k) salary reduction agreement form, but must be provided at least 60 days prior to the beginning of each SIMPLE Plan Year or commencement of participation for this purpose. A Participant also may at any time terminate prospectively, his/her salary reduction agreement applicable to the Employer's SIMPLE 401(k) Plan.

(3) EMPLOYER SIMPLE 401(k) CONTRIBUTIONS. An Employer which elects under this Section 14.02(E) to apply the SIMPLE 401(k) provisions, annually must make a SIMPLE 401(k) contribution to the Plan as described in this Section
14.02(E)(3). The Employer operationally must elect whether the Employer will contribute: (1) a matching contribution equal to each Participant's deferral contributions but not exceeding 3% of Plan Year Compensation or such lower percentage as the Employer may elect under Code Section 408(p)(2)(C)(ii)(II); or
(2) a nonelective contribution equal to 2% of Plan Year Compensation for each Participant whose Compensation is at least $5,000. The Employer in its Adoption Agreement may not elect to apply any Section 3.06 allocation conditions to the Plan Administrator's allocation of Employer SIMPLE contributions.

(4) SIMPLE 401(k) NOTICE. The Plan Administrator must provide notice to each Participant a reasonable period of time before the 60th day prior to the beginning of each SIMPLE 401(k) Plan Year, describing the Participant's deferral election rights and the Employer's matching or nonelective contributions which the Employer will make for the Plan Year described in the notice.

(5) APPLICATION OF REMAINING PLAN PROVISIONS. All contributions to the SIMPLE 401(k) Plan are Annual Additions subject to the limitations set forth in Article III. No contributions other than those described in this Section 14.02(E) or rollover contributions described in Section 4.04 may be made to the SIMPLE 401(k) Plan. All contributions to the SIMPLE 401(k) Plan are 100% Vested at all times and in the event of a conversion of a non SIMPLE Plan into a SIMPLE
401(k) Plan, all Account Balances in existence on the first day of the Plan Year to which the SIMPLE 401(k) provisions apply, become 100% Vested. A SIMPLE 401
(k) Plan is not subject to nondiscrimination testing under Section 14.08 (ADP test) or Section 14.09 (ACP test) of the Plan and is not subject to the top heavy provisions of Article XII. Except as otherwise described in this Section 14.03(E), if an Employer has elected in its Adoption Agreement to apply the SIMPLE 401(k) provisions of this Section 14.03(E), the Plan Administrator will apply the remaining Plan provisions to Employer's Plan.

(F) ELECTION NOT TO PARTICIPATE. A Participant's or Employee's election not to participate, pursuant to Section 2.06, includes his/her right to enter into a salary reduction agreement or to share in the allocation of a cash or deferred contribution.

14.03 DEFINITIONS. For purposes of this Article XIV:

(a) "Compensation" means, except as otherwise provided in this Article XIV, Compensation as defined for nondiscrimination purposes in Section 1.07(F).

(b) "Current year testing" means for purposes of the ADP test described in
Section 14.08 and the ACP test described in Section 14.09, the use of data from the testing year in determining the ADP or ADP for the Nonhighly Compensated Group.

(c) "Deferral contributions" are salary reduction contributions and cash or deferred contributions the Employer contributes to the Trust on behalf of an eligible Employee, irrespective of whether, in the case of cash or deferred contributions, the contribution is at the election of the Employee. For salary reduction contributions, the terms "deferral contributions" and "elective deferrals" have the same meaning.

(d) "Distribution restrictions" means the Employee may not receive a distribution of the restricted balances described in Section 14.11 (nor earnings on those contributions) except in the event of: (1) the Participant's death, Disability, Separation from Service (which for purposes of this Section 14.03(d), means as the Plan Administrator determines under applicable Revenue Service guidance, including the "same desk" rule and Revenue Ruling 2000-27 with respect to certain asset sale transactions) or attainment of age 59 1/2, (2) financial hardship satisfying Section 14.11(A), (3) Plan termination, without establishment of a successor defined contribution plan (other than an ESOP), (4) a sale by a corporate Employer of substantially all of the assets (within the meaning of Code Section 409(d)(2)) used in a trade or business of the Employer, to another corporation, but only to an Employee who continues employment with the corporation acquiring those assets, or (5) a sale by a corporate Employer of its interest in a subsidiary (within the meaning of Code
Section 409(d)(3)), but only to an Employee who continues employment with the subsidiary. A distribution described in clauses (3), (4) or (5) must be a lump sum distribution, and otherwise must satisfy Code Section 401(k)(10).

(e) "Elective deferrals" are all salary reduction contributions and that portion of any cash or deferred contribution which the Employer contributes to the Plan at the election of an eligible Employee. Any portion of a cash or deferred contribution contributed to the Trust because of the Employee's failure to make a cash election is an elective deferral. However, any portion of a cash or deferred contribution over which the Employee does not have a cash election is not an elective deferral. Elective deferrals do not include amounts which have become currently available to the Employee prior to the election nor amounts designated

as an Employee contribution at the time of deferral or contribution. Elective deferrals are 100% vested at all times.

(f) "Eligible Employee" means, for purposes of the ADP test described in Section 14.08, an Employee who is eligible to enter into a salary reduction agreement for all or any portion of the Plan Year, irrespective of whether he/she actually enters into such an agreement, and a Participant who is eligible for an allocation of the Employer's cash or deferred contribution for the Plan Year. For purposes of the ACP test described in Section 14.09. an eligible Employee is a Participant who is eligible to receive an allocation of matching contributions (or would be eligible if he/she made the type of contributions necessary to receive an allocation of matching contributions) and a Participant who is eligible to make Employee contributions, irrespective of whether he/she actually makes Employee contributions. An Employee continues to be an eligible Employee during a period the Plan suspends the Employee's right to make elective deferrals or Employee contributions following a hardship distribution.

(g) "Employee contributions" are nondeductible contributions made by a Participant and designated, at the time of contribution, as an Employee contribution. Elective deferrals and deferral contributions are not Employee contributions. Employee contributions are subject to Article IV.

(h) "Highly Compensated Employee" means an eligible Employee who satisfies the definition in Section 1.14 of the Plan.

(i) "Highly Compensated Group" means the group of eligible Employees who are Highly Compensated Employees for the Plan Year.

(j) "Matching contributions" are contributions made by the Employer on account of elective deferrals under a 401(k) arrangement or on account of Employee contributions. Matching contributions also include Participant forfeitures allocated on account of such elective deferrals or Employee contributions.

(k) "Nonelective contributions" are contributions made by the Employer which are not subject to a deferral election by an Employee and which are not matching contributions.

(1) "Nonhighly Compensated Employee" means an eligible Employee who is not a Highly Compensated Employee.

(m) "Nonhighly Compensated Group" means the group of eligible Employees who are Nonhighly Compensated Employees for the Plan Year.

(n) "Prior year testing" means for purposes of the ADP test described in Section 14.08 and the ACP test described in Section 14.09, the use of data from the Plan Year immediately prior to the testing year in determining the ADP or ACP for the Nonhighly Compensated Group.

(o) "Qualified matching contributions" are matching contributions which are 100% Vested at all times and which are subject to the distribution restrictions described in Section 14.03(d). Matching contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule. Any matching contributions allocated to a Participant's qualified matching contributions Account under the Plan automatically satisfy and are subject to the definition of qualified matching contributions.

(p) "Qualified nonelective contributions" are nonelective contributions which are 100% Vested at all times and which are subject to the distribution restrictions described in Section 14.03(d). Nonelective contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule. Any nonelective contributions allocated to a Participant's qualified nonelective contributions Account under the Plan automatically satisfy and are subject to the definition of qualified nonelective contributions.

(q) "Regular matching contributions" are matching contributions which are not qualified matching contributions.

(r) "Safe harbor contributions" are Employer nonelective or matching contributions which the Plan Administrator applies to satisfy the ADP test safe harbor under Code Section 401 (k)(l2)(B) or (C) and which are 100% Vested at all times and subject to the distribution restrictions described in Section 14.03(d). Safe harbor contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule. Any nonelective contributions allocated to a Participant's safe harbor contributions Account, automatically satisfy and are subject to the definition of safe harbor contributions.

(s) "Salary reduction agreement" is a written election by a Participant to make salary reduction contributions as described in Section 14.02(A).

(t) "Salary reduction contributions" mean Employer contributions elected by a Participant to be made from the Participant's Compensation pursuant to a salary reduction agreement and which the Plan Administrator must allocate to the electing Participant's Account.

(u) "Testing year" means for purposes of the ADP test described in Section 14.08 and the ACP test described in Section 14.09, the Plan Year for which the ADP or ACP test is being performed.

14.04 MATCHING CONTRIBUTIONS/ EMPLOYEE CONTRIBUTIONS. The Employer in Adoption Agreement Section 3.01 may elect to provide matching contributions. The Employer in Adoption Agreement Section 4.02 also may elect to permit a Participant to make Employee contributions.

14.05 DEFERRAL DEPOSIT TIMING/EMPLOYER CONTRIBUTION STATUS. The Employer must make salary reduction contributions to the Trust after withholding the corresponding Compensation from the Participant at the earliest date on which the contributions can reasonably be segregated from the Employer's general assets. Furthermore, the Employer must make to the Trust salary reduction contributions, cash or deferred contributions, matching contributions (including qualified matching contributions), qualified nonelective contributions, safe harbor contributions and SIMPLE contributions no later than the time prescribed by the Code or ERISA. Salary reduction contributions and cash or deferred contributions are Employer contributions for all purposes under this Plan, except to the extent the Code prohibits the use of these contributions to satisfy the qualification requirements of the Code.

14.06 SPECIAL ACCOUNTING AND ALLOCATION PROVISIONS. To make allocations under the Plan, the Plan Administrator must establish for each Participant, consistent with the Employer's elections under its Adoption Agreement, a deferral contributions Account, a nonelective contributions Account, a qualified matching contributions Account, a regular matching contributions Account, a qualified nonelective contributions Account, a safe harbor contributions Account and a SIMPLE contributions account.

(A) DEFERRAL CONTRIBUTIONS. The Plan Administrator will allocate to each Participant's deferral contributions Account the amount of deferral contributions the Employer makes to the Trust on behalf of the Participant. The Plan Administrator will make this allocation as of the last day of each Plan Year or more frequently as it may determine to be appropriate and consistent with the Plan terms, including those providing for allocation of net income, gain or loss.

(B) MATCHING CONTRIBUTIONS. The Plan Administrator will allocate the Employer's matching contributions as of the last day of each Plan Year or more frequently as the Plan Administrator may determine to be appropriate and consistent with the Plan terms, including those providing for allocation of net income, gain or loss. The Plan Administrator may not allocate any fixed or discretionary matching contributions with respect to deferral contributions that are excess deferrals under Section 14.07. For this purpose: (a) excess deferrals relate first to deferral contributions for the Plan Year not otherwise eligible for a matching contribution; and (b) if the Plan Year is not a calendar year, the excess deferrals for a Plan Year are the last elective deferrals made for a calendar year. The Plan Administrator may not allocate a matching contribution to a Participant's Account to the extent the matching contribution exceeds the Participant's Annual Additions limitation in Part 2 of Article III. The provisions of Section 3.05 govern the treatment of any matching contribution the Plan Administrator allocates contrary to this Section 14.06(B), and the Plan Administrator will compute a Participant's ACP under Section 14.09 by disregarding the forfeiture.

(1) FIXED MATCH. To the extent the Employer makes matching contributions under a fixed matching contribution formula set forth in the Employer's Adoption Agreement, the Plan Administrator will allocate the matching contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed matching contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's deferral contributions or Employee contributions eligible for a match. The Employer may contribute on a Participant's behalf under a specific matching contribution formula only if the Participant satisfies the allocation conditions for matching contributions, if any, the Employer elects in Adoption Agreement Section 3.06. The Employer in its Adoption Agreement may elect whether the Plan Administrator will allocate a fixed matching contribution as a qualified matching contribution or as a regular matching contribution.

(2) DISCRETIONARY MATCH. To the extent the Employer makes matching contributions under a discretionary formula, the Plan Administrator will allocate the discretionary matching contributions to the Account of each Participant who satisfies the allocation conditions, if any, for matching contributions the Employer elects in Adoption Agreement Section 3.06. The allocation of discretionary matching contributions to a Participant's Account is in the same proportion that each Participant's deferral contributions bear to the total deferral contributions of all Participants. If the discretionary formula is a tiered formula, the Plan Administrator will make this allocation separately with respect to each tier of deferral contributions, allocating in such manner the amount of the matching contributions made with respect to that tier. The Employer operationally may direct the Plan Administrator to allocate any discretionary match as a regular matching contribution or as a qualified matching contribution.

(3) MATCH ON DEFERRALS AND EMPLOYEE CONTRIBUTIONS. If the matching contribution formula applies both to deferral contributions and to Employee contributions, the matching contributions apply first to deferral contributions.

(C) QUALIFIED NONELECTIVE CONTRIBUTIONS. If the Employer operationally designates a nonelective contribution to be a qualified nonelective contribution for the Plan Year, the Plan Administrator will allocate that qualified nonelective contribution to the qualified nonelective contributions Account of each Participant eligible for an allocation of that designated contribution, as the Employer elects in Adoption Agreement Section 3.04.

(D) NONELECTIVE CONTRIBUTIONS. If the Employer makes a nonelective contribution for the Plan Year which the Employer does not designate as a qualified nonelective contribution, the Plan Administrator will allocate the nonelective contribution in accordance with Adoption Agreement Section 3.04. For purposes of the nondiscrimination tests described in Sections 14.08 (ADP test), 14.09 (ACP test) and 14.10 (multiple use limitation), the Plan Administrator may treat nonelective contributions allocated under this Section 14.06(D) as qualified nonelective contributions, if the contributions otherwise

satisfy the definition of qualified nonelective contributions. The Employer, to facilitate the Plan Administrator's correction of test failures under Sections 14.08, 14.09 and 14.10, also may make qualified nonelective contributions to the Plan irrespective of whether the Employer in its Adoption Agreement has elected to provide nonelective contributions.

(E) SAFE HARBOR CONTRIBUTIONS. If the Employer elects under Section 14.02(D) to apply the safe harbor provisions to the Plan, the Employer will allocate the safe harbor contributions to the safe harbor contributions Account of each Participant unless the Employer in an Addendum to its Adoption Agreement elects to limit safe harbor allocations to Nonhighly Compensated Employees.

(F) SIMPLE 401(k) PLAN CONTRIBUTIONS. If the Employer elects under Section 14.02(E) to apply the SIMPLE 401(k) provisions to the Plan, the Employer will allocate the SIMPLE contributions to the SIMPLE contributions Account of Participants eligible to receive an allocation of the Employer's SIMPLE contribution (including Participants who make deferral contributions), as specified in Section 14.02(E).

14.07 ANNUAL ELECTIVE DEFERRAL LIMITATION.

(A) ANNUAL ELECTIVE DEFERRAL LIMITATION. An Employee's elective deferrals for a calendar year may not exceed the Code Section 402(g) limitation ("402(g) limitation"). The 402(g) limitation is the greater of $7,000 or the adjusted amount determined by the Secretary of the Treasury. If, pursuant to a salary reduction agreement or pursuant to a cash or deferral election, the Employer determines the Employee's elective deferrals to the Plan for a calendar year would exceed the 402(g) limitation, the Employer will suspend the Employee's salary reduction agreement, if any, until the following January 1 and pay in cash the portion of a deferral election which would result in the Employee's elective deferrals for the calendar year exceeding the 402(g) limitation. If the Plan Administrator determines an Employee's elective deferrals already contributed to the Plan for a calendar year exceed the 402(g) limitation, the Plan Administrator will distribute the amount in excess of the 402(g) limitation (the "excess deferral"), as adjusted for allocable income under Section 14.07(C), no later than April 15 of the following calendar year. If the Plan Administrator distributes the excess deferral by the appropriate April 15, the excess deferral is not an Annual Addition under Article III, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. The Plan Administrator will reduce the amount of excess deferrals for a calendar year distributable to the Employee by the amount of excess contributions (as determined in Section 14.08), if any, previously distributed to the Employee for the Plan Year beginning in that calendar year. Elective deferrals distributed to an Employee as excess Annual Additions in accordance with Article III are not taken into account under the Employee's 402(g) limitation.

(B) MORE THAN ONE PLAN. If an Employee participates in another plan subject to the 402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) arrangement, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a tax-sheltered annuity (irrespective of whether the Employer maintains the other plan), the Employee may provide to the Plan Administrator a written claim for excess deferrals made to the Plan for a calendar year. The Employee must submit the claim no later than the March 1 following the close of the particular calendar year and the claim must specify the amount of the Employee's elective deferrals under this Plan which are excess deferrals. If the Plan Administrator receives a timely claim, it will distribute the excess deferral (as adjusted for allocable income) the Employee has assigned to this Plan, in accordance with the distribution procedure described in Section 14.07(A).

(C) ALLOCABLE INCOME. For purposes of making a distribution of excess deferrals pursuant to this Section 14.07, allocable income means net income or net loss allocable to the excess deferrals for the calendar year (but not beyond the calendar year) in which the Employee made the excess deferral, determined in a manner which is uniform, nondiscriminatory and reasonably reflective of the manner used by the Plan Administrator to allocate income to Participants' Accounts.

14.08 ACTUAL DEFERRAL PERCENTAGE (ADP) TEST. For each Plan Year, the Plan Administrator must determine whether the Plan's 401(k) arrangement satisfies either of the following ADP tests:

(i) The ADP for the Highly Compensated Group does not exceed 1.25 times the ADP of the Nonhighly Compensated Group; or

(ii) The ADP for the Highly Compensated Group does not exceed the ADP for the Nonhighly Compensated Group by more than two percentage points (or the lesser percentage permitted by the multiple use limitation in Section 14.10) and the ADP for the Highly Compensated Group is not more than twice the ADP for the Nonhighly Compensated Group.

(A) CALCULATION OF ADP. The ADP for a group is the average of the separate deferral percentages calculated for each eligible Employee who is a member of that group. An eligible Employee's deferral percentage for a Plan Year is the ratio of the eligible Employee's deferral contributions for the Plan Year to the Employee's Compensation for the Plan Year. In determining the ADP, the Plan Administrator must include any Highly Compensated Employee's excess deferrals, as described in Section 14.07(A), to this Plan or to any other Plan of the Employer and the Plan Administrator will disregard any Nonhighly Compensated Employee's excess deferrals. The Plan Administrator operationally may include in the ADP test, qualified nonelective contributions and qualified matching contributions the Plan Administrator does not use in the ACP test. The Plan Administrator, under prior year testing, may include qualified nonelective contributions or qualified matching contributions in determining the Nonhighly Compensated Employee ADP only if the Employer makes such contribution to the Plan by the end of the testing year and the Plan Administrator allocates the contribution to the prior Plan Year. In determining whether the Plan's 401(k)

arrangement satisfies either ADP test, the Plan Administrator will use prior year testing, unless the Employer in Adoption Agreement Appendices A or B elects to use current year testing. An Employer may not change from current year testing to prior year testing except as provided in the Code or in other applicable guidance. For the first Plan Year the Employer permits elective deferrals and the Plan is not a successor plan (as provided in the Code or in other applicable guidance), under prior year testing, the prior year ADP for the Nonhighly Compensated Group is 3% unless the Employer in an Addendum to its Adoption Agreement elects to use the actual first year ADP for the Nonhighly Compensated Group.

(B) SPECIAL AGGREGATION RULE FOR HIGHLY COMPENSATED EMPLOYEES. To determine the deferral percentage of any Highly Compensated Employee, the Plan Administrator must take into account any elective deferrals made by the Highly Compensated Employee under any other 401(k) arrangement maintained by the Employer, unless the elective deferrals are to an ESOP. If the plans containing the 401 (k) arrangements have different plan years, the Plan Administrator will determine the combined deferral contributions on the basis of the plan years ending in the same calendar year.

(C) AGGREGATION OF CERTAIN 401(k) ARRANGEMENTS. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401 (k) arrangements under such plans to determine whether the plans satisfy the ADP test. This aggregation rule applies to the ADP determination for all eligible Employees, irrespective of whether an eligible Employee is a Highly Compensated Employee or a Nonhighly Compensated Employee. An Employer may aggregate 401(k) arrangements under this Section 14.08(C) only if the plans have the same plan years and use the same testing method. An Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(k) arrangements under this Section 14.08(C) is using prior year testing, the Plan Administrator must adjust the Nonhighly Compensated Group ADP for the prior year as provided in the Code or in other applicable guidance.

(D) CHARACTERIZATION OF EXCESS CONTRIBUTIONS. IF, pursuant to this Section 14.08, the Plan Administrator has elected to include qualified matching contributions in the ADP test, the excess contributions are attributable proportionately to deferral contributions and to qualified matching contributions allocated on the basis of those deferral contributions. The Plan Administrator will reduce the amount of excess contributions for a Plan Year distributable to a Highly Compensated Employee by the amount of excess deferrals (as determined in Section 14.07), if any, previously distributed to that Employee for the Employee's taxable year ending in that Plan Year.

(E) DISTRIBUTION OF EXCESS CONTRIBUTIONS. If the Plan Administrator determines the Plan fails to satisfy the ADP test for a Plan Year, the Trustee, as directed by the Plan Administrator, must distribute the excess contributions, as adjusted for allocable income under Section 14.08(F), during the next Plan Year. However, the Employer may incur an excise tax with respect to the amount of excess contributions for a Plan Year not distributed to the appropriate Highly Compensated Employees during the first 2 1/2 months of that next Plan Year. The excess contributions are the amount of deferral contributions made by the Highly Compensated Employees which causes the Plan to fail the ADP test. The Plan Administrator will determine the total amount of the excess contributions to the Plan by starting with the Highly Compensated Employee(s) who has the greatest deferral percentage, reducing his/her deferral percentage (but not below the next highest deferral percentage), then, if necessary, reducing the deferral percentage of the Highly Compensated Employee(s) at the next highest deferral percentage level, including the deferral percentage of the Highly Compensated Employee(s) whose deferral percentage the Plan Administrator already has reduced (but not below the next highest deferral percentage), and continuing in this manner until the ADP for the Highly Compensated Group satisfies the ADP test.

After the Plan Administrator has determined the total excess contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute to each Highly Compensated Employee his/her respective share of the excess contributions. The Plan Administrator will determine each Highly Compensated Employee's share of excess contributions by starting with the Highly Compensated Employee(s) who has the highest dollar amount of elective deferrals, reducing his/her elective deferrals (but not below the next highest dollar amount of elective deferrals), then, if necessary, reducing the elective deferrals of the Highly Compensated Employee(s) at the next highest dollar amount of elective deferrals including the elective deferrals of the Highly Compensated Employee(s) whose elective deferrals the Plan Administrator already has reduced (but not below the next highest dollar amount of elective deferrals), and continuing in this manner until the Trustee has distributed all excess contributions.

(F) ALLOCABLE INCOME. To determine the amount of the corrective distribution required under this Section 14.08, the Plan Administrator must calculate the allocable income for the Plan Year (but not beyond the Plan Year) in which the excess contributions arose. "Allocable income" means net income or net loss. To calculate allocable income for the Plan Year, the Plan Administrator will use a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate income to Participants' Accounts.

14.09 ACTUAL CONTRIBUTION PERCENTAGE (ACP) TEST. For each Plan Year, the Plan Administrator must determine whether the annual Employer matching contributions (other than qualified matching contributions used in the ADP test under Section 14.08), if any, and the Employee contributions, if any, satisfy either of the following ACP tests:

(i) The ACP for the Highly Compensated Group does not exceed 1.25 times the ACP of the Nonhighly Compensated Group; or

(ii) The ACP for the Highly Compensated Group does not exceed the ACP for the Nonhighly Compensated Group by more than two percentage

points (or the lesser percentage permitted by the multiple use limitation in Section 14.10) and the ACP for the Highly Compensated Group is not more than twice the ACP for the Nonhighly Compensated Group.

(A) CALCULATION OF ACP. The ACP for a group is the average of the separate contribution percentages calculated for each eligible Employee who is a member of that group. An eligible Employee's contribution percentage for a Plan Year is the ratio of the eligible Employee's aggregate contributions for the Plan Year to the Employee's Compensation for the Plan Year. "Aggregate contributions" are Employer matching contributions (other than qualified matching contributions used in the ADP test under Section 14.08) and Employee contributions (as defined in Section 14.03). The Plan Administrator operationally may include in the ACP test, qualified nonelective contributions and elective deferrals not used in the ADP test. The Plan Administrator, under prior year testing, may include qualified nonelective contributions or qualified matching contributions in determining the Nonhighly Compensated Employee ACP only if the Employer makes such contribution to the Plan by the end of the testing year and the Plan Administrator allocates the contribution to the prior Plan Year. In determining whether the Plan satisfies either ACP test, the Plan Administrator will use prior year testing, unless the Employer in Appendix A to its Adoption Agreement elects to use the current year testing. An Employer may not change from current year testing to prior year testing except as provided in the Code or in other applicable guidance. For the first Plan Year the Plan permits matching contributions or Employee contributions and the Plan is not a successor plan (as defined in the Code or in other applicable guidance), under prior year testing, the prior year ACP for the Nonhighly Compensated Group is 3% unless the Employer in an Addendum to its Adoption Agreement elects to use the actual first year ACP for the Nonhighly Compensated Group.

(B) SPECIAL AGGREGATION RULE FOR HIGHLY COMPENSATED EMPLOYEES. To determine the contribution percentage of any Highly Compensated Employee, the aggregate contributions taken into account must include any matching contributions (other than qualified matching contributions used in the ADP test) and any Employee contributions made on his/her behalf to any other plan maintained by the Employer, unless the other plan is an ESOP. If the plans have different plan years, the Plan Administrator will determine the combined aggregate contributions on the basis of the plan years ending in the same calendar year.

(C) AGGREGATION OF CERTAIN 401(m) ARRANGEMENTS. If the Employer treats two or more plans as a single for coverage or nondiscrimination purposes, the Employer must combine the 401(m) arrangements under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACP determination for all eligible Employees, irrespective of whether an eligible Employee is a Highly Compensated Employee or a Nonhighly Compensated Employee. An Employer may aggregate 401(m) arrangements under this Section 14.09(C) if where the plans have the same plan year and use the same testing method. An Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(m) arrangements under this Section 14.09(C) is using prior year testing, the Plan Administrator must adjust the Nonhighly Compensated Group ACP for the prior year as provided in the Code or in other applicable guidance.

(D) DISTRIBUTION OF EXCESS AGGREGATE CONTRIBUTIONS. The Plan Administrator will determine excess aggregate contributions after determining excess deferrals under Section 14.07 and excess contributions under Section 14.08. If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Trustee, as directed by the Plan Administrator, must distribute the Vested excess aggregate contributions, as adjusted for allocable income, during the next Plan Year. However, the Employer may incur an excise tax with respect to the amount of excess aggregate contributions for a Plan Year not distributed to the appropriate Highly Compensated Employees during the first 2 1/2 months of that next Plan Year. The excess aggregate contributions are the amount of aggregate contributions allocated on behalf of the Highly Compensated Employees which causes the Plan to fail the ACP test. The Plan Administrator will determine the total amount of the excess aggregate contributions by starting with the Highly Compensated Employee(s) who has the greatest contribution percentage, reducing his/her contribution percentage (but not below the next highest contribution percentage), then, if necessary, reducing the contribution percentage of the Highly Compensated Employee(s) at the next highest contribution percentage level, including the contribution percentage of the Highly Compensated Employee(s) whose contribution percentage the Plan Administrator already has reduced (but not below the next highest contribution percentage), and continuing in this manner until the ACP for the Highly Compensated Group satisfies the ACP test.

After the Plan Administrator has determined the total excess aggregate contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each Highly Compensated Employee his/her respective share of the excess aggregate contributions. The Plan Administrator will determine each Highly Compensated Employee's share of excess aggregate contributions by starting with the Highly Compensated Employee(s) who has the highest dollar amount of aggregate contributions, reducing the amount of his/her aggregate contributions (but not below the next highest dollar amount of the aggregate contributions), then, if necessary, reducing the amount of aggregate contributions of the Highly Compensated Employee(s) at the next highest dollar amount of aggregate contributions, including the aggregate contributions of the Highly Compensated Employee(s) whose aggregate contributions the Plan Administrator already has reduced (but not below the next highest dollar amount of aggregate contributions), and continuing in this manner until the Trustee has distributed all excess aggregate contributions.

(E) ALLOCABLE INCOME. To determine the amount of the corrective distribution required under this Section 14.09, the Plan Administrator must calculate the allocable income for the Plan Year (but not beyond the Plan Year) in which the excess aggregate contributions arose. "Allocable income" means net income or net loss. The Plan Administrator will determine allocable income in the same manner as described in Section 14.08(F) for excess contributions.

(F) CHARACTERIZATION OF EXCESS AGGREGATE CONTRIBUTIONS. The Plan Administrator will treat a Highly Compensated Employee's allocable share of excess aggregate contributions in the following priority: (1) first as attributable to his/her Employee contributions, if any; (2) then as matching contributions allocable with respect to excess contributions determined under the ADP test described in
Section 14.08; (3) then on a pro rata basis to matching contributions and to the deferral contributions relating to those matching contributions which the Plan Administrator has included in the ACP test; and (4) last to qualified nonelective contributions used in the ACP test. To the extent the Highly Compensated Employee's excess aggregate contributions are attributable to matching contributions, and he/she is not 100% Vested in his/her Account Balance attributable to matching contributions, the Plan Administrator will distribute only the Vested portion and forfeit the nonVested portion. The Vested portion of the Highly Compensated Employee's excess aggregate contributions attributable to Employer matching contributions is the total amount of such excess aggregate contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the matching contribution).

14.10 MULTIPLE USE LIMITATION. If at least one Highly Compensated Employee is includible in the ADP test under Section 14.08 and in the ACP test under
Section 14.09, the sum of the Highly Compensated Group's ADP and ACP may not exceed the multiple use limitation.

The multiple use limitation is the sum of (i) and (ii):

(i) 125% of the greater of: (a) the ADP of the Nonhighly Compensated Group for the prior Plan Year; or (b) the ACP of the Nonhighly Compensated Group for the Plan Year beginning with or within the prior Plan Year of the 401(k) arrangement.

(ii) 2% plus the lesser of (i)(a) or (i)(b), but no more than twice the lesser of (i)(a) or (i)(b).

The Plan Administrator, in lieu of determining the multiple use limitation as the sum of (i) and (ii), may elect to determine the multiple use limitation as the sum of (iii) and (iv):

(iii) 125% of the lesser of: (a) the ADP of the Nonhighly Compensated Group for the prior Plan Year; or (b) the ACP of the Nonhighly Compensated Group for the Plan Year beginning with or within the prior Plan Year of the 401(k) arrangement.

(iv) 2% plus the greater of (iii)(a) or (iii)(b), but no more than twice the greater of (iii)(a) or (iii)(b).

If the Employer has elected in its Adoption Agreement to use current year testing, the multiple use limitation is calculated using the Nonhighly Compensated Group's current Plan Year data. The Plan Administrator will determine whether the Plan satisfies the multiple use limitation after applying the ADP test under Section 14.08 and the ACP test under Section 14.09 and using the deemed maximum corrected ADP and ACP percentages in the event the Plan failed either or both tests. If, after applying this Section 14.10, the Plan Administrator determines the Plan has failed to satisfy the multiple use limitation, the Plan Administrator will correct the failure by treating the excess amount as excess contributions under Section 14.08 or as excess aggregate contributions under Section 14.09, as the Plan Administrator determines in its sole discretion. This Section 14.10 does not apply unless, prior to application of the multiple use limitation, the ADP and the ACP of the Highly Compensated Group each exceeds 125% of the respective percentages for the Nonhighly Compensated Group.

14.11 DISTRIBUTION RESTRICTIONS. The Employer in Adoption Agreement Section 6.01 must elect the distribution events permitted under the Plan. The distribution events applicable to the Participant's deferral contributions Account, qualified nonelective contributions Account, qualified matching contributions Account and safe harbor contributions Account (collectively, "restricted balances") must satisfy the distribution restrictions described in
Section 14.03(d).

(A) HARDSHIP DISTRIBUTIONS FROM DEFERRAL CONTRIBUTIONS ACCOUNT. The Employer must elect in Adoption Agreement Section 6.01 whether a Participant may receive hardship distribution (as defined in Section 6.09) from his/her deferral contributions Account prior to the Participant's Separation from Service. A hardship distribution from the deferral contributions Account also must satisfy the requirements of this Section 14.11(A). A hardship distribution option may not apply to a Participant's qualified nonelective contributions Account, qualified matching contributions Account, nor to his/her safe harbor contributions Account except as provided in Paragraph (2).

(1) RESTRICTIONS. The following restrictions apply to a Participant who receives a hardship distribution from his/her deferral contributions Account: (a) the Participant may not make elective deferrals or Employee contributions to the Plan for the 12-month period following the date of his/her hardship distribution; (b) the distribution may not exceed the amount of the Participant's immediate and heavy financial need (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); (c) the Participant must have obtained all distributions, other than hardship distributions, and all nontaxable loans (determined at the time of the loan) currently available under this Plan and all other qualified plans maintained by the Employer; and (d) the Participant must limit elective deferrals under this Plan and under any other qualified plan maintained by the Employer, for the Participant's taxable year immediately following the taxable year of the hardship distribution, to the 402(g) limitation (as described in Section 14.07), reduced by the amount of the Participant's elective deferrals made in the taxable year of the hardship distribution. The suspension of elective deferrals and Employee contributions described in clause (a) also must apply to all other qualified plans and to all nonqualified plans of

deferred compensation maintained by the Employer, other than any mandatory employee contribution portion of a defined benefit plan, including stock option, stock purchase and other similar plans, but not including health or welfare benefit plans (other than the cash or deferred arrangement portion of a cafeteria plan). The Plan Administrator, absent actual contrary knowledge, may rely on a Participant's written representation that the distribution is on account of hardship (as defined in Section 6.09) and also satisfies clause (b). In addition, clause (c) regarding loans does not apply if the loan to the Participant would increase the Participant's hardship need.

(2) EARNINGS. A hardship distribution may not include earnings on an Employee's elective deferrals credited after December 31, 1988. Qualified matching contributions and qualified nonelective contributions, and any earnings on such contributions, credited as of December 31, 1988, are subject to withdrawal for a hardship distribution only if the Employer in an Addendum to its Adoption Agreement elects to permit such withdrawals. The Addendum may modify the December 31, 1988, date for purposes of determining credited amounts, provided the date is not later than the end of the last Plan Year ending before July 1, 1989.

(B) DISTRIBUTIONS AFTER SEPARATION FROM SERVICE. Following the Participant's Separation from Service, the distribution events applicable to the Participant apply equally to all of the Participant's Accounts.

14.12 SPECIAL ALLOCATION AND VALUATION RULES. If the 401(k) arrangement provides for salary reduction contributions, if the Plan accepts Employee contributions, or if the Plan allocates matching contributions as of any date other than the last day of the Plan Year, the Employer in Adoption Agreement Sections 9.08 and 10.15 must elect the method the Plan Administrator will apply to allocate net income, gain or loss to such contributions made during the Plan Year and any alternative valuation dates for the different Account types which the Plan Administrator maintains under the Plan.

**EXHIBIT 4.8**

**ADOPTION AGREEMENT #005**
**NONSTANDARDIZED 401(k) PROFIT SHARING PLAN**

The undersigned, Cott Beverages Inc. ("Employer"), by executing this Adoption Agreement, elects to establish a retirement plan and trust ("Plan") under the Wachovia Bank, N.A. (basic plan document # 01 ). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Prototype Plan and Trust provisions. This Adoption Agreement, the basic plan document and any attached appendices or addenda, constitute the Employer's entire plan and trust document. All section references within this Adoption Agreement are Adoption Agreement section references unless the Adoption Agreement or the context indicate otherwise. All article references are basic plan document and Adoption Agreement references as applicable. Numbers in parenthesis which follow headings are references to basic plan document sections. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

**ARTICLE I**
**DEFINITIONS**

1. PLAN (1.21). The name of the Plan as adopted by the Employer is Cott Beverages San Bernardino Savings & Retirement Plan

2. TRUSTEE (1.33). The Trustee executing this Adoption Agreement is: (Choose one of (a), (b) or (c))

[ ] (a) A DISCRETIONARY TRUSTEE. See Plan Section 10.03[A].

**[ ] (b) A NONDISCRETIONARY TRUSTEE. See Plan Section 10.03[B].**

**[X] (c) A TRUSTEE UNDER A SEPARATE TRUST AGREEMENT. See Plan Section 10.03[G],**

3. EMPLOYEE (1.11). The following Employees are not eligible to participate in the Plan: (Choose (a) or one or more of (b) through (g) as applicable)

**[ ] (a) No EXCLUSIONS.**

**[ ] (b) COLLECTIVE BARGAINING EMPLOYEES.**

**[ ] (c) NONRESIDENT ALIENS.**

**[ ] (d) LEASED EMPLOYEES.**

**[ ] (e) RECLASSIFIED EMPLOYEES.**

[X] (f) CLASSIFICATIONS: All employees of the employer are excluded from participation in the plan except employees covered under a collective bargaining agreement between the employer and the United Industrial Workers Service, Transportation, Professional and Governmental of North American Sub Region B.

[ ] (g) EXCLUSIONS BY TYPES OF CONTRIBUTIONS. The following classification(s) of Employees are not eligible for the specified contributions:

**EMPLOYEE CLASSIFICATION:____**
**CONTRIBUTION TYPE:_____**

4. COMPENSATION (1.07). The Employer makes the following election(s) regarding the definition of Compensation for purposes of the contribution allocation formula under Article III: (Choose one of (a), (b) or (c))

**[ ] (a) W-2 WAGES INCREASED BY ELECTIVE CONTRIBUTIONS.**

**[X] (b) CODE SECTION 3401(a) FEDERAL INCOME TAX WITHHOLDING WAGES INCREASED BY ELECTIVE CONTRIBUTIONS.**

**[ ] (c) 415 COMPENSATION.**

[Note: Each of the Compensation definitions in (a), (b) and (c) includes Elective Contributions. See Plan Section 1.07(D). To exclude Elective Contributions, the Employer must elect (g).]

COMPENSATION TAKEN INTO ACCOUNT. For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of Employer contributions (excluding deferral contributions) by taking into account: (Choose one of(d) or (e))

[ ] (d) PLAN YEAR. The Employee's Compensation for the entire Plan Year.

[X] (e) COMPENSATION WHILE A PARTICIPANT. The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant.

MODIFICATIONS TO COMPENSATION DEFINITION. The Employer elects to modify the Compensation definition elected in (a), (b) or (c) as follows. (Choose one or more of (f) through (n) as applicable. If the Employer elects to allocate its nonelective contribution under Plan Section 3.04 using permitted disparity, (i),
(j), (k) and (l) do not apply):

[X] (f) FRINGE BENEFITS. The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

[ ] (g) ELECTIVE CONTRIBUTIONS. The Plan excludes a Participant's Elective Contributions. See Plan Section 1.07(D).

[ ] (h) EXCLUSION. The Plan excludes Compensation in excess of: _____.

[X] (i) BONUSES. The Plan excludes bonuses.

[X] (j) OVERTIME. The Plan excludes overtime.

[X] (k) COMMISSIONS. The Plan excludes commissions.

[X] (l) NONELECTIVE CONTRIBUTIONS. The following modifications apply to the definition of Compensation for nonelective contributions: Car allowances, shift differential, employer contributions to the Cott U.S. Employee Share Purchase Plan.

[X] (m) DEFERRAL CONTRIBUTIONS. The following modifications apply to the definition of Compensation for deferral contributions: Same as above.

[X] (n) MATCHING CONTRIBUTIONS. The following modifications apply to the definition of Compensation for matching contributions: Same as above

5. PLAN YEAR/LIMITATION YEAR (1.24). Plan Year and Limitation Year mean the 12-consecutive month period (except for a short Plan Year) ending every: (Choose
(a) or (b). Choose (c) if applicable)

**[X] (a) DECEMBER 31.**

[ ] (b) OTHER:_____.

[ ] (c) SHORT PLAN YEAR: commencing on:____and ending on: _____.

6. EFFECTIVE DATE (1.10). The Employer's adoption of the Plan is a: (Choose one of (a) or (b))

[ ] (a) NEW PLAN. The Effective Date of the Plan is: _____.

[X] (b) RESTATED PLAN. The restated Effective Date is: September 1, 2003.

This Plan is an amendment and restatement of an existing retirement plan(s) originally established effective as of: April 1, 1996.

7. HOUR OF SERVICE/ELAPSED TIME METHOD (1.15). The crediting method for Hours of Service is: (Choose one or more of (a) through (d) as applicable)

[X] (a) ACTUAL METHOD. See Plan Section 1.15(B).

[ ] (b) EQUIVALENCY METHOD. The Equivalency Method is:_____. [Note: Insert "daily," "weekly," "semi-monthly payroll periods" or "monthly."] See Plan
Section 1.15(C).

[ ] (c) COMBINATION METHOD. In lieu of the Equivalency Method specified in (b), the Actual Method applies for purposes of:_____.

[X] (d) ELAPSED TIME METHOD. In lieu of crediting Hours of Service, the Elapsed Time Method applies for purposes of crediting Service for: (Choose one or more of(l), (2) or (3) as applicable)

[X] (1) Eligibility under Article II.

[ ] (2) Vesting under Article V.

[ ] (3) Contribution allocations under Article III.

8. PREDECESSOR EMPLOYER SERVICE (1.30). In addition to the predecessor service the Plan must credit by reason of Section 1.30 of the Plan, the Plan credits as Service under this Plan, service with the following predecessor employer(s): N/A

[Note: If the Plan does not credit any additional predecessor service under this
Section 1.30, insert "N/A " in the blank line. The Employer also may elect to credit predecessor service with specified Participating Employers only. See the Participation Agreement.] Service with the designated predecessor employer(s) applies: (Choose one or more of (a) through (d) as applicable)

[ ] (a) ELIGIBILITY. For eligibility under Article II. See Plan Section 1.30 for time of Plan entry.

[ ] (b) VESTING. For vesting under Article V.

[ ] (c) CONTRIBUTION ALLOCATION. For contribution allocations under Article
**III.**

[ ] (d) EXCEPTIONS. Except for the following Service:___.

## ARTICLE II
## ELIGIBILITY REQUIREMENTS

9. ELIGIBILITY (2.01).

ELIGIBILITY CONDITIONS. To become a Participant in the Plan, an Employee must satisfy the following eligibility conditions: (Choose one or more of (a) through
(e) as applicable) [Note: If the Employer does not elect (c), the Employer's elections under (a) and (b) apply to all types of contributions. The Employer as to deferral contributions may not elect (b)(2) and may not elect more than 12 months in (b)(4) and (b)(5).]

[X] (a) AGE. Attainment of age 18 (not to exceed age 21).

[X] (b) SERVICE. Service requirement. (Choose one of (1) through (5))

[ ] (1) One Year of Service.

[ ] (2) Two Years of Service, without an intervening Break in Service. See Plan Section 2.03(A).

[ ] (3) One Hour of Service (immediate completion of Service requirement).
The Employee satisfies the Service requirement on his/her Employment Commencement Date.

[X] (4) 3 months (not exceeding 24).

[ ] (5) An Employee must complete_____Hours of Service within the _____time period following the Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. [Note: The number of hours may not exceed 1,000 and the time period may not exceed 24 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A " in the second blank line.]

**[ ] (c) ALTERNATIVE 401(k)/401(m) ELIGIBILITY CONDITIONS. In lieu of the** elections in (a) and (b), the Employer elects the following eligibility conditions for the following types of contributions: (Choose (1) or (2) or both if the Employer

wishes to impose less restrictive eligibility conditions for deferral/Employee contributions or for matching contributions)

(1) [ ] DEFERRAL/EMPLOYEE CONTRIBUTIONS: (Choose one of a. through d. Choose e. if applicable)

a. [ ] One Year of Service

b. [ ] One Hour of Service (immediate completion of Service requirement)

c. [ ] _____months (not exceeding 12)

d. [ ] An Employee must complete_____Hours of Service within the____time period following an Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. [Note: The number of hours may not exceed 1,000 and the time period may not exceed 12 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A" in the second blank line.]

e. [ ] Age__(not exceeding age 21)

(2) [ ] MATCHING CONTRIBUTIONS: (Choose one off. through i. Choose
j. if applicable)

f. [ ] One Year of Service

g. [ ] One Hour of Service (immediate completion of Service requirement)

h. [ ] _____ months (not exceeding 24)

i. [ ] An Employee must complete_____Hours of Service within the _____ time period following an Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. [Note: The number of hours may not exceed 1,000 and the time period may not exceed 24 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A" in the second blank line.]

j. [ ] Age (not exceeding age 21)

**[ ] (d) SERVICE REQUIREMENTS:____.**
[Note: Any Service requirement the Employer elects in (d) must be available under other Adoption Agreement elections or a combination thereof.]

[ ] (e) DUAL ELIGIBILITY. The eligibility conditions of this Section 2.01 apply solely to an Employee employed by the Employer after_____. If the Employee was employed by the Employer by the specified date, the Employee will become a Participant on the latest of: (i) the Effective Date; (ii) the restated Effective Date; (iii) the Employee's Employment Commencement Date; or (iv) on the date the Employee attains age _____ (not exceeding age 21).

PLAN ENTRY DATE. "Plan Entry Date" means the Effective Date and: (Choose one of (f) through (j). Choose (k) if applicable) [Note: If the Employer does not elect (k), the elections under (f) through (j) apply to all types of contributions. The Employer must elect at least one Entry Date per Plan Year.]

[ ] (f) SEMI-ANNUAL ENTRY DATES. The first day of the Plan Year and the first day of the seventh month of the Plan Year.

**[ ] (g) THE FIRST DAY OF THE PLAN YEAR.**

[ ] (h) EMPLOYMENT COMMENCEMENT DATE (immediate eligibility).

[X] (i) THE FIRST DAY OF EACH: Plan Year quarter (e.g., "Plan Year quarter").

**[ ] (j) THE FOLLOWING PLAN ENTRY DATES:_____.**

[ ] (k) ALTERNATIVE 401(k)/401(m) PLAN ENTRY DATE(s). For the alternative
401(k)/401(m) eligibility conditions under (c), Plan Entry Date means:

(Choose (1) or (2) or both as applicable)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| (1) | [ ] | DEFERRAL/EMPLOYEE CONTRIBUTIONS<br>(Choose one of a. through d.) | | (2) | [ ] | MATCHING CONTRIBUTIONS<br>(Choose one of e. through h.) | |
| | a. | [ ] | Semi-annual Entry Dates | | e. | [ ] | Semi-annual Entry Dates |
| | b. | [ ] | The first day of the Plan Year | | f. | [ ] | The first day of the Plan Year |
| | c. | [ ] | Employment Commencement Date (immediate eligibility) | | g. | [ ] | Employment Commencement Date (immediate eligibility) |
| | d. | [ ] | The first day of each: _____ | | h. | [ ] | The first day of each: _____ |

TIME OF PARTICIPATION. An Employee will become a Participant, unless excluded under Section 1.11, on the Plan Entry Date (if employed on that date): (Choose one of (l), (m) or (n). Choose (o) if applicable): [Note: If the Employer does not elect (o), the election under (l), (m) or (n) applies to all types of contributions.]

**[X] (l) IMMEDIATELY FOLLOWING OR COINCIDENT WITH**

**[ ] (m) IMMEDIATELY PRECEDING OR COINCIDENT WITH**

**[ ] (n) NEAREST**

[ ] (o) ALTERNATIVE 401(k)/401(m) ELECTION(s): (Choose (1) or (2) or both as applicable)

(1) [ ] DEFERRAL CONTRIBUTIONS

a. [ ] Immediately following or coincident with

(2) [ ] MATCHING CONTRIBUTIONS (Choose one of b., c. or d.)

b. [ ] Immediately following or coincident with

c. [ ] Immediately preceding or coincident with

d. [ ] Nearest

the date the Employee completes the eligibility conditions described in this Section 2.01. [Note: Unless otherwise excluded under Section 1.11, an Employee must become a Participant by the earlier of: (1) the first day of the Plan Year beginning after the date the Employee completes the age and service requirements of Code Section 410(a); or (2) 6 months after the date the Employee completes those requirements.]

10. YEAR OF SERVICE - ELIGIBILITY (2.02). (Choose (a) and (b) as applicable):
[Note: If the Employer does not elect a Year of Service condition or elects the Elapsed Time Method, the Employer should not complete (a) or (b).]

[ ] (a) YEAR OF SERVICE. An Employee must complete___Hour(s) of Service during an eligibility computation period to receive credit for a Year of Service under Article II: [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]

[ ] (b) ELIGIBILITY COMPUTATION PERIOD. After the initial eligibility computation period described in Plan Section 2.02, the Plan measures the eligibility computation period as: (Choose one of (1) or (2))

[ ] (1) The Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's Employment Commencement Date.

[ ] (2) The 12-consecutive month period beginning with each anniversary of the Employee's Employment Commencement Date.

11. PARTICIPATION - BREAK IN SERVICE (2.03). The one year hold-out rule described in Plan Section 2.03(B): (Choose one of (a), (b) or (c))

[X] (a) NOT APPLICABLE. Does not apply to the Plan.

[ ] (b) APPLICABLE. Applies to the Plan and to all Participants.

[ ] (c) LIMITED APPLICATION. Applies to the Plan, but only to a Participant who has incurred a Separation from Service.

12. ELECTION NOT TO PARTICIPATE (2.06). The Plan: (Choose one of (a) or (b))

[X] (a) ELECTION NOT PERMITTED. Does not permit an eligible Employee to elect not to participate.

[ ] (b) IRREVOCABLE ELECTION. Permits an Employee to elect not to participate if the Employee makes a one-time irrevocable election prior to the Employee's Plan Entry Date.

**ARTICLE III**
**EMPLOYER CONTRIBUTIONS, DEFERRAL CONTRIBUTIONS AND FORFEITURES**

13. AMOUNT AND TYPE (3.01). The amount and type(s) of the Employer's contribution to the Trust for a Plan Year or other specified period will equal:
(Choose one or more of (a) through (f) as applicable)

[X] (a) DEFERRAL CONTRIBUTIONS (401(k) ARRANGEMENT). The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's salary reduction agreement and in accordance with Section 3.02.

**[X] (b) MATCHING CONTRIBUTIONS (OTHER THAN SAFE HARBOR MATCHING CONTRIBUTIONS**
UNDER SECTION 3.01(d)). The matching contributions made in accordance with
Section 3.03.

[X] (c) NONELECTIVE CONTRIBUTIONS (PROFIT SHARING). The following nonelective contribution (Choose (1) or (2) or both as applicable): [Note: The Employer may designate as a qualified nonelective contribution, all or any portion of its nonelective contribution. See Plan Section 3.04(F).]

[ ] (1) DISCRETIONARY. An amount the Employer in its sole discretion may determine.

[X] (2) FIXED. The following amount: 2% of Compensation

[ ] (d) 401(k) SAFE HARBOR CONTRIBUTIONS. The following 401(k) safe harbor contributions described in Plan Section 14.02(D): (Choose one of (1), (2) or (3). Choose (4), if applicable)

[ ] (1) SAFE HARBOR NONELECTIVE CONTRIBUTION. The safe harbor nonelective contribution equals ____%of a Participant's Compensation [Note: the amount in the blank must be at least 3%.].

[ ] (2) BASIC SAFE HARBOR MATCHING CONTRIBUTION. A matching contribution equal to 100% of each Participant's deferral contributions not exceeding 3% of the Participant's Compensation, plus 50% of each Participant's deferral contributions in excess of 3% but not in excess of 5% of the Participant's Compensation. For this purpose, "Compensation" means Compensation for:_____. [Note: The Employer must complete the blank line with the applicable time period for computing the Employer's basic safe harbor match, such as "each payroll period," "each month," "each Plan Year quarter" or "the Plan Year".]

**[ ] (3) ENHANCED SAFE HARBOR MATCHING CONTRIBUTION. (Choose one of a. or**

b.).

[ ] a. UNIFORM PERCENTAGE. An amount equal to ____% of each Participant's deferral contributions not exceeding____% of the Participant's Compensation. For this purpose, "Compensation" means Compensation for:___. [See the Note in (d)(2).]

[ ] b. TIERED FORMULA. An amount equal to the specified matching percentage for the corresponding level of each Participant's deferral contribution percentage. For this purpose, "Compensation" means Compensation for:_____. [See the Note in (d)(2).]

| Deferral Contribution Percentage | Matching Percentage |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

[Note: The matching percentage may not increase as the deferral contribution percentage increases and the enhanced matching formula otherwise must satisfy the requirements of Code Sections 401(k)(l2)(B)(ii) and (iii). If the Employer wishes to avoid ACP testing on its enhanced safe harbor matching contribution, the Employer also must limit deferral contributions taken into account (the "Deferral Contribution Percentage") for the matching contribution to 6% of Plan Year Compensation.]

[ ] (4) ANOTHER PLAN. The Employer will satisfy the 401 (k) safe harbor contribution in the following plan:_____.

[ ] (e) DAVIS-BACON CONTRIBUTIONS. The amount(s) specified for the applicable Plan Year or other applicable period in the Employer's Davis-Bacon contract(s). The Employer will make a contribution only to Participants covered by the contract and only with respect to Compensation paid under the contract. If the Participant accrues an allocation of nonelective contributions (including forfeitures) under the Plan in addition to the Davis-Bacon contribution, the Plan Administrator will: (Choose one of (1) or (2))

[ ] (1) Not reduce the Participant's nonelective contribution allocation by the Davis-Bacon contribution.

[ ] (2) Reduce the Participant's nonelective contribution allocation by the Davis-Bacon contribution.

[ ] (f) FROZEN PLAN. This Plan is a frozen Plan effective: ____. For any period following the specified date, the Employer will not contribute to the Plan, a Participant may not contribute and an otherwise eligible Employee will not become a Participant in the Plan.

14. DEFERRAL CONTRIBUTIONS (3.02). The following limitations and terms apply to an Employee's deferral contributions: (If the Employer elects Section 3.01 (a), the Employer must elect (a). Choose (b) or (c) as applicable)

[X] (a) LIMITATION ON AMOUNT. An Employee's deferral contributions are subject to the following limitation(s) in addition to those imposed by the Code:

(Choose (1), (2) or (3) as applicable)

[X] (1) Maximum deferral amount: 15%.

[X] (2) Minimum deferral amount: 1%.

[ ] (3) No limitations.

For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will apply any percentage limitation the Employer elects in (1) or
(2) to the Employee's Compensation: (Choose one of (4) or (5) unless the Employer elects (3))

[X] (4) Only for the portion of the Plan Year in which the Employee actually is a Participant.

[ ] (5) For the entire Plan Year.

[ ] (b) NEGATIVE DEFERRAL ELECTION. The Employer will withhold _____% from the Participant's Compensation unless the Participant elects a lesser percentage (including zero) under his/her salary reduction agreement. See Plan Section 14.02(C). The negative election will apply to: (Choose one of(1) or (2))

[ ] (1) All Participants who have not deferred at least the automatic deferral amount as of: ____.

[ ] (2) Each Employee whose Plan Entry Date is on or following the negative election effective date.

[ ] (c) CASH OR DEFERRED CONTRIBUTIONS. For each Plan Year for which the Employer makes a designated cash or deferred contribution under Plan
Section 14.02(B), a Participant may elect to receive directly in cash not more than the following portion (or, if less, the 402(g) limitation) of his/her proportionate share of that cash or deferred contribution: (Choose one of (1) or (2))

[ ] (1) All or any portion. [ ] (2) _____%.

MODIFICATION/REVOCATION OF SALARY REDUCTION AGREEMENT. A Participant prospectively may modify or revoke a salary reduction agreement, or may file a new salary reduction agreement following a prior revocation, at least once per Plan Year or during any election period specified by the basic plan document or required by the Internal Revenue Service. The Plan Administrator also may provide for more frequent elections in the Plan's salary reduction agreement form.

15. MATCHING CONTRIBUTIONS (INCLUDING ADDITIONAL SAFE HARBOR MATCH UNDER PLAN
SECTION 14.02(D)(3)) (3.03). The Employer matching contribution is: (If the Employer elects Section 3.01 (b), the Employer must elect one or more of (a),
(b) or (c) as applicable. Choose (d) if applicable)

[X] (a) FIXED FORMULA. An amount equal to 100% of each Participant's deferral contributions.

[ ] (b) DISCRETIONARY FORMULA. An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of the Participant's deferral contributions. The Employer, in its sole discretion, may designate as a qualified matching contribution, all or any portion of its discretionary matching contribution. The portion of the Employer's discretionary matching contribution for a Plan Year not designated as a qualified matching contribution is a regular matching contribution.

[ ] (c) MULTIPLE LEVEL FORMULA. An amount equal to the following percentages for each level of the Participant's deferral contributions. [Note: The matching percentage only will apply to deferral contributions in excess of the previous level and not in excess of the stated deferral

contribution percentage.]

| Deferral Contributions | Matching Percentage |
| --- | --- |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

[ ] (d) RELATED EMPLOYERS. If two or more Related Employers contribute to this Plan, the Plan Administrator will allocate matching contributions and matching contribution forfeitures only to the Participants directly employed by the contributing Employer. The matching contribution formula for the other Related Employer(s) is:_____. [Note: If the Employer does not elect (d), the Plan Administrator will allocate all matching contributions and matching forfeitures without regard to which contributing Related Employer directly employs the Participant.]

TIME PERIOD FOR MATCHING CONTRIBUTIONS. The Employer will determine its matching contribution based on deferral contributions made during each: (Choose one of(e) through (h))

**[ ] (e) PLAN YEAR.**

**[ ] (f) PLAN YEAR QUARTER.**

**[X] (g) PAYROLL PERIOD.**

[ ] (h) ALTERNATIVE TIME PERIOD:___. [Note: Any alternative time period the Employer elects in (h) must be the same for all Participants and may not exceed the Plan Year.]

DEFERRAL CONTRIBUTIONS TAKEN INTO ACCOUNT. In determining a Participant's deferral contributions taken into account for the above-specified time period under the matching contribution formula, the following limitations apply:
(Choose one of (i), (j) or (k))

[ ] (i) ALL DEFERRAL CONTRIBUTIONS. The Plan Administrator will take into account all deferral contributions.

[X] (j) SPECIFIC LIMITATION. The Plan Administrator will disregard deferral contributions exceeding 2% of the Participant's Compensation. [Note: To avoid the ACP test in a safe harbor 401(k) plan, the Employer must limit deferrals and Employee contributions which are subject to match to 6% of Plan Year Compensation.]

[ ] (k) DISCRETIONARY. The Plan Administrator will take into account the deferral contributions as a percentage of the Participant's Compensation as the Employer determines.

OTHER MATCHING CONTRIBUTION REQUIREMENTS. The matching contribution formula is subject to the following additional requirements: (Choose (l) or (m) or both if applicable)

[ ] (1) MATCHING CONTRIBUTION LIMITS. A Participant's matching contributions may not exceed: (Choose one of (1) or (2))

[ ] (1) _____. [Note: The Employer may elect (1) to place an overall dollar or percentage limit on matching contributions.]

[ ] (2) 4% of a Participant's Compensation for the Plan Year under the discretionary matching contribution formula. [Note: The Employer must elect (2) if it elects a discretionary matching formula with the safe harbor 401(k) contribution formula and wishes to avoid the ACP test.]

[ ] (m) QUALIFIED MATCHING CONTRIBUTIONS. The Plan Administrator will allocate as qualified matching contributions, the matching contributions specified in Adoption Agreement Section:_____. The Plan Administrator will allocate all other matching contributions as regular matching contributions. [Note:
If the Employer elects two matching formulas, the Employer may use (m) to designate one of the formulas as a qualified matching contribution.]

16. CONTRIBUTION ALLOCATION (3.04).

EMPLOYER NONELECTIVE CONTRIBUTIONS (3.04(A)). The Plan Administrator will allocate the Employer's nonelective contribution under the following contribution allocation formula: (Choose one of (a), (b) or (c). Choose (d) if applicable)

**[X] (a) NONINTEGRATED (PRO RATA) ALLOCATION FORMULA.**

[ ] (b) PERMITTED DISPARITY. The following permitted disparity formula and definitions apply to the Plan: (Choose one of (1) or (2). Also choose (3))

[ ] (1) Two-tiered allocation formula.

[ ] (2) Four-tiered allocation formula.

[ ] (3) For purposes of Section 3.04(b), "Excess Compensation" means Compensation in excess of: (Choose one of a. or b.)

[ ] a. __% of the taxable wage base in effect on the first day of the Plan Year, rounded to the next highest $____(not exceeding the taxable wage base).

[ ] b. The following integration level: _____.
[Note: The integration level cannot exceed the taxable wage base in effect for the Plan Year for which this Adoption Agreement first is effective.]

[ ] (c) UNIFORM POINTS ALLOCATION FORMULA. Under the uniform points allocation formula, a Participant receives: (Choose (1) or both (1) and (2) as applicable)

[ ] (1) _____point(s) for each Year of Service. Year of Service means:_____.

[ ] (2) One point for each $____ [not to exceed $200] increment of Plan Year Compensation.

[ ] (d) INCORPORATION OF CONTRIBUTION FORMULA. The Plan Administrator will allocate the Employer's nonelective contribution under Section(s) 3.01(c)(2), (d)(l) or (e) in accordance with the contribution formula adopted by the Employer under that Section.

QUALIFIED NONELECTIVE CONTRIBUTIONS. (3.04(F)). The Plan Administrator will allocate the Employer's qualified nonelective contributions to: (Choose one of
(e) or (f))

**[X] (e) NONHIGHLY COMPENSATED EMPLOYEES ONLY.**

**[ ] (f) AIL PARTICIPANTS.**

RELATED EMPLOYERS. (Choose (g) if applicable)

**[ ] (g) ALLOCATE ONLY TO DIRECTLY EMPLOYED PARTICIPANTS. If two or more Related**
Employers adopt this Plan, the Plan Administrator will allocate all nonelective contributions and forfeitures attributable to nonelective contributions only to the Participants directly employed by the contributing Employer. If a Participant receives Compensation from more than one contributing Employer, the Plan Administrator will determine the allocations under this Section 3.04 by prorating the Participant's Compensation between or among the participating Related Employers. [Note:
If the Employer does not elect 3.04(g), the Plan Administrator will allocate all nonelective contributions and forfeitures without regard to which contributing Related Employer directly employs the Participant. The Employer may not elect 3.04(g) under a safe harbor 401 (k) Plan.]

17. FORFEITURE ALLOCATION (3.05). The Plan Administrator will allocate a Participant forfeiture: (Choose one or more of (a), (b) or (c) as applicable)
[Note: Even if the Employer elects immediate vesting, the Employer should complete Section 3.05. See Plan Section 9.11.]

[X] (a) MATCHING CONTRIBUTION FORFEITURES. To the extent attributable to matching contributions: (Choose one of (1) through (4))

[ ] (1) As a discretionary matching contribution.

[X] (2) To reduce matching contributions.

[ ] (3) As a discretionary nonelective contribution.

[ ] (4) To reduce nonelective contributions.

[X] (b) NONELECTIVE CONTRIBUTION FORFEITURES. To the extent attributable to Employer nonelective contributions: (Choose one of (1) through (4))

[ ] (1) As a discretionary nonelective contribution.

[X] (2) To reduce nonelective contributions.

[ ] (3) As a discretionary matching contribution.

[ ] (4) To reduce matching contributions.

[X] (c) REDUCE ADMINISTRATIVE EXPENSES. First to reduce the Plan's ordinary and necessary administrative expenses for the Plan Year and then allocate any remaining forfeitures in the manner described in Sections 3.05(a) or (b) as applicable.

TIMING OF FORFEITURE ALLOCATION. The Plan Administrator will allocate forfeitures under Section 3.05 in the Plan Year: (Choose one of (d) or (e))

[X] (d) In which the forfeiture occurs.

[ ] (e) Immediately following the Plan Year in which the forfeiture occurs.

18. ALLOCATION CONDITIONS (3.06).

ALLOCATION CONDITIONS. The Plan does not apply any allocation conditions to deferral contributions, 401(k) safe harbor contributions (under Section 3.01(d)) or to Davis-Bacon contributions (except as the Davis-Bacon contract provides). To receive an allocation of matching contributions, nonelective contributions, qualified nonelective contributions or Participant forfeitures, a Participant must satisfy the following allocation condition(s): (Choose one or more of (a) through (i) as applicable)

[ ] (a) HOURS OF SERVICE CONDITION. The Participant must complete at least the specified number of Hours of Service (not exceeding 1,000) during the Plan Year:__.

[ ] (b) EMPLOYMENT CONDITION. The Participant must be employed by the Employer on the last day of the__ (designate time period).

**[X] (c) No ALLOCATION CONDITIONS.**

[ ] (d) ELAPSED TIME METHOD. The Participant must complete at least the specified number (not exceeding 182) of consecutive calendar days of employment with the Employer during the Plan Year:_____.

**[ ] (e) TERMINATION OF SERVICE/501 HOURS OF SERVICE COVERAGE RULE. The**
Participant either must be employed by the Employer on the last day of the Plan Year or must complete at least 501 Hours of Service during the Plan Year. If the Plan uses the Elapsed Time Method of crediting Service, the Participant must complete at least 91 consecutive calendar days of employment with the Employer during the Plan Year.

**[ ] (f) SPECIAL ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS. The**
Participant must complete at least ____ Hours of Service during the _____ (designate time period) for the matching contributions made for that time period.

[ ] (g) DEATH, DISABILITY OR NORMAL RETIREMENT AGE. Any condition specified in
Section 3.06 ___ applies if the Participant incurs a Separation from Service during the Plan Year on account of: ____ (e.g., death, Disability or Normal Retirement Age).

**[ ] (h) SUSPENSION OF ALLOCATION CONDITIONS FOR COVERAGE. The suspension of**
allocation conditions of Plan Section 3.06(E) applies to the Plan.

[ ] (i) LIMITED ALLOCATION CONDITIONS. The Plan does not impose an allocation condition for the following types of contributions:_____. [Note: Any election to limit the Plan's allocation conditions to certain contributions must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]

## ARTICLE IV
## PARTICIPANT CONTRIBUTIONS

19. EMPLOYEE (AFTER TAX) CONTRIBUTIONS (4.02). The following elections apply to Employee contributions: (Choose one of (a) or (b). Choose (c) if applicable)

[X] (a) NOT PERMITTED. The Plan does not permit Employee contributions.

[ ] (b) PERMITTED. The Plan permits Employee contributions subject to the following limitations: _____.
[Note: Any designated limitation (s) must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]

[ ] (c) MATCHING CONTRIBUTION. For each Plan Year, the Employer's matching contribution made with respect to Employee

contributions is:____.

**ARTICLE V**
**VESTING REQUIREMENTS**

20. NORMAL/EARLY RETIREMENT AGE(5.01). A Participant attains Normal Retirement Age (or Early Retirement Age, if applicable) under the Plan on the following date:(Choose one of (a) or (b). Choose (c) if applicable)

[X] (a) SPECIFIC AGE. The date the Participant attains age 65 [Note: The age may not exceed age 65.]

[ ] (b) AGE/PARTICIPATION. The later of the date the Participant attains _____ years of age or the _____ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan,
[Note: The age may not exceed age 65 and the anniversary may not exceed the 5th.]

[ ] (c) EARLY RETIREMENT AGE. Early Retirement Age is the later of: (i) the date a Participant attains age _____ or (ii) the date a Participant reaches his/her _____ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan.

21. PARTICIPANT'S DEATH OR DISABILITY(5.02). The 100% vesting rule under Plan Section 5.02 does not apply to: (Choose (a) or (b) or both as applicable)

[ ] (a) DEATH.

**[ ] (b) DISABILITY.**

22. VESTING SCHEDULE(5.03). A Participant has a 100% Vested interest at all times in his/her deferral contributions, qualified nonelective contributions, qualified matching contributions, 401(k) safe harbor contributions and Davis-Bacon contributions (unless otherwise indicated in (f)). The following vesting schedule applies to Employer regular matching contributions and to Employer nonelective contributions:(Choose (a) or choose one or more of(b) through (f) as applicable)

[ ] (a) IMMEDIATE VESTING. 100% Vested at all times. [Note: The Employer must elect (a) if the Service condition under Section 2.01 exceeds One Year of Service or more than twelve months.]

[X] (b) TOP-HEAVY VESTING SCHEDULES. [Note: The Employer must choose one of(b)(l), (2) or (3) if it does not elect (a)]

[ ] (1) 6-year graded as specified in the Plan.

[ ] (2) 3-year cliff as specified in the Plan.

[X] (3) Modified top-heavy schedule

| Years of Service | Vested Percentage |
|---|---|
| Less than 1 ..... | 0% |
| 1 ..... | 20% |
| 2 ..... | 40% |
| 3 ..... | 60% |
| 4 ..... | 80% |
| 5 ..... | 100% |
| 6 or more ..... | 100% |

[ ] (c) NON-TOP-HEAVY VESTING SCHEDULES. [Note: The Employer may elect one of (c)(l), (2) or (3) in addition to (b).]

[ ] (1) 7-year graded as specified in the Plan.

[ ] (2) 5-year cliff as specified in the Plan.

[ ] (3) Modified non-top-heavy schedule

| Years of Service | Vested Percentage |
|---|---|
| Less than 1 ..... | ___% |
| 1 ..... | ___% |
| 2 ..... | ___% |
| 3 ..... | ___% |
| 4 ..... | ___% |
| 5 ..... | ___% |
| 6 ..... | ___% |
| 7 or more ..... | 100% |

If the Employer does not elect (c), the vesting schedule elected in (b) applies to all Plan Years. [Note: The modified top-heavy schedule of (b)(3) must satisfy Code Section 416. If the Employer elects (c)(3), the modified non-top-heavy schedule must satisfy Code Section 411 (a)(2).]

**[ ] (d) SEPARATE VESTING ELECTION FOR REGULAR MATCHING CONTRIBUTIONS. In lieu** of the election under (a), (b) or (c), the following vesting schedule applies to a Participant's regular matching contributions: (Choose one of(l) or (2))

[ ] (1) 100% Vested at all times.

[ ] (2) Regular matching vesting schedule:_____.
[Note: The vesting schedule completed under (d)(2) must comply with Code Section 411 (a)(4).]

[ ] (e) APPLICATION OF TOP-HEAVY SCHEDULE. The non-top-heavy schedule elected under (c) applies in all Plan Years in which the Plan is not a top-heavy plan. [Note: If the Employer does not elect (e), the top-heavy vesting schedule will apply for the first Plan Year in which the Plan is top-heavy and then in all subsequent Plan Years.]

[ ] (f) SPECIAL VESTING PROVISIONS:_____. [Note: Any special vesting provision must satisfy Code Section 411 (a). Any special vesting provision must be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code Section 401(a)(4).]

23. YEAR OF SERVICE - VESTING (5.06). (Choose (a) and (b)): [Note: If the Employer elects the Elapsed Time Method or elects immediate vesting, the Employer should not complete (a) or (b).]

[X] (a) YEAR OF SERVICE. An Employee must complete at least 1,000 Hours of Service during a vesting computation period to receive credit for a Year of Service under Article V. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]

[X] (b) VESTING COMPUTATION PERIOD. The Plan measures a Year of Service on the basis of the following 12-consecutive month period: (Choose one of (1) or

(2))

[X] (1) Plan Year.

[ ] (2) Employment year (anniversary of Employment Commencement Date).

24. EXCLUDED YEARS OF SERVICE - VESTING (5.08). The Plan excludes the following Years of Service for purposes of vesting: (Choose (a) or choose one or more of
(b) through (f) as applicable)

[ ] (a) NONE. None other than as specified in Plan Section 5.08(a).

[ ] (b) AGE 18. Any Year of Service before the Year of Service during which the Participant attained the age of 18.

[X] (c) PRIOR TO PLAN ESTABLISHMENT. Any Year of Service during the period the Employer did not maintain this Plan or a predecessor plan.

[ ] (d) PARITY BREAK IN SERVICE. Any Year of Service excluded under the rule of parity. See Plan Section 5.10.

[ ] (e) PRIOR PLAN TERMS. Any Year of Service disregarded under the terms of the Plan as in effect prior to this restated Plan.

[ ] (f) ADDITIONAL EXCLUSIONS. Any Year of Service before:_____
[Note: Any exclusion specified under (f) must comply with Code Section
411(a)(4). Any exclusion must be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code Section
401(a)(4). If the Employer elects immediate vesting, the Employer should not complete Section 5.08.]

**ARTICLE VI**
**DISTRIBUTION OF ACCOUNT BALANCE**

25. TIME OF PAYMENT OF ACCOUNT BALANCE (6.01). The following time of distribution elections apply to the Plan:

SEPARATION FROM SERVICE/VESTED ACCOUNT BALANCE NOT EXCEEDING $5,000. Subject to the limitations of Plan Section 6.01(A)(1), the Trustee will distribute in a lump sum (regardless of the Employer's election under Section 6.04) a separated Participant's Vested Account Balance not exceeding $5,000: (Choose one of (a) through (d))

[X] (a) IMMEDIATE. As soon as administratively practicable following the Participant's Separation from Service.

[ ] (b) DESIGNATED PLAN YEAR. As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Separation from Service.

[ ] (c) DESIGNATED PLAN YEAR QUARTER. As soon as administratively practicable in the _____ Plan Year quarter beginning after the Participant's Separation from Service.

[ ] (d) DESIGNATED DISTRIBUTION. As soon as administratively practicable in the: _____ following the Participant's Separation from Service. [Note: The designated distribution time must be the same for all Participants, be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code Section 401(a)(4).]

SEPARATION FROM SERVICE/VESTED ACCOUNT BALANCE EXCEEDING $5,000. A separated Participant whose Vested Account Balance exceeds $5,000 may elect to commence distribution of his/her Vested Account Balance no earlier than: (Choose one of (e) through (i). Choose (j) if applicable)

[X] (e) IMMEDIATE. As soon as administratively practicable following the Participant's Separation from Service.

[ ] (f) DESIGNATED PLAN YEAR. As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Separation from Service.

[ ] (g) DESIGNATED PLAN YEAR QUARTER. As soon as administratively practicable in the _____ Plan Year quarter following the Plan Year quarter in which the Participant elects to receive a distribution.

[ ] (h) NORMAL RETIREMENT AGE. As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age and within the time required under Plan Section 6.01(A)(2).

[ ] (i) DESIGNATED DISTRIBUTION. As soon as administratively practicable in the:_____ following the Participant's Separation from Service. [Note:
The designated distribution time must be the same for all Participants, be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code Section 401(a)(4).]

**[X] (j) LIMITATION ON PARTICIPANT'S RIGHT TO DELAY DISTRIBUTION. A Participant**
may not elect to delay commencement of distribution of his/her Vested Account Balance beyond the later of attainment of age 62 or Normal Retirement Age. [Note: If the Employer does not elect (j), the Plan permits a Participant who has Separated from Service to delay distribution until his/her required beginning date. See Plan Section 6.01(A)(2).]

PARTICIPANT ELECTIONS PRIOR TO SEPARATION FROM SERVICE. A Participant, prior to Separation from Service may elect any of the following distribution options in accordance with Plan Section 6.01(C). (Choose (k) or choose one or more of (l) through (o) as applicable). [Note: If the Employer elects any in-service distributions option, a Participant may elect to receive one in-service distribution per Plan Year unless the Plan's in-service distribution form provides for more frequent in-service distributions.]

[ ] (k) NONE. A Participant does not have any distribution option prior to Separation from Service, except as may be provided under Plan Section 6.01(C).

[X] (l) DEFERRAL CONTRIBUTIONS. Distribution of all or any portion (as permitted by the Plan) of a Participant's Account Balance attributable to deferral contributions if: (Choose one or more of(l), (2) or (3) as applicable)

[X] (1) HARDSHIP (SAFE HARBOR HARDSHIP RULE). The Participant has incurred a hardship in accordance with Plan Sections 6.09 and 14.11(A).

[ ] (2) AGE. The Participant has attained age ___ (Must be at least age 59 1/2).

[ ] (3) DISABILITY. The Participant has incurred a Disability.

**[ ] (m) QUALIFIED NONELECTIVE CONTRIBUTIONS/QUALIFIED MATCHING**
CONTRIBUTIONS/SAFE HARBOR CONTRIBUTIONS. Distribution of all or any portion of a Participant's Account Balance attributable to qualified nonelective contributions, to qualified matching contributions, or to 401(k) safe harbor contributions if: (Choose (1) or (2) or both as applicable)

[ ] (1) AGE. The Participant has attained age _____ (Must be at least age 59 1/2).

[ ] (2) DISABILITY. The Participant has incurred a Disability.

**[ ] (n) NONELECTIVE CONTRIBUTIONS/REGULAR MATCHING CONTRIBUTIONS. Distribution**
of all or any portion of a Participant's Vested Account Balance attributable to nonelective contributions or to regular matching contributions if: (Choose one or more of(l) through (5) as applicable)

[ ] (1) AGE/SERVICE CONDITIONS. (Choose one or more of a. through d. as applicable):

[ ] a. AGE. The Participant has attained age ____.

[ ] b. TWO-YEAR ALLOCATIONS. The Plan Administrator has allocated the contributions to be distributed for a period of not less than ____ Plan Years before the distribution date. [Note: The minimum number of years is 2.]

[ ] c. FIVE YEARS OF PARTICIPATION. The Participant has participated in the Plan for at least ____ Plan Years.

[Note: The minimum number of years is 5.]

[ ] d. VESTED. The Participant is ___ % Vested in his/her Account Balance. See Plan Section 5.03(A).
[Note: If an Employer makes more than one election under Section 6.01(n)(l), a Participant must satisfy all conditions before the Participant is eligible for the distribution.]

[ ] (2) HARDSHIP. The Participant has incurred a hardship in accordance with Plan Section 6.09.

[ ] (3) HARDSHIP (SAFE HARBOR HARDSHIP RULE). The Participant has incurred a hardship in accordance with Plan Sections 6.09 and 14.11(A).

[ ] (4) DISABILITY. The Participant has incurred a Disability.

[ ] (5) DESIGNATED CONDITION. The Participant has satisfied the following condition(s): _____.
[Note: Any designated condition(s) must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]

[ ] (o) PARTICIPANT CONTRIBUTIONS. Distribution of all or any portion of a Participant's Account Balance attributable to the following Participant contributions described in Plan Section 4.01: (Choose one of (1), (2) or

(3))

**[ ] (1) ALL PARTICIPANT CONTRIBUTIONS.**

**[ ] (2) EMPLOYEE CONTRIBUTIONS ONLY.**

**[ ] (3) ROLLOVER CONTRIBUTIONS ONLY.**

**PARTICIPANT LOAN DEFAULT/OFFSET. See Section 6.08 of the Plan.**

26. DISTRIBUTION METHOD (6.03). A separated Participant whose Vested Account Balance exceeds $5,000 may elect distribution under one of the following method(s) of distribution described in Plan Section 6.03: (Choose one or more of (a) through (d) as applicable)

**[X] (a) LUMP SUM.**

**[ ] (b) INSTALLMENTS.**

**[ ] (c) INSTALLMENTS FOR REQUIRED MINIMUM DISTRIBUTIONS ONLY.**

**[ ] (d) ANNUITY DISTRIBUTION OPTION(s):_____.**
[Note: Any optional method of distribution may not be subject to Employer, Plan Administrator or Trustee discretion.]

27. JOINT AND SURVIVOR ANNUITY REQUIREMENTS (6.04). The joint and survivor annuity distribution requirements of Plan Section 6.04: (Choose one of (a) or
(b))

[X] (a) PROFIT SHARING PLAN EXCEPTION. Do not apply to a Participant, unless the Participant is a Participant described in Section 6.04 (H) of the Plan.

[ ] (b) APPLICABLE. Apply to all Participants.

## ARTICLE IX
## PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS

28. ALLOCATION OF NET INCOME, GAIN OR LOSS (9.08). For each type of contribution provided under the Plan, the Plan allocates net income, gain or loss using the following method: (Choose one or more of (a) through (e) as applicable)

**[X] (a) DEFERRAL CONTRIBUTIONS/EMPLOYEE CONTRIBUTIONS. (Choose one or more**
of(l) through (5) as applicable)

[X] (1) DAILY VALUATION METHOD. Allocate on each business day of the Plan Year during which Plan assets for which there is an established market are valued and the Trustee is conducting business.

[ ] (2) BALANCE FORWARD METHOD. Allocate using the balance forward method.

[ ] (3) WEIGHTED AVERAGE METHOD. Allocate using the weighted average method, based on the following weighting period:_____. See Plan
Section 14.12.

[ ] (4) BALANCE FORWARD METHOD WITH ADJUSTMENT. Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period _____% of the contributions made during the following valuation period:_____.

[ ] (5) INDIVIDUAL ACCOUNT METHOD. Allocate using the individual account method. See Plan Section 9.08.

[X] (b) MATCHING CONTRIBUTIONS. (Choose one or more of (1) through (5) as applicable)

[X] (1) DAILY VALUATION METHOD. Allocate on each business day of the Plan Year during which Plan assets for which there is an established market are valued and the Trustee is conducting business.

[ ] (2) BALANCE FORWARD METHOD. Allocate using the balance forward method.

[ ] (3) WEIGHTED AVERAGE METHOD. Allocate using the weighted average method, based on the following weighting period:_____. See Plan
Section 14.12.

[ ] (4) BALANCE FORWARD METHOD WITH ADJUSTMENT. Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period ____% of the contributions made during the following valuation period:____.

[ ] (5) INDIVIDUAL ACCOUNT METHOD. Allocate using the individual account method. See Plan Section 9.08.

[X] (c) EMPLOYER NONELECTIVE CONTRIBUTIONS. (Choose one or more of (1) through
(5) as applicable)

[X] (1) DAILY VALUATION METHOD. Allocate on each business day of the Plan Year during which Plan assets for which there is an

established market are valued and the Trustee is conducting business.

[ ] (2) BALANCE FORWARD METHOD. Allocate using the balance forward method.

[ ] (3) WEIGHTED AVERAGE METHOD. Allocate using the weighted average method, based on the following weighting period:_____.
See Plan
Section 14.12.

[ ] (4) BALANCE FORWARD METHOD WITH ADJUSTMENT. Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period _____% of the contributions made during the following valuation period:____.

[ ] (5) INDIVIDUAL ACCOUNT METHOD. Allocate using the individual account method. See Plan Section 9.08.

[ ] (d) SPECIFIED METHOD. Allocate pursuant to the following method:_____.
[Note: The specified method must be a definite predetermined formula which is not based on Compensation, which satisfies the nondiscrimination requirements of Treas. Reg. Section 1.401(a)(4) and which is applied uniformly to all Participants.]

[ ] (e) INTEREST RATE FACTOR. In accordance with Plan Section 9.08(E), the Plan includes interest at the following rate on distributions made more than 90 days after the most recent valuation date: _____.

## ARTICLE X
## TRUSTEE AND CUSTODIAN, POWERS AND DUTIES

29. INVESTMENT POWERS (10.03). The following additional investment options or limitations apply under Plan Section 10.03: Cott Corporation Stock. Participants will be restricted from transferring more than 25% of their current or future assets into the Cott Stock investment. [Note: Enter "N/A" if not applicable.]

30. VALUATION OF TRUST (10.15). In addition to the last day of the Plan Year, the Trustee must value the Trust Fund on the following valuation date(s):
(Choose one of (a) through (d))

[X] (a) DAILY VALUATION DATES. Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee is conducting business.

[ ] (b) LAST DAY OF A SPECIFIED PERIOD. The last day of each _____ of the Plan Year.

**[ ] (c) SPECIFIED DATES:_____.**

**[ ] (d) NO ADDITIONAL VALUATION DATES.**

**EXECUTION PAGE**

The Trustee (and Custodian, if applicable), by executing this Adoption Agreement, accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Prototype Plan and Trust. The Employer hereby agrees to the provisions of this Plan and Trust, and in witness of its agreement, the Employer by its duly authorized officers, has executed this Adoption Agreement, and the Trustee (and Custodian, if applicable) has signified its acceptance, on: August 21, 2003.

Name of Employer: Cott Beverages Inc.

Employer's EIN: 58-1947565

*Signed: /s/ Colin D. Walker*
*---*
*Colin D. Walker*
*Senior Vice President*
*---*
*[Name/Title]*

*Name(s) of Trustee:*

**Wachovia Bank, N.A.**

**Trust EIN (Optional):**

Signed:_____
[Name/Title] Signed:_____
[Name/Title] Signed:_____
[Name/Title] Signed:_____
[Name/Title] Signed:_____
[Name/Title] Signed:_____
[Name/Title] Signed:_____
[Name/Title]

**Name of Custodian (Optional):**

Signed: _____
[Name/Title]

31. PLAN NUMBER. The 3-digit plan number the Employer assigns to this Plan for ERISA reporting purposes (Form 5500 Series) is: 003.

Use OF ADOPTION AGREEMENT. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement in conjunction with the basic plan document referenced by its document number on Adoption Agreement page one.

EXECUTION FOR PAGE SUBSTITUTION AMENDMENT ONLY. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Section(s)_____effective_____, by substitute Adoption Agreement page number(s)_____.

PROTOTYPE PLAN SPONSOR. The Prototype Plan Sponsor identified on the first page of the basic plan document will notify all adopting employers of any amendment of this Prototype Plan or of any abandonment or discontinuance by the Prototype Plan Sponsor of its maintenance of this Prototype Plan. For inquiries regarding the adoption of the Prototype Plan, the Prototype Plan Sponsor's intended meaning of any Plan provisions or the effect of the opinion letter issued to the Prototype Plan Sponsor, please contact the Prototype Plan Sponsor at the following address and telephone number: 1525 West W.T. Harris Blvd.; Bldg. 3C5; Charlotte, NC 28288-1176, 800-669-5812

RELIANCE ON SPONSOR OPINION LETTER. The Prototype Plan Sponsor has obtained from the IRS an opinion letter specifying the form of this Adoption Agreement and the basic plan document satisfy, as of the date of the opinion letter, Code Section 401. An adopting Employer may rely on the Prototype Sponsor's IRS opinion letter only to the extent provided in Announcement 2001-77, 2001-30 I.R.B. The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter and in Announcement 2001-77. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the Internal Revenue Service.

**APPENDIX A**
**TESTING ELECTIONS/EFFECTIVE DATE ADDENDUM**

35. The following testing elections and special effective dates apply: (Choose one or more of (a) through (n) as applicable)

[ ] (a) HIGHLY COMPENSATED EMPLOYEE (1.14). For Plan Years beginning after____, the Employer makes the following election(s) regarding the definition of Highly Compensated Employee:

(1) [ ] TOP PAID GROUP ELECTION.

(2) [ ] CALENDAR YEAR DATA ELECTION (FISCAL YEAR PLAN).

[X] (b) 401 (k) CURRENT YEAR TESTING. The Employer will apply the current year testing method in applying the ADP and ACP tests effective for Plan Years beginning after: December 31, 2001. [Note: For Plan Years beginning on or after the Employer's execution of its "GUST" restatement, the Employer must use the same testing method within the same Plan Year for both the ADP and ACP tests.]

[ ] (c) COMPENSATION. The Compensation definition under Section 1.07 will apply for Plan Years beginning after:_____.

[ ] (d) ELECTION NOT TO PARTICIPATE. The election not to participate under Section 2.06 is effective:_____.

[ ] (e) 401(k) SAFE HARBOR. The 401(k) safe harbor provisions under Section 3.01(d) are effective:_____.

[ ] (f) NEGATIVE ELECTION. The negative election provision under Section 3.02(b) is effective:_____.

[ ] (g) CONTRIBUTION/ALLOCATION FORMULA. The specified contribution(s) and allocation method(s) under Sections 3.01 and 3.04 are effective:_____.

[ ] (h) ALLOCATION CONDITIONS. The allocation conditions of Section 3.06 are effective:_____.

[ ] (i) BENEFIT PAYMENT ELECTIONS. The distribution elections of Section(s)_____are effective:_____.

**[ ] (j) ELECTION TO CONTINUE PRE-SBJPA REQUIRED BEGINNING DATE. A Participant** may not elect to defer commencement of the distribution of his/her Vested Account Balance beyond the April 1 following the calendar year in which the Participant attains age 70 1/2. See Plan Section 6.02(A).

**[ ] (k) ELIMINATION OF AGE 70 1/2 IN-SERVICE DISTRIBUTIONS. The Plan eliminates** a Participant's (other than a more than 5% owner) right to receive in-service distributions on April 1 of the calendar year following the year in which the Participant attains age 70 1/2 for Plan Years beginning after:_____.

[ ] (l) ALLOCATION OF EARNINGS. The earnings allocation provisions under Section 9.08 are effective:_____.

**[X] (m) ELIMINATION OF OPTIONAL FORMS OF BENEFIT. The Employer elects** prospectively to eliminate the following optional forms of benefit: (Choose one or more of (1), (2) and (3) as applicable)

[X] (1) QJSA and QPSA benefits as described in Plan Sections 6.04, 6.05 and 6.06 effective: September 1, 2002.

[ ] (2) Installment distributions as described in Section 6.03 effective:_____.

[X] (3) Other optional forms of benefit (Any election to eliminate must be consistent with Treas. Reg. Section 1.411(d)-4): Life Annuity with 120 month term certain: Effective September 1, 2002.

**[ ] (n) SPECIAL EFFECTIVE DATE(s):_____.**

For periods prior to the above-specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

**APPENDIX B**
**GUST REMEDIAL AMENDMENT PERIOD ELECTIONS**

36. The following GUST restatement elections apply: (Choose one or more of (a) through (j) as applicable)

[ ] (a) HIGHLY COMPENSATED EMPLOYEE ELECTIONS. The Employer makes the following remedial amendment period elections with respect to the Highly Compensated Employee definition:

| | | |
|---|---|---|
| (1) 1997: | [ ] Top paid group election. | [ ] Calendar year election. |
| | [ ] Calendar year data election. | |
| (2) 1998: | [ ] Top paid group election. | [ ] Calendar year data election. |
| (3) 1999: | [ ] Top paid group election. | [ ] Calendar year data election. |
| (4) 2000: | [ ] Top paid group election. | [ ] Calendar year data election. |
| (5) 2001: | [ ] Top paid group election. | [ ] Calendar year data election. |
| (6) 2002: | [ ] Top paid group election. | [ ] Calendar year data election. |

[X] (b) 401(k) TESTING METHODS. The Employer makes the following remedial amendment period elections with respect to the ADP test and the ACP test:
[Note: The Employer may use a different testing method for the ADP and ACP tests through the end of the Plan Year in which the Employer executes its GUST restated Plan.]

| | ADP TEST | | | ACP TEST | |
|---|---|---|---|---|---|
| (1) 1997: | [ ] prior year | [X] current year | 1997: | [ ] prior year | [X] current year |
| (2) 1998: | [ ] prior year | [X] current year | 1998: | [ ] prior year | [X] current year |
| (3) 1999: | [ ] prior year | [X] current year | 1999: | [ ] prior year | [X] current year |
| (4) 2000: | [ ] prior year | [X] current year | 2000: | [ ] prior year | [X] current year |
| (5) 2001: | [ ] prior year | [X] current year | 2001: | [ ] prior year | [X] current year |
| (6) 2002: | [ ] prior year | [X] current year | 2002: | [ ] prior year | [X] current year |

**[ ] (c) DELAYED APPLICATION OF SBJPA REQUIRED BEGINNING DATE. The Employer**
elects to delay the effective date for the required beginning date provision of Plan Section 6.02 until Plan Years beginning after:_____.

**[ ] (d) MODEL AMENDMENT FOR REQUIRED MINIMUM DISTRIBUTIONS. The Employer adopts**
the IRS Model Amendment in Plan Section 6.02(e) effective_____. [Note: The date must not be earlier than January 1, 2001.]

**DEFINED BENEFIT LIMITATION**

[ ] (e) CODE SECTION 415(e) REPEAL. The repeal of the Code Section 415(e) limitation is effective for Limitation Years beginning after _____ [Note:
If the Employer does not make an election under (e), the repeal is effective for Limitation Years beginning after December 31, 1999.]

CODE SECTION 415(e) LIMITATION. To the extent necessary to satisfy the limitation under Plan Section 3.17 for Limitation Years beginning prior to the repeal of Code Section 415(e), the Employer will reduce: (Choose one of (f) or
(g))

[ ] (f) The Participant's projected annual benefit under the defined benefit plan.

[ ] (g) The Employer's contribution or allocation on behalf of the Participant to the defined contribution plan and then, if necessary, the Participant's projected annual benefit under the defined benefit plan.

COORDINATION WITH TOP-HEAVY MINIMUM ALLOCATION. The Plan Administrator will apply the top-heavy minimum allocation provisions of Article XII with the following modifications: (Choose (h) or choose (i) or (j) or both as applicable)

[X] (h) No modifications.

[ ] (i) For Non-Key Employees participating only in this Plan, the top-heavy minimum allocation is the minimum allocation determined by substituting ____% (not less than 4%) for "3%," except: (Choose one of (1) or (2))

[ ] (1) No exceptions.

[ ] (2) Plan Years in which the top-heavy ratio exceeds 90%.

[ ] (j) For Non-Key Employees also participating in the defined benefit plan, the top-heavy minimum is: (Choose one of (1) or (2))

[ ] (1) 5% of Compensation irrespective of the contribution rate of any Key Employee: (Choose one of a. or b.)

[ ] a. No exceptions.

[ ] b. Substituting "7 1/2%" for "5%" if the top-heavy ratio does not exceed 90%.

[ ] (2) 0%. [Note: The defined benefit plan must satisfy the top-heavy minimum benefit requirement for these Non-Key Employees.]

ACTUARIAL ASSUMPTIONS FOR TOP-HEAVY CALCULATION. To determine the top-heavy ratio, the Plan Administrator will use the following interest rate and mortality assumptions to value accrued benefits under a defined benefit plan:_____.

**CHECKLIST OF EMPLOYER INFORMATION**
**AND EMPLOYER ADMINISTRATIVE ELECTIONS**

**COMMENCING WITH THE 2003 PLAN YEAR**

The Prototype Plan permits the Employer to make certain administrative elections not reflected in the Adoption Agreement. This form lists those administrative elections and provides a means of recording the Employer's elections. This checklist is not part of the Plan document.

37. EMPLOYER INFORMATION.

Cott Beverages Inc.
[Employer Name]

1000 10th Avenue
[Address]

Columbus, Georgia 31901 — 706-494-7581
[City, State and Zip Code] — [Telephone Number]

38. FORM OF BUSINESS.

(a) [X] Corporation (b) [ ] S Corporation

(c) [ ] Limited Liability Company (d) [ ] Sole Proprietorship

(e) [ ] Partnership (f) [ ] _____

39. SECTION 1.07(F) - NONDISCRIMINATORY DEFINITION OF COMPENSATION. When testing nondiscrimination under the Plan, the Plan permits the Employer to make elections regarding the definition of Compensation. [Note: This election solely is for purposes of nondiscrimination testing. The election does not affect the Employer's elections under Section 1.07 which apply for purposes of allocating Employer contributions and Participant forfeitures.]

(a) [X] The Plan will "gross up" Compensation for Elective Contributions.

(b) [ ] The Plan will exclude Elective Contributions.

40. SECTION 4.04 - ROLLOVER CONTRIBUTIONS.

(a) [X] The Plan accepts rollover contributions.

(b) [ ] The Plan does NOT accept rollover contributions.

41. SECTION 8.06 - PARTICIPANT DIRECTION OF INVESTMENT/404(c). The Plan authorizes Participant direction of investment with Trustee consent. If the Trustee permits Participant direction of investment, the Employer and the Trustee should adopt a policy which establishes the applicable conditions and limitations, including whether they intend the Plan to comply with ERISA Section 404(c).

(a) [X] The Plan permits Participant direction of investment and is a 404(c) plan.

(b) [ ] The Plan does NOT permit Participant direction of investment or is a non-404(c) plan.

42. SECTION 9.04[A] - PARTICIPANT LOANS. The Plan authorizes the Plan Administrator to adopt a written loan policy to permit Participant loans.

(a) [ ] The Plan permits Participant loans subject to the following conditions:

(1) [ ] Minimum loan amount: $_____.

(2) [ ] Maximum number of outstanding loans:_____.

(3) [ ] Reasons for which a Participant may request a loan:

a. [ ] Any purpose.

b. [ ] Hardship events.

c. [ ] Other:_____.

(4) [ ] Suspension of loan repayments:

a. [ ] Not permitted.

b. [ ] Permitted for non-military leave of absence.

c. [ ] Permitted for military service leave of absence.

(5) [ ] The Participant must be a party in interest.

(b) [X] The Plan does NOT permit Participant loans.

43. SECTION 11.01 - LIFE INSURANCE. The Plan with Employer approval authorizes the Trustee to acquire life insurance.

(a) [ ] The Plan will invest in life insurance contracts.

(b) [X] The Plan will NOT invest in life insurance contracts.

44. SURETY BOND COMPANY:_____. Surety bond amount: $_____

**EXHIBIT 4.9**

**EGTRRA**
**AMENDMENT TO THE**

**COTT BEVERAGES SAN BERNARDINO SAVINGS & RETIREMENT PLAN**

**EGTRRA - EMPLOYER**

## ARTICLE I
## PREAMBLE

1.1 Adoption and effective date of amendment. This amendment of the plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.

1.2 Supersession of inconsistent provisions. This amendment shall supersede the provisions of the plan to the extent those provisions are inconsistent with the provisions of this amendment.

## ARTICLE II
## ADOPTION AGREEMENT ELECTIONS

THE QUESTIONS IN THIS ARTICLE II ONLY NEED TO BE COMPLETED IN ORDER TO OVERRIDE THE DEFAULT PROVISIONS SET FORTH BELOW. IF ALL OF THE DEFAULT PROVISIONS WILL APPLY, THEN THESE QUESTIONS SHOULD BE SKIPPED.

**UNLESS THE EMPLOYER ELECTS OTHERWISE IN THIS ARTICLE II, THE FOLLOWING DEFAULTS APPLY:**

1) THE VESTING SCHEDULE FOR MATCHING CONTRIBUTIONS WILL BE A 6 YEAR GRADED SCHEDULE (IF THE PLAN CURRENTLY HAS A GRADED SCHEDULE THAT DOES NOT SATISFY EGTRRA) OR A 3 YEAR CLIFF SCHEDULE (IF THE PLAN CURRENTLY HAS A CLIFF SCHEDULE THAT DOES NOT SATISFY EGTRRA), AND SUCH SCHEDULE WILL APPLY TO ALL MATCHING CONTRIBUTIONS (EVEN THOSE MADE PRIOR TO 2002).

2) ROLLOVERS ARE AUTOMATICALLY EXCLUDED IN DETERMINING WHETHER THE $5,000 THRESHOLD HAS BEEN EXCEEDED FOR AUTOMATIC CASH-OUTS (IF THE PLAN IS NOT SUBJECT TO THE QUALIFIED JOINT AND SURVIVOR ANNUITY RULES AND PROVIDES FOR AUTOMATIC CASH-OUTS). THIS IS APPLIED TO ALL PARTICIPANTS REGARDLESS OF WHEN THE DISTRIBUTABLE EVENT OCCURRED.

3) THE SUSPENSION PERIOD AFTER A HARDSHIP DISTRIBUTION IS MADE WILL BE 6 MONTHS AND THIS WILL ONLY APPLY TO HARDSHIP DISTRIBUTIONS MADE AFTER 2001.

4) CATCH-UP CONTRIBUTIONS WILL BE ALLOWED.

5) FOR TARGET BENEFIT PLANS, THE INCREASED COMPENSATION LIMIT OF $200,000 WILL BE APPLIED RETROACTIVELY (i.e., TO YEARS PRIOR TO 2002).

2.1 VESTING SCHEDULE FOR MATCHING CONTRIBUTIONS

If there are matching contributions subject to a vesting schedule that does not satisfy EGTRRA, then unless otherwise elected below, for participants who complete an hour of service in a plan year beginning after December 31, 2001, the following vesting schedule will apply to all matching contributions subject to a vesting schedule:

If the plan has a graded vesting schedule (i.e., the vesting schedule includes a vested percentage that is more than 0% and less than 100%) the following will apply:

| Years of vesting service | Nonforfeitable percentage |
|---|---|
| 2 | 20% |
| 3 | 40% |
| 4 | 60% |
| 5 | 80% |
| 6 | 100% |

If the plan does not have a graded vesting schedule, then matching contributions will be nonforfeitable upon the completion of 3 years of vesting service.

In lieu of the above vesting schedule, the employer elects the following schedule:

a. [ ] 3 year cliff (a participant's accrued benefit derived from employer matching contributions shall be nonforfeitable upon the participant's completion of three years of vesting service).

b. [ ] 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).

c. [ ] Other (must be at least as liberal as a. or the b. above):

**EGTRRA - EMPLOYER**

| Years of vesting service | Nonforfeitable percentage |
|---|---|
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |

The vesting schedule set forth herein shall only apply to participants who complete an hour of service in a plan year beginning after December 31, 2001, and, unless the option below is elected, shall apply to ALL matching contributions subject to a vesting schedule.

d. [ ] The vesting schedule will only apply to matching contributions made in plan years beginning after December 31, 2001 (the prior schedule will apply to matching contributions made in prior plan years).

2.2 EXCLUSION OF ROLLOVERS IN APPLICATION OF INVOLUNTARY CASH-OUT PROVISIONS (FOR PROFIT SHARING AND 401(k) PLANS ONLY). If the plan is not subject to the qualified joint and survivor annuity rules and includes involuntary cash-out provisions, then unless one of the options below is elected, effective for distributions made after December 31, 2001, rollover contributions will be excluded in determining the value of the participant's nonforfeitable account balance for purposes of the plan's involuntary cash-out rules.

a. [X] Rollover contributions will not be excluded.

b. [ ] Rollover contributions will be excluded only with respect to distributions made after _____. (Enter a date no earlier than December 31, 2001.)

c. [ ] Rollover contributions will only be excluded with respect to participants who separated from service after _____. (Enter a date. The date may be earlier than December 31, 2001.)

2.3 SUSPENSION PERIOD OF HARDSHIP DISTRIBUTIONS. If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-l(d)(2)(iv), then, unless the option below is elected, the suspension period following a hardship distribution shall only apply to hardship distributions made after December 31,2001.

[ ] With regard to hardship distributions made during 2001, a participant shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

2.4 CATCH-UP CONTRIBUTIONS (FOR 401 (k) PROFIT SHARING PLANS ONLY): The plan permits catch-up contributions (Article VI) unless the option below is elected.

[ ] The plan does not permit catch-up contributions to be made.

2.5 FOR TARGET BENEFIT PLANS ONLY: The increased compensation limit ($200,000 limit) shall apply to years prior to 2002 unless the option below is elected.

[ ] The increased compensation limit will not apply to years prior to 2002.

## ARTICLE III
## VESTING OF MATCHING CONTRIBUTIONS

3.1 Applicability. This Article shall apply to participants who complete an Hour of Service after December 31, 2001, with respect to accrued benefits derived from employer matching contributions made in plan years beginning after December 31, 2001. Unless otherwise elected by the employer in Section 2.1 above, this Article shall also apply to all such participants with respect to accrued benefits derived from employer matching contributions made in plan years beginning prior to January 1, 2002.

3.2 Vesting schedule. A participant's accrued benefit derived from employer matching contributions shall vest as provided in Section 2.1 of this amendment.

## ARTICLE IV
## INVOLUNTARY CASH-OUTS

4.1 Applicability and effective date. If the plan provides for involuntary cash-outs of amounts less than $5,000, then unless otherwise elected in

Section 2.2 of this amendment, this Article shall apply for distributions made after December 31, 2001, and shall apply to all participants. However, regardless of the preceding, this Article shall not apply if the plan is subject to the qualified joint and survivor annuity requirements of Sections 401(a)(11) and 417 of the Code.

4.2 Rollovers disregarded in determining value of account balance for involuntary distributions. For purposes of the Sections of the plan that provide for the involuntary distribution of vested accrued benefits of $5,000 or less, the value of a participant's nonforfeitable account balance shall be determined without regard to that portion of the account

balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code. If the value of the participant's nonforfeitable account balance as so determined is $5,000 or less, then the plan shall immediately distribute the participant's entire nonforfeitable account balance.

## ARTICLE V
## HARDSHIP DISTRIBUTIONS

5.1 Applicability and effective date. If the plan provides for hardship distributions upon satisfaction of the safe harbor (deemed) standards as set forth in Treas. Reg. Section 1.401(k)-l(d)(2)(iv), then this Article shall apply for calendar years beginning after 2001.

5.2 Suspension period following hardship distribution. A participant who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for 6 months after receipt of the distribution. Furthermore, if elected by the employer in Section 2.3 of this amendment, a participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

## ARTICLE VI
## CATCH-UP CONTRIBUTIONS

Catch-up Contributions. Unless otherwise elected in Section 2.4 of this amendment, all employees who are eligible to make elective deferrals under this 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, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Sections 402(g) and 415 of the Code. The plan shall not be treated as failing to satisfy the provisions of the plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

## ARTICLE VII
## INCREASE IN COMPENSATION LIMIT

Increase in Compensation Limit. The annual compensation of each participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). If this is a target benefit plan, then except as otherwise elected in Section 2.5 of this amendment, for purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited to $200,000. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

## ARTICLE VIII
## PLAN LOANS

Plan loans for owner-employees or shareholder-employees. If the plan permits loans to be made to participants, then effective for plan loans made after December 31, 2001, plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

## ARTICLE IX
## LIMITATIONS ON CONTRIBUTIONS (IRC SECTION 415 LIMITS)

9.1 Effective date. This Section shall be effective for limitation years beginning after December 31, 2001.

9.2 Maximum annual addition. Except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:

a. $40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or

b. 100 percent of the participant's compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in b. shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

## ARTICLE X
## MODIFICATION OF TOP-HEAVY RULES

10.1 Effective date. This Article shall apply for purposes of determining whether the plan is a top-heavy plan under Section 416(g) of the Code for plan years beginning after December 31, 2001, and whether the plan satisfies the minimum benefits requirements of Section 416(c) of the Code for such years. This Article amends the top-heavy provisions of the plan.

10.2 Determination of top-heavy status.

10.2.1 Key employee. Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than $130,000 (as adjusted under Section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than $150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

10.2.2 Determination of present values and amounts. This Section 10.2.2 shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.

a. Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under Section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

b. Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

10.3 Minimum benefits.

10.3.1 Matching contributions. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the plan. The preceding sentence shall apply with respect to matching contributions under the plan or, if the plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.

10.3.2 Contributions under other plans. The employer may provide, in an addendum to this amendment, that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met). The addendum should include the name of the other plan, the minimum benefit that will be provided under such other plan, and the employees who will receive the minimum benefit under such other plan.

11.1 Effective date. This Article shall apply to distributions made after December 31, 2001.

11.2 Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions of the plan, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic

relation order, as defined in Section 414(p) of the Code.

11.3 Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions of the plan, 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.

11.4 Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401 (a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

ARTICLE XII
ROLLOVERS FROM OTHER PLANS

Rollovers from other plans. The employer, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this plan.

## ARTICLE XIII
## REPEAL OF MULTIPLE USE TEST

Repeal of Multiple Use Test. The multiple use test described in Treasury Regulation Section 1.401(m)-2 and the plan shall not apply for plan years beginning after December 31, 2001.

## ARTICLE XIV
## ELECTIVE DEFERRALS

14.1 Elective Deferrals - Contribution Limitation. No participant shall be permitted to have elective deferrals made under this plan, or any other qualified plan maintained by the employer during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable.

14.2 Maximum Salary Reduction Contributions for SIMPLE plans. If this is a SIMPLE 401(k) plan, then except to the extent permitted under Article VI of this amendment and Section 414(v) of the Code, if applicable, the maximum salary reduction contribution that can be made to this plan is the amount determined under Section 408(p)(2)(A)(ii) of the Code for the calendar year.

ARTICLE XV
SAFE HARBOR PLAN PROVISIONS

Modification of Top-Heavy Rules. The top-heavy requirements of Section 416 of the Code and the plan shall not apply in any year beginning after December 31, 2001, in which the plan consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met

## ARTICLE XVI
## DISTRIBUTION UPON SEVERANCE OF EMPLOYMENT

16.1 Effective date. This Article shall apply for distributions and transactions made after December 31, 2001, regardless of when the severance of employment occurred.

16.2 New distributable event. A participant's elective deferrals, qualified nonelective contributions, qualified matching contributions, and earnings attributable to these contributions shall be distributed on account of the participant's severance from employment. However, such a distribution shall be subject to the other provisions of the plan regarding distributions, other than provisions that require a

separation from service before such amounts may be distributed.

**EGTRRA - EMPLOYER**

This amendment has been executed this 21st day of August, 2003.

Name of Employer: Cott Beverages Inc.

*By: /s/ Colin D. Walker*

_____

*EMPLOYER*

Name of Plan: Cott Beverages San Bernardino Savings & Retirement Plan

**DEEMED IRA - EMPLOYER**

## ARTICLE I
## PREAMBLE

1.1 Adoption and effective date of amendment. This amendment, effective as of the date specified in Section 2.1 below, is adopted to implement Code Section 408(q) as added by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with such provisions and is to be construed in accordance with EGTRRA and guidance issued thereunder.

1.2 Supersession of inconsistent provisions. This amendment shall supersede the provisions of the plan to the extent those provisions are inconsistent with the provisions of this amendment.

**Exhibit 5.1**

INTERNAL REVENUE SERVICE Department of the Treasury Washington, DC 20224

Plan Description: Prototype
Non-standardized Profit Sharing
Plan with CODA
FFN: 50326960701-005 Case: 200105793
EIN: 22-1147033

BPD: 01 Plan: 005
Letter Serial No: K308706a

FIRST UNION NATIONAL BANK
1525 WEST W.T. HARRIS BLVD. NC176
Charlotte, NC 28288

Contact Person: Ms. Arrington 50-00197
Telephone Number: (202) 383-8811
In reference ID: T:EP:RA:ICU
Date: 08/30/2001

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employees for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other federal or local statutes.

You must furnish a copy of this letter to each employer who adopts this plan. You are also required to send a copy of the approved form of the plan, any approved amendments and related documents to Employee Plans Determinations in Cincinnati at the address specified in section 9.11 of Rev. Proc. 2000-20 2000-6 I.R.B. 553.

This letter considers the changes in qualifications requirements made by the Uruguay Round Agreements Act (GATT). Pub. L. 103-465, the Small Business Job Protection Act of 1996, Pub. L. 104-188, the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353, the Taxpayer Relief Act of 1997, Pub. L. 105-34, the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554. These laws are referred to collectively as GUST.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section
401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a) as provided for in Announcement 2001-77, 2001-30 I.R.B. and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of: (a) Code sections 401(a)(4), 401(a)(26), 401(l), 410 (b) and
414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s) provided such other plan(s) has

been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Likewise, if this plan is first effective on or after the effective date of the repeal of Code section
415(e), the employer will not be considered to have maintained another plan merely because the employer has maintained benefit plan(s), provided the defined benefit plan(s) has been terminated prior to the effective date of this plan. Our opinion also does not apply for purposes of Code section 401(a)(16) if, after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3).

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an opinion letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4) and the requirements of sections 401(k) and 401(m) (except where the plan is a safe harbor plan under section 401(k)(12) that provides for the safe harbor contribution to be made under another plan).

An employer that elects to continue to apply the pre-GUST family aggregation rules in years beginning after December 31, 1996, or the combined plan limit of section 415(e) in years beginning after December 31, 1999, will not be able to rely on the opinion letter without a determination letter. The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

If you, the master or prototype sponsor, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the master or prototype sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,

*/s/ Paul T. Shultz*
*----------*
*Director*
*Employee Plans Rulings & Agreements*

**Exhibit 23**

**CONSENT OF CHARTERED ACCOUNTANTS**

We hereby consent to the incorporation by reference in the Registration Statement of Cott Corporation on Form S-8 of our report dated January 30, 2003, relating to the consolidated financial statements of Cott Corporation, which appears in Cott Corporation's Annual Report on Form 10K for the year ended December 28, 2002. We also consent to the incorporation by reference of our report dated January 30, 2003 relating to the consolidated financial statement schedules, which appears in the Annual Report on Form 10-K for the year ended December 28, 2002.

*/s/ PRICEWATERHOUSECOOPERS LLP*

*Chartered Accountants*
*Toronto, Ontario, CANADA*
*August 21, 2003*